

**IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT KABWE**

Appeal No. 314/2021

(Civil Jurisdiction)

B E T W E E N:

WABEI NAMBULA MANGAMBWA

AND

ZCCM INVESTMENT HOLDINGS



APPELLANT

RESPONDENT

**Coram: Kondolo, Majula & Chembe JJA
On 13th October, 2023 and 30th October, 2023**

For the Appellant : *Mr. K. Hang'andu of Kelvin Hang'andu & Co.*

For the Respondent : *Mr. B. Mbilima, In — House Counsel*

JUDGMENT

MAJULA JA, delivered the Judgment of the Court.

Cases referred to:

1. *ZCCM vs Matale (1995-1997) Z.R. 144.*
2. *Zambia Airways Corporation Ltd vs Mubanga (1992) SJ 24.*
3. *Chimanga Changa Limited vs Stephen Chipango Ngombe (2010) 1 ZR 208.*
4. *Supabets Sports Betting vs Batuke Kalimukwa - SCZ Appeal No 110/2016*
5. *Zinka (Shilling Bob) vs The Attorney General (1991) ZR 73 (SC)*
6. *Masauso Zulu vs Avondale Housing Project Limited (1982) Z.R. 172.*
7. *Zambia Electricity Supply Corporation Limited vs Muyambango (2006) Z.R. 22.*

8. *The Attorney-General vs Richard Jackson Phiri (1988-1989) Z.R. 121.*
9. *Kambatika vs Zambia Electricity Supplies Corporation Limited - SCZ Appeal No 186 of 2000*
10. *Donoghue vs Stevenson (1932) AC 562*

Legislation referred to:

1. *Employment Code Act, No. 3 of 2019*

1.0 Introduction

- 1.1 This appeal is against the decision of Maka-Phiri J. of the High Court dated 15th June, 2021 which declared that the appellant's dismissal from employment of the respondent was fair.
- 1.2 We have been called upon to determine whether there was a substratum of facts before the disciplinary committee to support the appellant's dismissal from employment. In addition, the appeal probes whether the claim for damages for emotional injury is tenable in this case.

2.0 Background

- 2.1 The appellant was employed by the respondent as Head Risk and Internal Audit on a three-year contract that ran from January, 2014 to February, 2017. On 22nd December, 2016 the appellant was given another mandate as Chief Risk and Internal Audit Officer on a three-year contract that was to run from 3rd February, 2017 to 2nd February, 2020.

- 2.2 On 25th March, 2019, the respondent through its Chief Executive Officer, (CEO) charged the appellant with the offence of gross negligence, contrary to clause 2.4 item 12 of the respondent's Disciplinary and Grievance Procedure Code.
- 2.3 On the 30th May, 2019, the appellant wrote an exculpatory letter in which she indicated that she understood the charges leveled against her but denied them. She explained, with respect to the first charge, that her department had a shortage of staff and that the Audit Committee did not approve the annual work plans for the 2017/2018 and 2018/2019 financial years. This was despite her submitting revised annual plans. The appellant contended that it was thus impossible to prepare internal audit reports because the Audit Committee did not give approval.
- 2.4 The appellant subsequently appeared before the Disciplinary Committee for a hearing on 30th May, 2019. She was later found guilty of the offence of gross negligence and dismissed from employment on the same day.
- 2.5 The appellant appealed against the dismissal which was heard and determined by the appeal committee that was chaired by the respondent's Board Chairperson. The committee dismissed the appeal on 24th July, 2019.
- 2.6 The appellant consequently commenced an action against the respondent at the Livingstone High Court wherein she sought

damages for wrongful and unfair dismissal. She also sought damages for emotional injury, interest and costs.

3.0 Decision of the Court below

- 3.1 The learned Judge reviewed the evidence and law applicable to the case before her and thereafter made several findings of fact. With regard to the claim for wrongful dismissal, the Judge found that the respondent followed the Disciplinary and Grievance Procedure Code and gave the respondent an opportunity to be heard. She exercised her right to appeal the dismissal which although not chaired by the CEO but by the Board Chairperson, was properly constituted. That this was in view of the fact the CEO was the one who charged the appellant for gross negligence.
- 3.2 Pertaining to the claim for unfair dismissal, the lower court found that the offence and charges that were leveled against the appellant fell under **section 50(1)** of the **Employment Code Act**¹ which relates to the conduct of an employee.
- 3.3 All in all, the trial court was of the view that there was a substratum of facts upon which the disciplinary committee could summarily dismiss the appellant. She consequently dismissed all the appellant's claims as set out in the writ of summons.

