

**IN THE COURT OF APPEAL OF ZAMBIA    APPEAL NO. 57/2023  
HOLDEN AT LUSAKA**

(CIVIL JURISDICTION)

BETWEEN

**LOVEMORE GUMBO**



**APPELLANT**

**AND**

**STANDARD CHARTERED BANK ZAMBIA PLC**

**RESPONDENT**

**CORAM: Chashi, Banda-Bobo and Muzenga, JJA**

**ON: 14<sup>th</sup> and 31<sup>st</sup> January 2025**

*For the Appellant    :    V. Michelo, Messrs. VN Michelo and Partners*

*For the Respondent:    K. Wishimanga and K. Banda, AMW & Co  
Legal Practitioners*

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**JUDGMENT**

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**CHASHI JA**, delivered the Judgment of the Court.

**Cases referred to:**

- 1. Chilanga Cement v Venus Kasito – SCZ Appeal No. 86 of  
2015***
- 2. Kelvin Hang'andu v Law Association of Zambia – SCZ  
Judgment No. 36 of 2014***
- 3. Wilson Masauso Zulu v Avondale Housing Project  
Limited – (1982) ZR, 172***

4. *Zambia Telecommunication Company Limited v Mirriam Shabwanga – SCZ Appeal No. 78 of 2016*
5. *Supabets Sports Betting v Batuke Kalimukwa – Selected Judgment No. 27 of 2019*
6. *Attorney General v Richard Jackson Phiri (1988-1989) ZR, 121*
7. *Zambia Electricity Supply Corporation Limited v David Lubasi Muyambango (2006) ZR, 22*
8. *Chimanga Changa Limited v Stephen Chipango Ngombe – SCZ Judgment No. 5 of 2010*
9. *Posts and Telecommunications Corporation Limited v Salim Jack Phiri – SCZ Judgment No. 7 of 1995*
10. *Friday J.M. Ngwira v Zambia National Insurance Brokers – SCZ Judgement No. 9 of 1994*
11. *Edward Mweshi Chileshe v Zambia Consolidated Copper Mines – SCZ Judgment No. 10 of 1996*
12. *AB Bank Zambia Ltd v Benjamin Nyirenda – CAZ Appeal No. 58 of 2002*
13. *Undi Phiri v Bank of Zambia – SCZ Judgment No. 21 of 2007*
14. *Zambia Breweries Plc v Maritime Freight and Forwarding Ltd – SCZ Appeal No. 16 of 2019*

**15. *Dennis Sakala and 2 Others v Zambia Breweries Plc – CAZ Appeal No. 121 of 2022***

**16. *Martinez v Cracker Barrel Old Country Store Inc No. 11-2189 (6th Cir. 2013)***

**17. *Forrest v Transit Management of Charlotte No. 06-2245 (4th Cir. 2007)***

**Legislation referred to:**

**1. *The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia***

**2. *The Employment Code Act, No. 3 of 2019***

**1.0 INTRODUCTION**

1.1 This is an appeal against the decision of Honourable Mr. Justice D. C. Mumba, delivered on 16<sup>th</sup> December 2022, in which the learned Judge held that the Appellant had failed to prove, on a balance of probabilities, that his dismissal was unfair, wrongful or discriminatory.

**2.0 BACKGROUND**

2.1 The brief background to this appeal is that the Appellant joined the Respondent as a Bank Clerk on 22<sup>nd</sup> February 1993 and rose to the position of Branch Manager, Kitwe Branch, a role he held until his dismissal on 22<sup>nd</sup> November 2019.

- 2.2 The dismissal arose after the Appellant encouraged his subordinates (bank tellers), who typically knocked off at 19:00 hours, to claim dinner allowances, which were only due if they worked past 19:30 hours. He approved the claims to motivate the staff, citing understaffing pressures.
- 2.3 Upon discovery of this irregularity, the Respondent issued a show-cause letter dated 20<sup>th</sup> September 2019. In his response, dated 1<sup>st</sup> October 2019, the Appellant admitted his actions, expressed regret and pleaded for leniency.
- 2.4 Following a disciplinary hearing on 14<sup>th</sup> October 2019, the Appellant was found guilty of abuse of authority, dishonest conduct, fraud, embezzlement, and falsification of staff imprest claims. Consequently, he was summarily dismissed on 22<sup>nd</sup> November 2019, while his subordinates who were charged with similar offences received final written warnings. The Appellant later appealed his dismissal through internal grievance mechanisms but his appeal was unsuccessful.

