

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

**COMP/IRD/LSK/126/2017**

**BETWEEN:**

**GILDA NGOMA AND OTHERS**

**AND**

**WORLD VISION, ZAMBIA**



**COMPLAINANTS**

**RESPONDENTS**

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

**For the Complainant:** Mr Gondwe with Mr I Silwamba both of Messers Buta Gondwe and Associates.

**For the Respondents:** Mrs. S. Kateka with Ms Chibuye N. both of Messrs Nchito and Nchito

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

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Date: 22<sup>nd</sup> March, 2019

**CASES REFERRED TO:**

1. *Wilson Masauso Zulu v Avondale Housing Project, Ltd*  
(1982) Z R.
2. *Galaunia Farms Ltd v National Milling Corporation Ltd*  
(2005) Z R.
3. *Mike Musonda Kabwe v B.P Zambia Ltd* (1997) SC
4. *Marriot v Oxford and District Corporative Society Ltd*  
(1969) 3 All ER
5. *National Milling Cooperation Ltd v Simataa and others*  
(2000) ZR

**LEGISLATION REFERRED TO:**

1. *Section 108 of the Industrial and Labour Relations Act*  
*Cap 269 of the Laws of the Republic of Zambia.*

This complaint was filed by F/Gilda Ngoma and others against World Vision Zambia. I shall, therefore, refer to F/Gilda Ngoma and others as the Complainants and World Vision Zambia as the Respondents which is what the parties to this action actually were.

The Complainants' claim is for the following relief;

1. Declaration that the purported terminations were unlawful and in breach of their existing conditions of service and should be paid damages.
2. Declaration that the said terminations amounted to a redundancy exercise and each Complainant should be paid redundancy package as required by the conditions of service.
3. In the alternative, that the Respondents dealt with the Complainants in a discriminatory manner by unjustifiably claiming they had failed interviews and replacing them with people less qualified than they were.
4. Interest at the current bank rate from the date of purported termination to date of payment.
5. Any other relief as court may deem fit.
6. Costs.

The duty for this court is to determine whether or not the Complainants have proved their claims.

I have looked at the case of ***Wilson Masauso Zulu v Avondale Housing Project Ltd*** (1) and also the case of ***Galaunia Farms Ltd v National Milling Corporation Ltd*** (2) and have been well guided. In those cases, it was held that it was the duty of the Complainant to prove his case, if the Complainant does not prove his case, then, the claims must fail.

I shall now consider the evidence in this case.

The Complainants called two (2) witnesses. I shall refer to those witnesses as **CW1** and **CW2** respectively.

**CW1** was F/Gilda Ngoma. **CW1** told this court that she was employed by the Respondent in 1988. The documents governing her employment were an employee manual, performance appraisal and operational manual. **CW1** last worked for the Respondent on 31<sup>st</sup> December, 2006.

Performance appraisals for an earlier contract were done and found to be satisfactory. They were then put on **three** months contracts. The argument by **CW1** was that the contract does not provide for a three months contract. They were also subjected to interviews, so, the other complaint by **CW1** was that they were subjected to interviews yet there is no provision in the contract for interviews for renewal of contract.

When interviews were held, 14 out of the 18 former employees were unsuccessful. The unsuccessful former employees were then told that their 3 months contracts had ended.

**CW2** was F/Evereth Kabwe. **CW2** told this court that she worked for the Respondents and that each year there was an appraisal done after which a renewal of contract would be done.

The Respondents called only one witness. I shall refer to this witness as **RW1**.

**RW1** was M/Mubita Mukelabai a Director of Human Resources for the Respondents.

The evidence for **RW1** was that in 2006 there were about 3 reviews. One review was done by support officers who are financiers of the Respondent. The other review was done by the Regional Office based in South Africa in charge of 9 countries one of which is Zambia. The third review was done by the senior leadership team. These reviews were done because between 2003 and 2006 Respondents were running one of the largest programmes in Africa and the national budget was about US \$100m. There was a lot of demand for increased accountability from stake holders like donors.