4.0 Grounds of Appeal

4.1 The appellant was dissatisfied with the decision of the lower court and has appealed to this court, advancing the following grounds:

- “1. The Court below erred in law when it held that notwithstanding the improper composition of the Appeal Tribunal that reviewed the propriety of the Appellant’s dismissal; and that the respondent’s General Manager or Chief Executive Officer was the rightful officer mandated to hear the appellant’s appeal against dismissal, it was nonetheless lawful to do so because it would have been a more serious violation of the law for the Chief Executive Officer to hear the appeal since he was also the prosecutor.*
- 2. The court below erred in law and fact when it held that there was a substratum of facts to support the appellant’s dismissal from employment in that the allegations of impropriety, misconduct, or incompetence in fact pertained to matters or allegations of fact that occurred under a fixed term employment contract that had in fact been dully served and expired.*
- 3. The court below erred in both law and fact when it held that the dismissal of the appellant by the respondent was fair.*
- 4. The court below erred both in law and fact when it held that there was a substratum of facts to support the disciplinary measures taken by the respondent.*
- 5. The court below misdirected itself in both law and fact when it held that the respondent acted reasonably in*

coming to the decision to summarily dismiss the appellant.

6. *The court below misdirected itself in both law and fact when it dismissed the appellant's claim for emotional injury."*

5.0 Appellant's arguments

5.1 In the heads of arguments that were filed, Counsel argued in respect of ground one that although the respondent's Board Chairperson upheld the appellant's summary dismissal on appeal the respondent's disciplinary code did not provide for such a procedure.

5.2 We were referred to page 77 of the record of appeal for the provision of the code that enacts that the Chief Executive Officer shall review the appeal and make a final ruling on the matter. To reinforce the submission, the case of **ZCCM vs Matale**¹ where it was held that:

"In the instant case, the Industrial Relations Court found in effect that for a variety of reasons there was a wrongful and unwarranted termination since the wrong authority terminated the employment and because there was no offence committed by the complainant; and that the rules of natural justice and the disciplinary code had not been followed."

5.3 Another case of **Zambia Airways Corporation Ltd vs Mubanga**² was cited where it was held that non-compliance with a disciplinary procedure code when dismissing an employee justifies a claim for wrongful dismissal.

5.4 Pertaining to ground two, Counsel observed that the first charge included the period 1st April, 2015 to 31st March, 2016 which related to the first contract. Counsel argued that the appellant was therefore dismissed for alleged gross negligence relating to misconduct emanating from an employment contract which had been fully discharged and expired by effluxion of time. It was contended that there was therefore wrongful dismissal.

5.5 In relation to grounds three and four, Counsel began referring us to a quotation from a judgment of the apex court in the case of **ZCCM vs Matale**¹ where it stated:

“In the process of doing substantial justice, there is nothing in the Act to stop the Industrial Relations Court from delving behind or into the reasons given for termination in order to redress any real injustices discovered.”

5.6 The learned Counsel then went on to highlight three factors that he called upon us to interrogate on what seems to be a justifiable termination. These are that:

- (a) the appellant went to full length at trial to prove her innocence;
- (b) the appellant was never availed with a constitute reason to justify her summary dismissal from employment; and
- (c) the respondent failed to describe the harm it suffered by reason of the appellant’s supposed negligence.

- 5.7 Regarding the first issue, Counsel asserted that the appellant led evidence of the fact that the failure to produce audit reports was due to insufficient staffing levels in her department.
- 5.8 On the second issue, Counsel averred that the law requires proof of underlying facts upon which the inference of guilt on a disciplinary charge can be sustained. This cannot be satisfied when an employer fails to produce the minutes of the disciplinary meeting as was the case in *casu*.
- 5.9 On the third factor, Counsel highlighted the fact that the respondent failed to meet the requisite legal criteria to prove the charge of gross negligence against the appellant. In this case, no injury was established to have occurred to the respondent.
- 5.10 Lastly on ground five, Counsel stated that there was emotional injury to the appellant occasioned by the summary dismissal. She could no longer find employment elsewhere due to the nature of the charges that were leveled against her.
- 5.11 We were accordingly urged to find merit in the appeal and set aside the judgment of the lower court.

