

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2016/HP/1966

(Civil Jurisdiction)

BETWEEN:

AARON NJOBVU

AND

SAJA CONSTRUCTION LIMITED



PLAINTIFF

DEFENDANT

***BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO,
IN OPEN COURT, ON 5TH JUNE, 2020.***

*For the Plaintiff: Mr. F.M. Chombo - Messrs. Chombo and
Partners*

*For the Defendant: Mr. S. Mambwe - Messrs. Mambwe Siwila
and Lisimba Advocates*

JUDGMENT

CASES REFERRED TO:

1. *Attorney General vs. Kakoma* (1975) Z.R. 212 (S.C);
2. *Giraffe Bus Services Limited vs. Abel Lwitikiko Mwandemwa* (SCZ No.4/2001);
3. *Nwume vs. The People* (S.C.Z. Judgment No. 9 of 1980);
4. *Phillip Mhango vs. Dorothy Ngulube and others* (S.C.Z Judgment No. 5 of 1983);
5. *Khalid Mohammed vs. Attorney General* (S.C.Z. Judgment No. 26 of 1982);
6. *William David Carlisle Wise vs. E.F Hervey Limited* (1985) Z.R. 179 (S.C.); and
7. *Zulu v Avondale Housing Project Limited* (1982) Z.R. 172.

LEGISLATION REFERRED TO:

1. *The Minimum Wages and Conditions of Service Act, Chapter 276, Volume 15 of the Laws of Zambia;*
2. *Statutory Instrument No. 46 of 2012;*
3. *The Employment Act Chapter 268, Volume 15 of the Laws of Zambia; and*

4. *The Minimum Wages and Conditions of Employment (General) Order, 2011, Statutory Instrument No. 2 of 2011.*

1 BACKGROUND

1.1 By an amended Writ of Summons dated the 18th of January, 2019, the Plaintiff seeks the following reliefs: -

- i) Housing Allowances, Transport Allowances, Underpayments and Terminal Benefits amounting to K34,600.20;*
- ii) Costs incidental to these proceedings; and*
- iii) Any other relief that the Court may deem fit.*

1.2 By his accompanying Statement of Claim, the Plaintiff averred *inter alia*, that he was employed as a driver by the Defendant Company in September, 2013. He further averred that his conditions of work did not conform with the requirements of Labour Laws as he was required to report for work at 06:30 hours in the morning and would only knock off after 18:00 hours. That despite many appeals to the Defendant for improvement to his conditions of service, none were made. Furthermore, the Plaintiff averred that he was not paid overtime as required by law despite the fact that he was very busy on most days and that he worked without resting. That based on the foregoing reasons and due to the fact that his wife was unwell, coupled with other issues that required him to relocate, the Plaintiff decided to apply for early retirement. The said application was approved by the Management of the Defendant Company, who asked the Plaintiff to return the following day to collect his dues. That to his

surprise, the Defendant prepared money that was less than what is stipulated in the Labour Laws. The Plaintiff also avers that during his employment, the Defendant deliberately neglected to do the following: -

- i) *Pay housing allowance at 30 percent of the basic salary;*
- ii) *Pay transport allowance of K120 to employees who were not provided transport but were living in areas outside the 3 kilometre radius; and*
- iii) *Comply with the basic pay for a Driver as per requirements of the Law.*

1.3 The Plaintiff suggested a computation of the money due to him as follows: -

1. Housing Allowances

Housing Allowances 30% of basic pay by the number of months served (30% of K1,000.20 by 37 months) =
K11,122.20;

2. Transport Allowances

K120 by number of months served (K120 by 37 months) =
K4,440. 00;

3. Underpayments

Paid K700 (Statutory required basic pay = (K1,002)
Underpayment = K300 by 37 months= **K11, 100;**

4. Leave payment

Basic pay by number of leave days by 3/312
Basic Pay = 50 days by 12/312
Leave pay = **K1,926;** and

5. Terminal benefits

Basic pay by the number of years served multiplied by 2
K1,002 x3x2 = **K6,012**
Total = K34,600.20.