All the 3 reviews indicated that the Respondents needed to reorganize and relook at the skills of the people who were running those programs, so, a decision was made by management to open up a number of positions which would be vacant.

The 1 year contracts for the Complainants ended by effluxion of time. They were then given 3 months contracts and informed that those positions would be opened to competition and that they would be required to apply if they wished to be retained. There were 24 vacant positions. The Complainants applied and were interviewed but were unsuccessful.

Having considered the evidence, I must now consider the relief sought;

**1. Declaration that the purported terminations were unlawful and in breach of their existing conditions of service and should be paid damages**

The undisputed evidence is that the Complainants were on one year renewable contracts. Some of the Complainants served for 18 years and others 5 years. None of those yearly contracts were terminated and there seems to have been no problem then. The genesis of this problem is from the time their one year contracts ended. When their one year contracts ended they were not offered another one year contract as was the practice each time the contract ended.

What happened instead is that they were put on a 3 months contract. Prior to the expiry of those 3 months contracts their jobs were advertised. The serving employees applied for the jobs. Some were offered the jobs but some were not. The within

Complainants are the ones who were not offered contracts. Dissatisfied with the Respondent's refusal to give them another contract, they filed this complaint.

The evidence of M/Mubita Mukelabai who was **RW1** was that around 2006 there was a reorganization to relook at the skills of the people who were running the programmes for the Respondents. The positions were advertised. The Complainants applied and were called for interviews but were not successful. On those basis, the Complainants have sought damages for unlawful termination and for breach of their existing conditions of service.

It is important to note that the Complainants were on 1 year contracts. Their last 1 year contracts expired in 2006 by effluxion of time. Clearly those contracts were not terminated but were allowed to run their full term. Following the expiry of their 1 year contracts, they were put on 3 months contract. It was during the course of their 3 months contracts that their jobs were advertised. The Complainants applied for those jobs which they were already holding, they were interviewed and were unsuccessful. That is what the Complainants have called unlawful and breach of their existing conditions of service.

I have noted that even if the Complainants were unsuccessful in the interview, they were allowed to work the full term of their 3 months contract. I, therefore, have seen no termination in this

case because there is no evidence to show that the Respondents terminated the contracts of the Complainants.

The available evidence shows that the Complainants' 3 months contracts expired by effluxion of time whereupon they exited employment because they did not qualify to be offered a new contract. The evidence by the Complainants suggests that because they used to be on a 1 year contract, it was wrong to give them a 3 months contract.

I have seen clause 6 of the Respondents' operations manual. That clause reads as follows;

***“All staff will be on contract renewable yearly upon satisfactory performance.”***

This clause shows that contracts will be 'renewable,' when a contract is couched in such terms it does not mean that renewal is mandatory, rather, it means that renewal is on mutual consent. There can be no cause of action in such an event.

The other argument by the Complainants seems to suggest that since they used to be on a yearly contract, it was wrong for the Respondents to have given them 3 months contracts.

I have already referred to clause 6 of the Respondents' operations manual which decrees that all contracts would be one year and renewable yearly. The Respondents were at liberty



to separate with the Complainants when their 1 year contracts expired and there would have been nothing wrong. The Respondents, however retained the Complainants in their jobs but on a 3 months contract with the full understanding by both parties that owing to organizational changes going on, the jobs then held by the Complainants would be advertised to the open market and that the Complainants were free to apply if they wished.

There is, therefore, nothing which the Respondents could be said to have varied without the consent of the Complainants. By executing a 3 months contract instead of 1 year, the Complainants knew that they were departing from the practice of 1 year contracts. I have seen no termination of employment, either, because both the 1 year and the 3 months contract run their full terms until they expired by effluxion of time.

On the above basis, this claim fails.