6.0 Respondent's arguments

- 6.1 In opposing the appeal, the respondent filed its heads of argument on 10th March, 2022. In relation to ground one, it was submitted that the essence of adherence to procedural

requirements in disciplinary proceedings is to meet the demands of natural justice and procedural fairness. Counsel observed that in the absence of a disciplinary procedure or in the event that compliance to procedures would lead to injustice, the *audi alteram partem* rule of natural justice should guide the disciplinary process.

- 6.2 It was asserted that the key thing is that, the appellant was given an opportunity to be heard by the disciplinary committee and also on appeal.
- 6.3 Turning to ground two, the gist of the respondent's submissions was that there was no break in the employment of the appellant as she was the Head of Risk and Audit from 2016 to 2019 although there were two contracts involved. Counsel argued that it is therefore wrong for the appellant to submit that there was no subsisting contract and no obligations accrued after her first contract was terminated.
- 6.4 Moving to grounds three and four that were argued together, Counsel for the respondent submitted that by seeking to assail the findings of fact by the lower court, the appellant essentially wants the court to interpose itself as an appellate tribunal within the respondent's disciplinary procedures to review what the disciplinary committee had done. It was further submitted that it is not for the appellant to prove her innocence neither is it for the respondent to prove the appellant's guilt before the court. Doing so would have gone against settled principles of law which guide on the role of the

court when dealing with complaints relating to domestic disciplinary procedures.

- 6.5 Counsel went on to submit that the trial court was on firm ground when it held that a reason was communicated to the appellant for her dismissal at page 57 line 14 of the record of appeal. That the trial court also examined whether the reason for the appellant's dismissal was in tandem with the law in **section 52(2)** of the **Employment Code Act**¹.
- 6.6 Counsel wound up by asserting that the lower court cannot therefore be faulted for arriving at the conclusion that a valid reason was given for the appellant's summary dismissal. To reinforce this proposition, Counsel called in aid the case of ***Chimanga Changa Limited vs Stephen Chipango Ngombe***³ where it was held that an employer does not have to satisfy himself beyond reasonable doubt that the employee committed the offence. The function of the employer is to ensure that they acted reasonably in coming to the decision.
- 6.7 Finally on ground five, Counsel forcefully argued that the trial court was on firm ground when it refused to entertain the appellant's claim for emotional injury having dismissed the claims for wrongful and unfair dismissal. That the claim can only stand if the court holds the view that there was wrongful or unfair dismissal.
- 6.8 We were therefore called upon to dismiss the appeal with costs.

7.0 Hearing of the appeal

- 7.1 At the hearing of the appeal, both Counsel placed reliance on the heads of argument that were filed and have been set out in the earlier part of this judgment. Additionally, Mr. Hang'andu also made extensive oral submissions which are essentially a rehash of what is contained in the appellant's heads of argument.
- 7.2 He reiterated that the dismissal of the appellant from employment was without a valid reason. He stressed that the request for minutes of the disciplinary hearing from the respondent was denied and there is a finding by the lower court to that effect.
- 7.3 Mr. Hang'andu further vociferously submitted that the appellant was advised to appeal to a disciplinary appeal tribunal chaired by the respondent's Board Chairperson instead of the CEO.
- 7.4 Counsel went on to aver that **section 52(2)(3) and (5)** of the **Employment Code Act**¹ makes no allowance for a dismissal that has no valid reasons and that the onus is on the employer to demonstrate that a dismissal is both fair and valid. That where a request for minutes is sought but denied as in *casu*, then there is no proof of a fair dismissal.
- 7.5 Mr. Hang'andu went on to assert that where a wrong authority terminates the employment contract then the dismissal is wrongful on the authority of the case of **ZCCM vs**

Matale¹. He reiterated that the CEO remained the competent authority to hear the appeal from the decision of the disciplinary tribunal and not the Board Chairperson.

7.6 All in all, Mr. Hang'andu implored the Court to allow the appeal and set aside the judgment of the lower court.

7.7 In his oral submissions Mr. Mbilima Counsel for the respondent enjoined the reasoning of the lower court and that it would have been a violation of the charging officer to sit as an appellate body. He went on to submit that the appellant reported to the CEO who was responsible for taking disciplinary action. He dismissed the assertion that the audit committee could have charged the appellant as it does not form part of management so as to interpose itself as a charging entity.

7.8 The long and short of Mr. Mbilima's submission was that the respondent was on firm ground in having the Board Chairperson sit in the stead of the CEO for purposes of the appeal.