- 1.4 The Plaintiff stated that efforts to have the Defendant pay the money to the Plaintiff have proved futile as the Defendant Company insisted on settling this matter outside Court. However, the Plaintiff opted to bring this matter before the Court in order for the Court to compel the Defendant to pay the money due to him in accordance with the law.
- 1.5 The Defendant filed a Defence on 4th April, 2017, in which it avers *inter alia*, that the Plaintiff was employed by the Defendant on a 2 year contract from 1st January, 2015 and not 2013 as alleged by the Plaintiff. The Defendant denies that the Plaintiff's working conditions were not in conformity with the Labour Laws. The Defendant further avers that the Plaintiff did in fact apply for early retirement and that he was paid his dues in conformity with the fixed term contract entered into voluntarily by the Plaintiff on 1st January, 2015.

2 EVIDENCE AT TRIAL

- 2.1 At trial on 9th December, 2019, the Plaintiff Aaron Njobvu testified as PW1. He testified that he started working for the Defendant in January, 2013, when he signed a one year contract and was paid a monthly salary of K1, 200.00. PW1 further testified that he used to get on a bus to go to the Defendant Company where he would pick the Defendant Company car and collect the Defendant Company's workers. He further stated that in the evening he would park the motor vehicle at

the Defendant Company's premises and board public transport to go home.

- 2.2 PW1 stated that when the contract ended he was not paid any gratuity. He further stated that he signed another contract for a period of two years, from 2014 to 2016, wherein he hoped that the conditions of service would be changed but they were not and he was requested by the Defendant Company's representative to be patient. PW1, furthermore stated that he did not have any copy of the contracts that he signed as they were retained by the Defendant Company after signing them. He also stated that the Defendant Company had refused him to read the contracts and therefore he did not know what they contained.
- 2.3 PW1 testified that before the second contract came to an end in 2016, the Defendant Company offered him a new contract but that he refused to sign it and requested the Defendant to give him the money that he had worked for. He further testified that the Defendant gave him a day within which he was to go and collect his money. Furthermore, he testified that when he went to collect the money, at the Defendant's offices, to his surprise the amount given to him was K650.00 and that he refused to collect the money and opted to go to Court.
- 2.4 It was PW1's testimony that he was claiming money for the two years that he had worked for the Defendant and that the sum of K650.00 that he had been offered to be paid by the Defendant was not correct as it was too little. PW1 testified that the Defendant never paid him

allowances for housing and transport but only paid him basic pay. He further testified that he did not know if the housing allowance was included in his salary of K1,200.00 because he was never allowed to read the contract and was never given a payslip by the Defendant Company. Furthermore, he testified that he did not know what was due to him and that was the reason he came to Court so that the Court can calculate the amount due to him.

- 2.5 During Cross-Examination, PW1 testified that he could not say anything about the amount stated in the Statement of Claim as he did not want to get confused. He further testified that he did not start work in 2014 and that he did not work for the Director of the Defendant Company as alleged by the Defendant. Furthermore, PW1 testified that the Defendant Company was already established when he started working for it. He also testified that he used to sign a paper whenever he got paid.
- 2.6 When referred to Pages 1 and 2 of the Defendant's Bundle of Documents, PW1 testified that the signature and the amounts indicated therein were not his and that he was not the one who received those amounts. He stated that he used to get paid the sum of K1,200.00 and not the sum of K1,400.00, which is indicated on the said documents. He further testified that he used to get salary advances from the Defendant Company but that he did not do so all the time.

- 2.7 When referred to Pages 4 to 15 of the Defendant's Bundle of Documents, PW1 testified that the signature on those pages were his and that the documents on those pages show that the amount that he was getting was K1,200.00 and not K1,400.00. PW1 testified that Page 4 showed K950 as advance and K200 as bonus. He further testified that he got the K200 bonus and K1,200 as salary. PW1 further testified that Page 5 shows K1,200 as salary and K200 bonus; Page 6 shows K1,200.00 as salary and K200 bonus; and that it was the same on Pages 7, 8, 9, 10,11, 12, 13 and 14.
- 2.8 PW1 conceded that he only signed the two year contract with the Defendant Company in 2015 which was to end in 2016 and thereafter he left. When referred to Pages 19 to 24 of the Defendant's Bundle of Documents, which contain a 2 year Contract of employment dated 1st January, 2015, for a driver, with the Plaintiff's names on it, PW1 testified that the contract on Page 19 was not the contract of employment that he signed and that the signature on it was forged. He further stated that the said contract indicates that he started work in 2015 and on Page 19 it shows that it was for 2 years. Furthermore, he testified that the said contract was stamped by the Labour Commissioner on Page 21 of the Defendant's Bundle of Documents. PW1 also testified that the Defendant never gave him transport allowance and that he always used his own transport.
- 2.9 PW1 stated that he left employment because the extended contract he was offered in 2016, at the end of

