IN THE HIGH COURT FOR ZAMBIA **IRC/ND/50/2021**
AT THE DISTRICT REGISTRY
HOLDEN AT NDOLA
(Industrial Relations Division)

BETWEEN:

RAYMOND MAZUBA **1ST COMPLAINANT**
AGRIPPA SAKALA **2ND COMPLAINANT**

AND

MANSA TRADES TRAINING INSTITUTE **1ST RESPONDENT**
THE ATTORNEY GENERAL **2ND RESPONDENT**

Before the Hon. Mr. Justice Davies C. Mumba in Chambers on the 12th day of September, 2022.

For the Complainant: Mrs. N. Nyangu-Zimba, Messrs Magubbwi & Associates.
For the Respondent: Mr. C. Mulumbwa, State Advocate, Attorney General's Chambers.

JUDGMENT

Case referred to:

1. Eston Banda and another v The Attorney-General, Appeal No. 42 of 2016.
2. Chilanga Cement v Venus Kasito, Appeal No. 86 of 2015.
3. Zambia National Provident Fund v Y.N. Chirwa (1986) Z.R. 70.
4. National Breweries Limited v Phillip Mwenya (2002) Z.R 118.

Other works referred to:

1. W.S Mwenda, Employment Law in Zambia: Cases and Materials: UNZA Press, Lusaka, 2004.
2. Winnie Sithole Mwenda and Chanda Chungu: A Comprehensive Guide to Employment Law in Zambia: UNZA Press. Lusaka 2021.

On 14th September, 2021, the complainants commenced this action by way of a notice of complaint supported by an affidavit sworn by Raymond Mazuba, the 1st complainant herein. On application by the complainants, the notice of complaint was amended pursuant to the Court orders dated 11th April, and 20th May, 2022, the latest notice of complainant having been filed on 19th May, 2022.

The complainants claim for the following:

1. An order that the dismissal was wrongful, unlawful and unfair.
2. Damages for wrongful, unlawful and unfair dismissal.
3. Payment for accrued leave days from February, 2019 to July, 2020.
4. Payment of gratuity from February, 2019 to July, 2020 for the 1st complainant; and from September, 2018 to July, 2020 for the 2nd complainant.
5. One month's pay in lieu of notice.
6. An order that the 1st complainant is entitled to extra duty allowance at 15% of his basic pay as per clause 16.3 of the 1st respondent's conditions of service law book for the period 18th February, 2016 to 20th July, 2020 and payment in the total sum of K31,500.00.
7. An order that the 1st complainant is entitled to the payment of big class allowance as per clause 16.2 of the 1st respondent's conditions of service and collective

agreement and payment in the total sum of K5,400.00 for the period February, 2016 to July, 2020.

8. An order that the 1st complainant is entitled to payment in the sum of K1,500.00 which money was erroneously deducted from his pay of K14,982.50.
9. An order for the payment of K3,000.00 being money that was erroneously deducted from the 2nd complainant's pay of K25,107.85 being balance payment for the 2nd complainant's contract from September, 2015 to 31st August, 2018.
10. Refund of NAPSA deduction equivalent to the sum of K18,000.00 for the complainants.
11. Interest on all sums due as by law provided.
12. Any other relief the Court may deem fit.
13. Costs.

In their affidavit in support of the notice of complaint, it was deposed that the 1st complainant executed a fixed term contract with the 1st respondent on 22nd February, 2019 which was to run from 22nd February, 2019 to 21st February, 2023 as a Lecturer in the Information and Technology section. That on 18th September, 2018, the 2nd complainant executed a fixed term contract with the 1st respondent which was to run from 1st September, 2018 to 31st August, 2022 as a Lecturer in the Engineering section. To that effect, the deponent exhibited their contracts of employment, exhibits 'RM1a' and 'RM1b'. That on or about 10th July, 2020,

:here was discovered an incident of burglary and theft from one of the 1st respondent's computer laboratories wherein several items were stolen, notably, monitors, processor and key boards. That on 12th June, 2020, the respondent charged the complainants and gave them 48 hours within which they were to exculpate themselves over the said stolen items as shown by the 1st complainant's charge letter, exhibit 'RM2'. That on 13th June, 2020 before the complainants could even exculpate themselves, the Mansa Police recovered the stolen items which were abandoned at Kaole stadium and the 1st respondent was informed accordingly. That on 17th June, 2020, the 1st respondent's Principal called for an open meeting and verbally suspended the complainants pending investigations despite the recovery of the stolen items. That on 18th June, 2020, the 1st respondent charged the 2nd complainant for the missing digital projector, an incident which was believed to have happened between December, 2019 and March, 2020. That the 2nd complainant was given five days within which to exculpate himself and he did so on 25th June, 2020 as shown by his exculpatory letter, exhibit 'RM3b'. That as a consequence of the disciplinary actions initiated against the complainants by the 1st respondent, the 1st respondent dismissed the 1st complainant and discharged the 2nd complainant on 20th July, 2020 as shown by the dismissal and discharge letters, exhibits 'RM4a' and 'RM4b' respectively. That they were given five days within which to appeal to the respondent's management board and they appealed on 24th July, 2020 but the

outcome of their appeals was never communicated to them. That he 1st respondent terminated their services and further removed hem from the payroll during the month of June, 2020. The 1st complainant deposed that he and the 2nd complainant have made several follow-ups over their appeals with the view to exhausting internal domestic procedures but to no avail as the respondent did not have a management board in place. He averred that the 1st respondent had at all material times engaged a security firm called Scorpion Security company whose duty was to provide security services but when the burglary and theft occurred, the said security firm was not charged and it was still in operation.

The 1st complainant also deposed that during his employment with the 1st respondent, he was entitled to leave days, gratuity, extra duty allowance at 15% of his basic pay, 'B' class allowance, record management allowance and subsistence allowance which the 1st respondent refused, neglected and/or denied to pay. That the 2nd complainant was entitled to gratuity, leave days and open distance and flexible learning allowance which the 1st respondent refused, neglected and/or denied to pay. He further deposed that the complainants did not commit the offences for which they were charged and dismissed. Further, that the 1st respondent did not follow procedure when dismissing the complainants as per the terms and conditions of service; and the collective agreements.

