

IN THE HIGH COURT FOR ZAMBIA  
INDUSTRIAL RELATIONS DIVISION  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

COMP/IRCLK/164/14

BETWEEN:

RICHARD C. LWELEKA & 7 OTHERS **COMPLAINANT**

AND

POLO GRILL @ THE TRENDZ LINE **RESPONDENT**



**BEFORE** : **MR FRANCIS C. NSOKOLO**  
**REGISTRAR**

**FOR COMPLAINANTS** : **IN PERSON**

**FOR RESPONDENT** : **M/S ANDREW MUSUKWA & CO**

## **R U L I N G**

On the 14<sup>th</sup> September 2015, the Court entered a default judgment for both Applicants, who are Richard Lweleka and Hildah Musonda and ordered that the damages be assessed by the Deputy Registrar in chambers, I am therefore on terra fema to assess the Complainants' dues.

During the hearing of this assessment, both Applicants gave evidence and called one witness to support their claim, who is Stella Mawere. The three testified that they used to work for the Respondent, who, when he closed his business promised to pay them their salary, leave days and other benefits, but



has never done that to date. They stated that according to Richard Lweleka, he is claiming a total sum of K4,360.00 for accrued leave days, and Hildah Musonda the sum of K6,030.00 for leave days. They are also claiming costs for filing fees for K144.60, transport, K1,300.00 plus printing and photocopying for K800.00 making the total amount K16,206.12.

Cross examined by the Respondent's advocate, they stated that the Respondent has not paid them and that as their employment was oral, they do not have papers or documents to prove their conditions of service and that they used to get paid by signing in a register, which was kept by the employer. Further, they added that they used to print the Court documents in Mtendere and spent K5 per copy although there were times when they made mistakes and were ordered to redo the printing by court registry staff.

Regarding costs, they stated that they made about 30 trips from their respective homes and boarded minibus where they each paid K5 from home to the Court house, and K5 back to their respective homes.

In his defence of the Respondent, Mr. Linyama Linyama admitted that Hildah Musonda was employed by the Respondent as cleaner, while Mr. Lweleka was working as a temporary waiter and was later dismissed as waiter for drunkenness although he was sometimes used when there was shortage of manpower.



Further, he stated that so far, he has paid the Applicants their dues and that he paid Hildah K1,500.00 at Shoprite although, Hildah admitted to having received only K500.00 from the Respondent at Shoprite Store.

From the evidence adduced so far, I find that the following facts have been proved and are not disputed.

- (1) That both Complainants worked for the Respondent.
- (2) That they were employed on oral contracts.
- (3) That when receiving their salaries, they were signing in a register.
- (4) That the Applicants were using minibuses to travel to and from Court to prosecute their case against the Respondent.
- (5) That I take judicial notice that minibus drivers do not issue tickets to local travellers within Lusaka.
- (6) That the Respondent Company has ceased operations.

The Respondent's representative Mr. Linyama Linyama, states that he has paid the Applicants all the moneys and that nothing is owed to them. He buttressed his evidence by swearing an affidavit in opposition dated 11<sup>th</sup> December 2017, in which he made a general traverse or denial of the Applicants claims. The Respondent never produced any document to show that the Applicants received their terminal benefits and signed for them. If, indeed, the Applicants received their terminal dues, the Respondent should have produced a register to prove this fact. The Respondent took a casual and open door policy to defend this assessment. In the end, I dismiss the Respondent's defence that he paid the Applicants. The Applicants stated that they could not produce the



written contract as it was oral and that the documents, if any, are with the Respondent. I will now assess the Applicants' dues.

#### Salary areas

The Two Applicants were awarded K3,300.00 salary arrears by the Court in its judgment.

First Complainant stated that he was owed salary arrears for January, March and April 2014 at K700.00 per month and Hildah Musonda was owed 2 months salary at K700.00 per month, making a total of K1,400.00 for 2 months and K2,1.00 for Lweleka the lead Complainant. However I have noticed a mistake in the calculations of the arrears by the Applicants and since they claimed K3,300.00 as total amount of salary arrears owing, I award the same figures of K3,300.00, which I shall divide in the ratio of 3:2 which comes up to: Lweleka; K1,980.00 Musonda K1,320.00. The only evidence available to me, though scanty is the Complainant's affidavit in support of Assessment of Damages dated 28<sup>th</sup> August 2017 under paragraph 7 where the Complainants have exhibited a document in which they have tabulated their claim.

The lead Complainant, Richard Lweleka did not go on leave from 12<sup>th</sup> April 2011 to 12<sup>th</sup> May 2014 for a total of 4 years 18 days. As his salary was K700.00 per month, he is entitled to K2,800.00 + K35.10 making a total of K2,850.10 for leave days.



Regarding Hildah Musonda, who has been working from the 7<sup>th</sup> March 2007 to 12<sup>th</sup> May 2014 her leave benefits at K700.00 per month for 7 years 2 months is  $K700 \times 7 + K170 = K5,070$ .

There is also evidence from Hildah Musonda to the effect that she went on leave for 3 months when she gave birth. I will not deduct this period from her leave day allowance because by law, she is entitled to 3 months paid maternity leave.

She did, however, admit that she was paid K500.00 cash at Shoprite by the Respondent though she denied receiving any payment from the Respondent apart from this K500.00. I will therefore deduct this amount since it was paid to her.

#### Costs

The costs for filing this case before Courts as provided by Court Official receipts comes up to K144.60, which I award to both Complainants at K72.30 each, since they both contributed in paying for the Court fees.

#### Transport Costs

Having found that Minibus Drivers do not issue tickets to commuters, I am of the view that the Applicants must have spent money by way of transport in prosecuting this case. In their evidence they stated that they made 30 trips to and from Court. I have checked and examined this case record and found that the highest number of appearances the parties made is 16 times, including the time when they will come to receive this ruling on the 15<sup>th</sup> February 2018. As



each Applicant spent K10 to and from Court up to their respective homes, I grant each one of them K160,00 transport refunds.

#### Printing and Photocopying

The Applicants have failed to prove that they spent the K800.00 on printing and photocopying costs. Had they done this, they could have provided receipts. This claim therefore fails.

#### Accrued leave Days

There was no documentary evidence to contradict the Applicant's evidence regarding the number of leave day's they have taken. It was incumbent upon the Respondent to rebut the Applicant's claim concerning their claim for accrued leave days, by producing documentary evidence.

#### Summary of the claim

I award the lead Complainant, Richard Lweleka the following amounts

Salary arrears	-	K2,100.00
Leave days	-	K2,850.10
Court fees	-	K0,72.30
Transport	-	<u>K0,160.00</u>
Total	-	<u>K5,182.40</u>

I award Hildah Musonda the following

Salary Arrears	-	K1,400.00
Leave days	-	K5.070.00



Court fees refund -	K0,072.30
Transport refund -	<u>K0,160.00</u>
Total -	<u>K6,702.00</u>
	- K6,702.00
Less -	<u>K 500.00 paid</u>
Total: -	<u>K6,202.30</u>

The Applicants did not plead for interest on the amounts and the Court did not award them interest.

Parties are free to appeal.

Dated the ..... day of ..... 2018



*[Handwritten signature]*  
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**F. C. NSOKOLO**  
**REGISTRAR**