

IN THE HIGH COURT FOR ZAMBIA

COMP/419/2015

AT THE INDUSTRIAL RELATIONS DIVISION

HOLDEN AT LUSAKA

Between

BENJAMIN TEMBO

DONIANA ZIMBA

EDITH MAKAYI

KAYINDAMA MUZEYA

RACHEL MUTALE MUYUNDA

HELLEN CHILUFYA PHIRI

And

SANLAM LIFE INSURANCE COMPANY ZAMBIA LTD RESPONDENT



1ST COMPLAINANT

2ND COMPLAINANT

3RD COMPLAINANT

4TH COMPLAINANT

5TH COMPLAINANT

6TH COMPLAINANT

BEFORE HON. MR. JUSTICE E.L MUSONA

For the Complainant:

Mr. O. Sitimela: Fraser Associates

For the Respondent:

Ms. S Kaingu: Chibesakunda & Co

Mr. J. Ngisi: Chibesakunda & Co

JUDGMENT

Date: 27th March, 2019

Cases referred to:

- 1. Barclays Bank PLC v Zambia Union of Financial Institution and Allied Workers Appeal Number 17 of 2007**
- 2. Barclays Bank Zambia PLC v Weston Luyi and Another: Appeal No. 7 of 2012**
- 3. Chilanga Cement PLC v Kasote Singogo (2009) ZR 122**
- 4. United Bank of Africa v Maxwell Sichilongo Appeal No. 56 of 2015**
- 5. North- Western Energy Limited v Energy Regulation Board (2011) Z.R**
- 6. Sugar v Ridehalgh and Sons Limited 1931 1CH 310**
- 7. Zambia National Commercial Bank v Geoffrey Muyamwa and 88 Others-Appeal No. 5 of 2017.**

Legislation referred to

- 1. Employment Act Chapter 268 of the Laws of Zambia**
- 2. Minimum Wages and Conditions of Employment Act Chapter 276 of the Laws of Zambia**
- 3. Pensions Regulations Act Number 28 of 1996**

This matter was commenced by way of a Notice of Complaint and accompanying Affidavit in support by Mr. Benjamin Tembo and 5 others (Complainants) against Sanlam Life Insurance Company Zambia Limited, formerly known as African Life Assurance Limited (Respondent).

The Complainants are seeking for the following reliefs which have been stated in their Notice of Complaint:

- I. 1 month pay for each year served which was withheld from the Complainants terminal benefits as per Company practice followed in a previous retrenchment where the employees were paid, three months' salary for every year served
- II. 3 months' pay being compensation for the period when there was no pension as conceded and promised by the Respondent
- III. Payment of outstanding leave days to Hellen Chilufya Phiri and Kayindana Muzeya
- IV. Payment of acting allowance to Benjamin Tembo and Kayindana Muzeya
- V. Refund of tax for 25% that was deducted on pension contributions by the Respondent due to the Respondent's unjustified actions
- VI. Damages for mental stress and trauma caused by the Respondents action
- VII. Interest on all the claims
- VIII. Costs

The Affidavit in Support of Notice of Complaint was deposed to by Benjamin Tembo who stated that the Complainants were engaged on various dates by the Respondent in various positions until 9th November, 2015 when the Respondent decided to terminate their contracts of employment by way of redundancy.

According to the deponent, the Complainants challenged the said redundancy because they were not given notices with regard to the redundancy as well as guidance on how the process was to be

undertaken. Further, there was no negotiated package as everything was done unilaterally and without government's approval through the Ministry of Labour.

The deponent further stated that at the time of the said redundancy, there were unresolved issues between the Complainants and the Respondents namely:

- I. Outstanding leave days with respect to Hellen Chilufya Phiri and Kayindana Muzeya*
- II. Acting allowances that were not paid to Kayindana Muzeya and Benjamin Tembo*
- III. Pension which was promised to be paid for the period served from the time of engagement to 2013 when the new one was introduced*

The deponent went further to state that the terminal benefits were calculated at 25% with respect to employer contributions and further that the earlier group of employees who were declared redundant were paid 3 months' pay for each completed year of service.

