

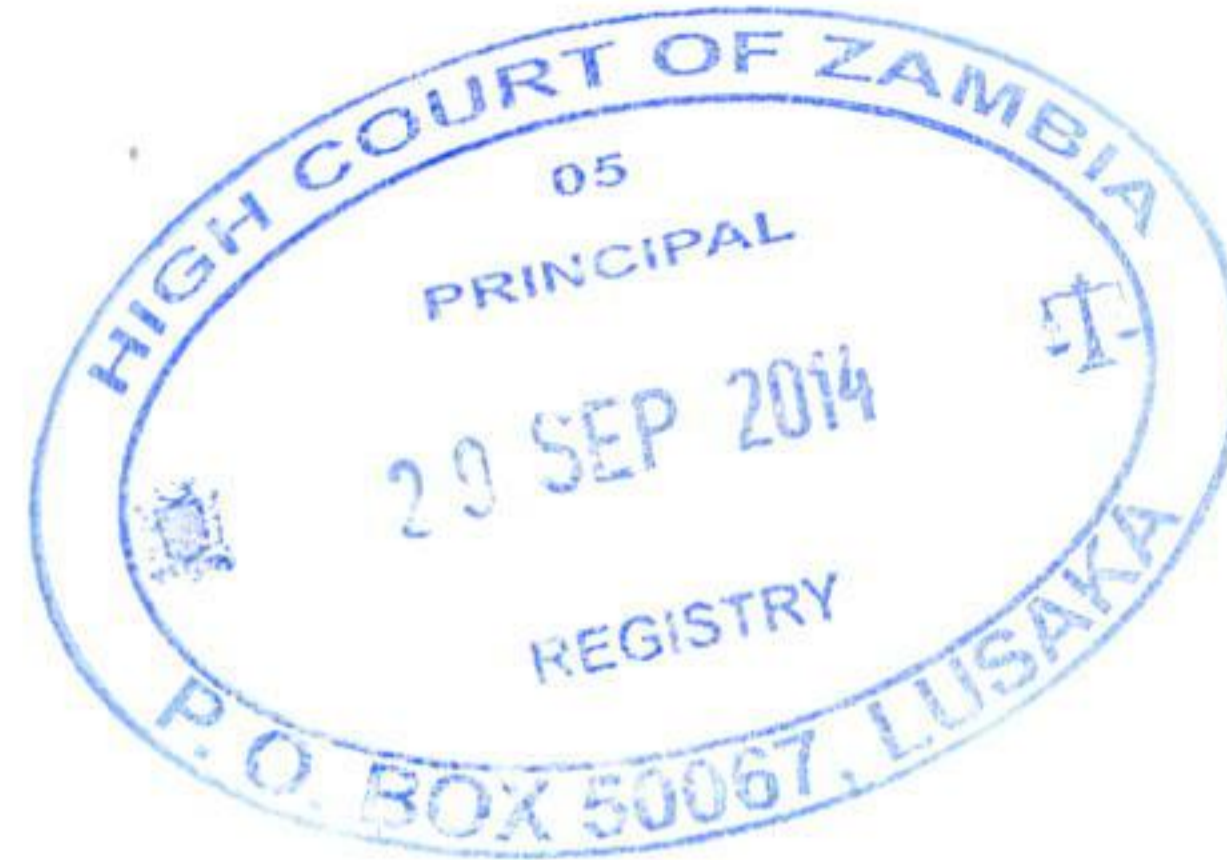
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**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
AT LUSAKA  
(Civil Jurisdiction)**

**2012/HP/122**

**BETWEEN:**

**OBED MAHOLE**



**PLAINTIFF**

**AND**

**ROADS CONTRACTORS COMPANY  
ZAMBIA LIMITED**

**DEFENDANT**

**Before Hon. Mrs. Justice M.S. Mulenga this 29<sup>th</sup> day of September 2014.**

For the Plaintiff : Mr. G. Lungu of Messrs Muleza Mwiimbu and Company  
For the Defendant : Mr. A. Tembo of Messrs Tembo Ngulube and Associates

