

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

**2010/HP/501**

**BETWEEN:**

**NORMAN ARIEL KAMANGA**



**PLAINTIFF**

**AND**

**NATIONAL TECHNOLOGY BUSINESS CENTRE**

**1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL**

**2<sup>ND</sup> DEFENDANT**

**BEFORE HON. MR. JUSTICE E. L. MUSONA**

*For the Plaintiff:*

*Mr. C. L. Mundia SC with Ms J. Lungu  
Both of Messrs C.L. Mundia and Company*

*For the 1<sup>st</sup> Defendant:*

*Mr. M. Lisimba, of Messs Mambwe Siwila  
and Lisimba Advocates*

*For the 2<sup>nd</sup> Defendant:*

*Mr. C. Mulonga, Senior State Advocate  
with Ms B. Chibwe, State Advocate*

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## **JUDGMENT**

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**Date: 27<sup>th</sup> June, 2019**

**Cases referred to:**

- 1. Wilson Masauso Zulu v Avondale Housing Project Ltd,  
(1982) ZR 172**



This action was commenced by writ of summons with an accompanied statement of claim.

The plaintiff's claim is for the following reliefs:

- i. Damages against the Defendants for unilaterally altering, changing and/or repudiating the Plaintiff's condition of service with the 1<sup>st</sup> Defendant to his detriment.
- ii. Damages for implied wrongful termination of the Plaintiff's employment by way of redundancy by ordering the plaintiff to vacate his office on or about 21<sup>st</sup> May, 2010 without a specific and defined reason for the action and the indented appointment or posting by the Permanent Secretary was null and void as he has no powers whatsoever to redeploy the plaintiff who was no longer a Civil Servant.
- iii. Damages for mental strain and anguish as a result of the actions of the Defendants.
- iv. Any other interim injunction against the 1<sup>st</sup> Defendant and a further order declaratory of the rights of the parties against



the 2<sup>nd</sup> Defendant for their actions and harassment of the plaintiff.

- v. Any other relief the Court may deem fit, appropriate and cost.

The duty of this court is to determine whether or not the Plaintiff has proved his claims.

I have looked at the case of **Wilson Masauso Zulu v. Avondale Housing Project Limited** <sup>(1)</sup> and have been well guided. In that case, it was held that the Plaintiff must prove his case and if he fails to do so he cannot be entitled to judgment.

The Plaintiff was the only witness who gave evidence in aid of the plaintiff's case. I shall refer to this plaintiff's witness only as PW.

The evidence for PW was that he was employed by the Government of the Republic of Zambia and posted to the Ministry of Science as Senior Accountant.



In 2004 PW was transferred to National Technology Business Center which is a statutory body under the Ministry of Technology and vocational Training. PW went to National Technology Business Centre to fill the position of Manager – finance and Administration. That position was supposed to be temporal and PW was to continue receiving a Government salary as Senior Accountant while getting a top up of salary from the 1<sup>st</sup> Defendant which was the difference between his Government Salary and the new salary at his new job with the 1<sup>st</sup> Defendant.

After three (3) months on the job, PW was employed by the 1<sup>st</sup> Defendant on a permanent basis.

On 13<sup>th</sup> November, 2008, PW received a letter from the Permanent Secretary in the Ministry of Science, Technology and Vocational Training withdrawing PW from the 1<sup>st</sup> Defendant.

PW further testified that when she received the letter withdrawing him from the 1<sup>st</sup> Defendant, PW had already signed a contract of employment with the 1<sup>st</sup> Defendant and, that therefore, the



Permanent Secretary in the Ministry of Science, Technology and vocational Training no longer had jurisdiction over PW. PW further argued that in that letter of withdrawing him from the 1<sup>st</sup> Defendant, he was directed to report to the Ministry of Finance. PW stated that his employer in the Government was public service Management Division and not the Ministry of Finance where the said Permanent Secretary wanted him to go.

Because of that letter by the Permanent Secretary, the 1<sup>st</sup> Defendant told PW to leave the 1<sup>st</sup> Defendant and removed PW from its payroll.

At the conclusion of his testimony, PW was cross examined but did not conclude the cross examination. The matter was adjourned for continued cross examination. When the matter came up for continued cross examination on 22<sup>nd</sup> May, 2019, Counsel was not present to conduct continued cross examination.