In opposing the Notice of Complaint, the Respondent filed an Answer and Affidavit in Support of Answer which was deposed to by Chanda Mwila the Head of Human Resource in the Respondent Company who deposed that the Complainants were all employed by the Respondent on various dates and on written contracts.

According to the deponent, before the redundancy, the Respondent had meetings with the Assistant Labour Commissioner at the Ministry of Labour and Social Services to discuss the impending redundancies and that subsequently the affected employees were given 2 months' notice of the impending redundancy and that during this period, the employees were put on garden leave to allow for a consultation process with the said employees.

It has further been deposed that none of the employees took advantage of the garden leave to engage Management on the redundancy and that during the said garden leave, the employees continued to enjoy all their entitlements.

According to the Respondent, although none of the Complainants were protected employees under the Minimum Wages and Conditions of Employment Act, the Respondent in good faith, paid the Complainants 2 months' pay for each year served and that the Company does not have a practice of paying employees who have been retrenched 3 months' salary for each year served.

Further, it was deposed that the Complainants were paid their entitlements under the contractual Pension Scheme.

With regard to leave days, the Respondent has deposed that the practice is that leave days are not carried over to the subsequent financial year and that various emails were sent to the employees urging them to utilize their leave days.

According to the Respondent, at the time of creating the Pension Scheme, the employees were advised that their benefits for past service would be reconciled and paid into the Pension Scheme at the time the Scheme became due, that is at retirement.

At trial, the Complainants called two witnesses in support of their case. CW1 was Benjamin Tembo who is the first Complainant. According to his evidence under examination in chief, on 10th September, 2015, there was a group of employees who used to work for the Respondent and whose contracts were terminated in similar circumstances as the Complainants and the Conditions of Service under which the first group served are the same as the ones under which the Complainants served.

According to CW1, the Respondents used clause B6.4 of the 2010 Conditions of Service in order to terminate the contracts for the first group and this was the same clause which was used when terminating the contracts of employment for the Complainants.

CW1 further testified that the first group was paid 3 months' pay for each year served as redundancy and yet the Complainants were paid 2 months' salary for each year served as redundancy, meaning that the Respondent underpaid the Complainants by 1-month salary for each completed year.

According to CW1, he had worked for the Respondent for 11 years and that on 10th September, 2015, the Complainants were called for a meeting with Human Resource Department and that at the said meeting, they were informed that the Respondent would be carrying

out a redundancy exercise owing to some financial difficulties. He testified that the Respondent did not prepare the Complainants for the redundancy and the loss of jobs was sudden and traumatizing.

It was CW1's further testimony that he was employed in 2004 but the Pension Scheme was introduced in 2013 at which point the Complainants had accrued past benefits. According to CW1, the Complainants are claiming for 3months pay for each year served up to May, 2013. He testified that upon redundancy, the Respondent maintained that it could only pay the Complainants their past benefits if they had reached 55 years and after working for a continuance period of 10 years and yet the earlier position was that past benefits would be computed and paid into the Pension Scheme before one joined the Scheme.

According to CW1, the Complainants want the Court to order the Respondent to transfer these benefits to the Pension Scheme

On the issue of leave days, CW1 testified that the practice in the Respondent Company was to pay outstanding leave days on separation but Helen Chilufya Phiri and Kayindana Muzeya were not paid. He further testified that while the Respondent is claiming that it does not allow to carry over leave days to the next year, exhibit marked 'BT38' in the Complainant's Affidavit in Support of Notice of Compliant shows that Opha Mulila was paid 30 leave days on separation and yet the maximum leave days in a year is 24 days.

In his further testimony, CW1 maintained that Helen Chilufya is asking for 36 leave days while Kayindana is asking for 10 leave days

and reference was made to exhibit 'BT6 and BT7' in the Complainant's Affidavit in Support of Notice of Complaint.