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## **J U D G M E N T**

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### **Cases cited**

- 1. Zambia Daily Mail Limited v Grevesious Mayenga and 2 Others Appeal no. 31/2010 (unreported)**
- 2. Jones vs Associated Tunneling Company Limited**
- 3. Faidecy Mithi Lungu v Lonrho Zambia Limited Appeal no. 182 of 2000**
- 4. Zambia Railways Limited V Pauline S Mundia, Brian Sialumba (2008) Z.R. 287 Vol. 1 (S.C)**
- 5. Wilson Masauso Zulu v Avondale Housing Project Limited**
- 6. Moonjelly Ouseph Joseph v RDS Investments Limited (2004) Z.R. 67 (S.C.)**

This action was commenced by way of writ of summons and statement of claim dated 6<sup>th</sup> February 2012 claiming the following reliefs:

- i. The sum of K63,177, 641.92 (K63,177.64 rebased).*
- ii. Interest.*
- iii. Such other relief that the Court may deem fit.*
- iv. Costs.*

The Plaintiff avers in his statement of claim that he was at all material times an employee of the Defendant, a company incorporated in Zambia under the Companies Act 388 of the Laws. He was employed as a site clerk for a period of one year, commencing the 2<sup>nd</sup> day of November 2007. He was issued with yet another contract as a site clerk commencing 3<sup>rd</sup> November 2008 to 3<sup>rd</sup> May 2010.

During the course of his second contract, he was transferred from the bottom road project to the head office where he worked in the finance department and was eventually given the duties of a human resources officer. The Defendant through its chief executive officer did not communicate in writing at the time that he was being transferred to the head office. He was simply told to report to head office on the 16<sup>th</sup> day of February 2009 by the managing director and the human resources manager. The Defendant did not communicate to the Plaintiff when it assigned him the duties of the human resources officer.

The Plaintiff further avers that his transfer from the position of a Site Clerk to the head office to do accounts and run the human resources office entailed that his salary should have been brought

into line with the salary scale of the human resources officer position.

That the defendant failed and or neglected to pay the Plaintiff his gratuity, leave pay, salary arrears for a period of five months, medial refund, industrial break dues and the difference between the salary of a site clerk and that of a human resources officer for a period of fourteen (14) months and it is in the premise that he claims the above reliefs.

In its Defence, the Defendant admits that the Plaintiff was employed as site clerk under two contracts and was later moved to head office. The Defendant denies the contents of the rest of the paragraphs in the statement of claim and states that it will prove at trial that the Plaintiff was working as a clerk and performed only clerical work as he had no qualifications to work as human resources officer, a position that would have entitled him to a higher salary in that grade and he is put to strict proof of his claim. That the Plaintiff was paid his salaries for the entire period he worked at the Defendant company including medical refund, and also received all his dues. The Defendant denies owing the Plaintiff the sum of K63,177.64 or at all.

At the trial, the Plaintiff testified that he started working for the Defendant on 2<sup>nd</sup> November 2007 as a site clerk on the Bottom road project in Southern Province. The contract was for 12 months. It expired on 2<sup>nd</sup> November 2008. The contract was

renewed for another 18 months. The two contracts are at pages 2 to 11 of the Plaintiff's bundle of documents. The Plaintiff further testified that as a site clerk, his duties included the general management of the site including taking care of the employees on site, managing stock on the site and making orders required on the site and representing the company in issues to do with villagers as they were constructing the roads.

In February 2009 he was asked to move to the head office as the Defendant liked the way he worked on the site and thought he would contribute at head office. The first two months at the head office, he worked in the finance department as he had knowledge of accounts. From 30<sup>th</sup> April 2009 up to the time he left the Defendant company he was in human resource department. The senior human resource officer was fired over some issues to deal with the payroll. He was asked to work alone in the human resource department to take over from her. Among his duties was the preparation of the payroll for employees on sites and headquarters, preparation of bank transfers and taking care of employees on all project sites and also dealing with any issues affecting employees and the labour office.

He testified that he prepared the documents at pages 14 and 16 of the bundle of documents as human resource officer and would take the same to the signatories to sign and then take to the bank. At page 17 he signed as human resource officer and there were no

objections from the company for him to sign as human resource officer. He prayed that he be paid money as human resource officer from the time he was engaged up to the time he left the company, salary arrears and leave days.