There was proof that Counsel was served the notice of hearing in their pigeon hole but no communication was received from counsel



for the defendant to explain their non appearance. The plaintiff had since closed their case. On that basis, this matter was then adjourned for judgment.

I shall, therefore, determine this case, not only on the basis of PW's evidence but also whatever the Defendant filed into court, including but not limited to their defence.

I shall consider the reliefs sought as here below;

- i. Damages against Defendants for unilaterally altering, changing and/or repudiating the plaintiff's conditions of service with the 1<sup>st</sup> Defendant to his detriment.**

I have looked at the history of the plaintiff's employment with the 1<sup>st</sup> Defendant. The history is that the plaintiff was an employee of the government of Zambia, and at the material time he was under the Ministry of Science Technology and vocational Training.



By letter dated 21<sup>st</sup> January, 2004 Dr. JCN Lungu who then was Board Vice Chairperson for the National Technology Business Centre, a parastatal body, wrote to the Permanent Secretary in the Ministry of Science Technology and Vocational Training requesting that Ministry to second an officer to them to be designated as Finance and Administration Manager.

In response to that request by the national Technology Business Centre, the Permanent Secretary in the Ministry of Science Technology and Vocation Training seconded the Plaintiff to the national Technology Business Centre. That initial secondment was temporal and for three (3) months only. It was stated then, in that letter of secondment that depending on the exigencies of the office, the Plaintiff would be recalled from secondment and replaced by another officer.

The evidence on record shows that on 29<sup>th</sup> January, 2004 which was barely one day following secondment from the Ministry of Science Technology and Vocational Business Centre, Dr. G. K Nkonde who then was Director of National Technology Business



Centre wrote to the Plaintiff offering the Plaintiff employment as a Manager Finance and Administration for a period of three (3) years ending on 28<sup>th</sup> January, 2007. It was stated in that letter that the period of employment may be extended or terminated depending on performance and willingness to continue. What is also clear is that, that was headed “secondment...”

That period of employment expired on 28<sup>th</sup> January, 2007.

By letter dated 30<sup>th</sup> July, 2007 the employment of the plaintiff with the 1<sup>st</sup> defendant was renewed for a further three (3) years to end on 28<sup>th</sup> January, 2010. It is again clear that, that letter was marked “secondment...”.

By letter dated 13<sup>th</sup> November, 2008, the plaintiff was withdrawn from the 1<sup>st</sup> Defendant by the Permanent Secretary in the Ministry of Science Technology and Vocational Training. The Plaintiff was given two (2) months in which to wind up and report to the office of the Accountant General, in the Ministry of Finance and National



Planning. It is also clear that, that letter was headed, "Staff Withdrawal".

On 8<sup>th</sup> December, 2008, the plaintiff wrote to the Director of National Technology Business Centre reacting to the letter of his withdrawal. He challenged his withdrawal and argued that he was an employee of the 1<sup>st</sup> defendant because:

- i. **He was offered a job by the 1<sup>st</sup> Defendant on 29<sup>th</sup> January, 2004.**

I have already stated that, that offer of employment was a secondment. His other arguments for rejecting his withdrawal from the National Technology Business Centre were that he had worked for the 1<sup>st</sup> Defendant for five (5) years, he had been making decisions of behalf of the 1<sup>st</sup> Defendant in his capacity as Manager-Finance and Administration, he had been receiving a salary from the 1<sup>st</sup> Defendant and had a man number given by the 1<sup>st</sup> Defendant.



The other reasons were that he was given a NAPSA social security number while working for the 1<sup>st</sup> Defendant and was able to obtain a loan from Standard Chartered Bank upon confirmation by the 1<sup>st</sup> Defendant that he was a bona fide employee of the 1<sup>st</sup> Defendant. His further arguments were that he had performed his duties diligently, had 21 years of experience and was a holder of accounting qualifications.

By letter dated 5<sup>th</sup> March, 2010, the 1<sup>st</sup> Defendant wrote to the Plaintiff requesting him to respond to the letter of his withdrawal from the 1<sup>st</sup> Defendant by the Ministry of Finance and National Planning. The Plaintiff was requested to take a position regarding his withdrawal because his employment status with the 1<sup>st</sup> Defendant was unclear because the Plaintiff had not resigned from the Government and the Government had withdrawn the Plaintiff's secondment to the 1<sup>st</sup> Defendant. He was requested to state if he was resigning from Government so that his employment status with the government is known, and that the 1<sup>st</sup> Defendant may consider an application for employment from him.