With regard to acting allowance, CW1 testified that the practice in the Respondent Company is to pay acting allowance when someone is acting in a higher position and that he acted as Chief Financial Officer in 2013 when incumbent was laid off and he was paid. Reference was made to exhibit 'BT8' in the Complainants Affidavit in Support of Notice of Complaint. He further testified that in 2015 he again acted in the same capacity of Chief Financial Officer when the incumbent was on maternity leave but was not paid as such, he is claiming for K10,000 which was 10% of the basic salary of the incumbent.

In relation to Muzeya, CW1 testified that Muzeya acted as Information Technology and Premium Administration Assistant Manager and was not paid acting allowance. Reference was made to instances when acting allowance was paid in exhibit 'BT9 and 10' in the Complainant's Affidavit in Support of Notice of Complaint.

On the claim for a refund of 25% that was deducted on the Pension Contribution by the Respondent, CW1 testified that had the Complainants claimed their benefits at the time of reaching retirement age, 10% was to be deducted but that since they *withdrew* their Pension Contribution earlier, 35% deduction was done. It was the evidence of CW1 that they were prompted to withdraw their pensions earlier due to the manner in which the

Respondent carried out the redundancy, as such, the Respondent should refund the Complainants the extra 25%.

In cross examination, CW1 testified that the contracts of employment did not provide for the payment of redundancy and that when the first group of employees contracts were terminated, he was not part of management decision and that he is not aware that the termination of the first group's contract of employment was to facilitate for intercompany transfer of employees from the Respondent to Sancare.

CW1 further stated that he has no evidence for mental stress and trauma as he was not treated at the hospital and that he was given a termination letter on 10th September, 2015 and asked to go home but that the letter indicated that he was still employed until November 2015 and was still paid.

In further cross examination, CW1 testified that when he was employed, he was verbally promised that he would join a Pension Scheme although his conditions of service did not provide for a Pension Scheme. According to CW1, he is claiming for 3 months' compensation for the period worked when there was no Pension Scheme.

It was CW1's testimony that exhibit 'CM15' in the Respondent's Affidavit in Support of Answer shows that there are circumstances when a maximum of 5 days' leave could be carried forward to the next year but that before there could be a carry-over of the leave

days, there must be approval. According to CW1, apart from exhibit BT6, there is no any other proof that Hellen did not go on leave.

In re-examination, CW1 testified that the Complainant's claim for past benefits is based on clause 3 of exhibit 'BT11'.

CW2 was Rachel Mutale Muyunda who testified that she worked as an Assistant Manager, Customer Care Department. According to her evidence in examination in chief, she worked for the Respondent for a period of 13 years until 10th September, 2015. She testified that she was called for a meeting in the Human Resource Office together with other Complainants and they were informed that the Company was carrying out redundancy and that after she was given a redundancy letter she was in a state of shock as she was told to pack and go the same day.

In cross examination, she testified that she served under the conditions of service of which the Respondent had power to terminate by notice a contract of employment and that she had 3 years remaining to retirement.

The Respondent called one witness by the name of Chanda Evelyn Mwila who testified that in 2015 she was the Head of Human Resource at the Respondent. She testified that the Respondent does not have a policy of paying 3 months' salary for each year served following redundancy but that it was the employees in another Company called Sancare Medical Division who were paid 3 months' salary for each year served. According to RW, Sancare operated under the Respondent but it had its own Terms and Conditions.

With regard to the Pension Scheme, RW testified that the Respondent did not have a Pension Scheme prior to 1st May, 2013 and that the only applicable Pension Scheme was National Pension Scheme Authority. According to her, the Respondent set up a Pension Scheme effective 1st May, 2013 with the understanding that although it had no obligation to pay the past benefits, it committed to pay the past benefits using the rates applicable in the introduced Pension Scheme for employees who had worked for a minimum of 10 years and attained the age of 55 years but that none of the Complainants were entitled to this because they do not qualify.

In further evidence in chief, RW testified that Hellen and Kayindana are only entitled to leave days accumulated from 1st January 2015 up to their departure and that prior to that date, the Company policy was that one had to take all his leave days in a particular year and that only in cases where there was prior authorization from the CEO were employees allowed to carry forward a maximum of 5 days and that in the present case there was no authorization.