2.5 Dissatisfied with the outcome, the Appellant, by way of Complaint, commenced legal proceedings against the Respondent, seeking the following reliefs:

1. A declaration that the Appellant was discriminated against by virtue of his job as branch manager as his subordinates facing similar charges like himself were given a penalty of a final warning letter valid for 12 months as against his dismissal when served under the same Disciplinary Code;
2. A declaration that the Appellant was wrongly and unfairly dismissed;
3. An order for damages for wrongful dismissal;
4. In the alternative, a declaration that the Appellant be deemed to have retired under voluntary separation;
5. Further alternatively, the Appellant be reinstated to his position;
6. Interest on the amount found due; and
7. An order that the Appellant be deemed to have separated with the Respondent under the Voluntary Separation Scheme.

2.6 In his supporting affidavit, the Appellant reiterated his claim of discrimination, asserting that while his subordinates received final written warnings valid for 12 months, he was subjected to summary dismissal despite facing similar charges under the same Disciplinary Code.

2.7 The Respondent, on the other hand, justified its actions, arguing that the Appellant, as a senior member of staff and a controlling officer, carried greater responsibility and accountability. Therefore, the severity of his misconduct warranted a more severe penalty, specifically summary dismissal.

### **3.0 DECISION OF THE LOWER COURT**

3.1 Upon considering the evidence and the submissions by the parties, the learned Judge formulated three issues for determination:

**1. Whether the Appellant's dismissal from employment was wrongful and unfair thereby entitling him to the payment of damages.**

**2. Whether the Appellant is entitled to an order for reinstatement in the alternative.**

**3. Whether the Appellant should be deemed to have been retired or separated with the Respondent under the voluntary separation scheme.**

3.2 In addressing the first issue, the learned Judge emphasised that for a claim of wrongful dismissal to succeed, an employee must demonstrate a breach of disciplinary procedures under the employment contract, the rules of natural justice or **The Employment Code Act**<sup>2</sup>. Reference was made to **Chilanga Cement v Venus Kasito**<sup>1</sup> and to the works of the learned Author of **Employment Law in Zambia: Cases and Materials**, highlighting that wrongful dismissal is concerned with the form not the merits of dismissal.

3.3 In this case, the Appellant was charged after approving dinner allowances for subordinates who were not entitled to them. He was asked to exculpate himself, which he did in writing. Subsequently, he was charged and a disciplinary hearing was held on 14<sup>th</sup> October 2019, after which he was found guilty and summarily dismissed on 22<sup>nd</sup> November 2019. The Appellant

exercised his right to appeal but the appeal was unsuccessful.

- 3.4 The learned Judge concluded that the Respondent had adhered to its disciplinary procedures, the rules of natural justice and **The Employment Code Act**<sup>2</sup>. The Appellant was accorded a fair hearing and his dismissal was procedurally sound. Consequently, the Appellant failed to prove that his dismissal was wrongful.
- 3.5 On the question of whether the Appellant's dismissal was unfair, the learned Judge found it undisputed that the Appellant was dismissed for abuse of authority, dishonest conduct, fraud, embezzlement, and falsification of staff imprest claims and that as Branch Manager, he admitted to approving dinner allowances for subordinates who were not entitled to them. The learned Judge concluded that the Respondent had adequately substantiated the Appellant's misconduct prior to his dismissal. Therefore, the disciplinary action taken was both factually supported and justified.
- 3.6 The second aspect of unfair dismissal concerns whether the Respondent treated the Appellant discriminatorily. The learned Judge noted that dismissal based on



discrimination is prohibited under Section 108(1) of **The Industrial and Labour Relations Act**<sup>1</sup> and Section 5(2) of **The Employment Code Act**<sup>2</sup>. After reviewing the disciplinary hearing minutes and dismissal letter, the Judge found no evidence that the Appellant was dismissed due to his position as Branch Manager. Instead, the Appellant admitted to the offences and the Respondent found him guilty and appropriately imposed summary dismissal in line with the Fair Accountability Treatment Processes and Procedures Handbook.