Under cross examination the Plaintiff stated that he was employed as site clerk and the contract provided for working outside the site at company discretion. That he was not paid gratuity for the first contract as the employer was postponing payment. He could not remember the exact figure he was entitled to for this contract. On the second contract, the Plaintiff stated that it was also for the position as site clerk and was basically the same as the first contract. This was the contract that was in force at the time he left employment. He was initially working for the Chaboboma site office.

The Chaboboma site project ended in July 2009 whilst he was working at head office as it was the last time the salaries were paid. By August 2009, the site was disbanded and the foreman who remained was also out of employment by September 2009.

His immediate supervisor was Janice Goagoses (DW). No appointment letter was ever written to him on the position of human resource officer. The pay slips showed he was site clerk. He was not the one to change the title. The appointment was verbal and he used to sign together with those in administration

and he would sign as human resource officer as that was the work he was doing and he was the only one in the department.

Page 15 of the Plaintiff's bundle depicts the workers with bank accounts and the others who used to get their money on site. They sent lump sum to the bank for those receiving cash. The list was substantially the same every month and this was part of the work he was doing. The Plaintiff further stated that the leave pay for the 22 days he had accumulated is what he was seeking. He did not exhibit any document to show he accumulated 22 days leave. He just subtracted the days for the two periods he went on leave. That in 2010, he went on a long leave for a course run by Jehovah's Witnesses. It was for two (2 ) months from December 2009 to end of January 2010 except for weekends and public holidays. The leave days were from the first contract carried over to the second contract. He admitted that the payslips used to show the outstanding leave days but which he did not produce them. The pay slip at page 1 was just a proforma pay slip. From February 2010 to June 2010 he was not given payslips as he was not paid and these are the salary arrears he is claiming.

The March 2010 payroll was prepared by him and shows his name. He also prepared the February payroll. However, all employees never got paid. The bank transfers were prepared in June but were not credited. He could not recall preparing the May and June payrolls. He left work on 21<sup>st</sup> June 2010. His contract

expired on 3<sup>rd</sup> May after which he worked up to June without a contract. All company employees never got paid in February, March and April 2010 despite the payroll being prepared. The May salaries were only paid in June.

That sometime in 2010 after he had left employment the Defendant deposited K8,500.00 into his account and the company said it included everything, including benefits.

On the medical refund, the Plaintiff testified that he left the receipt with the company and thus did not have the document in court. He did not get a copy from the hospital. He had a photocopy but he misplaced it.

On the industrial break dues, the Plaintiff testified that every year between December and January or early February employees go on recess. That the recess is not provided for in his contract. He was however entitled to it due to the provision on overtime in his contract. This marked the close of the Plaintiff's case.

The Defendant called one witness, the Administrative Manager Fridah Ganeth Goagos (DW), who testified that she has worked for the Defendant since its incorporation in the year 2006.

She confirmed that the Plaintiff was a site clerk at the Bottom Road project. He was paid his gratuity including leave days. The gratuity amounted to K10,500.00 and K1,400.00 leave days as he

had taken other leave days. He was also given K400.00 for medicals. After PAYE deductions it came to K8,500.00 net which was paid to his account.

As regards the five (5) months salary arrears claim, DW testified that the Plaintiff for some time did not go for work and so this period was deducted as he did not get official leave. He only informed the company that he was attending a training at his church.

On the issue of the transfer, DW stated that the Plaintiff was transferred from Chaboboma site to the head office as a site clerk. At the head office he did clerical work which was the same as the one he was doing at the site. He was processing people's time sheets as he used to do on site. Ms. Jane Mutelo was heading the human resource department and Ms. Mushoka and the Plaintiff were also in the department. The Plaintiff was not doing everything in human resource and is not entitled to be paid at the rate of a human resource officer.

DW also testified that as regards the letter at page 17, the same was a standard letter in the Defendant's office and it is on the system. The letter is normally signed by the acting chief executive officer or human resource officer. The Plaintiff signed it as the Human Resource Officer was not present at the time but it is a standard letter. Further that at the time the Plaintiff's employment



was terminated, he still held the position of site clerk. DW also stated that the conditions of service provided that if there was need elsewhere the company could relocate the person when the assigned duty station.