On 11th October, 2021, the respondents filed into Court an answer and an affidavit in opposition, sworn by Weston Sichamba, an Accountant in the 1st respondent Institute. He deposed that the 1st complainant was employed on contract basis from 22nd February, 2016 to 28th February, 2019 and on a second contract from 22nd February, 2019 to 21st February, 2021; and whereas the 2nd complainant was employed from 10th September, 2012 to 9th September, 2015; and on a second contract from 1st October, 2015 to 30th September, 2018; and on a third contract from 1st September, 2018 to 31st August, 2022. The deponent admitted that on or about 10th June, 2020, there was an incident of burglary and theft in one of the 1st respondent's computer laboratories where several items were stolen, following which the complainants were charged in connection with the same and subsequently dismissed from employed. The deponent disputed the complainants' assertion that the security firm engaged by the 1st respondent was not charged for the burglary and theft. That to the contrary, investigations revealed that there was no security breach or breaking from outside but the stolen items could have been taken by a person who had access (keys) to the room. He admitted that the 1st complainant was entitled to the payment for accrued leave days and gratuity which were already paid to him as shown by the payment voucher, exhibit 'WS1'. That, however, the 1st complainant was not entitled to extra duty allowance at the rate of 15% of his basic pay, 'B' class allowance and open distance and flexible learning allowance as the said

allowances were not provided for in the collective agreement. The deponent also admitted that the 2nd complainant was entitled to the payment for accrued leave days and gratuity which were already paid to him as shown by the payment voucher, 'WS2'. That, however, the 2nd complainant was not entitled to extra duty allowance at 15% of his basic pay as it was not enshrined in his contract.

The deponent averred that the complainants committed the offences for which they were charged and dismissed. That they were dismissed and discharged after following the disciplinary procedure provided for in the collective agreement and following the disciplinary committee recommendations. He further deposed that the 1st respondent was not indebted to the complainants and urged the Court to dismiss their action with costs.

On 23rd June, 2022, the 1st respondent filed into Court an affidavit in support of the further amended answer, also sworn by Weston Sichamba. He deposed that it was not true that the 1st respondent deducted a total of K11,000.00 from the 1st complainant's and K8,000.00 from the 2nd complainant's pay on pretext that it was going to remit the said amounts to NAPSA. That the only amount deducted and not remitted to NAPSA was K16,619.85. That on 10th June, 2022, he had conducted a search at the NAPSA office in Mansa to find out the latest report

regarding the contributions on behalf of the complainants as shown by the statements, exhibits 'WS1' and 'WS2' from NAPSA. That the 1st respondent was upto date with remitting the contributions to NAPSA on behalf of the complainants although it had been behind in remitting the contributions for a few months. To that effect, the deponent produced the latest payment vouchers, exhibits 'WS3' and 'WS4'. That, therefore, the 1st respondent could not be responsible and could not refund the sum of K18,000.00 to the complainants as the said amount was incorrect. That the only amount which was deducted and not remitted to NAPSA for that period was K16,619.85 which had since been remitted. That in any case, it was NAPSA's responsibility to pay the complainants their dues.

At the trial, the 1st complainant testified as CW1. He told the Court that he was relying on his affidavit in support of the notice of complaint filed into Court on 14th September, 2021.

In addition, the 1st complainant testified that his dismissal from employment was wrongful because the procedure was not followed and that the charge of missing items was not provided for in the respondent's conditions of service but the closest charge was failure to account for college property. He referred the Court to page 26 of the complainant's notice of intention to produce documents, in particular, clause 1.11 of the schedule of offences, and the letter, exhibit 'RM2' of the complainants'

affidavit in support of the complaint. He stated that clause 1.1 provided that on first breach, the penalty was first written warning and replacement of the property. That for the second breach, the penalty was second warning and suspension from work for 30 days. He stated that he was never given any warnings for the items that went missing from the computer lab after the burglary. He also stated that the two monitors that went missing after the burglary mentioned in the letter, exhibit 'RM2' were recovered by the CID Police on 15th June, 2021. That the items were not recovered from him but from Kaole stadium. He also referred the Court to page 6 of the 1st respondent's bundle of documents, and stated that according to item no. 3, the monitors which were reported missing in the letter, exhibit 'RM2' were available. That they were the same monitors that were recovered by the Police from the stadium. He stated that the keyboards that were referred to in exhibit 'RM2' never went missing and they were all intact. The 1st complainant further testified that his dismissal was wrongful because even after the items were recovered from the stadium and not him, the 1st respondent maintained the charge of missing items.

With regard to his claim that he was unfairly dismissed, the 1st complainant testified that his dismissal was unfair because it was not justified. That there was no proof that he was the one who got the items because the items were recovered by the police. That the disciplinary committee at page 6 of the

respondents' bundle of documents, recommended the charges of negligence of duty, contrary to clause 4.1 whose penalties were first and final warnings; failure to account for college property whose penalty was first written warning and replacement of the property; and falsification and conspiracy in fraudulent transaction activities whose penalty was dismissal. That the charge that was brought to his attention at the time he was exculpating himself was that of missing items in the computer laboratory. That there was no documentation that was brought to his attention in relation to the charges of negligence of duty and falsification and/or conspiracy in fraudulent transaction activities. The 1st complainant referred the Court to the letter of dismissal, exhibit 'RM4a' and stated that according to the letter, exhibit 'RM2' the charge he was facing was for missing items but in the letter of dismissal, 'RM4a' the respondent brought in new issues from the past which were not related to the charge he was given and were never brought to his attention.

Regarding the complainants' claims for the payment for accrued leave days and gratuity, the 1st complainant informed the Court that the respondent had agreed to pay them and they were in the process of executing a consent judgment in relation to those claims.

Regarding the complainants' claim for one month's pay in lieu of notice, the 1st complainant testified that their contracts were

erminated after the payroll had closed and they did not get their salaries for the month of July, 2020.

The 1st complainant also testified that he was claiming for extra duty allowance which was 15% of his basic pay for the period 22nd February, 2016 to 20th July, 2020 in the sum of K31,500.00. That the reason he was claiming for the said allowance was because he was an IT Technician and at the same time, he was lecturing more than 8 classes. He referred the Court to clause 16.3 of the respondent's conditions of service at page 17 of the complainants' notice of intention to produce documents.

The 1st complainant also testified that he was entitled to big class allowance as was stipulated under clause 16.17 of the respondent's conditions of service shown at page 18 of the complainants' notice of intention to produce documents. He explained that one was entitled to the said allowance if teaching a class of between 41 and 100 students. That during his tenure at the respondent college, his agriculture class used to have more than 41 students and as such, he was entitled to K600.00 at the end of each term which he never received from 22nd February, 2016 to 20th July, 2020 making a total of K5,400.00.