the 2 year contract did not improve his conditions of service. When referred to Page 18 of the Defendant's Bundle of Documents, which contains an application letter for early retirement, PW1 testified that he never wrote the letter contained therein and that the signature on it was not his but was forged.

2.10 PW1 testified that his wife was never sick. When referred to paragraph 6 of the Plaintiff's Statement of Claim at Page 3 of the Plaintiff's Bundle of Pleadings, which states that his wife was very sick and that it is one of the reasons he was applying for early retirement, PW1 testified that the said portion of the said paragraph was a lie as his wife had never been sick. He conceded that the Court should not rely on his Statement of Claim because it contained lies.

2.11 When referred to Page 25 of the Defendant's Bundle of Documents, which contains a Payment Voucher for Aaron Ndhlovu being payment for work done during leave days between 1st January, 2015 and 31st December, 2015, PW1 testified that he never signed a contract for this period as the initial contract he had, had not yet come to an end. He further testified that the Defendant Company permitted the forfeiture of leave days in return for payment during the course of the contract.

2.12 PW1 was referred to Page 26 of the Defendant's Bundle of Documents, which contains a payment voucher indicating that it was for the payment of Aaron Ndhlovu's dues following his resignation. PW1 testified

that the said document reflected the sum of K1,000.00 and not the K650.00 that was offered to him when he left employment.

2.13 In Re-Examination, PW1 did not raise any new items of evidence and thereafter, the Plaintiff closed its case.

2.14 Ali Ahmed Malik, the Defendant Company's Director testified at DW1. He testified that the Plaintiff was working for his father from 2014, at Jazz Mining and that in mid-2014, his father decided to open his own company which is the Defendant Company. He further testified that the Defendant Company started operating when it got its first contract from Lamasat and that was when it started employing workers.

2.15 DW1 stated that the Plaintiff was employed by the Defendant Company in May, 2014, as a driver at a salary of K1,400.00 and was on probation for 3 months. He further stated that at the beginning of 2015 in January, the Defendant Company offered the Plaintiff a two year contract. Furthermore, DW1 stated that a draft contract was prepared and sent to the Labour Office for approval. Following the approval, the Defendant Company was asked to prepare 3 copies, one for the employee, one for the employer and one for the Labour Office. DW1 also stated that all the employees including the Plaintiff were given the contract to read and return the following day if they were ok with it and that the Plaintiff signed and returned his. That it was after this exercise that the contract was attested by the Labour Commissioner.

- 2.16 DW1 testified that since 2015, the Plaintiff has been on a salary of K1,400.00 as gross payment and that lunch was provided by the Defendant Company. DW1 further testified that the said amount included his housing allowance and basic salary. Furthermore, DW1 testified that the Plaintiff lived near the Defendant Company's premises and therefore he was provided with a bicycle, while the other employees were ferried using the Company Car.
- 2.17 DW1 testified that at the end of 2015 the Plaintiff was given his dues and that he continued the second year of the contract. DW1 further testified that in August 2016 after the Plaintiff was paid his salary, he was absent from work, for two weeks and returned with the application letter requesting for early retirement and that the Defendant asked its Accountant to prepare his dues, which the Plaintiff did not collect. Following this incident, the Plaintiff left the Defendant Company's premises and days later returned with a Bailiff and two men.
- 2.18 When referred to Page 1 of the Defendant's Bundle of Documents, DW1 testified that it showed the amounts that the Plaintiff received and his signature indicating that he had received the amounts. DW1 further testified that the letter on Page 18 of the Defendant's Bundle of Documents, indicating that Plaintiff's wife was sick, was brought to the Defendant's offices by the Plaintiff and it had his signature.