Under cross examination, DW stated that there was no position of site clerk at headquarters but the job was there. In February 2009 when the Plaintiff went to the headquarters, the human resource officer, Ms. Mushoka, was sick. In reference to the letter signed by the Plaintiff at page 17, she testified that the document is a standard letter. She did not know where Ms. Mushoka was at that time. The Plaintiff did not commit an offence when he signed the said letter. She admitted seeing the said letter for the first time at trial. The Plaintiff was not the only one signing such type of letters. It could have been signed by him or anyone else in the human resource office. The Plaintiff was not the human resource officer as it indicates on the letter. Further, DW testified that Ms. Mutelo was the human resource officer and the supervisor to the Plaintiff but was dismissed sometime in 2009. Further that she did not know the exact date when Ms. Mushoka resigned but before doing so she had gone on maternity leave.

DW admitted that the duties of Human resource officer had to continue but that the Plaintiff was doing clerical work such as preparing time sheets. This was the same thing he was doing at the site office including preparing the payroll. The payroll was

being done in Namibia and he was doing the clerical part of capturing the data and not human resource work. The acting managing director took over the human resource work when the other two human resource officers left. She was not aware that someone from Namibia took over the Plaintiff's position on the site.

That the Plaintiff was being paid for the work he was doing on position of site clerk even though headquarters had no position of site clerk. He was not given responsibility or acting allowance for a higher position. She admitted knowing Situmbeko as site clerk in Solwezi who was transferred to head office but she was not aware of the position he was holding at the head office or that he was moved to procurement officer position and his salary was adjusted.

The Plaintiff, at the time he left, was working on terminal benefits for some site by merely providing information to the consultant who had been hired for the purpose of conducting terminal benefits calculation. The Plaintiff was not paid for the five months he did not work. He was not charged for absenteeism or any other offence. She could not state the exact period he did not report for work but they did not pay for the period he did not work. The Defendant used to have industrial break and paid workers for it. She was not aware that the Plaintiff worked and the company decided not to pay him.

This marked the close of the trial and both parties were given opportunity to file submission which they did and the said submissions are on record.

Counsel for the Plaintiff submits that the Defendant company found the need in the human resources office hence transferring the Plaintiff from the site office to the head office where the position of the site clerk did not exist. That it is also evident that during this time, the senior human resources officer was dismissed while another officer who proceeded on leave resigned immediately after her leave expired which left the office of the human resources without anybody to operate from. Consequently, the Plaintiff was taken to this very important office from accounts section where he was initially transferred from the Bottom road project.

That the Plaintiff worked during Christmas holidays when this was industrial break time but never got paid for working during this special period. That it is on record that the Plaintiff proceeded on leave to attend training at his church for about two (2) months hence the failure by the Defendant to discipline or charge him for absenteeism or any other offence.

Further that the Plaintiff as an employee of the Defendant was in a weaker position to even ask the employer whether his salary would change commensurate to the newly acquired position of human resources officer. All that the Plaintiff had was excitement and high

expectation of a better and improved salary which was never paid to him. Counsel then cited the case of **Zambia Daily Mail Limited v Grevesious Mayenga and 2 Others Appeal no. 31/2010 (unreported)** wherein the case of **Jones vs Associated Tunneling Company Limited** was referred and it was held by the Supreme Court that:

**"even if he does read the statement and can understand it, it would be unrealistic of the law to require him to risk a confrontation with his employer on a matter which has no immediate practical impact on the employee."**

From this counsel surmises that the Plaintiff could not react there and then and start a confrontation with the Defendant since he was comfortable that at the end of his contract his terminal benefits or gratuity would be calculated on the newly acquired position of human resources officer. That there is an element of discrimination in the manner the Defendant treated the Plaintiff and another person by the name of Terence Situmbeko who was transferred from Western Province to Head Office in purchasing and supply whose salary was adjusted upwards in relation to his new position leaving out the Plaintiff.

That there is no way that two (2) different officers could hold one and the same position at the same time. When the Plaintiff was transferred, another person from Namibia was brought to take over the Plaintiff's position of site clerk at the Bottom road project. Therefore, the Plaintiff could not continue holding the position of a site clerk when another person had already taken up the same position.

Counsel then concluded by reiterating that the work the Plaintiff was performing at head office is that of human resources officer hence the hiring of a consultant to finish the work that the Plaintiff left unfinished at the time he was leaving the Defendant. That if this was simple clerical work, then there was no need for the Defendant to hire a consultant to do clerical work.