On the 19<sup>th</sup> April, 2010, the 1<sup>st</sup> Defendant wrote to the Plaintiff that his last day with the 1<sup>st</sup> Defendant would be 7<sup>th</sup> May, 2010. By that date, his three-year employment as stated in the letter by the 1<sup>st</sup> Defendant to the Plaintiff dated 30<sup>th</sup> July, 2007 had already expired by effluxion of time.

On the above basis, I find that for all purposes and intents, the Plaintiff was an employee of the Government in the Ministry of Science, Technology and Vocational Training. This is so because of the following reasons:

1. All the letters which the Plaintiff produced in aid of his case clearly stated that his stay with the 1<sup>st</sup> Defendant was on secondment.
2. The letter dated 28<sup>th</sup> January, 2004 by the Ministry of Science Technology and vocational Training clearly stated that the Plaintiff could have withdrawn from the 1<sup>st</sup> Defendant **“depending on the exigencies of the office.”**
3. Whatever the Plaintiff enjoyed with the 1<sup>st</sup> Defendant was consequential to his secondment to the 1<sup>st</sup> Defendant and did not detach the Plaintiff from the Ministry of Science



Technology and vocational Training which seconded him to the 1<sup>st</sup> Defendant.

4. The plaintiff did not resign from the Ministry of Science Technology and vocational Training, so he remained an employee of the Ministry which seconded him to the 1<sup>st</sup> Defendant.

5. The Plaintiff never applied for the employment to the 1<sup>st</sup> Defendant in order to detach himself from the Ministry which seconded him to the 1<sup>st</sup> Defendant.

I have found that when the Ministry of Science Technology and vocational Training withdrew the Plaintiff from the 1<sup>st</sup> Defendant, they were on firm ground because the Plaintiff was still their employee who they had seconded to the 1<sup>st</sup> Defendant.

The Plaintiff was wrong to refuse or to resist the withdrawal of his secondment to the 1<sup>st</sup> Defendant.

The claim for damages against the Defendants for unilaterally altering, changing and/or repudiating the Plaintiff's conditions of



service with the 1<sup>st</sup> Defendant has failed for being destitute of merit. I accordingly dismiss it.

- i. Damages for implied wrongful termination of the Plaintiff's employment by way of redundancy by ordering the Plaintiff to vacate his office on/or about 21<sup>st</sup> May, 2010 without specific and defined reason for the action and the intended appointment or posting by the Permanent Secretary was null and void as he has no powers whatsoever, to redeploy the Plaintiff who was no longer a civil servant.*

I have already held that when the Ministry of Science Technology and vocational Training withdrew the Plaintiff from the 1<sup>st</sup> Defendant, they were on firm ground because the Plaintiff was still their employee who they had seconded to the 1<sup>st</sup> Defendant. I have also already held that the Plaintiff was wrong to refuse or to resist the withdrawal of his secondment to the 1<sup>st</sup> Defendant.



Having found the withdraw of the Plaintiff from the 1<sup>st</sup> Defendant justifiable, and further, that the Plaintiff was wrong to refuse or to resist his withdrawal from the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant cannot be faulted for their subsequent action and the Plaintiff cannot claim successfully against the 1<sup>st</sup> Defendant, this claim, therefore fails.

***ii. Damages for Mental strain and anguish as a result of the actions of the Defendants.***

Having already held the 1<sup>st</sup> Defendants action justifiable, whatever mental strain or anguish suffered by Plaintiff if any, cannot be attributed to be 1<sup>st</sup> Defendants.

***iii. An order for Interim Injunction against the 1<sup>st</sup> Defendant and a further Order declaratory of the rights of the parties against the 2<sup>nd</sup> Defendants for their actions and harassment of the Plaintiff.***



This claim was withdrawn at the hearing by the Plaintiff and accordingly, the Plaintiff led no evidence in aid of this claim. I shall therefore not consider it.

I have seen no relief due to the Plaintiff.

The net result is that the Plaintiff's claim has failed in its totality and I wholly dismiss it.

I order costs in favour of the Defendants to be taxed in default of agreement.

Delivered and signed at Lusaka this 27<sup>th</sup> day of June 2019

  
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**HON MR JUSTICE E.L. MUSONA**  
**HIGH COURT JUDGE**