The 1st complainant also claimed for refund of K1,500.00 which he said was deducted from his first contract which ran from 22nd February, 2016 to 22nd February, 2019. That the said amount was

deducted for a projector which the electrical department had lost. That the respondent had received six projectors which he distributed to six departments at the institution. That the construction and the electrical departments lost the projectors. That the 2nd complainant, who was in the construction department, was asked to replace the projector that got lost from that department, whilst he (the 1st complainant) and the head of the electrical department were asked to share the cost of the projector that got lost from the electrical department hence the K1,500.00 refund he was claiming. He stated that he had nothing to do with the projector from the electrical department because he had one in the IT department and he did not understand why he had to pay or help the head of department for the electrical department to pay for it; while the cost of the one from the construction department was lumped on the 2nd complainant alone when the department had about 7 lecturers.

The 1st complainant also testified that the 2nd complainant was claiming the sum of K3,000.00 which was wrongly deducted from his gratuity. That for the contract that ran from 1st September, 2015 to 31st August, 2018, the respondent deducted the said sum of K3,000.00 for the projector that got lost from the construction department when he had nothing to do with its disappearance. That there was no evidence showing that he was the one who lost the projector as the said projector was being used by all the members of staff in the construction department. That it was

only discovered that the projector was missing in 2020 but the respondent used to conduct inventories every term. That at the time the projector got lost, the 2nd complainant was just an ordinary member of staff who was just a mere user of the said projector like the other members of staff and he was not the custodian of the projector.

The 1st complainant further testified that the respondent used to deduct money for their contributions to NAPSA but the respondent did not remit the said contribution from 1st January to May, 2017; September to December, 2017; and January to October, 2018.

In cross-examination, the 1st complainant admitted that both he and the 2nd complainant were given charge letters by the 1st respondent. That the said letters were the ones exhibited at pages 1 and 2 of the respondents' bundle of documents. That after being given the said letters, they were both given the opportunity to exculpate themselves and they did so through the letters at pages 3 and 4 of the respondent's bundle of documents. Further, that they were heard by a disciplinary committee on the allegations contained in the charge letters. That the minutes of the disciplinary committee were exhibited at pages 5-8 of the respondents' bundle of documents. That the committee sat once. That on the part of the minutes with the heading verified findings of 10th July, 2020, it was stated that all

the cords and monitors that were recorded missing in the laboratory were found. He stated that lab 1 was under his custody and it was found that seven mouses were missing. That monitors with serial numbers 0918, 1601 and 0522 which were reported missing were found. The 1st complainant confirmed that lab 2 was under his custody and he used to hold the keys to the said lab. That the processor with serial number 2569 which was reported missing was available on the computer which the secretary was using. That the keyboard with serial number 3006 was missing but it was not indicated where it was missing from. The 1st complainant stated that the processor which he was working on at home was different from the original one. That he took the processor to his house because as an IT Technician, he used to work on all the 1st respondent's equipment, lap tops, printers and many others. That at the same time, he used to lecture and whenever there was a problem with any device and his workload was full of lecturing such that he could work on an item, he would go and work on the device at home. That that practice was not allowed by the 1st respondent and that he did not get permission from the Principal to take it home. The 1st complainant admitted that he was present during the inventory on 10th July, 2020. He stated that after being given an opportunity to be heard, he was given the dismissal letter exhibited at pages 8 and 9 of the respondent's bundle of documents, while the 2nd complainant was given the letter of discharge exhibited at pages 10 and 11 of the said bundle of

documents. The 1st complainant explained that the reason they were claiming one month's pay in lieu of notice was because at the time their employment was terminated, the payroll had closed but they were expecting their salaries for that month as they did not know that the 1st respondent was going to terminate their employment. That the payment was the salary for the month of July, 2020 when their contracts were terminated as they were still working at the time the payroll closed. That they used to get paid between the 20th and 25th of every month and the payroll used to close on 12th of every month. That their employment was terminated on 20th July, 2020. When referred to clause 13.2 of the conditions of service at page 30 of the respondent's bundle of documents, the 1st complainant admitted that according to the document, their pay day was 25th. He stated that he was entitled to extra duty allowance at 15% of his basic pay because in addition to his duties to maintain and look after the institution's equipment, he was asked to temporarily teach while the institution was looking for another Lecturer to take up that responsibility since the one who used to teach had resigned. The 1st complainant denied that the practice was that for one to qualify for extra duty allowance, the Principal had to put it in writing and stated that the Principal was the one who told him to take up the extra duties verbally. That he was given over 8 classes to teach. That lecturing was an extra duty in addition to his normal duties as an IT Technician. When referred to clause 6.2 of the 1st respondent's conditions of service, the 1st

complainant maintained that he was claiming for extra duty allowance for a period of five years and not responsibility allowance. He admitted that he was also claiming the big class allowance as he was teaching a class of more than 35 students, although he did not produce any documents to prove that he was entitled to the said allowance. He stated that he was also claiming K1,500.00 which was erroneously deducted from his payment for gratuity. He disputed that the 1st respondent was entitled to deduct the said K1,500.00 due to the items that were found to be missing following the inventory that was carried out on 10th July, 2020. As for the K3,000.00 which was deducted from the 2nd complainant's gratuity, the 1st complainant stated that the projectors were discovered missing about a month before the inventory took place. Regarding the refund for NAPSA contributions which were not remitted to NAPSA, the 1st complainant explained that the procedure for getting contributions was that one had to produce the statement of remittance to NAPSA and show NAPSA the months in which the contributions were not remitted. He stated that he was 40 years old and that one must have attained the age of 55 in order to get the NAPSA contributions. That he was not aware that by law, only NAPSA could compel former employers to remit contributions.

CW2 was Alvteis Mushido. The witness informed the Court that she had been a student at the 1st respondent college pursuing secretarial and office management studies from 2017 to 2019.

That the 1st complainant was her ITC Lecturer. That she obtained a certificate in Secretarial and Office Management studies.