The Defendant's counsel submitted that the Plaintiff is not entitled in any way to the reliefs sought in the statement of claim as he was employed as a clerk and only performed clerical work throughout the course of his employment. That it is undisputed that the Plaintiff was transferred to the human resources department in the Defendant's company and such transfer was not to any other position but site clerk, a position which the Plaintiff held throughout the course of his employment. This position is supported by the evidence of DW who in her testimony before court stated that the Plaintiff was a site clerk. She further informed the Court that even though there was no site clerk position at the head office, the Plaintiff performed clerical and administrative work such as processing time and leave sheets and the getting of information from systems to prepare schedules for terminal benefits.

The case of **Faidecy Mithi Lungu v Lonrho Zambia Limited Appeal no. 182 of 2000** was cited. In this case, the Appellant was employed in

a secretarial position in the Respondent company in 1982 and rose to become executive secretary to the Executive Chairman. A new board dismissed her, whereupon she sued the company. The High Court ordered reinstatement and directed that there be no loss of status. Her position had since been abolished together with that of Executive Chairman, and in an effort to implement the reinstatement, the company gave her a lower position secretarial job, but without loss of salary.

It was then submitted that even though this case is not on all fours with the case in casu, it has a huge bearing on it as it goes to show that irrespective of what kind of work one does, his pay will be determined by his position as stipulated in the contract of employment.

On the strength of the above case, counsel for the Defendant argues that the Plaintiff having been transferred to do that which he was contracted to do under his contract of employment in the human resources department, cannot be heard to assert that he ought to be paid a wage available to a human resource officer.

Further, that DW testified that the Plaintiff was not the only person in the human resource department but was under the supervision of one Ms. Mutelo who was the senior human resources officer and Mrs. Mushoka who was the human resources officer. She further stated that after Ms. Mutelo left, the Plaintiff remained with Ms. Mushoka. In addition to this, DW in cross

examination stated that even if the Plaintiff signed the letter on page 17 of the Plaintiff's bundle of documents, the same was just an oversight and a mistake. Invariably, the said letter was supposed to be signed by the chief executive officer who was in fact available at the time. DW further pointed out that the Plaintiff was not a human resource officer by virtue of signing the aforesaid letter. A mere letter written by oneself cannot alter ones position from that stated in the contract of employment.

Further, it is submitted that DW's testimony clearly points out that at no time did the Plaintiff single handedly run or perform the functions of a human resource officer in the Defendant company. Even if he had performed functions such as the signing of the letter in issue and any other acts, the same are to be taken as acts incidental to the performance of his functions as clerk in the human resource department and not as a human resource officer.

It is further submitted that the Plaintiff cannot be seen to assert that he had been under some sort of impression that his salary would be increased by virtue of him being transferred. This is because there was no formal communication to the Plaintiff informing him of any promotion or change of position that would warrant him a pay raise. The Plaintiff has not led any evidence to show that he asked for a raise in his pay while still in employment.

That as rightly pointed out by DW, industrial break is a condition of service in the Defendant's Company and anyone who did not go on break was paid. The Plaintiff has not brought proof before this Court to show that he indeed worked and was not paid during the industrial break. Thus it is submitted that his claim is baseless.

Furthermore, that DW testified that the Plaintiff was paid his gratuity through a bank transfer in the sum of K8,500.00. Further, that the Plaintiff did not work for five (5) months when he was attending training at his church. However, he did not apply for leave even after being requested to do so. He only appeared to collect his separation letter on 31<sup>st</sup> July 2010. That it is on the strength of DW's testimony that counsel contends that the Defendant does not owe the Plaintiff any gratuity dues. As regards leave pay, it is contended that DW's testimony clearly points out that the Plaintiff proceeded on unapplied for leave which can be said to be in breach of his employment conditions and hence places no obligation on the Defendant to pay him for the time he illegally stayed away. That the Plaintiff's claims be dismissed with costs.

Counsel for the Plaintiff filed submissions in reply which repeated a number of facts already stated above and also makes some assertions such as particular dates that are neither stated in the statement of claim nor mentioned by the parties during the trial.