- 3.7 The Judge concluded that the dismissal was based on the proven offences and not on discriminatory grounds and the Appellant failed to prove otherwise.
- 3.8 On the second issue, the Judge held that since the Appellant failed to prove his dismissal was wrongful or unfair, his claim for reinstatement could not succeed.
- 3.9 On the third issue, the Judge noted that the Appellant applied for the Voluntary Separation Scheme (VSS) on 16<sup>th</sup> November 2019, during an offer period running from 15<sup>th</sup> to 25<sup>th</sup> November 2019. Management was to evaluate applications and communicate outcomes by 1<sup>st</sup>

December 2019. However, before the Appellant's application could be considered, he was dismissed on 22<sup>nd</sup> November 2019, effectively ceasing to be an employee. Consequently, he was no longer eligible for VSS benefits and his claim for retirement or separation under VSS was dismissed.

#### **4.0 THE APPEAL**

4.1 Dissatisfied with the decision of the court below, the Appellant has appealed to this Court advancing two grounds of appeal as follows:

- 1. The learned trial Judge misdirected himself both in law and fact when he held that the Appellant's dismissal was not discriminatory when it was him alone dismissed whilst four of his juniors facing the same charges were only given suspensions from work in contrast to the Appellant's dismissal.**
- 2. The learned Judge misdirected himself when he held that on a balance of probabilities, the Appellant failed to prove that his dismissal from employment was unfair, wrongful and discriminatory.**

## 5.0 ARGUMENTS IN SUPPORT OF THE APPEAL

5.1 Mr. Michelo, Counsel for the Appellant, relied on the filed heads of argument dated 10<sup>th</sup> March 2023, addressing both grounds of appeal. Counsel referred us to Section 108(1) of **The Industrial and Labour Relations Act**<sup>1</sup> and the case of **Kelvin Hang'andu v Law Association of Zambia**<sup>2</sup> and argued that the Appellant and his four subordinates, faced the same allegations under the same conditions of service and Disciplinary Code. Despite this, the Appellant was treated differently as he was dismissed, whereas the four subordinates received final written warnings. Counsel contended that this disparity in treatment was discriminatory and based solely on the Appellant's employment status as manager

5.2 It was further submitted that since the Appellant and his subordinates were subject to the same conditions of service, Disciplinary Code and relevant statutes, they should have received identical penalties or sanctions. It was argued that any deviation from this equality of treatment, constituted discrimination and that the Appellant proved his case to the required standard. We

were urged to overturn the lower court's Judgment and award damages for wrongful dismissal.

## **6.0 ARGUMENTS OPPOSING THE APPEAL**

6.1 Mr. Banda, Counsel for the Respondent, relied on the heads of argument filed on 29<sup>th</sup> June 2023, which he supplemented with oral submissions. Counsel addressed grounds one and two concurrently, presenting arguments under four main headings as follows:

6.2 Firstly, whether or not the Appellant's dismissal was unfair, wrongful and discriminatory. Counsel submitted that the lower court was on firm ground when it found that the Appellant failed to prove on a balance of probabilities that his dismissal from employment was wrongful. For this position, we were referred to **Wilson Masauso Zulu v Avondale Housing Project Limited**<sup>3</sup>

6.3 It was submitted that, for the Appellant to succeed, he bore the burden of proving that the Respondent failed to adhere to the established procedures at the time of his dismissal. Counsel argued that the facts on record demonstrate that the Appellant engaged in acts that

constituted a breach of his contractual duties, a fact he admitted during his own testimony.

- 6.4 Furthermore, it was contended that the Respondent adhered to its internal policies and procedures in effecting the dismissal. The Respondent followed the correct disciplinary processes and rules in handling the matter, without any prejudice or compromise. Consequently, the Appellant failed to demonstrate any irregularities in the dismissal process and therefore, cannot validly claim that his dismissal was wrongful.
- 6.5 On the claim of unfair dismissal, Counsel cited **Zambia Telecommunication Company Limited v Mirriam Shabwanga<sup>4</sup>** and **Supabets Sports Betting v Batuke Kalimukwa<sup>5</sup>**, emphasizing that unfair dismissal focuses on whether the decision to dismiss was just, based on the merits of the case. Counsel argued that overwhelming evidence supported the charges against the Appellant, including abuse of authority, dishonesty, fraud, embezzlement and falsification of staff imprest claims. According to Counsel, it was undisputed that these offences were proved and the Respondent had valid grounds for the disciplinary action.