8.0 Decision of this court

8.1 We have reflected on the appeal before us and taken into consideration the arguments that have been advanced by both parties in arriving at our decision. We appreciate the industry by both counsel. We propose to deal with the grounds of appeal as they have been presented.

9.0 Ground one - Composition of Appeal Tribunal

- 9.1 In the first ground of appeal, the contention by the appellant is that there was an improper composition of the appeal tribunal. It has been submitted that according to the respondent's Disciplinary and Grievance Procedure Code, it was the General Manager or Chief Executive Officer who was the rightful officer mandated to hear the appeal against dismissal. However, in this instance, it was the Chairman of the Board who chaired the appeal.
- 9.2 It has been argued that the composition therefore, of the appeals tribunal lacked legal warrant and the dismissal should be rendered void. On the other hand, the argument by the respondent is that the trial Judge was justified in holding that no injustice had arisen from the alleged failure to adhere to the appeals procedure. That the General Manager could not be an accuser and judge at the same time
- 9.3 Our considered view is that the trial court could not be faulted for arriving at the conclusion that there was no injustice occasioned on the appellant by having the Board Chairperson preside over the appeal.
- 9.4 The rules of natural justice demand that one must be heard and that there must be procedural fairness. In *casu*, the *audi alteram partem* rule was complied with. The appellant was given an opportunity to be heard on the allegations leveled

against her at two levels i.e. the disciplinary committee as well as the appeals committee.

- 9.5 The CEO could not be the judge, jury and executioner as this could have been an affront to the rules of natural justice. It was only fair that an impartial and independent person be appointed to chair the committee. (See ***Supabets Sports Betting vs Batuke Kalimukwa***⁴, and ***Zinka (Shilling Bob) vs The Attorney General***⁵). Had the CEO sat to hear the appeal, there would have been perceived prejudice or bias. It was therefore imperative that a mechanism be put in place to ensure a fair and unbiased decision. This would be in tandem with upholding the principles of justice and fairness.
- 9.6 We are of the firm view that this case is distinguishable from the ***ZCCM vs Matale*** case (supra). In the ***Matale*** case, the wrong office terminated the employment. There was no offence committed and the rules of natural justice were not followed. The circumstances in *casu* are different. In this case, there was an offence that was committed and the rules of natural justice were followed in that she was heard. The only issue the appellant has raised is that it ought to have been the CEO and not the Board Chairperson who should have determined the appeal.
- 9.7 We are of the view that notwithstanding that it was the Board Chairperson who sat to hear the appeal, there was fairness, due process and accountability. Against this backdrop, we find nothing untoward by the decision of the respondent to

invite the Board Chairperson to chair the appeal. On this score, we see no basis upon which the decision of the court below could be faulted. We find no merit in the first ground of appeal and dismiss it.

10.0 **Ground two - Substratum of facts**

10.1 In the second ground of appeal, the criticism emanates from the finding by the court below that there was a substratum of facts to support the appellant's dismissal. It has been asserted that this is against the backdrop of allegations of impropriety, misconduct or incompetence which were pertaining to matters under a fixed term contract that had already been served and expired.

10.2 It is clear from the evidence on record that when the appellant was charged, she was serving a contract of employment that commenced on 3rd April, 2017 and its expiration date was 2nd February, 2020. The evidence on record also reveals that there was no break in the employment relationship between 2016 to the time of dismissal. This has been confirmed by the appellant.

10.3 However, she still argues that she was not responsible for any omission or actions that transpired before her contract was renewed. This averment, however, flies in the teeth of the evidence in that she admits that there was no break in the employment relationship and that during her period of

renewal of her contract, she was receiving all emoluments and enjoying all conditions of service.

10.4 We hold the firm view that she can now not turn around and shake off her responsibilities during that period. She bore the responsibility for any omissions and commissions throughout the employment relationship which had no break.

10.5 In light of the foregoing, we see no basis upon which the findings of the trial Judge can be assailed. There was a subsisting contract between the parties based on the evidence on record. That being the case, it follows that there was a substratum of facts upon which the respondents were entitled to dismiss the appellant from employment.

11.0 Grounds Three & Four - Substratum of Facts And delving behind The Reason for Dismissal

11.1 The appellant has elected to deal with these two grounds together as they are interlinked. In the third ground of appeal, the appellant attacks the finding that there was a substratum of facts to support the disciplinary measures taken by the respondent. In the fourth ground, the appellant is aggrieved by the finding that the respondent acted reasonably in arriving at its decision to dismiss her. In this vein, we are being called upon to delve into the reasons for the dismissal. It has been suggested that the respondents were in actual fact looking for a way 'to chuck her out', to borrow counsel's words and therefore came up with unfounded allegations.