RW1 was Weston Sichamba, an Accountant for the 1st respondent. He informed the Court that the complainants were former employees of the 1st respondent. He testified that on 11th June, 2020, it came to the attention of management that there had been a burglary in the laboratory where the 1st complainant used to work from. That the 1st complainant's supervisor, Dr. Clement Zimba then instituted investigations after which he charged the 1st complainant with the offence of missing items and asked him to exculpate himself. That the 1st complainant exculpated himself in writing. That, thereafter, and the standing disciplinary committee, which comprised of 10 members including the witness and the NUTELAW union representative, Patricia Ngomba and chaired by Matthews Chati was convened. That during the disciplinary hearing, the Chairperson produced the inventory report of the things that were reported missing, and that the said inventory report was distributed to everyone including the 1st complainant. That concerning the missing processor, the 1st complainant reported that the processor was not missing but was just exchanged with the one from the stores because it had a problem. That concerning the two missing computer mouses, the 1st complainant reported that the said mouses were missing because students from the academic and vocation section had been picking them during their training and examinations.

Regarding the laptop which had been in the 1st complainant's custody, the witness stated that the 1st complainant reported that he had given it to a student by the name of Mirriam Bwacha who was the daughter to the Luapula Province Deputy Permanent Secretary and that he had gotten authority from the Principal of the institution to that effect. That there were also three monitors which went missing and a mother board which was reported to be at the 1st complainant's house for repairs. That other items that were missing were computer cables. The witness testified that after the 1st complainant reported that some of the items that were reported missing were actually there, they concluded that the 1st complainant needed more time with the committee so that a verification of the missing items from the laboratory could be made. That on 10th July, 2020, the committee went to laboratory 1 and 2 with the 1st complainant for verification. That in laboratory 2, they discovered that the cables that had been reported missing were there and that they had just been moved to a different position; and that the monitors were also there except for one which had not been recovered. That as for the mother board which the 1st complainant had stated that it was at his house and was requested to return it, it was discovered that it was different from the computers the institution had. That it was also found that he had not been authorised to give the laptop he gave to Mirriam Bwacha. That based on the above findings, the committee made recommendations to the 1st respondent's Principal whom the committee used to report to. The first

recommendation was that the 1st complainant was found to be negligent in accordance with the 1st respondent's conditions of service. The second recommendation was that the 1st complainant had failed to account for college property. And the third recommendation was that the 1st complainant had falsified information and also engaged in fraudulent transactions.

The witness testified that the same committee sat to hear the 2nd complainant's case on 3rd July, 2020 after he had been charged and advised to exculpate himself. That the committee heard how he had been found with the institution's projector which had been handed over to him. That the committee also heard how, at first, the 2nd complainant had denied receiving the projector, but later agreed to have received the projector after being asked questions. That the 2nd complainant told the committee that he could not remember who picked up the projector and on which date it was picked up. That after the hearing, the committee made recommendations to the 1st respondent's Principal that there was negligence on the part of the 2nd complainant because he did not care about the charges that were slapped on him. That he was also found to have failed to account for college property. The witness told the Court that the burglary took place in the lab where the 1st complainant used to work.

During cross-examination, the witness confirmed that the monitors that had gone missing were recovered by the Police. He

tated that the recommendations made by the disciplinary ommittee were followed. He stated that the 1st complainant was harged with the offence of negligence of duty and given the first nd final warnings as per the recommendations of the disciplinary committee, but that the main charge was that of falsification. He stated that the penalty for negligence of duty was a warning on first breach and suspension on second breach. That that procedure was followed in case of the 1st complainant but when asked to show the Court the first warning, the witness explained that where an employee was charged with a lot of offences, the cases could not be dealt with separately. Regarding the offence of failure to account for college property, the witness stated that the penalty was replacement of the property, but that that was not done in the case of the 1st complainant. The witness stated that the penalty for falsification was summary dismissal. In relation to the 2nd complainant's charge of failure to account for college property, the witness stated that the procedure was followed. That the documents had been brought before Court but that the first and final warning letters were not before Court. As regards the offence of negligence of duty, the witness stated that the procedure was also followed and the 2nd complainant was suspended from duty. That the documents to that effect were on record. Regarding the offence of failure to report irregularities to higher authorities which resulted in loss of property, the witness stated that the penalty was suspension, and then dismissal. That

he was not in a position to answer whether that was done in relation to the 2nd complainant.

In re-examination, the witness stated that the penalty for falsification was summary dismissal and the said offence was slapped on the 1st complainant during his disciplinary hearing.

RW2 was Mukupa Musanshe Chresencious, the Principal of the 1st respondent. The witness informed the Court that the complainants were former employees of the 1st respondent. He testified that some items went missing from the lab where the 1st complainant used to work; and in the plumbing workshop where the 2nd complainant used to work from. That the disciplinary committee sat to look at the allegations that were levelled against the complainants after which they were charged by their respective supervisors as shown by the charge letters on pages 1 and 2 of the respondents' bundle of documents. Thereafter, the complainants wrote their exculpatory statements exhibited at pages 3 and 4 of the respondents' bundle of documents. They were then invited for disciplinary hearings by the disciplinary committee as shown by the minutes of the disciplinary committee hearings at pages 5-7 of the respondents' bundle of documents held on 3rd July, 2020. After the disciplinary hearing, the disciplinary committee made recommendations to his office for the final decision. That with regard to the 1st complainant, there were three charges recommended namely: failure to

account for college property; negligence of duty; and falsification and conspiracy which leads to fraudulent activities. The witness explained that after receiving evidence from the 1st complainant, the committee looked at cases which were related to what he had explained as well as the conditions of service and code of conduct. He stated that before he could make his decision, he looked at the previous behaviour of the 1st complainant. That on a date he could not remember, the 1st complainant was found drunk during working hours and left the students unattended to. That he was charged and he wrote an exculpatory letter and afterwards, he was warned and counselled. Further, that on 1st April, 2020, the 1st complainant was suspended for 30 days and placed on half salary because of examination malpractices. That that made the witness to pick one charge from the three of the recommendations by the disciplinary committee, that is, the charge of falsification and conspiracy which leads to fraudulent activities which had the penalty of dismissal.

Regarding the 2nd complainant, the witness stated that he was also slapped with three charges namely: failure to account for college property; negligence of duty; and failure to report irregularities which leads to loss of property. That before he could make a decision, he also looked at the previous behavior of the 2nd complainant. That on a date that he could not remember, the 2nd complainant carried plumbing tools and equipment from the workshop without permission. That he was charged and after

writing his exculpatory statement, he was warned not to repeat the activity. Further, that on a date he could not remember, the 2nd complainant got 10 days off work to go for further studies at Copperstone University but he did not go and information reached the institution. That when he returned, the 2nd complainant was charged and since he was in management as Head of Section, he was demoted from that position to a mere Lecturer. That that gave the witness the power and knowledge to make a decision as the 2nd complainant had not changed. That based on the recommendations from the disciplinary committee, the witness decided to discharge the 2nd complainant. That the same applied to the 1st complainant who committed an offence on 3rd July, 2020 after being charged on 1st April, 2020. That the period was too short for him to repeat and change. That he wrote a letter of dismissal to the 1st complainant and a letter of discharge to the 2nd complainant, and wrote to the Permanent Secretary for notification as shown by the letters exhibited at pages 8-13 of the respondents' bundle of documents.

