

CAZ/8/007/2019

**IN THE HIGH COURT FOR ZAMBIA
INDUSTRIAL RELATIONS/LABOUR DIVISION
HOLDEN AT NDOLA**

IRD/ND/ 97/2017

BETWEEN:

RENFORD KABWE

COMPLAINANT

AND

GUARDALL SECURITY GROUP

RESPONDENT



BEFORE : Hon Mr Justice E.L Musona

FOR THE COMPLAINANT: In Person

FOR THE RESPONDENT: Mr E. Phiri, Human Resources
Officer for the Respondent

J U D G M E N T

DATE: 14th December, 2018

Cases referred to :

1. Wilson Masauso Zulu V Avondale housing Project Limited
(1982) ZR
2. Galaunia Farms Limited V National Milling Corporation
Limited (2004) ZR

Legislation referred to:

1. Act No. 15 of 2015

This Complaint was filed by M/Renford Kabwe against Guardall Security Group. I shall, therefore, refer to M/Renford kabwe as the Complainant and to Guardall Security Group as the Respondents which is what the parties to this action actually were.

The Complainant's claim is for the following relief;

1. Damages for loss of employment
2. Terminal benefits
3. Leave days
4. Costs
5. Interest
6. Any other dues the court may deem fit

The duty for this court is to ascertain whether or not the Complainant has proved his claim.

I have looked at the cases of Wilson Masauso Zulu V Avondale housing Project Limited (1) and Galaunia Farms Limited V National Milling Corporation Limited (2) and have been well guided. In those cases, it was held that the Complainant must prove his claims. If the Complainant does not prove his claim, then, the claim must fail.

When this matter came up for commencement of hearing before this court on 5th December, 2018 the Complainant was present in person. Counsel for the Respondents was not before court. M/Elias Phiri who is Human Resources Officer was present and told this court that their lawyer was not present because he has other commitments in Lusaka where he is based. M/Elias Phiri, therefore, sought an adjournment. This court declined to adjourn the matter because of the following reasons;

1. Counsel for Respondents did not write to court to show what those other commitments in Lusaka were. It was not shown why those commitments in Lusaka should take precedence over these court proceedings.
2. This court is also based in Lusaka just like Counsel for the Respondents. This court also has other commitments in Lusaka just like Counsel for the Respondents but travelled to Ndola to hear and determine this matter.
3. The record shows that this was not the first time Counsel for the Respondents was asking for an adjournment. It was the third time. The first time was on 23rd August, 2017. The second one was on 26th September, 2017 and the third one was the current request on 5th December, 2018. Adjournments must

be granted sparingly and only when it is imperative to do so. Adjournments should not be granted as a norm.

4. Parties including Counsel should fit themselves into the programme of the court. It is not the court to fit into the programme of parties or lawyers' programmes.

5. The notice of hearing was issued on 1st October, 2018 for the hearing which was scheduled for 5th December, 2018. So, the Respondents had two (2) months' notice. This was enough opportunity for Respondents to organise themselves.

6. Matters cause listed for a session as this one was must be concluded during the same session. There should be no adjournments except where there are compelling reasons to warrant an adjournment. In casu, I saw no compelling reason to warrant an adjournment.

7. Act no. 8 of 2008 obligates a court to conclude a matter within one year from the date it is filed. This matter was filed on 6th September, 2017. By 5th December, 2018 when it came for commencement of hearing it was already more than one year old. This was contrary to Act no. 8 of 2008.

8. This matter was referred to Mediation but parties failed to reach settlement.

Hearing commenced. The Complainant gave evidence and was cross-examined by M/Elias Phiri who is Human Resources Officer for the Respondents.

He stated that the termination of employment was unlawful because the Respondents did not give any reason for termination of employment.