- 6.6 Citing **Attorney General v Richard Jackson<sup>6</sup>, Zambia Electricity Supply Corporation Limited v David Lubasi Muyambango<sup>7</sup>**, and **Chimanga Changa Limited v Stephen Chipango Ngombe<sup>8</sup>**, Counsel argued that the court's role is not to act as an appellate body over domestic disciplinary processes, but to ensure that disciplinary powers were exercised properly. Furthermore, it was argued that where misconduct breaches the trust between employer and employee, dismissal is a reasonable course of action.
- 6.7 Secondly, on whether a lawfully dismissed employee can claim discrimination, Counsel cited **Posts and Telecommunications Corporation Limited v Salim Jack Phiri<sup>9</sup>** and **Friday J.M. Ngwira v Zambia National Insurance Brokers<sup>10</sup>**. Counsel argued that, the Appellant was not discriminated against. Instead, his case as branch manager was assessed within the context of him being the most senior at the Bank and his responsibilities. By approving undue payments, the Appellant exposed the bank to financial risk, breaching his duties as the first line of defence in managing conduct and financial risks.

6.8 Counsel further submitted that the Respondent relied on the Fair Accountability and Disciplinary Process (FADP) to impose punishment, which was based on the specific facts and circumstances of each case. It was argued that the FADP ensured fair procedures, with each offending employee being charged and disciplined on a case by case basis. That, therefore, the Respondent had the requisite authority to dismiss the Appellant and exercised this power appropriately. Counsel concluded that it would be unreasonable for a lawfully dismissed employee to claim discrimination. This position was supported by the case of **Edward Chileshe v Zambia Consolidated Copper Mines Limited**<sup>11</sup>.

6.9 Thirdly, whether imposing a stiffer penalty on a senior staff can amount to discrimination. Counsel referred us to the cases of **AB Bank Zambia Ltd v Benjamin Nyirenda**<sup>12</sup> and **Phiri v Bank of Zambia**<sup>13</sup> for the position that individuals in superior positions are held to higher standards of responsibility and therefore, imposing a stricter penalty on a senior officer is both reasonable and justifiable given the expectations of their role.

6.10 In *casu*, it was argued that the Respondent did not act unfavourably towards the Appellant for being a branch manager. That RW1's testimony showed that the Appellant breached his duties, prompting remedial action as per the Respondent's policies and procedures. It was contended that senior staff bear greater responsibility and are expected to uphold higher standards, making their breaches of trust more detrimental and deserving of stricter penalties. Such actions, it was argued, cannot be deemed discriminatory.

6.11 Lastly, whether the Respondent adduced any evidence to prove discrimination. Counsel referred us to the case of **Zambia Breweries Plc v Maritime Freight and Forwarding Ltd**<sup>14</sup> and submitted that the Appellant failed to prove any of the grounds for discrimination outlined in section 108(1) of **The Industrial and Labour Relations Act**<sup>1</sup>. Counsel argued that the Appellant's summary dismissal was lawful and conducted in accordance with the FADP. The Court was therefore urged to dismiss the appeal.



6.12 During the hearing of the appeal, Counsel for the Respondent reiterated the arguments outlined in their heads of argument and additionally referred the Court to the case of **Dennis Sakala and 2 Others v Zambia Breweries Plc**<sup>15</sup>.

## **7.0 ARGUMENTS IN REPLY**

7.1 In reply, Mr. Michelo reiterated the arguments presented in his heads of argument and urged the Court to distinguish the **Dennis Sakala** case from the present matter.