During cross-examination, the witness stated that the items went missing due to negligence on the part of the people who were keeping them. That he did not know what led to the missing of the items and that he was not sure if there was a burglary. When referred to the 1st complainant's charge letter at page 1 of the respondents' bundle of documents, the witness still maintained that he did not know what led to the missing of the items. He

also stated that he did not know who recovered the missing items. He stated that the loss of the projector was lamped on the 2nd complainant because he got the projector from the carpentry workshop without recording it and he did not report to anyone that it had gone missing. That he did not know the time that had passed from the time the 2nd complainant got the projector and the time it was discovered having gone missing. The witness stated that the 2nd complainant indicated that he got the projector from Mr. Musonda Kambele, a Lecturer from the carpentry and joinery section in his letter of appeal. He stated that according to the charge letter, the 1st complainant was charged because of the missing items. He admitted that there was no charge called missing items in the conditions of service. He stated that in the case of the 1st complainant, he had looked at the last penalty for the offence of negligence of duty, which was discharge. When referred to the 1st respondent's disciplinary code, clause 4.1 at page 28 of the complainants' notice of intention to produce documents, the witness stated that the complainants were not given first and final warning letters for the offence of negligence of duty. That as for the offence of failure to account for college property, the penalty, which was first written warning and replacement of the property was partially done. That K1,500.00 was deducted from the 1st complainant while K3,000.00 was deducted from the 2nd complainant to replace the property. He confirmed that there was no written warning given. He also stated that the second penalty

for the offence, which was second warning and suspension for 30 days on half pay was not effected. Regarding the 2nd complainant's charge of failure to report irregularities of malpractices to higher authority which resulted in loss of property, the witness stated that the last penalty was discharge. That the penalty of suspension on half pay for the first breach was not effected. The witness stated that the reason the 1st complainant was suspended for 30 days on half pay for examination malpractices was because all the students in his class were nullified for printing practical examination results for the national exams from TEVETA. That he was not sure if there was any proof that it was the 1st complainant that had practiced the malpractice. When asked whether there was proof that the 2nd complainant got 10 days leave for further studies but he did not go, the witness stated that upon being written to, the 2nd complainant exculpated himself and that was why he was demoted.

In re-examination, the witness stated that in his exculpation, the 1st complainant denied being responsible for the burglary and theft but when he was asked to go to the lab to verify, the items were missing from the lab. That the 1st complainant was given the task to go and report to the police.

I have considered the affidavit and the *viva voce* evidence as well as the final written submissions filed by learned Counsel for the respondents.

The facts which were common cause are that the 1st complainant was employed by the respondent on fixed term contract which was to run from 22nd February, 2019 to 21st February, 2023 as an IT Technician in the Information and Technology section; and the 2nd complainant was also employed on a fixed term contract which was to run from 1st September, 2018 to 31st August, 2022 as a Lecturer in the Engineering section. Sometime in June, 2020, there was a burglary and theft in one of the 1st respondent's labs where the 1st complainant used to operate from. As a result, the 1st respondent wrote to the 1st complainant the letter at page 1 of the respondents' bundle of documents dated 12th June, 2020 asking him to exculpate himself within 48 hours over the missing items. The 1st complainant wrote the exculpatory letter exhibited at page 3 of the said bundle of documents on 15th June, 2020. In relation to the same, on 18th June, 2020, the 1st respondent wrote the letter exhibited on page 2 of the respondents' bundle of documents to the 2nd complainant asking him to exculpate himself within five days over a projector that went missing from the construction section between December, 2019 and March, 2020. In the said letter, clauses 1.8, 1.11, 5.2 and 5.3 of the 1st respondent's conditions of service-schedule of offences were brought to his attention. The 2nd complainant wrote his

exculpatory statement exhibited at page 4 of the respondents' bundle of documents. Thereafter, the complainants were invited for disciplinary hearings on 3rd July, 2020. While presenting his case, the 1st complainant informed the disciplinary hearing that some of the items which were recorded as missing were actually available. The disciplinary committee then decided to postpone his hearing to 10th June, 2020 on which date it conducted an inventory and some items were found to be available. On 20th June, 2020, the 1st respondent wrote to the 1st complainant informing him that he had been dismissed from employment having been found guilty of the offences of negligence of duty, failure to account for college property and falsification and/or conspiracy in fraudulent transaction activities, contrary to clauses 4.1, 1.11 and 5.6 respectively, of the 1st respondent's schedule of offences. On the same date, the 1st respondent also wrote to the 2nd complainant informing him that he had been discharged from employment having been found guilty of the offences of failure to account for college property, negligence of duty and failure to report irregularities to higher authority which resulted in the loss of property, contrary to clauses 1.11, 4.1 and 5.3 respectively, of the 1st respondent's conditions of service-schedule of offences. The complainants appealed against the dismissal and discharge, but their appeals were not heard as the 1st respondent did not have a Management board.

The complainants have now made several claims against the respondents, as listed on pages J2-J3 of this judgment.

Regarding the complainants' claim for an order declaring that the 1st complainant's dismissal from employment and the 2nd complainant's discharge from employment was wrongful, unlawful and unfair, the Supreme Court in the case of **Eston Banda and Another v the Attorney General**[1], has guided that:

> **"There are only two broad categories for dismissal by an employer of an employee, it is either wrongful or unfair. *'Wrongful'* refers to a dismissal in breach of a relevant term embodied in a contract of employment, which relates to the expiration of a term for which the employee is engaged; whilst *'unfair'* refers to a dismissal in breach of a statutory provision where an employee has a statutory right not to be dismissed. A loose reference to the term *'unlawful'* to mean *'unfair'* is strictly speaking, in employment parlance, incorrect and is bound to cause confusion. The learned author, Judge W.S. Mwenda, clarifies on the two broad categories, in her book Employment Law in Zambia: Cases and Materials, (2011), revised edition UNZA Press, Zambia at page 136. She opines that, in our jurisdiction, a dismissal is either wrongful or unfair, and that wrongful dismissal looks at the form of the dismissal whilst unfair dismissal is a creature of statute."**

On the above authority, I am of the view that the relief that the complainants are seeking is for an order that the dismissal and discharge be declared to have been wrongful and unfair, and I will proceed to determine the issue as such.