RW testified further that Benjamin Tembo and Kayindana Muzeya are not entitled to acting allowance because the Conditions of Service did not provide for acting allowance and she made reference to exhibit 'BT57 and 58' in the Complainant's Affidavit in Reply to Affidavit in Support of Answer. She further testified that those employees who got acting allowances were paid because they came from sales department to act in administration role and this was meant as compensation for loss of income they would have

generated in form of commissions as workers in sales department are entitled to commissions.

On the deduction of 35% from the Pension Fund, RW's testimony was that the Complainants were advised by the Pension Scheme Managers that there would be a 10% deduction from the employee and 25% for employers. It was her further testimony that before the termination was done there was consultation with the Ministry of Labour and that the redundancy was conducted in accordance with the guidance from the Ministry.

In cross examination, RW testified that there was no policy to pay 3 months' pay for each year served or 2 months' pay for each year served in the Conditions of Service. She testified that Felix Phiri and Tapson were paid 3 months salary for each year served because they were protected employees as guided by the Minimum Wages and Conditions of Service Act and that the Complainants were paid 2 months' pay for each year served out of the Respondents discretion.

At the end of trial both parties opted to file their written submissions which I will briefly highlight although most of it constitute a summary of the evidence which is already on record. The Complainant submitted that the basis for claiming under payment of 1 month salary for each year served is because Felix Phiri, Tapson Kahenya, Ireen Mubita and Opha Mulila , all ex-employees of the Respondent Company were paid 3months salary for each year served after they were declared redundant. According to the Complainant, the employees in the first group were not

protected employees under the Minimum Wages and Conditions of Employment Act.

It is the Complainant's further evidence that both the first group and second group served under the same Conditions of Service and that section 26B of the Employment Act was not applicable as there were written contracts in place. Reference was made to the case of ***Chilanga Cement PLC v Kasote Singogo (2009) ZR 122*** and ***Barclays Bank PLC v Zambia Union of Financial Institution and Allied Workers Appeal Number 17 of 2007***

The Complainants further submitted that the principle of treating similarly circumstanced employees in the like manner was applicable in this case and reference was made to the case of ***United Bank of Africa v Maxwell Sichilongo Appeal No. 56 of 2015*** where the Supreme Court of Zambia held at J20 that:

"..in the case before us, the Respondent was employed in similar circumstances as Mr. Zavare. We do not see how he can be denied a benefit given to a co-worker when they both served under the same terms and conditions of service"

Further reference was made to the case of ***Zambia National Commercial Bank v Geoffrey Muyamwa and 88 Others-Appeal No. 5 of 2017.***

With regard to mental damages for mental stress and trauma caused by the Respondent's unlawful action, the Complainant submitted that that they are entitled to this claim because the

manner in which the termination was done was traumatic and they were not prepared for the said redundancy. Reference was made to the case of ***Chilanga Cement PLC v Kasote Singogo (2009) Z.R 122*** and ***Barclays Bank Zambia PLC v Weston Luyi and Another: Appeal No. 7 of 2012***

In relation to the claim for 3 months pay as compensation for the period when there was no Pension, the Complainants have submitted that following the establishment of a Private Pension Scheme by the Respondent in 2013, the Respondents informed the Complainants and other staff that their previous years of service will be paid to the said Pension Scheme. According to the Complainants, this created a legitimate expectation on their part. Reference was made to the case of ***North- Western Energy Limited v Energy Regulation Board (2011) Z.R***

On the other hand, the Respondent has submitted that the Complainants were all serving under written contracts and therefore section 26B of the Employment Act does not apply and further that their respective contracts of employment did not state the redundancy package which was applicable but the Respondent paid them out of goodwill.