He further stated that he was employed by the Respondents in February, 2002 on permanent terms of employment. On 1st August, 2012 there was a conversion from permanent terms of employment to yearly contractual terms. At the time of that conversion of the terms of employment the Complainant had worked for 11 years but was not paid benefits for those 11 years before proceeding to contractual terms of employment. At that time the Complainant's monthly salary was **K1,500.00** and he was entitled to 2 months pay for each year served. His claim for 11 years, therefore, is **K33,000.00**.

His last contract with the Respondents was signed on 1st March, 2016 and was due to expire on 1st March 2017. This is the contract which was terminated on 4th December, 2016.

The Complainant also averred that he was owed payment for accrued leave days.

This marked the end of the Complainant's evidence.

During cross-examination, the Complainant stated that from 2002 to 2012 he was a permanent employee, but that from 2012 he was put on one year contract and served several contracts up to 2016 when his last contract was terminated before it expired. He added that during the period when he worked under one year contracts of employment, he was never paid any benefits at the end of each contract save for accrued leave days only.

M/Elias Phiri who is Human Resources Officer for the Respondents elected not to give evidence.

I have considered the Complainant's evidence including the evidence in cross-examination by the Respondent. I have also considered the documents which were filed by the Respondents.

I shall now consider the relief sought.

1. DAMAGES FOR LOSS OF EMPLOYMENT

I note that the Respondents terminated the Complainant's employment by letter dated 4th November, 2016. In terminating the Complainant's employment the Respondents relied on the termination clause in the contract of employment. That letter was produced as exhibit RK 2. No reason for the termination was given.

I have looked at Act 15 of 2015. That Act obligates an employer to give a reason for the termination of employment.

Reference to a termination clause in a contract of employment is not a reason. There must be a reason which compels the Respondents to resort to the usage of the termination clause in the contract of employment.

On the above basis, I find that the termination of the Complainant's employment was unlawful because it contravened Act no. 15 of the 2015.

I order that the Complainant be paid six months basic salary for loss of employment arising from unlawful termination of contract of employment. For the avoidance of doubt, basic salary shall mean the salary rate at the time of termination of his employment.

2. TERMINAL BENEFITS

The Complainant claimed terminal benefits for the period during which he worked under permanent terms of employment before the introduction of 1 year contractual terms. The period during which the Complainant worked under permanent terms of employment was from February 2002 to 1st August, 2012. The Respondent did not dispute this period. The Respondents only dispute is that the Complainant was entitled to terminal benefits. M/Elias Phiri averred during his cross-examination that the Complainant was not entitled to terminal benefits because he was on daily wages but paid the accumulated wages on monthly basis. I shall not accept this assertion by the Respondents because the Respondents did not

produce any evidence such as a contract of employment or conditions of service to prove their assertion.

On the above basis, I order that the Complainant shall be paid terminal benefits at the rate payable to the Respondent's employees serving on permanent establishment for the period from February 2002 to 1st August 2012. In default of agreement same to be assessed by the Registrar.

3. LEAVE DAYS

The Complainant told this court that he was claiming payment for his accrued leave days. He has claimed **K1,150.55** I have looked at paragraph 4 of the Respondents' answer which was filed on 10th October, 2017. That paragraph shows that the Respondents prepared payment for the Complainant's accrued leave

days in the sum of **K1,150.55** but the Complainant refused to accept that payment.

Noting that the Complainant is claiming payment of the same amount which the Respondents claim to have prepared for the Complainant but which the Complainant allegedly refused to accept, I order that the Respondents shall pay to the Complainant the sum of **K1, 150.55** and the Complainant shall accept and receive the said sum of **K1, 150.55** as payment for accrued leave days. These awards shall carry interest at the short term deposit rate prevailing from the date of Notice of Complaint to the date of judgment and thereafter, at the current Bank of Zambia lending rate until full payment.

Costs of these proceedings go to the Complainant.

Leave to appeal within 30 days from today is granted.

DELIVERED THIS 14TH DAY OF DECEMBER 2018

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E.L. Musona
HIGH COURT JUDGE

RECEIVED
HIGH COURT
14 DEC 2018
MUSONA
POSITIVE