11.2 From what can be gleaned from the allegation, counsel is hinting at the respondent's conduct being borne out of improper motives. It must be stated from the onset that in making such a sweeping allegation, the onus lies with the appellant to substantiate or to prove the same. It is a principle of law that he who alleges must prove. (See ***Masauso Zulu vs Avondale Housing Project Limited***⁶). There was no iota of evidence in our assessment, that was led to support the contention that there were other reasons aside from the ones that have been advanced that lay behind the dismissal of the appellant from employment. The view we take is that there was no evidence of any improper motive or *mala fide* that could be ascribed to the respondent to justify our lifting the veil to see whether there were reasons other than those advanced. We therefore decline the invitation to delve into the reasons for the dismissal.

11.3 Counsel for the appellant has raised three issues for us to interrogate. The first one is framed as follows:

11.0 The appellant went to full length at trial to prove her innocence

11.1 According to the appellant, she had vehemently denied all the charges against her and in particular the charge to the effect that no audit reports had been submitted in the last two years. We have been referred to the record showing submitted compliance audit reports.

- 11.2 Regarding the audit report for the year 2018/2019, it has been asserted that these were not submitted because the audit committee did not approve the work plan. It was contended that the court below failed to take into proper consideration the appellant's lamentations over the actual allegations leveled against her which affected the outcome of the judgment. We have thus been urged to overturn the findings of the lower court in this regard.
- 11.3 Having reflected on the arguments by both parties, it is quite clear to us that although the appellant's counsel has chosen to segment the issues he would like us to interrogate, at the core of the appellant's grievance is whether there was a substratum of facts to charge the appellant and invoke the disciplinary measures.
- 11.4 Our view is that there was a substratum of facts upon which the respondent could charge the appellant. From her testimony falling from her mouth, the appellant stated that she had not submitted the audit reports for 2018/2019. The reason attributed to this was that the audit committee had not approved the work plan.
- 11.5 This takes us to what is our role is as a court in dealing with internal disciplinary procedures. There are a multitude of authorities on the subject, to name a few; ***Zambia Electricity Supply Corporation Limited vs Muyambango***⁷, ***The Attorney-General vs Richard Jackson Phiri***⁸ and ***Kambatika vs Zambia Electricity Supplies***

Corporation Limited⁹. These cases espouse the principle that the role of the court is not to interpose itself as an appellate tribunal within the domestic disciplinary procedures to review what others have done. The duty of the court is to examine whether there was necessary disciplinary power and if it had been exercised in due form.

11.6 From our standpoint, the disciplinary committee did possess the power and jurisdiction to discipline the appellant. The power of the disciplinary committee emanates from clause 2.3 of the respondent's Disciplinary and Grievance Procedure Code (hereinafter referred to as 'the Code').

11.7 The next question is whether the disciplinary committee properly invoked its power. The answer to this question is in the affirmative in that the appellant was charged with the offence of gross negligence pursuant to clause 2.4 item number 12 of the Code on the 25th of March, 2019.

11.8 The third requirement is whether or not the rules of natural justice were complied with. In this regard, the appellant was given a charge form and given two (2) working days to submit a written exculpatory statement. She exculpated herself on 27th March, 2019. (See pages 429-468 ROA). After the disciplinary committee had sat and rendered its verdict of summary dismissal on 30th May, 2019, she appealed to the Board Chairperson on 6th June, 2019. On 24th July 2019, the Chairman upheld the decision of the disciplinary committee and consequently dismissed the appeal.

11.9 It is against this background, that it behoves us to state that the rules of natural justice were indeed complied with. It has been stated in a plethora of authorities that no man should be condemned unheard. The appellant was afforded an opportunity to be heard which opportunity she seized.

11.10 We are inclined to state that what is significant to note is that the appellant was given a fair hearing. We would go so far as to also state that in disciplinary hearings, the test generally is whether the employee had disregarded a fundamental term of the contract.

11.11 Having established that there was sufficient substratum of facts to support the disciplinary measures taken by the employer and that the disciplinary process was complied with, we do not believe it is our place to review what the disciplinary committee had done. In line with the provisions of the law, we cannot interpose ourselves as an appellate tribunal. There is therefore no merit in the arguments.