According to the Respondent, for the Complainant to claim that they are entitled to 3months salary for each year served they have to establish that there was in existence such a practice. Reference was made to the case of ***Sugar v Ridehalgh and Sons Limited 1931 1CH 310*** where it was held that:

“but for a custom to be upheld, it must be long established, reasonable, certain, not contrary to law and must be strictly proved clear and compelling evidence is required to establish that a custom and practice exist”

The Respondent has submitted that the employees whom the Complainants are making reference to belonged to a different Company called Sancare, a Subsidiary Company of the Respondent Company

On the claim for 3 months pay as compensation for the period prior to the Respondent setting up a Pension Scheme, the Respondent has argued that it opened up a Pension Scheme which the Complainants joined and that the Respondent was to reconcile their past service benefits and pay the same into the Pension Scheme but that the legal requirement was to arise upon the retirement of the Complainants.

On the claim for outstanding leave pay, the Respondent has argued that no carryover of leave days was allowed and that only in very exceptional circumstances could a maximum of 5 days be allowed as carryover after approval.

With regard to acting allowance, the Respondent has denied that Benjamin Tembo and Kayindana Muzeya are entitled to it as there is no provision for acting allowance in their contracts.

These were the submissions by the parties in so far as they do not amount to a repetition of the evidence on record.

I have considered the evidence on record and the submissions by both parties. I will proceed to consider the Complainant's claims in the manner they are set out in the Notice of Complaint.

A. One month's salary for each year served that was withheld from the Complainants terminal benefits

The parties are in agreement that the Complainants were declared redundant and that Section 26B of the Employment Act Chapter 268 of the Laws of Zambia does not apply to written contracts in line with the decision of the Supreme Court in the case of **Chilanga Cement PLC v Kasote Singogo (2009) Z.R 122** in which it was held that:

" S. 26 B of the Employment Act, dealing with termination of employment by way of redundancy does not apply to written contracts. In enacting this provision, Parliament intended to safeguard the interests of employees who are employed on oral contracts of service, which by nature would not have any provision for termination by way of redundancy"

Redundancy involving the Complainants therefore ought to be in accordance with the terms and conditions of employment which governed the relationship between the Complainants and the Respondent. Exhibit '**BT11**' in the Complainant's Affidavit in Support of Notice of Complaint shows the 2010 Terms and Conditions for African Life Assurance Company of which termination by redundancy was provided for under clause B6.4 which provides that:

“Termination of Employment with Notice

The Company may terminate the contract of employment of any employee at any time for the following reasons subject to notice having being given, or payment made in lieu of notice as provided in section B6.1:

- a) For poor performance*
- b) For disciplinary reasons where summary dismissal is not justified*
- c) For medical reasons as provided for in section B8.8.5*
- d) For the purpose of reducing the Company's workforce*
- e) Any other reason in the interests of the Company's operations”*

The issue in dispute is whether or not after the redundancy, the Complainants were entitled to be paid a redundancy package of 3months salary for each year served and whether by paying them 2months salary for each year served, the Respondent shortchanged the Complainants.

The parties have taken different views, with the Respondent maintaining that the Terms and Conditions of Service did not provide for the package of 3 months' salary for each year served or 2months for each year served and that the Complainants were only paid out of goodwill. The Complainants on the other hand, insist that the Respondent has a practice of paying 3months salary for each completed year of service and that this was done in the case involving the first group of workers that were declared redundant.

I have looked at exhibit '**BT36** to **BT39**' in the Affidavit in Reply to Affidavit in Support of Answer. '**BT36**' is a notice of termination of Employment for Mr. Felix Phiri care of African Life Assurance Company Zambia Limited, signed by Chanda E. Mwila (RW) the Head of Human Resources for African Life Assurance Company Zambia Limited. In the said letter, the said Mr. Phiri was informed that that he was entitled to 3 months' pay for each year served from 1st July 2011 to 31st July, 2014. Similarly, Opha Mulila was given 3 months' pay for each year served as well as Tapson Kahenya and Irene Mubita.