I have considered the evidence and submissions. The standard of proof in civil matters as held In **Zambia Railways Limited V Pauline S Mundia, Brian Sialumba (2008) Z.R. 287 Vol. 1 (S.C) :**

**"... is not as rigorous as the one obtaining in a criminal case. Simply stated, the proof required is on a balance of probability "as opposed to beyond all reasonable doubt in a criminal case". The old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability that the other party is liable. "**

In **Wilson Masauso Zulu v Avondale Housing Project Limited** it was held that:

**" I think it is accepted that where a Plaintiff alleges that he has been wrongfully or unfairly dismissed, as indeed in any other case where he makes any allegations it is generally for him to prove those allegations. A Plaintiff who has failed to prove his case cannot be entitled to Judgment, whatever may be said of the opponent's case."**

Furthermore the degree of the standard of proof in civil matters as held by Lord Denning in **Miller v Minister of Pensions [1947] 2 All ER 372 at 373 -374** is as follows:

**"That degree is well settled. it must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not."**

In **Moonjelly Ouseph Joseph v RDS Investments Limited (2004) Z.R. 67 (S.C.)** it was held that:

**"The lack of a regular salary can also mean the absence of employment, which we think was the state of affairs in this case. The position in this country is that under Section 48 of the Employment Act, Chapter, 268 of the laws, no one can be employed to work without receiving a wage as per the contract because that would be illegal. On the basis of the statutory and mandatory provisions of the Act we refuse to take judicial notice that workers in this country, including civil servants, of which we form an integral part, go for long periods without pay because such a proposition is not true in reality."**

What I have to determine is whether the Plaintiff has proved his case to the required standard. In his statement of claim the Plaintiff claims for K63,177.64 as monies due to him on separation but this amount is not broken down to show what it comprises or how the Plaintiff arrived at the same. In the absence of any clarification on the same, this amount is not proved but is merely speculative. Paragraph 8 of the statement of claim highlights six (6) claims which I will now consider.

The first is for the difference between the salaries of site clerk and human resources officer for fourteen (14) months. It is not in dispute that the Plaintiff was moved from the site office to the headquarters in February 2009 and from 30<sup>th</sup> April 2009 to the time of his separation in June 2010, he had been in the human resource department. The dispute is on whether or not the Plaintiff was appointed as human resource officer during these fourteen (14) months. The Plaintiff has not produced any documentation appointing him to the position of human resource officer. His own further evidence is that he was not also verbally told that he was human resource officer. The Plaintiff continued to get his salary and other benefits based on his substantive and official position as site clerk although there was no position designated as site clerk at the headquarters. The Plaintiff's contention is that by virtue of signing the letter at page 17 as human resource officer and the duties he was carrying out in that

department, he was effectively the human resource office. That this is more so in view of the dismissal of Ms. Mutelo who was the head of that department and the leave and subsequent resignation of Ms Mushoka the human resource officer, thereby leaving the Plaintiff alone in the department.

The Defendant's position is that although the Plaintiff remained alone, he continued doing the duties he had been carrying out all along as site clerk. That the one who was then handling the human resource issues was the chief executive officer. That the site clerk duties included processing time sheets for staff, leave sheets and preparing the payroll schedule although the actual payroll was being done in Namibia.

Based on the above, I find that the Plaintiff has not proved that he was appointed to the position of human resources officer. It is apparent that he continued to do basically the same duties he used to carry out at the site office. He has also not proved that another person from Namibia took over his position as site clerk at the site in view of his own and DW's evidence that the Plaintiff continued to process the time sheets and payroll for the sites including the one the Plaintiff was transferred from. The Plaintiff's signing of a lone letter as human resource officer at page 17 of his bundle of documents does not suffice to confer him with the position of human resource officer. Further, the Plaintiff's evidence is that he continued getting his salary as site clerk and

which position was reflected on his pay slips until the expiry of his contract in June 2010. During this fourteen (14) months Period, he also never received any acting allowance and never asked for any.