It is settled that for an employee to successfully bring and maintain an action for wrongful dismissal or termination, it must

be shown that the employer breached the disciplinary procedures under the contract of employment or the rules of natural justice. Hon. Dr. Judge W.S. Mwenda, learned author of the book entitled '**Employment Law in Zambia: Cases and Materials**' states at page 18 that:

> **"The concept of wrongful dismissal is the product of common law. When considering whether a dismissal is wrongful or not, the form, rather than the merits of the dismissal must be examined. The question is not why, but how the dismissal was effected."**

Further, in the case of **Chilanga Cement v Venus Kasito**[2], the Supreme Court held that:

> **"The concept of wrongful dismissal is essentially procedural and is largely dependent upon the actual terms of the contract in question."**

With regard to the concept of unfair dismissal, the learned authors, Judge W.S. Mwenda and Chanda Chungu, in their book entitled: **A Comprehensive Guide to Employment Law in Zambia,** state at page 241 as follows:

> **"Unfair dismissal is dismissal that is contrary to the statute or based on unsubstantiated ground. For unfair dismissal, the Courts will look at the reasons for the dismissal for the purpose of determining whether the dismissal was justified or not. In reaching the conclusion that the dismissal is unfair, the Court will look at the substance or merits to determine if the dismissal was reasonable and justified."**

On the above authority, for the complainants to succeed in their claim that they were unfairly dismissed and discharged, they must show that a specific statutory provision was breached by

the respondent or that the dismissal/discharge was based on unsubstantiated reasons.

In the present case, the complainants have argued that the dismissal of the 1st complainant and the discharge of the 2nd complainant were wrongful and unfair as the 1st respondent did not follow the laid down disciplinary procedures when dealing with their cases. They also argued that they did not commit the offences for which they were dismissed and discharged. On the other hand, the respondent argued that the complainants were dismissed and discharged after following the disciplinary procedure provided for in the collective agreement and following the disciplinary committee's recommendations. It was argued that the complainants committed the offences for which they were dismissed and discharged.

I have looked at clause 21.5 of the respondent's conditions of service exhibited at pages 9-32 of the complainants' notice of intention to produce documents, which provided for the disciplinary procedure in an event that an offence was committed. It provides that when an offence was deemed to have been committed, the immediate supervisor of the offender had to undertake preliminary investigations and thereafter charge the offender in writing with the offence and inform the offender accordingly. That if the case involved misappropriation of funds and fraud, the offender had to be suspended for 30 days on half

pay to pave way for further investigations. The next step was for the employee or supervisor who laid the charges to take statements from both the offender and available witnesses. After completing investigations, the next step was to hold a hearing within three working days after which the disciplinary committee had to communicate its judgment to the Principal and also inform the offender of the judgment in writing. In an event that the offender was found guilty, the committee had to pass judgment in accordance with the schedule of offences. That the employee would have the right to appeal against the decision of the disciplinary committee to Management Board within five working days after which an appeal hearing had to be held within two weeks. That the decision on appeal was final.

In *casu*, with regard to the 1st complainant, the events that led to his dismissal were that after a burglary and theft in one of the 1st respondent's labs where the 1st complainant used to work from, some items were found to be missing from the said lab. The 1st respondent wrote to the 1st complainant the letter at page 1 of the respondents' bundle of documents dated 12th June, 2020 asking him to exculpate himself within 48 hours over the missing items. The 1st complainant wrote the exculpatory letter exhibited at page 3 of the said bundle of documents on 15th June, 2020. Thereafter, the 1st complainant was invited for a disciplinary hearing on 3rd July, 2020. After explaining that some of the items were available, the disciplinary hearing was postponed to 10th

June, 2020 on which day an inventory was conducted in the labs and some of the items which were reported to be missing were found. Later, the 1st complainant was dismissed upon being found guilty of the offences of negligence of duty, failure to account for college property and falsification and/or conspiracy in fraudulent transaction activities, contrary clauses 4.1, 1.11 and 5.6 respectively, of the 1st respondent's conditions of service-schedule of offences.

It is clear from the evidence on record that the offences for which the 1st complainant was found guilty and subsequently dismissed were never investigated by respondent. The 1st complainant was also never charged with any of the aforementioned offences in order to accord him an opportunity to defend himself either before or during the disciplinary hearing. It is evident from the minutes of the disciplinary hearing, exhibited at page 6 of the respondents' bundle of documents that the case for which the complainant was given an opportunity to present his case related to the items that were discovered to be missing after the burglary and theft and not to any of the offences for which he was dismissed. Therefore, the 1st complainant could not have directed his mind to the three offences when he was presenting his case during the disciplinary hearing. For the foregoing reasons, I am satisfied that the 1st respondent breached its own disciplinary procedures.

However, the matter does not end there. The question that now begs the answer is whether the 1st complainant committed any offence for which he could be dismissed from employment, even though he may not have been formally charged with it.

In the case of **Zambia National Provident Fund v Y.N. Chirwa,**[3] it was held that:

> **"Where it is not in dispute that the employee has committed an offence for which the appropriate punishment is dismissal and is also dismissed, no injustice arises from failure to comply with the laid down procedure in the contract and the employee has no claim on that ground for wrongful dismissal or a declaration that a dismissal is a nullity."**

Further, in case of **National Breweries Limited v Phillip Mwenya,**[4] the Supreme Court held that:

> **"Where an employee has committed an offence for which he can be dismissed, no injustice arises for failure to comply with the procedure stipulated in the contract and such an employee has no claim on that ground for wrongful dismissal"...**

In *casu,* it is on record that before he was dismissed, the 1st complainant was given an opportunity to be heard in relation to the items that had gone missing from the labs which were under his charge after the burglary and theft in one of the labs sometime in June, 2020. He was given a chance to present his case during the disciplinary hearing held on 3rd July, 2020. After explaining that the items were still available, the 1st complainant was given chance to prove his case as the disciplinary hearing was adjourned to allow for an inventory in the lab on 10th July,

2020 after which it was found that some of the items were still available while others could not be accounted for. It is also on record that after the burglary and theft, investigations were instituted and the Police recovered some of the items. There was no evidence adduced during the disciplinary hearing, and also at trial showing that the 1st complainant was connected to the said burglary and theft.