- 2.19 When referred to Page 21 of the Defendant's Bundle of Documents, containing a portion of the disputed contract, DW1 testified that it indicates the basic pay and housing allowance and that some figures on the document were handwritten by the Defendant's Accountant as the Labour Office had requested her to separate the amounts. DW1 testified that the Accountant wanted to redo the contracts but that she was told by the Labour Office that it was ok as the Labour Office just wanted the employees to be informed of the separate amounts.
- 2.20 DW1 testified that the sum K1,400 was the correct amount for the Plaintiff and that he was not underpaid as he claimed. DW1 further stated that the contract that the Plaintiff signed stated that he was only to get his gratuity at the end of the contract and it was calculated and paid. When referred to Page 27 of the Defendant's Bundle of Documents, DW1 testified that it showed the calculation of the Plaintiff's dues and that it included his gratuity, but that the Plaintiff did not collect the said amount. Furthermore, DW1 testified that the Plaintiff went back later on 1st February, 2017, with two men and Bailiffs who seized his father's car.
- 2.21 During Cross-Examination, DW1 reiterated his earlier testimony that the Plaintiff joined the Defendant Company towards the end of 2014 and was on probation, but that he had no documentation to show this. He testified that before that, the Plaintiff was his father's personal driver but again stated that he had no

documents to show this. DW1 further testified that lunch and transport were provided to the Plaintiff, but that the same was not reduced in writing.

2.22 When referred to Page 19 of the Defendant's Bundle of Documents and specifically to Page 21 containing the Contract of employment, DW1 testified that it showed that the Plaintiff's basic pay was K769.25 and that transport allowance was provided. DW1 further testified that the Plaintiff was given a car to travel from the company to the site and that the Defendant provided the Plaintiff with a bicycle for use to and from his home to the Company premises. That the Plaintiff was also given cash and that he would get advances. DW1 conceded that there was no proof before the Court to show that the Plaintiff was given a bicycle.

2.23 DW1 testified that the housing allowance was calculated by the Labour Office to be K230.75 which is 30 percent of the Plaintiff's basic pay. DW1 further testified that the sum of K1,400 was the gross sum of the basic salary and housing allowance. Furthermore, DW1 testified that according to the contract that the Plaintiff signed, his net salary amounted to K1,000.00 but that the Defendant was paying him K1,400.00. DW1 also testified that Page 1 of the Defendant's Bundle of Documents containing the Plaintiff's salary advance schedule, indicates the Plaintiff's probation period and that the ticks show that he reported for work. DW1 stated that the Plaintiff was working and the Defendant

was ticking even though there was no contract that had been signed.

2.24 When referred to Page 17 of the Defendants Bundle of Documents, DW1 testified that it showed the Plaintiff's employment with the Defendant Company and that the Plaintiff was paid his salary and leave days for the period of his probation. DW1 further stated that he did not know how much the minimum wage was and that what they paid the Plaintiff was enough as confirmed by the Labour Office. Furthermore, DW1 testified that the Plaintiff was paid his leave pay and that Page 28 of the Defendant's Bundle of Documents shows that the Defendant paid the Plaintiff the sum of K250 in 2014. DW1 also testified that Page 25 of the same Bundle shows that the Plaintiff was paid the sum of K960.00 as leave pay in 2015 and that he was the one who signed the aforementioned documents but was lying when he said that he did not.

2.25 It was DW1's testimony that Page 1 of the Defendant's Bundle of Documents shows that the Defendant paid the Plaintiff in 2014 and that by that time the Defendant Company's employees used to sign in a book. It was his further testimony that at the end of the contract, the Plaintiff was entitled to leave days and gratuity which amounted to two months' salary as indicated on Page 21 of the Defendant's Bundle of Documents.

2.26 DW1 testified that Page 20 of the Defendant's Bundle of Documents shows hours of work and that at knock-off

time, the Plaintiff would take the Defendant's workers to their stations and later return to park the car at the Defendant's Company's premises. Thereafter, the Plaintiff would knock off. DW1 further testified that when an employee worked after 17:00 hours, he was paid K20 or K30, but that the employee would not sign anywhere. DW1 also stated that the Plaintiff did not work beyond the contract time as alleged.