On this aspect, the Plaintiff has relied on the case of **Zambia Daily Mail v Grevesious Mayenga and 2 Others** where it was stated that:

**“It would be unrealistic of the law to require him to risk a confrontation with his employer on a matter which has no practical impact on the employee.”**

This statement does not assist the Plaintiff in this matter because it can be distinguished. In this instant case, the acting allowance or position affected him directly and therefore had practical impact on him. He was therefore required to confront his employer over the same. The fact that he was silent on the same for over fourteen (14) months until after he left employment does not support his case. The case of **Faidecy Lungu v Lonrho** cited by the Defendant is to the effect that an employee's pay is determined by the position he is holding as stipulated in the contract of employment. In this case the Plaintiff's pay showed that he was holding the position of site clerk. The other aspect on discrimination compared to the alleged treatment of one Terence Situmbeko has not been proved in the absence of clear evidence to that effect. A mere allegation is not enough.

This claim on the difference in salary accordingly fails.

On the claims for gratuity, leave pay and medical refunds, the Defendant's evidence is that this was paid to the Plaintiff less the tax. The gross amounts were stipulated as K10,500.00 gratuity, K1,400.00 leave days and K400.00 medicals. That these amounts less tax gave the net of K8,500.00 which was paid to the Plaintiff. The Plaintiff acknowledged having received this amount. The Plaintiff has not provided any evidence to show that there was underpayment for these three items. All that have been provided are general statement and on the issue of the leave days the Plaintiff does not specifically show how he arrived at the 22 days claimed.

These claims therefore fail.

The other claim is for industrial break dues. The Plaintiff acknowledged that the employment contract does not specify the industrial break but he put the same as between December and January or early February. No specific length of period on the number of days has been provided. The Defendant's witness stated that there was an industrial break and dues were only payed to those who worked during the break. DW was also not asked on the exact duration of the break. As the facts stand, the Plaintiff has not shown that he worked during the industrial break and to which specific year and period he was claiming for. As for December 2009 to January 2010, he stated that he was attending a church training program and it is therefore apparent that he did

not work during the same. In the absence of specifics and proof, the Plaintiff cannot succeed on this claim.

This claim thus fails.

The last claim is for salary arrears for five months. The Plaintiff's testimony is that he was not paid his salary for the months February 2010 to June 2010 when his contract came to an end. That during this period he was working as evidenced by the letter at page 16 which he wrote for the signature of the interim chief executive officer dated 10<sup>th</sup> March 2010 and has his name as the person to channel inquiries. He also signed the letter at page 17 dated 11<sup>th</sup> June 2010.

The Defendant has acknowledged the fact that it did not pay the Defendant for five months although the specific months were not mentioned. That the none payment was due to the fact that during the said period, the Plaintiff had gone for some church training and did not report for work despite being asked to do so. That during this period the Plaintiff did not take leave but no disciplinary action was taken against him.

I have considered the above, I find that it is not in dispute that the Plaintiff was not paid for five months. The Defendant's position that despite the alleged illegal absence for five months they did nothing to the Plaintiff in terms of the disciplinary procedure is not plausible or reasonable. I say so because no company would let its

employee be absent without official leave for such a long period of time which is close to half a year and do nothing about it except deny the person the salary for that period. The two letters at pages 16 and 17 show that the Plaintiff was at least working in March and June 2010 as per his evidence. The Plaintiff stated that from February 2010 up to May 2010 the none payment of salary affected all the employees and not only himself. That in February and March the payroll was prepared but no money was paid out. That this went on until June 2010 when there were some payments. Apart from the bare denial, the Defendant has not rebutted this assertion despite having all the requisite documents in its custody to show otherwise. The Plaintiff's further evidence is that he was also not given pay slips for the period in issue.

I am thus satisfied that the Plaintiff has proved on the balance of probability that he worked but was not paid for five months. This claim succeeds and I hereby enter judgment for the Plaintiff for the salary arrears for five months. In the absence of the pay slip for late 2009 or early 2010, I cannot ascertain the exact amount due per month and do not therefore specify the same. Should the parties fail to reach an agreement of the monthly salary applicable, the same is to be assessed by the Deputy Registrar.

The five months salary arrears will attract simple interest at 10% per annum from the date of writ to the date of Judgment.

Thereafter, the same shall attract interest at the average Bank of Zambia lending rate to the date of payment in line with the Judgment Act Cap 81.

Costs are for the Plaintiff to be taxed in default of agreement.

Leave to appeal is granted.

***Dated 29th day of September 2014***

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***M.S. MULENGA***  
***HIGH COURT JUDGE***