**2. Declaration that the said terminations amounted to a redundancy exercise and each Complainant should be paid redundancy package as required by the conditions of service**

This is a claim for payment of redundancy package. In order for this claim to succeed it must be proved that the Complainants' exit from employment amounted to a redundancy.

It is trite that redundancy arises where the employer ceases to carry on business for which the employee was engaged or the employer has reduced the requirement for the employees to carry out work of a particular kind in the place where the employee was engaged.

I have analysed the whole evidence in this case. I have seen nothing amounting to redundancy. I say so because the Respondents were neither closing to carry on with their business nor reducing the requirement for the employees.

I have looked at a *plethora* of authorities and Am well guided. In the case of ***Mike Musonda Kabwe v BP Zambia Ltd*** (3) wherein it was held as follows;

***“Any conditions that are introduced which are to the detriment of the workers do not bind the workers unless they consent to them.”***

In the case of ***Marriot v Oxford and District Co-operative Society Ltd*** (4) which was applied by the Supreme Court of Zambia in the Mike Musonda case above, the court held that,

***“If an employer varies in an adverse way a basic condition or basic conditions of employment without the consent of the employee then the contract of employment terminates***

***and the employee is deemed to have been declared redundant or early retired as may be appropriate....”***

The Supreme took this same position in the case of ***National Milling Corporation Ltd v Simataa and others*** (5) as it did in the ***Mike Musonda*** case above.

I have already held that I have seen nothing amounting to redundancy in this case. The facts of this case are clear. The facts are that the Complainants always worked for the Respondents on a 1 year contract, renewable. In consequence of such contracts, some Complainants worked for 18 years and others at least for 5 years and have renewed their contracts 18 times and 5 times respectively.

The crescendo was in 2006 when at the expiry of the 1 year contract the Complainants were put on 3 months contract instead. The 3 months contracts were not without history. The history was that the Respondents were reorganizing themselves, there is no dispute that this was within the full knowledge of all the Complainants.

The Complainants and the Respondents executed 3 months contracts. There is no dispute that the Complainants consented to these contracts. There is no dispute that the Complainants served the full term of these 3 months contracts. The 3 months

contracts were not terminated until they expired by effluxion of time.

Since the 3 months contracts ran their full term, the Complainants' employments cannot be said to have been terminated.

When the Complainants entered into a 3 months contract instead of the usual 1 year contract, it cannot be said to be breach of contract to warrant the Complainants being declared redundant because they consented. It could only have amounted to redundancy if there was no consent from the affected employees. The genuineness of their consents has not been disputed. The claim for redundancy package fails.

**3. In the alternative, that the Respondents dealt with the Complainants in a discriminatory manner by unjustifiably claiming they had failed interviews and replacing them with people less qualified than they were**

This claim is anchored on discrimination. The law on discrimination is well settled.

The law on discrimination is provided by **Section. 108 (1) of Cap 269** of the laws of the Republic of Zambia, and it reads as follows;

**“No employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or status of the employee.”**

Section 108 (1) above clearly outlines the subject matters upon which a claim for discrimination should be anchored, these are,

- 1. Race,**
- 2. Sex,**
- 3. Marital status,**
- 4. Religion,**
- 5. Political opinion or affiliation,**
- 6. Tribal extraction or**
- 7. Status of the employee.**

In order to prove discrimination it must be shown that the discrimination complained of falls within the subject matter of **Section 108 (1) of Cap 269** of the laws of the Republic of Zambia. The Complainants have not proved or shown that the discrimination complained of falls within or is one of the subject matters prescribed in **Section 108 (1) of Cap 269** of the laws of Zambia. On those basis this claim fails.

I have seen no relief due to the Complainants. The net result is that this complaint has failed in its totality and it is wholly dismissed.

I shall order no costs.

Leave to appeal within 30 days from today is granted.

Delivered at Lusaka this the 22<sup>nd</sup> day of March, 2019.



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