Further, of the three offences that the 1st complainant was charged with, the only offence with the penalty of dismissal was the offence of falsification and/or conspiracy in fraudulent transaction activities. The particulars of this offence were not outlined so as to show how the disciplinary committee reached to the conclusion that the 1st complainant had committed this offence. In my view, this offence was not established by the 1st respondent as it did not show how his failure to account for some of the missing items or failure to secure the lab to avoid the burglary and theft could amount to falsification and/or conspiracy in fraudulent transaction activities.

It is also clear from the dismissal letter that the main reasons why the 1st complainant was dismissed were firstly, because of an allegation that before he left employment at NORTEC where he had been working before joining the 1st complainant, a burglary and theft had occurred; and also that examination results in his class were nullified owing to examination malpractices. However,

there was no evidence to the effect that both the burglary and theft at NORTEC and the examination malpractices at the 1st respondent's institution were attributable to the 1st complainant. For the foregoing reasons, I find that the 1st respondent did not properly exercise its disciplinary powers when it dismissed the 1st complainant from employment as there were no substantiated grounds for doing so. Therefore, on a balance of probabilities, the 1st complainant has proved that his dismissal was wrongful and unfair, and he is, therefore, entitled to damages.

Looking at the manner in which his employment was terminated, I award the 1st complainant damages equivalent to three months of his last basic salary plus allowances. According to his contract of employment, the 1st complainant was in receipt of an all-inclusive salary of K5,457.00 per month. That amount multiplied by three months gives a total K16,371.00, which are the damages I award to him.

Regarding the 2nd complainant, the evidence on record has revealed that on 18th June, 2020, the 1st respondent wrote the letter exhibited on page 2 of the respondents' bundle of documents asking him to exculpate himself within five days over a projector that went missing from the construction section between December, 2019 and March, 2020. In the said letter, reference was made to clauses 1.8, 1.11, 5.2 and 5.3 of the 1st respondent's conditions of service-schedule of offences. After

writing his exculpatory statement exhibited at page 4 of the said bundle of documents, the 2nd complainant was invited to a disciplinary hearing after which he was discharged from employment, having been found guilty of the offences of failure to account for college property, negligence of duty and failure to report irregularities to higher authority which resulted in the loss of property, contrary to clauses 1.11, 4.1 and 5.3 respectively, of the 1st respondent's conditions of service-schedule of offences. However, a perusal of the schedule of offences at pages 26-28 of the complainant's notice of intention to produce documents has revealed that none of the three offences attracted the penalty of discharge of an employee on first breach. Under clause 1.11, the penalties for the offence of failure to account for college property were first written warning and replacement of the property on first breach; and second warning and suspension for 30 days on half salary on second breach. Under clause 4.1, the penalties for the offence of negligence of duty were first and final warning letter on first breach; suspension for 30 days on half salary on second breach; and discharge on third breach. Under clause 5.3, the penalties for the offence of failure to report irregularities or malpractices by a member of or a customer(s) to higher authority which result in loss of college property, funds or reputation were suspension for 30 days on half salary on first breach and discharge on second breach. According to the evidence on record, it was the first time the 2nd complainant had been charged with the three aforementioned offences, meaning it

was his first breach. However, according to the 1st respondent, it resolved to discharge the 2nd complainant from employment based on his past conduct where on one occasion, he was absent from work for 10 days after getting study leave but never went for further studies. That on another occasion, he had been charged for leaving, without permission, with an institution property without following the laid down procedure. However, no such charges and their resultant sanctions were produced to the Court. I find that there was no basis upon which the 1st respondent decided to discharge the 2nd complainant based on his past conduct. For the foregoing reasons, I am satisfied that the 1st respondent breached its disciplinary procedures when it imposed the wrong penalty on the 2nd complainant and as such, the 2nd complainant's discharge from employment was both wrongful and unfair. In this regard, the 2nd complainant is entitled to damages.

Having considered the circumstances under which the 2nd complainant was discharged from employment, I award him damages equivalent to three months of his last basic salary plus allowances. According to his contract of employment, the 2nd complainant was in receipt of an all-inclusive salary of K4,631.50 per month. That amount multiplied by three months gives a total K13,8941.50, which are the damages I award to him.

Regarding the complainants' claims for the payment for accrued leave days and gratuity, the 1st complainant informed the Court that the respondent had agreed to pay them and they were in the process of executing a consent judgment in relation to those claims. The respondents admitted that the complainants were entitled to the payment for their accrued leave days and gratuity and that they had since been paid as shown by the payment vouchers, exhibits, 'WS1' and 'WS2'. Therefore, this claim had been overtaken by events and is accordingly dismissed.

Regarding the complainants' claim for one month's pay in lieu of notice, the 1st complainant testified that at the time their contracts were terminated, the payroll had closed but they were not paid their salaries for the month of July, 2020 despite having worked in that month.

From the outset, I must state that the complainants were not entitled to the payment of one month's salary in lieu of notice having been dismissed and discharged from employment for facing disciplinary charges. However, from their evidence, it appears that what they were actually claiming were their July, 2020 salaries, for having worked during that month. According to the 1st complainant's letter of dismissal, exhibit 'RM4a' he was dismissed from employment on 20th July, 2020; and according to the 2nd complainant's letter of discharge, exhibit 'RM4b', he was discharged from employment on 20th July, 2020. Therefore, the

complainants are entitled to their salaries for the days they worked in the month of July, 2020. The amount shall be agreed upon by the parties or assessed by the learned Deputy Registrar in default of such agreement.

The 1st complainant also claimed that he was entitled to extra duty allowance at 15% of his basic pay for the period 22nd February, 2016 to 20th July, 2020 in the sum of K31,500.00. That the reason he was claiming for the said allowance was because he was employed as an IT Technician and at the same time, he was given the task of lecturing more than 8 classes and he taught for a period of five years. He referred the Court to clause 16.3 of the respondent's conditions of service in support of his claim. It was the 1st complainant's evidence that in addition to his duties to maintain and look after the institution's equipment, he was asked to temporarily teach while the institution was looking for another Lecturer to take up that responsibility since the one who used to teach had resigned. That the instruction to take up the lecturing was given to him verbally by the Principal of the institution. That the lecturing was an extra duty in addition to his normal duties as an IT Technician.