## **8.0 ANALYSIS AND DECISION OF THE COURT**

8.1 We have considered the evidence on record, the submissions made by Counsel and the impugned Judgment.

8.2 At the outset, it is important to highlight that the Appellant's wrongdoing is not in dispute. The evidence reveals that the Appellant admitted to authorising dinner allowances for subordinates who were not entitled to them, thereby breaching the Respondent's policies and procedures. The central issue raised by the Appellant pertains to the apparent disparity in sanctions; while he was summarily dismissed, his

subordinates, who faced similar charges, were only issued final written warnings valid for 12 months.

8.3 The Respondent, however, maintains that the Appellant's dismissal was justified given his position as a senior member of staff. As Branch Manager, he bore a higher level of responsibility and accountability and his actions warranted a more severe penalty compared to his subordinates.

8.4 The Respondent's position does find support in English Jurisprudence such as the cases of **Martinez v Cracker Barrel Old Country Store Inc**<sup>16</sup>, the court affirmed that holding managers to higher standards of accountability is justified due to the trust and authority inherent in their roles. The court specifically found that Ms. Martinez's role as a manager at Cracker Barrel justified holding her to a more stringent standard of conduct than that applied to Ms. Guidry, who held the position of assistant manager. Similarly, in **Forrest v Transit Management of Charlotte**<sup>17</sup>, it was stated that misconduct by individuals in leadership positions warrants stricter penalties compared to subordinates due to their greater responsibilities.

8.5 Turning to the Zambian Jurisdiction, the above principles have been upheld in several cases. In the **Friday Ngwira** case, the Supreme Court observed:

**"There is nothing improper with punishing a senior member of an organisation more severely on the grounds that he should be setting an example to others."**

8.6 Similarly in our decision in the **AB Bank** case, we referred to the **Friday Ngwira** case and held that:

**"We find nothing wrong with the treatment which was accorded to the respondent. It is clear that those who have high responsibility or hold superior office should ordinarily be expected to exhibit high levels of responsibility. A higher standard of behaviour is thus expected."**

8.7 In our recent decision in **Dennis Sakala** case, we addressed allegations of discrimination and held:

**"It follows that the respondents were entitled to treat the lab technicians, quality assurance officers and electricians differently as they were not similarly circumstanced owing to what the Judge found to be material differences "in their job**

**title, description, tasks, duties, responsibilities and ultimately the misconduct they engaged".**

**As guided by the apex Court, courts should not accept allegations of discrimination to be conclusive merely because parties have been treated differently. For reasons articulated above we accordingly find no merit in the second ground of appeal."**

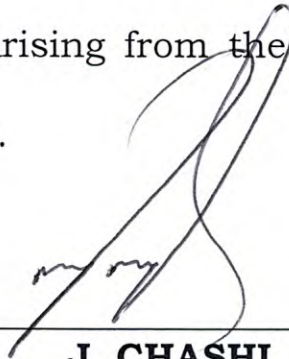
8.8 In our view, these principles apply squarely to the present case. The evidence clearly establishes that the Appellant's duties and responsibilities were materially different from those of his subordinates. In his position, he held a higher degree of responsibility and accountability, which inherently warranted greater scrutiny and stricter consequences for any misconduct.

8.9 Additionally, the Appellant admitted to authorising the dinner allowances, attributing his actions to understaffing and pressure on his subordinates. However, such circumstances do not excuse a deliberate disregard for established policies and procedures. His admission further underscores his awareness of the breach and his deliberate decision to bypass the Respondent's guidelines.

8.10 It follows, therefore, that the Respondent was justified in imposing a more severe penalty on the Appellant compared to his subordinates. The differential treatment was neither arbitrary nor discriminatory. In light of the foregoing, we see no reason to interfere with the decision of the lower court.

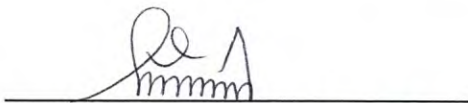
## 9.0 CONCLUSION

9.1 The Appeal is devoid of merit and is accordingly dismissed. There shall be no Order as to costs since this was a matter arising from the Industrial and Labour Relations Court.



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**J. CHASHI**  
**COURT OF APPEAL JUDGE**



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**A.M. BANDA-BOBO**  
**COURT OF APPEAL JUDGE**



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**K. MUZENGA**  
**COURT OF APPEAL JUDGE**