2.27 There was no Re-examination conducted and the Defendant closed its case.

2.28 The parties were given a time frame within which to file their written submission. Neither party filed submissions despite being given ample time to do so.

3 THE LAW

3.1 I have considered the Pleadings and evidence adduced. The following are the legal issues for determination: -

1. The period within which the Plaintiff was employed by the Defendant Company;
2. What the Plaintiff's salary was during the period of employment and whether or not the Defendant owes the Plaintiff any of the following: -
 - i) Underpayments;
 - ii) transport allowance; and
 - iii) housing allowance.

3.2 Wages for Drivers are regulated by **The Minimum Wages and Conditions of Service Act¹**. According to the interpretation Section of the **Minimum Wages and**

Conditions of Service Act¹, the term "wage" includes remuneration of any kind.

3.3 Further, **Paragraph 1 (c) of Statutory Instrument No. 46 of 2012**² provides that a person engaged to work as a driver is to be paid a minimum wage of K1,002,386 per month, which amounts to K1,002.00 in the rebased currency.

3.4 The Plaintiff claims terminal benefits which are the final entitlements of an employee upon termination of an employment contract. According to **Section 48 (4) of The Employment Act**³, which is the applicable Act during the period in question, it provides that: -

"In every case in which employment under a contract of service is lawfully terminated, all wages including overtime pay and allowances additional to basic pay shall be payable on the day upon which such contract terminates."

3.5 The Plaintiff has further claimed transport and lunch allowance. **Paragraph 14 of The Minimum Wages and Conditions of Employment (General) Order**⁴ provides that: -

"Any employee whose duty station is beyond a 3 kilometre radius from the area of residence shall be paid a monthly allowance of one hundred and two thousand four hundred Kwacha (K102,400.00 - unrebased) for transport expenses unless the employer provides transport for that employee."

3.6 **Paragraph 15 of The Minimum Wages and Conditions of Employment (General) Order**⁴ provides that: -

"An employee shall be entitled to a lunch allowance of one hundred and twenty thousand Kwacha per month (K120,000.00 - unrebased), unless the employer provides a canteen at which the employee may obtain wholesome and adequate meals provided free of charge."

4 ANALYSIS AND FINDINGS

- 4.1 I will start with determining the first issue identified above of the period within which the Plaintiff was employed by the Defendant Company as a driver, as this is necessary in order to determine the period to which the Plaintiff's claims relate.
- 4.2 According to the testimony adduced by PW1, he worked for the Defendant in 2013 when he signed a one year contract. He further stated that he worked till 2014 and was not paid any gratuity. PW1 also testified that he signed a subsequent 2 year contract in 2014, but that he had no copy of any of the contracts that he signed. During cross-examination, PW1 conceded that he only signed one contract with the Defendant in 2014 and not the other one that he alluded to. This change in his testimony is an indication that his testimony lacked credibility.
- 4.3 PW1 further testified that before the contract that he signed ended in 2016, he was offered another contract which he refused to sign as according to him, it did not contain improvements to his conditions of service and consequently he requested for his dues to be paid to him. PW1 further testified that the letter dated 19th

September, 2016, indicating that he was applying for early retirement because his wife was sick, amongst other reasons, was forged as he did not write nor sign it, which statement was contrary to what was stated under paragraph 6 of his Statement of Claim. This was a further indication that the PW1's testimony lacked credibility.

- 4.4 Furthermore, PW1 testified that the contract dated 1st January, 2015, was not the contract that he signed and that the signature on it was not his, and was forged. PW1 did not adduce any cogent evidence to establish that the said letter or the signature on the contract was indeed forged.
- 4.5 On the other hand, DW1 testified that that the Plaintiff was employed by the Defendant in 2014 and was placed on probation. He further testified that the Plaintiff subsequently signed a two year contract on 1st January, 2015, voluntarily and that a copy of it was exhibited on Page 19 of the Defendant's Bundle of Documents. DW1 further testified that the letter dated 19th September, 2016, alluded to above, wherein the Plaintiff applied for early retirement was delivered by him personally at the Defendant Company's premises and bore the Plaintiff's signature.
- 4.6 Based on the foregoing, it is clear that the Plaintiff and the Defendant gave directly conflicting accounts of the events that led to the matter before Court. In the case of ***Attorney General vs. Kakoma***¹, the Supreme Court stated that: -

"A Court is entitled to make finding of fact where the parties advance directly conflicting stories and the Court must make those findings on the evidence before it and having seen and heard the witnesses giving that evidence."

