

**IN THE HIGH COURT FOR ZAMBIA  
INDUSTRIAL RELATIONS DIVISION  
HOLDEN AT LUSAKA**

**COMP/598/16**

**BETWEEN:**

**LUCY MUTAMBO**

**COMPLAINANT**

**AND**

**UNIVERSITY OF LUSAKA**

**RESPONDENT**



Before the **Hon. Mr. Justice M. Musaluke** on the 10<sup>th</sup> day of January, 2018

**Appearances:**

*For the Complainant:* Dr. O. M. M. Banda of Messrs. OMM Banda & Co.

*For the Respondent:* Mr. M. Mutemwa S.C. of Messrs. Mutemwa Chambers

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**JUDGMENT**

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**Legislation referred to:**

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

**Cases referred to:**

- 1. Wilson Masauso Zulu vs. Avondale Housing Project (1982) Z.R. 172***

## 1.0 **COMPLAINANT'S CASE**

1.1 On 16<sup>th</sup> December, 2016, the Complainant filed Notice of Complaint against the Respondent pursuant **Section 85 (4) of the Industrial and Labour Relations Act chapter 269 of the Laws of Zambia.**

1.2 The grounds on which the Complaint was presented were that:

“

- (i) *A declaration order that I am still an employee of University of Lusaka;*
- (ii) *That the Applicant having been assigned by University of Lusaka to be a Research Assistant on the Justice – water for all project is entitled to payment under the said project;*
- (iii) *That the Applicant is expecting her payments under the project with Scottish Government facilitated by University of Lusaka and which project funds have already been paid to the University of Lusaka;*
- (iv) *The Applicant was supposed to be paid 1,000 British Pounds on average per month as per project conditions from May, 2015 until the project closed on 14<sup>th</sup> October, 2016;*
- (v) *That Applicant is owed on average of 14,000 British Pounds in total by University of Lusaka in arrears which is meant to be payment for the past 14 months up to the end of the project on the 14<sup>th</sup> October, 2016;*
- (vi) *The Applicant is also seeking an order to be allowed to be using the data from the project in my writing of journal articles in conjunction with other members of the project*

*team as all the data belongs to GCU as the project has come to an end;*

(vii) *The Applicant is further seeking a declaration order that the University of Lusaka has lost interest in the James Cook University as the institution had failed to sign the University as there are a number of Universities which may be interested in such partnership which I should be allowed to pursue.”*

- 1.3 Based on these grounds, she sought the indulgency of this Court to grant her: *“14,000 British Pounds, costs, interest and other remedy the Court may deem fit.”*
- 1.4 The Notice of Complaint was supported by an affidavit deposed by the Complainant.
- 1.5 The Complainant’s affidavit evidence stated that she was employed by the Respondent as a Marketing Lecturer and Coordinator from 2<sup>nd</sup> May, 2015 to 30<sup>th</sup> April, 2017.
- 1.6 It was her evidence that the Respondent did not pay her a sum of 14,000 British Pounds owed to her for 14 months under the Project Scottish Government Climate Justice – Water for all as she was assigned by the Respondent to run this project as Research Assistant.
- 1.7 That under the project, the Complainant stated that she was to be paid a monthly sum of 1,000 British Pounds from May, 2015 to 14<sup>th</sup> October, 2016 when the project closed.

1.8 The Complainant also sought an order that she be allowed to be using data collected from the said project in writing of journal articles by her in conjunction with other members of the project.

1.9 She further sought a declaratory Order that since the Respondent had lost interest in the James Cook University as a partner, I should order her to pursue the partnership as an individual.

## 2.0 **RESPONDENT'S CASE**

2.1 On 10<sup>th</sup> January, 2017, the Respondent filed its Answer supported by an affidavit deposed by Ms. Mukuka Lillian Zimba, its Lecturer and Student Mentor who was also the Principal Investigator for the Climate Justice-Water for all Project.

2.2 Ms. Zimba's affidavit evidence was to the effect that, the Complainant was an employee of the Respondent and signed a two-year Employment Contract effective 2<sup>nd</sup> May, 2015 as a Lecturer.

2.3 That it was a condition of her employment Contract that she would be assigned other duties apart from lecturing.

2.4 That during the course of her employment, the Complainant was assigned to perform duties of a Research Assistant under the Climate Justice Water for all Project which was being

funded by the Glasgow Caledonia University through the Scottish Government, undertaken in Partnership with the Respondent and University of Malawi Chancellor College.

- 2.5 That the Complainant was co-opted into this project for the purpose of capacity building.
- 2.6 That no Contract was signed for the Complainant on this project as she was still operating on the Employment Contract executed between the parties.
- 2.7 That it was made aware to the Complainant and other team members of the project that if any honorariums would be paid at the end of the project, that would be conditional to availability of funds.
- 2.8 That at the end of the project, the Principal Investigator prepared Honorariums for the four (4) Research Assistants (including the Complainant) and were told to collect these but the Complainant neglected to do so.
- 2.9 That as regards the issue of James Cook University, it was the evidence of Ms. Zimba that the Respondent had applied for the PhD program at the James Cook University. That the Complainant required the Respondent to consider entering into a Cotutelle Agreement with James Cook University which request the Respondent refused.