11.12 The second issue raised for our consideration is that:

The appellant was never availed with a constitute reason for dismissal from employment

11.13 It has been strenuously argued that the appellant was never given a valid reason for her dismissal. The appellant is challenging the failure of the respondent to produce the minutes of the disciplinary committee and has argued that therefore, the legal standard which requires proof of underlying

facts upon which an inference of guilt on a disciplinary charge, can be justified has not been satisfied.

11.14 A perusal of the record reveals that notwithstanding the fact that the minutes of the disciplinary committee were not availed to the appellant, the reason for the dismissal was articulated in the dismissal letter where it stated that:

“...based on the evidence at the hearing, the disciplinary committee found you guilty of the offence of gross negligence.”

11.15 We are of the strong conviction that the letter of dismissal speaks for itself. It did contain the offence for which the appellant had been charged with and the reason for the dismissal. The court below went on to examine the provisions of the **Employment Code Act**¹ in particular **section 52(2)** and found that the reason advanced was valid when she stated that:

“The view I take is that the offence and charges that were leveled against the plaintiff fall under the valid reason relating to conduct. As already stated this encompasses misconduct, inadequate performance and as such captured under section 51(1) of the Employment Code Act. The plaintiff’s submission therefore that Gross Negligence is not captured under the said section 51(1) of the Employment Code Act is misconceived.”

11.16 We could not agree more with the trial Judge. She was on firm ground.

11.17 The third issue we have been called upon to interrogate is that:

“The respondent failed and/or neglected to describe the harm it suffered by reason of the appellant’s supposed negligence”.

11.18 The question we are being called upon to resolve is whether or not the respondent met the requisite legal criteria to prove the charge of gross negligence against the appellant. According to the appellant, no negligence or gross negligence occurred. The case of ***Donoghue vs Stevenson***¹⁰ has been called into aid for the principle that every negligent act or omission must inevitably ‘injure your neighbor’.

11.19 It is our considered opinion that Counsel in placing reliance on the case of ***Donoghue vs Stevenson***¹⁰ in the circumstances of this case is misconceived. This is because there is a distinction between negligence in the law of tort and in the law of contract. There are two distinct legal concepts. In summary, the key distinction is that negligence in tort involves a breach of a general duty of care owed to society while negligence in contract is a breach of a specific duty of care owed to the other party as defined within a contractual agreement.

11.20 Turning to the case at hand, the charge of gross negligence was one within the realms of the contractual agreement as opposed to the law of tort. What this entails is that there should be proof of the breach of the contract. In other words, breach of the conditions of service. Through the disciplinary process, the respondent was able to establish that the appellant had committed a breach of the conditions of service. It was

satisfied that there was gross negligence of duty committed by the appellant thereby failing to fulfil her contractual obligations with reasonable care and skill.

11.21 It is our firm position therefore that the argument advanced by the appellant therefore does not have a legal leg to stand on. We are satisfied from the evidence on record that there was sufficient evidence upon which the trial court could make a determination that there was a valid reason proffered for the dismissal. Consequently, we find that the third issue does not hold water.

11.22 All in all, grounds three and four are bereft of merit for the foregoing reasons.

12.0 Ground five - Emotional injury claim

12.1 In the fifth ground, the appellant is disconsolate with the dismissal of her claim for emotional injury. Her outcry is that she has held high-level management positions and that there are no prospects of getting employment because of the nature of the charge which attacks her integrity that she has built over 30 years. She feels embarrassed and argues that emotional injury cannot be denied.

12.2 This claim in the court below fell flat on its face on account of the fact that the appellant's claims for wrongful and unfair dismissal were unsuccessful. Our unshakable belief is that the claim for emotional injury was predicated on the success of the claim for wrongful and unfair dismissal. Having found

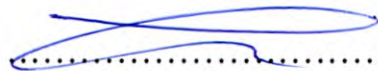
that the same was unmeritorious, it consequently follows that the claim for emotional injury had no legal basis.

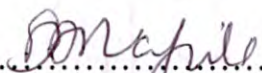
12.3 In light of the foregoing, this ground of appeal is doomed to fail.


13.0 Conclusion

13.1 In sum, we hold that all six grounds of appeal are devoid of merit and are accordingly dismissed.

13.2 Costs for the respondent limited to out of pocket expenses.


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M.M. Kondolo, SC
COURT OF APPEAL JUDGE


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B.M. Majula
COURT OF APPEAL JUDGE


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Y. Chembe
COURT OF APPEAL JUDGE