4.7 Being guided by the foregoing authority, I find that a contract of employment was in existence between the Plaintiff and the Defendant Company in November 2014. This is due to the fact that Page 1 of the Defendant's Bundle of Documents shows a Salary Advance schedule from November, 2014 to 2015 and on further examination bears signatures, which though disputed by the Plaintiff, match those contained on page 4 to 15 of the Defendants Bundle of Documents which have been admitted by the Plaintiff as his. I am mindful that neither party called handwriting experts to give evidence. That being the case, I am bound to consider the matter on the evidence adduced before Court.

4.8 The decision that I take is fortified by case of ***Giraffe Bus Services Limited vs. Abel Lwitikiko Mwandemwa***², where the Supreme Court held as follows regarding handwriting specimens: -

"Even our own looking for ourselves and making up our minds is a proper course to adopt and this is precisely what we did in Nwume v the People"³

4.9 Based on the foregoing authority, I find that the contract on Page 19 of the Defendant's Bundle of Documents is a copy of the two year contract of employment dated 1st December, 2015, between the Plaintiff and the Defendant Company. Although the

Plaintiff denies that this was not the contract that he signed, on examination of the signature endorsed under the Plaintiff's name, I am of the view that it matches the one that he has admitted as his. Additionally, at trial, by his own admission, the Plaintiff indicated that he only signed one contract with the Defendant Company which was for a two year term, but stated that it was signed in 2014 and that he had no proof to establish this. Based on the foregoing, I find and hold that the two-year contract that was signed by the Plaintiff on 1st January, 2015, is the one exhibited on Page 19 of the Defendant's Bundle of Documents.

4.10 I will now proceed to determine when the aforementioned contract between the Plaintiff and the Defendant expired. Page 18 of the Defendant's Bundle of Documents contains an application for early retirement dated 19th September, 2016 and addressed to the Defendant Company. Although the Plaintiff at trial denied that he wrote this letter, his Statement of Claim alludes to the fact that he had written this letter which was approved by the Defendant Company. Further, the said letter bears his name and signature. Therefore, I find and hold that the two year contract expired on the 19th of September, 2016, following the Plaintiff's notification to the Defendant of his resignation from the Defendant Company.

4.11 Although a contract was in existence between the Plaintiff and the Defendant Company in November, 2014, no cogent evidence was adduced by the Plaintiff

or the Defendant for the Court to determine when it began and the terms it contained. Further the signing of a subsequent contract by the Plaintiff indicates that the contract in existence in 2014 came to an end and that a new one was entered into by the Plaintiff and the Defendant Company. Therefore, it is my considered view that the contract which is the subject of these proceedings is the 2 year contract dated the 1st of January, 2015, which ended on the 19th of September, 2016, by the Plaintiff's own volition.

4.12 Having established that the contract that is the subject of these proceedings is the 2 year contract of 2015, I shall now proceed to determine the second issue of what the Plaintiff's salary was during the period of employment and whether or not he is entitled to the following: -

- a) Underpayments;
- b) Transport allowance; and
- c) Housing allowance.

4.13 The claims by the Plaintiff by their own nature fall under special damages. The Supreme Court in the case of ***Philip Mhango vs. Dorothy Ngulube and others***⁴ held that: -

"It is of course, for any party claiming special losses to prove that loss and to do so with evidence which makes it possible for the Court to determine the value of that loss with a fair amount of certainty. As a general rule, therefore any shortcomings in the proof of special loss should react against the claimant."

4.14 Additionally, the Supreme Court in the case of **Khalid Mohammed vs. Attorney General**⁵ held as follows: -

"A Plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to Judgment. I would not accept the proposition that even if the Plaintiff's case has collapsed of its own inaction or for some other reasons or other, judgement should nevertheless, be given to him on the ground that the defence set up by the opponent has also collapsed. Quite clearly, a defendant in such circumstances would not need a defence."