### 3.0 **OPINION**

3.1 On 28<sup>th</sup> June, 2017 at a Status Conference held with Counsel for both parties an application was made that parties would dispense with full trial and that parties would rely on affidavit evidence. I granted this application and Ordered the following:

- (a) *Parties file agreed statement of facts into Court on or before 12<sup>th</sup> July, 2017;*
- (b) *The Complainant to file written submissions on or before 26<sup>th</sup> July, 2017;*
- (c) *The Respondent to file written submissions on or before 16<sup>th</sup> August, 2017;*
- (d) *The Complainant to file written submissions in Rely (if any) on or before 23<sup>rd</sup> August, 2017;*
- (e) *Judgment to be delivered on 29<sup>th</sup> September, 2017.*

3.2 The parties did not comply to the Order for Directions. I have therefore, decided to proceed to render my opinion based on the information on record.

3.3 From the record, the only issues for determination are:

- (a) Whether the Complainant is entitled to 14,000 British Pounds as a payment to her from the Climate Justice – Water for all Project;

- (b) Whether or not I should order the Respondent to allow the Complainant to use data collected from the said project for writing of her journal articles; and
- (c) Whether or not I should order the Complainant to enter into Cotutelle agreement with the James Cook University.

3.4 (a) **WHETHER THE COMPLAINANT IS ENTITLED TO 14,000 BRITISH POUNDS**

3.5 Evidence on record point to the undisputed fact that the Complainant was employed as a Lecturer by the Respondent on 2<sup>nd</sup> May, 2015 for a fixed period of two years. The contract signed by the parties was exhibited as “**MLZ1**” in the Respondent’s affidavit in support of Answer.

3.6 The Employment Contract specifically provided that the Complainant would serve as a full time Lecturer and that she would perform all duties assigned for to her [see clause (1) (d)].

3.7 There is no any other Contract before me which provides for the terms under which the Climate Justice Water - for all Project was to be performed.

3.8 The Complainant has alleged that she was entitled to 1,000 British Pounds per month for her work as Research Assistant and a total of 14,000 British Pounds for the whole period.

3.9 She has however, failed to provide any evidence to justify this claim. In the case of ***Wilson M. Zulu vs. Avondale Housing***

**Project**, the Supreme Court rightly guided that it was the duty of the Complainant to prove her case before Court. The Complainant in the case at hand has failed to justify this claim as she has not brought any evidence that she was entitled to 14,000 British Pounds from the Climate Justice Water for all Project.

- 3.10 I agree with the evidence of the Respondent that the Complainant was coopted into this project for purposes of capacity building on her part and that honorariums were paid at the end of the project. The Complainant was entitled to the said honorarium which was in fact paid into Court on 7<sup>th</sup> September, 2017.
- 3.11 The Complainant's claim for 14,000 British Pounds, therefore, fails as it lacks merit.
- 3.12 (b) **WHETHER OR NOT I SHOULD ORDER THE RESPONDENT TO ALLOW THE COMPLAINANT TO USE DATA FOR HER JOURNAL ARTICLES**
- 3.13 The Climate Justice – Water for all Project was a collaboration between the Glasgow Caledonia University and the Respondent. I would assume that Intellectual Property Rights for the project would reside in these two parties. Any right to allow or deny access to these Intellectual Property Rights of the project for purposes of journal writing rest with the parties. The Complainant can formally request the parties to



use the data collected for her journal articles. Whether that right will be granted or not is not within my domain.

3.14 This claim is highly misplaced and cannot succeed. It is therefore dismissed.

3.15 (c) **WHETHER OR NOT I SHOULD ORDER THE COMPLAINANT TO ENTER INTO COTUTELLE AGREEMENT WITH JAMES COOK UNIVERSITY**

3.16 This claim is anchored on the issue of Cotutelle between the Respondent and the James Cook University.

3.17 Before I consider this claim, let me explain a bit on Cotutelle Agreements that Universities enter into. These are joint PhD programs where PhD candidates are jointly enrolled at two Universities and spend time at universities. The universities jointly supervise the candidate and upon completion of the program, he/she graduates from both universities with a Doctor of Philosophy.

3.18 The aim of Cotutelle agreements is to establish continuing relationships with international research universities through joint research candidate supervision.

3.19 Clearly, these agreements are entered between universities and not with individuals.

3.20 From the record it can be deduced that on 22<sup>nd</sup> September, 2016, James Cook University had requested to enter into a Cotutelle agreement with the Respondent.

3.21 On 27<sup>th</sup> September, 2016, the Respondent informed the Complainant that the request by James Cook University for a Cotutelle agreement was refused.

3.22 The issue of Cotutelle in essence ended when the request from James Cook University was refused by the Respondent.

3.23 The Claim by the Complainant is therefore, not actionable. I cannot order that she should pursue a partnership through Cotutelle with other universities. This order would be worthless and an academic exercise. I therefore, decline to grant this order as it is highly frivolous.

4.0 **CONCLUSION**

4.1 The Complainant has failed in all her claims save for the honorarium already paid by the Respondent.

4.2 Each party to bear own costs.

Delivered this <sup>10<sup>th</sup></sup>..... day of <sup>January</sup>....., 2018

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**JUSTICE M. MUSALUKE**