

IN THE HIGH COURT FOR ZAMBIA
INDUSTRIAL RELATIONS DIVISION
HOLDEN AT LIVINGSTONE

COMP NO. IRC LS/12/2018

BETWEEN:



ACKIM MUNALULA
ABEL LYOMBOKA

1st COMPLAINANT
2nd COMPLAINANT

AND

GUARDALL SECURITY GROUP LIMITED

RESPONDENT

CORAM:

Hon. E. MWANSA Esq : JUDGE

APPEARANCES:

For the Complainant : *In Person*

For the Respondent : *Mr. Kayawe Victor – In House Legal Counsel*

JUDGEMENT

Authorities Referred to:

1. *Sections 85 Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.*
2. *Section 15C (1) Employment Act Chapter 268.*
3. *Wilson Masauto Zulu -V- Avondale Housing Project Limited (1982) ZR 172.*

Other Authorities Referred to:

Clause 6.5 Collective Agreement between Guardall Security Group Limited and Zambia Union of Security Officers and Allied Workers for Wages and Conditions of Services for the period 1st April, 2015 – 31st March, 2018.

The Complainants were employees of the Respondent. They were also Unionised by that very fact. As such, the terms and conditions of service under which they served were governed by Collective Agreements between the Zambia Union of Security Officers and Allied Workers and the Respondent; which were entered into as required from time to time.

It appears that from the Collective Agreement, the Unionised employees of which the Complainants were; were on contract and never pensionable and permanent.

On 31st May, 2018, on being served due Notice for one month, the Complainants employment contracts were terminated. This was after the Respondent's client decided to end the Guard Service between them. The Complainants, not having anywhere to be deployed, were so terminated.

They come before Court on a Notice of Complaint and seek the following relief:

- (i) Salary arrears from date of being declared redundant to the date when the package will be paid.**
- (ii) Separation benefits of K17,600.00 and K15,840.00 respectively.**

- (iii) Leave days K123.00 and K720.00 respectively.*
- (iv) Pay in lieu of Notice K800.00.*
- (v) Uniform Bond K500.00 each.*
- (vi) Any other relief the Court may deem fit and appropriate.*

I had occasion to hear the testimony of the first Complainant. The second Complainant, on having heard the testimony and cross-examination of the colleague elected to settle as earlier on amount that had been calculated by the Respondent.

Counsel for the Respondent, Mr. Victor Kayawe also guaranteed that the Respondent would settle as earlier calculated in respect of the second Complainant. The amount to be paid to him being K1,748.25 (One thousand Seven Hundred Forty Eight Kwacha Twenty-Five Ngwee).

So this Judgment relates to the first Complainant only, but may, where necessary, extend to the second.

The evidence as given by the first Complainant is not easy to follow as he kept on referring to the calculations that were done at the Ministry of Labour and Social Security but was not able to explain what the figures were and why they should be as they were. He kept on wanting only K17,600.00 without explaining why.

On my own I took time to understand the figures but I was unable to do so.

I am aware that the burden of proof lies upon the Complainant to prove its case on the balance of probabilities³.

Let me quickly deal with the specific reliefs.

1. **Salary arrears from the date of being declared**

Redundant: The Answer here is a point of law more than facts. Section 15C of the Employment Act Chapter 268 is instructive. I quote.

“subject to any agreement between the parties providing for conditions which are not less favourable to an employee than are provided for in this Section, where, by reason of redundancy a contract of service is terminated by the employer or by any other person acting for and on behalf of the employer, the employer or the person acting on his behalf shall be liable to pay to the employee, a redundancy payment calculated in a manner prescribed by the Minister. (Emphasis mine).

Provided that a redundancy payment shall be made only to an employee who has been employed by the employer continuously for a period of not less than six months. (Which the Complainants served).

2. For the purposes of this Section, an employee's contract of service shall be deemed to be terminated by reason of redundancy if the termination is wholly or partly due to – (a) the fact that his employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him or has ceased or intends to cease to carry on that business in the place where the employee was so employed; or
- (b) the fact that the requirement of that business for employees to carry out work of a particular kind in the place where he was so employed has ceased or diminished or is expected to cease or diminish.....”

The circumstances of this case are such that, the Respondent's client for whom the Complainants herein provided the security services decided to terminate the services of the Respondent as he was relocating.

It fell on the Complainants to layoff or terminate the services of the Complainants. This is what redundancy just means.

I am comforted that the provisions above cited and fully quoted are favourable to the Complainants and I declare that they were declared Redundant and the provisions thereof should apply.

If they were on redundancy as I have declared, then it is correct that they continue being on payroll until the Redundancy package has been fully paid.

What about the provisions of Clause 6.5 of the Collective Agreement herein of 1st April, 2015 to 31st March, 2018, of what effect is it to this case?

Clause 6.5 of this Collective Agreement provides as follows:

“it is further agreed that if the client/company terminates the contract between the company and the client under which the employee is guarding/working or attached, the employees attached to that contract if not redeployed shall be paid severance gratuity in accordance with the years served as follows:-

“6.5.1 from five (5) years and above – one (1) months basic pay ,...”

At once I recognise that the provisions of the Collective Agreement above quoted, fall short of those provided by the law as they relate to the same. For that reason the clause in 6.5 above should not be part of ANY COLLECTIVE AGREEMENT for being inconsistent with the law. Further, it is not proper that those who worked 5 years should get the same as those who work 10 years or 15 years or even 20 years. This could be recast to make it better.

(2) Separation Package

I have said earlier that the Complainants do not even know

what this entails. The burden is upon them to explain. They have failed to do so. I decline to award it in this form.

(3) **Leave days of K123.00 and K720.00**

This claim is good and has been conceded to and was part of the payment which the Complainants refused to collect. I accordingly award this, if not already paid.

(4) **Payment in lieu of Notice**

I find that there was due Notice given for one month on the letter of termination produced here and marked "AM1" so this relief fails.

(5) **Uniform bond at K500.00 each**

This claim is not disputed and was also one item that fell to be paid on the last cheque which was not collected.

I award it accordingly, and needs to be paid if not already paid, especially in respect of the 2nd Complainant.

(6) **Any other relief**

I have found no other relief that may be extended to the Complainants. But I will award costs to them.

In sum, I have awarded a Redundancy package including salary arrears for both Complainants I have also awarded leave days, and uniform bond as well as costs to be taxed in default of agreement.

The matter is referred to the Honourable Registrar to assess what is properly due to the Complainants. Which will then attract interest at 21% per annum from date of Notice of Complaint to Judgment and thereafter at 6% to full payment.

I also award costs to both Complainants.

I so Order.

Delivered this.....day of, 2019.

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E. MWANSA
JUDGE