4.15 According to PW1's testimony at trial, he contended that he was claiming the money for the two years he had worked for, but did not adduce evidence to show which two years he was referring to. Further, PW1 testified that he was offered the sum of K650.00 as his terminal benefits which he disputed as being too little, but did not present the copy of the letter before the Court that indicated that this was the sum that the Defendant offered. PW1 further contended that the Defendant never paid him allowances for housing and transport but only paid him basic pay. He however admitted that the documents contained on Pages 4 to 15 contained his signature and that he received the sums of money indicated therein. He further testified that he did not know if the housing allowance was included in his salary of K1,200.00 because he was never allowed to read the contract and was never given a payslip by the Defendant Company. PW1 further testified that he did

not know what was due to him and he could not say anything about the amount of K34,600.20 stated in the Writ of Summons and Statement of Claim as he did not want to get confused. He further conceded that the Court should not rely on his Statement of Claim because it contained lies.

4.16 It should be noted that the Plaintiff's concession that his Statement of Claim should not be relied on by the Court because it contained lies, offends the purpose of pleadings, which is to define issues of fact and law to be decided. In the case of **William David Carlisle Wise vs. E.F Hervey Limited**⁶, the Supreme Court held as follows regarding the purpose of Pleadings: -

"Pleadings serve the useful purpose of defining the issues of fact and law to be decided; they give each party distinct notice of the case intended to be set up by the other; and they provide a brief summary of each party's case from which the nature of the claim and defence may easily be apprehended."

4.17 Based on the foregoing, the Plaintiff did not adduce sufficient evidence to support his claims of underpayment and transport allowance against the Defendant Company.

4.18 I am guided by the case of **Zulu vs. Avondale Housing Project Limited**⁷, where the Supreme Court held as follows: -

"The trial Court has a duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined in finality."

- 4.19 Based on the foregoing authority and the finding that a two-year contract of employment was entered between the parties on the 1st of January, 2015, I will now proceed to determine if the Plaintiff was paid his dues under the contract based on the evidence available at trial.
- 4.20 According to the contract of employment, the Plaintiff was to receive a basic pay of K769.25 and housing allowance of K230.75, which when added together meant that he was entitled to receive a salary of K1,000.00 monthly. The contract also stated that lunch and transport were to be provided. Further, the contract provided that the Plaintiff would be paid gratuity which was to amount to two month's salary at end of the contract.
- 4.21 I will now address each of the components of his salary, based on the evidence at trial, in order to determine whether or not the Plaintiff was paid his dues under the contract.
- 4.22 The Plaintiff claimed under payment. According to the interpretation Section of ***The Minimum Wages and Conditions of Service Act***¹, the term "wage" includes remuneration of any kind. Further, according to ***Statutory Instrument No. 46 of 2012***², ***paragraph 1 (c)***, which was the applicable Statutory Instrument during the period of the Plaintiff's employment, a person engaged to work as a driver was to be paid a minimum wage of K1,002,386 per month, which amounts to K1,002.00 in the rebased currency. According to the

Plaintiff's contract of employment, the Plaintiff was to be paid a total sum of K1000.00 per month. However, from the salary payment schedule for September, 2015 to August, 2016, exhibited on Pages 4 to 15 of the Defendant's Bundle of Documents, the Plaintiff was paid a salary of K1,200.00 and not the sum of K700 indicated in the Statement of Claim. In fact, by the Plaintiff's own admission, the Plaintiff received the sum of K1,200.00 as his monthly salary. The said amount of K1,200.00 was in fact beyond the statutory minimum wage and therefore the Defendant does not owe the Plaintiff any salary underpayments.

4.23 The Plaintiff further sought a claim for terminal benefits. Terminal benefits are the final entitlements of an employee upon termination of an employment contract. According to **Section 48 (4) of The Employment Act**³, which is the applicable Act during the period in question, it provides that: -

"In every case in which employment under a contract of service is lawfully terminated, all wages including overtime pay and allowances additional to basic pay shall be payable on the day upon which such contract terminates."