I do not agree with the submissions by the Respondent that those who were paid 3months pay for each year completed were employees Sancare, a subsidiary of the Respondent. The termination notice of Mr. Felix Phiri clearly shows that the said Mr. Phiri was an employee of the Respondent and yet he was paid 3months pay for each year served. The case of **United Bank of Africa v Maxwell Sichilongo-Appeal No. 56 of 2015** cited by the Complainant is a clear illustration that similar circumstanced employees must be treated in the like manner. At page J21 the supreme Court held that:

" ..,In our considered view, this case is ultimately, on all fours with the cases of Charles Zavare v United Bank for Africa and United Bank for Africa Zambia Limited v Joseph Kafwariman and 14 Others . There is, therefore, no need for us to try and re-event the wheel in this case whose basic facts are similar to

those in the two cases above and we have no doubt that the respondent is as much similarly circumstanced as his colleagues in those cases. The issue for determination in this appeal was already resolved in the two cases”

As submitted by the Complainants, the circumstances facing the first group and their group are similar in the following manner:

- I. in both cases the Respondent relied upon clause B6.4 of the Respondent's Terms and Conditions of Service 2010 to terminate the contracts of employment
- II. in both cases there was no agreed terminal benefits package
- III. in both cases the Respondent unilaterally determined the package
- IV. in both cases none of the employees were protected employees.

On the above premise, I order that the Complainants be paid the balance of 1month pay for each year served. The first claim has therefore succeeded

B. Damages for mental stress and trauma caused by the Respondent's unlawful actions

The Complainants are claiming that they were not prepared for the redundancy and that it was sudden without consultations thereby causing them mental stress and trauma. I do not agree with the Complainants because it is very clear that contrary to the assertions by the Complainants, the Respondent consulted the Ministry of Labour on the redundancy and the Ministry had no

objection and secondly the Complainants were given 1 months' notice of the redundancy and put on garden leave with full pay. I do not agree that the manner in which the redundancy was done was traumatic. This claim has not succeeded and I accordingly dismiss it.

C. 3months pay being compensation for the period when there was pension

The Complainants case is that after the pension Scheme was introduced in 2013, the Respondent promised to reconcile previous years of service and that the said money would be paid into the Pension Fund.

From **'BT 47'** to **'BT51'** of the Complainants Affidavit in Reply to Affidavit in Support of Answer, the Complainants upon joining Saturnia Regina Pension Fund were informed that their previous years of service will be paid to the Fund. In paragraph 15 of the Respondents Affidavit in Support of Answer, the Respondent has admitted that at the time of establishing the Pensions Scheme, the employees were advised that their past benefits would be reconciled and paid into the fund but that this was to be at the time that the same became due, that is retirement.

I have looked at exhibit **'CM16'** in the Respondent's Affidavit in Support of Answer which clearly shows that the eligible staff were to join the Pension Scheme from 1st May, 2015 and that all eligible employees that joined the Scheme and would have served the Company for 10 years at the point of separation, would qualify to

have their past service liability transferred to the Scheme calculated from the day they were engaged to 31st April, 2013 prorated plus interest applicable to the Funds in the Pension Scheme.

Exhibit 'CM17' from the Respondent's Affidavit in Support of Answer shows a letter to Mr. Venus Daka dated 21st May, 2014 which shows that the Respondent was clarifying to Mr. Daka that the past benefits would only be considered upon an employee reaching 55 years and having worked for 10 years.

Employees of a Pension Scheme are free to leave from the Pension Scheme and when they do so they ought to be paid the benefits upon leaving in line with Section 18(1)(b) of the Pension Scheme Regulations Act Number 28 of the 1996 as was held in the case of **Standard Chartered Bank Zambia PLC v Willard Solomon Nthenga and others SCZ Judgment Number 13 of 2008** and **Barclays Bank Zambia PLC Staff Pension Fund v Augustin Mwanamuwila and others SCZ Appeal Number 70 of 2009**.

In this regard, I am satisfied that for past benefits to be reconciled and paid into the Scheme, an employee ought to have reached 55 years and worked for a continuous period of 10 years for the Respondent. The Complainants not having fulfilled this condition cannot be entitled to this claim but they were at liberty, upon leaving the Scheme, to withdraw their Pension benefits which they had contributed from the time they joined the Pension Scheme.