On the other hand, the respondent argued that the complainants were not entitled to the extra duty allowance as it was not enshrined in their contracts of employment or the collective agreement.

I have considered the parties opposing arguments.

It is not in dispute that the 1st complainant had taken up classes to teach and that he did so from 22nd February, 2016 to 20th July, 2020. Whereas the respondents argued that the extra duty allowance was not provided for in the contract of employment or collective agreement. A perusal of the collective agreement exhibited at pages 9-32 of the complainants' notice of intention to produce documents and pages 24-51 of the respondents' bundle of documents has revealed that extra duty allowance was provided for under clause 16.3 of the said collective agreement also termed as conditions of service. The said clause provided as follows:

> **"Employees may from time to time be seconded to alternative functions at equivalent or lower grades in addition to their substantive duties in the Mansa Trades Training Institute structure, in order to meet operational requirements. Such individuals will be entitled to extra duty allowance at the rate of 15% of basic salary."**

In *casu*, the above conditions of service notwithstanding, there is a letter exhibited at page 3 of the complainants' notice of intention to produce documents indicating that on 6th August, 2019, the 1st respondent had written to the 1st complainant informing him of the change of his job title from IT Technician to Lecturer. That letter went on to state that he would still be required to perform the role of IT Technician when need arose. Based on the same letter, it is clear that from 6th August, 2019,

the lecturing was not an alternative function or extra duty but it was the 1st complainant's actual job. For this reason, I find and hold that the 1st complainant is only entitled to the payment of extra duty allowance for the period he worked as a Lecturer, in addition to being an IT Technician upto 5th August, 2019. For the avoidance of doubt, the 1st complainant shall be paid extra duty allowance at 15% of his basic pay from 22nd February, 2016 to 5th August, 2019. The amount due to the 1st complainant shall be agreed upon by the parties or assessed by the learned Deputy Registrar in default of such agreement.

The 1st complainant also claimed for big class allowance in accordance with clause 16.12 of the respondent's conditions of service. He argued that his agriculture class used to have more than 41 students and as such, he was entitled to K600.00 at the end of each term which he never received from 22nd February, 2016 to 20th July, 2020, making a total of K5,400.00. The respondent disputed the claim stating that the same was not provided for in the conditions of service.

I have noted that contrary to the respondents' assertion that big class allowance was not provided for in the complainants' conditions of service, it was infact provided for under clause 16.12. In support of his claim for this allowance, the complainants exhibited examination attendance registers in their notice of intention to produce documents dated 7th April, 2020 at

page 38-42; and class attendance registers in their further notice of intention to produce documents dated 11th May, 2022 at pages 1-7. The said registers indicated class memberships of 43-50 students. For the foregoing reason, I find that the 1st complainant is entitled to big class allowance in the sum of K5,400.00 for the period February, 2016 to July, 2020 and I accordingly enter judgment in his favour in the said sum.

The complainants also claimed for refund of K1,500.00 which they said was deducted from the 1st complainant's payment for gratuity and K3,000.00 which was deducted from the 2nd complainant's payment for gratuity. That the K1,500.00 and K3,000.00 which were deducted from the complainants' payments were for projectors which the electrical and construction departments had lost. That the 1st respondent had received six projectors which the 1st complainant distributed to six departments at the institution. That the construction and the electrical departments lost the projectors. That the 2nd complainant, who was in the construction department was asked to replace the projector that got lost from that department, whilst he (1st complainant) and the head of the electrical department were asked to share the cost of the projector that got lost from the electrical department. The 1st complainant contended that he had nothing to do with the projector from the electrical department because he had one in the IT department and that he did not understand why he had to pay or help the

head of the electrical department to pay for it; while the cost of the one from the construction department was lumped on the 2nd complainant alone when the department had about 7 lectures. That the 2nd complainant had nothing to do with its disappearance and there was no evidence showing that he was the one who lost the projector. That it was only discovered that the projector was missing in 2020 but the respondent used to conduct inventories every term. That at the time the projector got lost, the 2nd complainant was just an ordinary member of staff who was just a mere user of the said projector like the other members of staff and he was not the custodian of the projector.
From the evidence on record, I have noted that the complainants were found to have been responsible for the missing of the above items owing to their failure to account for the same. For this reason, I find that the 1st respondent was entitled to recover from the complainants the value of the said items and as such, the complainants' claims for the refund of K1,500.00 and K3,000.00 which were deducted from their payments for gratuity cannot stand and are accordingly dismissed.

The complainants further claimed that the respondent used to deduct their mandatory statutory contributions to NAPSA but the respondent did not remit the contributions for some months to NAPSA, that is, from 1st January to May, 2017; September, to December, 2017; January, 2018 to September, 2018; and October, 2018. That the 1st respondent had deducted and not remitted the

total amount of K18,000.00. The respondents did not dispute that the 1st respondent did not remit to NAPSA some of the complainants' contributions but stated that the amount that was not remitted was K16,619.85 and that the said amount had since been remitted to NAPSA as shown by the latest payment vouchers, exhibits 'WS3' and 'WS4'. It was also argued that in any event, it was NAPSA's responsibility to pay the complainants their dues.

There being evidence on record that the 1st respondent had since remitted the contributions to NAPSA, this claim has been overtaken by events and is accordingly dismissed. However, I must add that the payment of contributions to NAPSA by contributing employers in respect of their employees in their employment is governed by the National Pension Scheme Act No. 40 of 1996 which also provides for penalties for failure to comply with the provisions of the law [see section 51 of the Act]. It is the duty of NAPSA to ensure that the contributing employer pays to the authority all contributions that are due for payment. Therefore, the proper course would have been for the complainants to lodge a complaint with NAPSA for it to compel the respondent to fulfill its obligations as mandated by law.

In summary, the complainants have succeeded in their claims for damages for wrongful and unfair dismissal equivalent to three months of their basic salaries plus allowances; their salaries for the days

worked in the month of July; extra duty allowance in respect of the 1st complainant at 15% of his basic pay from 22nd February, 2016 to 5th August, 2019; and big class allowance in respect of the 1st complainant in the sum of K5,400.00. The total amount due to the complainants shall attract interest at the short-term commercial deposit rate, as determined by the Bank of Zambia, from the date of the notice of complaint to the date of the judgment and thereafter, at 10% per annum until full settlement.

I make no order for costs. Each party will bear own costs.

Leave to appeal is granted.

Delivered at Ndola this 12th day of September, 2022.

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Davies C. Mumba

HIGH COURT JUDGE