4.24 According to the Plaintiff's Statement of Claim and testimony at trial, the Plaintiff in his letter dated 19th September, 2016, to the Defendant requested for an early retirement to enable him attend to some personal matters and he further requested for payment of his dues. This letter in my view amounted to a notification

of resignation from employment by the Plaintiff from the Defendant Company. The Plaintiff therefore had worked for a period of 1 year 9 months before he notified the Defendant of his resignation. Based on the Plaintiff's dues under the contract, he was entitled to payment for accrued leave days, accrued salary and gratuity on a pro rata basis. At trial, the PW1 testified that he did not collect his dues as he was offered much less than he expected. However, the Plaintiff did not lead any evidence to demonstrate how much the Defendant owed him, in fact, he requested the Court to assist him in establishing how much was owed to him as the calculations outlined in his Statement of Claim would confuse him.

4.25 DW1 on the other hand testified that the Plaintiff's dues were calculated to amount to K1000.00. DW1 exhibited on Page 25 of the Defendant's Bundle of Documents, a payment voucher for the sum of K960.00, which was signed for and received by the Plaintiff being payment for leave days for work done by the Plaintiff for the period from 1st January, 2015 to 31st December, 2015. Further, the Defendant exhibited on Page 26 of its Bundle of Documents, a payment voucher for the payment of K1,000.00, being payment of the Plaintiff's dues following his resignation. However, the said voucher was not signed as received by the Plaintiff. Page 27 of the Defendant's Bundle of Documents indicates a breakdown of the Plaintiff's dues calculated by the Defendant, which indicates the sum of K1,000.00

as being payable and due to the Plaintiff. From the said document it can be seen that the Defendant Company in calculating the Plaintiff's dues, took into consideration the salary advances and loans that the Plaintiff had received from the Defendant Company. In my view, the said break down gives a clear indication of how the Plaintiff's dues came to amount to the sum of K1,000.00. Therefore, due to the fact that the Plaintiff has failed to establish and prove the inaccuracy of the final dues offered to him on a balance of probabilities, he can only be entitled to the Defendant's admitted sum of K1,000.00.

4.26 The Plaintiff also sought a claim for transport and lunch allowance. **Paragraph 14 of *The Minimum Wages and Conditions of Employment (General) Order*⁴** provides that: -

"Any employee whose duty station is beyond a 3 kilometre radius from the area of residence shall be paid a monthly allowance of one hundred and two thousand four hundred Kwacha (K102, 400. 00-unrebased) for transport expenses unless the employer provides transport for that employee."

4.27 Further, **Paragraph 15 of *The Minimum Wages and Conditions of Employment (General) Order*⁴** provides that: -

"An employee shall be entitled to a lunch allowance of one hundred and twenty thousand Kwacha per month (K120,000.00 - unrebased), unless the employer provides a canteen at which the employee may obtain

wholesome and adequate meals provided free of charge."


4.28 According to the Contract of employment of 2015, it states that the Defendant provided transport and lunch to the Plaintiff. At trial, the Defendant through DW1 testified that the Plaintiff was offered a bicycle to use as he living very near the Defendant Company's premises but failed to adduce evidence to that effect. On the other hand, PW1 testified that the Defendant Company provided lunch but did not provide any transport allowance or offer alternative transport to him. The Plaintiff, however, did not adduce any evidence to demonstrate that he lived beyond the 3 kilometre radius from the Defendant Company's premises, which would have entitled him to a transport allowance. Therefore, I find that the Plaintiff did not demonstrate to this Court that he was entitled to transport allowance.

5 CONCLUSION

5.1 The Plaintiff has not adduced sufficient evidence to establish his claims of underpayment, Transport Allowance, and Terminal Benefits. Therefore, he is only entitled to the Defendant's admitted sum of K1,000.00, which the Defendant is directed to pay to the Plaintiff, with interest at average short term bank deposit rate from the date of the Writ to the date of this Judgment and thereafter, interest will accrue at current Bank of Zambia lending rate up to the date of payment.

- 5.2 In the circumstances of this case, I order that each party bears its own costs.
- 5.3 Leave to Appeal is granted.

Delivered at Lusaka on 5th June, 2020.


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P. K. YANGAILO
HIGH COURT JUDGE