D. Leave days for Hellen Chilufya Phiri and Kayindama Muzeya

According to the Complainants, Helen Chilufya Phiri is claiming for 36 leave days while Kayindama Muzeya is claiming for 10 days leave. I have analyzed the evidence on record under this claim and I have noted that the Respondent's submission is that Opha Mulila who appears to have been paid more than 12 leave days as at 30th June 2015, which was the date when he was declared redundant was never their employee but of a Subsidiary Company known as Sancare. Further, the Respondents position is that exhibit '**CM13**' in the Respondent's Affidavit in Support of Answer shows a copy of the 2012 policy update on leave days as well as the emails sent to the employees of the Respondent concerning leave days.

There appear to be no dispute about the fact that Hellen Chilufya Phiri and Kayindama Muzeya accumulated leave days of 36 days and 10 days respectively. What appears to be in dispute is whether the two Complainants forfeited the said leave days owing to the fact that the Respondent contends that they had a policy which did not allow the employees to carryover leave days into the next year.

I have looked at exhibit marked '**CM12**' to '**14**' in the Respondent's Affidavit in Support of Answer, I have noted that the Respondent communicated the leave policy. The circumstances under which Opha Mulila was paid his leave days have not been made clear and

I therefore hold that the claim hereunder has failed and I accordingly dismiss it.

E. Acting allowance to Benjamin Tembo and Kayinda Muzeya

The Complainants position hereunder is that CW1 and the 4th Complainant took up acting roles in June and July 2015 respectively and that they should be paid acting allowances from 26th June 2015 to 31st August 2015 and 15th July 2015 to 10th August 2015 respectively. The Respondent's position is that acting allowance was not provided for in the Terms and Conditions of Employment.

I have looked at '**BT 57**' and '**BT58**' which shows that Olivia Mulongo and Victor Kakoma were paid acting allowances when they took up acting roles. Further, '**BT8**' shows that CW1 was paid responsibility allowance of K2,500 when he acted as Chief Financial Officer. I find that it was indeed the practice in Respondent Company to pay acting allowances whenever an employee was in acting position and I see no reason why the two Complainants should be denied acting allowance. I order that the Respondent pay Benjamin Tembo acting allowance for the period 26th June 2015 to 15th July 2015 and Kayindana Muzeya from 15th July 2015 to 10th August 2015 at a rate of 10 percent pay of the substantive office holder as testified by CW1.

F. Refund of 25% that was deducted on the Pension Scheme

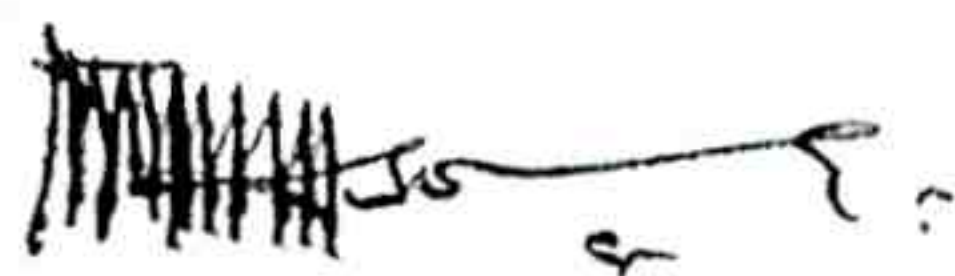
According to the Complainants they were charged 35% upon withdraw of the money from the Pension Scheme owing to the fact that they withdrew the money before reaching retirement age. They submitted that had they reached retirement age, they would only have been charged 10% and that they were prompted to withdraw the money early owing to the manner in which the Respondent conducted the redundancy.

I have already held that there was nothing wrong with the manner in which the redundancy was conducted and as such the 35% charge on early withdraw cannot be blamed on the Respondent. The claim hereunder has failed and I accordingly dismiss it.

I award interest on the sums due to the Complainants at the average short term deposit rate per annum as determined by the Bank of Zambia from the date of commencement of this action to the date of Judgment and thereafter, at the current Commercial Bank lending rate as determined by the Bank of Zambia until full satisfaction of the Judgment debt.

Costs to follow the event

DATED AT LUSAKA THIS 27TH DAY OF MARCH, 2019



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Hon. E. L. Musona

JUDGE