

**IN THE HIGH COURT FOR ZAMBIA
INDUSTRIAL RELATIONS DIVISION
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2022/HPIR/632

BETWEEN:

OLIVER ZIMBA & 32 OTHERS

AND

KAY TWO ZAMBIA LIMITED



COMPLAINANTS

RESPONDENT

**Coram: Before Hon. Lady Justice Mrs. Mwaka S. Ngoma this
22nd Day of September, 2023.**

For the Complainants : Mr. Stephen Lungu, S.C, of Shamwana & Co.

For the Respondent : No Appearance

JUDGMENT

Legislation referred to:

1. Employment Code Act No. 3 of 2019
2. The Employment Code (Exemption) Regulations, Statutory Instrument No. 48 of 2020
3. The Employment Act, Cap 268 of the Laws of Zambia
4. The Minimum Wages and Conditions of Employment Act
5. The Minimum Wages and Conditions of Employment (General) Orders, 2011
6. The Industrial and Labour Relations Act, chapter 269 of the Laws of Zambia.
7. The Minimum Wages and Conditions of Employment (General) (Amendment) Order 2018.

Cases referred to:

1. Robert Simeza & 3 Others V Elizabeth Mzyece (2011) ZMSC 3
2. The Attorney General V Aboubacar Tali and Zambia Airways Corporation LTD (1995/1997) ZR 54
3. Malise Lubonda and 72 Others v Pierson Mwale (sued in his capacity as Secretary – Roan United Football Club), Lamack Chiti (sued in his capacity as Secretary – Roan United Football Club) and Zambia Consolidated Copper Mines Limited SCZ Appeal No 84 of 2011.
4. Dereck Mukokanwa v Development Bank of Zambia. SCZ Appeal No. 120 of 2014.
5. Wilson Masauso Zulu V Avondale Housing Project Limited (1982) ZR 172
6. Zambia Revenue Authority V Chintu Kanga (Sued as Administratrix of the Estate of Godfrey Locha) (DECEASED) Appeal No. 219 Of 2015
7. James Mankwa Zulu and Others v Chilanga Cement. SCZ Appeal No. 12 of 2004.
8. Musonda Chizinga V Capstone Management Company Limited (2022/HPIR/0557) (unreported)
9. Tiger Chicks (T/A Progressive Poultry Limited) V Tembo Chrisford and Others Appeal No. 6 of 2020

Authoritative Texts Referred to:

Mwenda, W.S and Chungu, C. A Comprehensive Guide to Employment Law in Zambia (UNZA Press, 2021).

1.0 Introduction

- 1.1 The complainants filed a notice of complaint and affidavit in support of complaint on 18th of August 2022 against Kay Two

Zambia Limited. The affidavit was sworn by Oliver Zimba on behalf of the complainants.

- 1.2 The grounds upon which the complaint was presented are that the complainants were employed by the respondent on different dates and performed different roles until they were all retrenched by letters dated 31st May, 2022 giving them 30 days' notice of retrenchment.
- 1.3 Although the letters of severance stated that they would be paid their employment benefits , they were not paid as a result of which they seek the following reliefs:
 - a. *Leave days;*
 - b. *Benefits for the years worked;*
 - c. *Outstanding salary arrears;*
 - d. *Costs and any other benefits the court may deem fit.*

2.0 Complainants' Affidavit Evidence

- 2.1 In the Affidavit in support of complaint, Mr. Zimba averred that the complainants were employed on varying dates and in different positions. Exhibited to his affidavit and marked "OZ1" is a list of names of all the complainants, the dates of

commencement of their employment and the respective positions in which they served.

2.2 Mr. Zimba deposed that the complainants worked well with the Respondent until their employment ended on 30th June, 2022 when the respondent retrenched them without paying them their severance packages. Prior to the termination, on 31st May, 2022, they were each served with a notice of termination of employment by retrenchment with effect from 30th June, 2022. As evidence of this assertion, copies of the letters of termination were produced as exhibits "OZ2".

3.0 Respondent's Answer and Affidavit Evidence

3.1 In the answer filed on 28th September, 2022, the respondent admitted that it had employed the complainants and that it had retrenched them due to financial circumstances beyond its control.

3.2 The affidavit verifying answer was deposed to by Jonathan Johstone-Butcher, the respondent's Managing Director. He admitted that the respondent was aware of the complainants' claims except that it had no capacity to pay. Exhibited to the affidavit and marked "**JJB 1-3**" are the respondent's 3 months'

bank statements showing the respondent's alleged incapacity to meet its obligations to the complainants.

- 3.3 Mr. Butcher averred that from the beginning of the year 2022, the respondent faced so many financial challenges in the business and by May 2022 when the situation worsened, the respondent decided to retrench some members of staff as it could no longer sustain all of the staff.
- 3.4 Mr. Butcher further requested for more time to raise resources so that the respondent could pay its indebtedness to the complainants by instalments.

4.0 Evidence at Trial

- 4.1 Prior to trial, the matter came up for a status conference on 15th June, 2023 at which both parties were absent without explanation. I proceeded to schedule the matter for trial on the 21st June, 2023.
- 4.2 On the date of trial, the complainants were before court while the respondent was absent. The record showed that the respondent was duly served with the notice of hearing as evidenced by the affidavit of service filed by the complainants on 19th June, 2023. I, therefore, proceeded to hear the complainants on the basis that

the respondent was aware of the date of hearing and absent from court without any reason. I was fortified in taking this course by the case of **Robert Simeza & 3 Others V Elizabeth Mzyece**⁽¹⁾ where the Supreme Court guided that there is no procedural injustice occasioned when a Court proceeds where a party who was aware of proceedings did not appear before Court.

- 4.3 At the hearing, the complainants called 3 witnesses. Mr. Blackson Mbewe was the 1st witness. It was his testimony that he was employed by the respondent on 3rd March, 2012 until 30th June, 2022. He testified that by letter dated 31st May, 2022, the respondent formally gave him notice of his retrenchment indicating that his last day of work was 30th June, 2022.
- 4.4 The reason for the retrenchment, as stated in the letter of 31st May, 2022, was that the respondent did not have any active or new contracts to sustain its business.
- 4.5 He maintained that the respondent had not paid the complainants' dues despite promising to pay by 30th June, 2022. Reminders to the respondent had not yielded any positive result, prompting the complainants to institute these proceedings.
- 4.6 It was his further testimony that all the respondent's construction assets were moved to Mr. Butcher's residence in

State Lodge, Lusaka while ownership of the respondent's vehicles was changed from the respondent's name into the names of Mr. Butcher and his fellow Directors. He cited the General Manager, Mr. John Phaquar, as one of those to whom ownership of the respondent's vehicles was transferred.

4.7 He averred that his last basic pay was K1,854 without allowances and that if allowances were included his pay would amount to between K3,200 and K3,500.

4.8 He further testified that the total number of complainants in this matter was 33 and that they were all similarly circumstanced.

4.9 The complainant's 2nd witness was Kandesha Wanted Mwandango. His testimony was that he worked for the respondent as a driver from 2nd September, 2019 until 30th June 2022 when he was retrenched. He averred that the respondent had 5 vehicles as follows: a Hino Ranger, Mistubishi Canter, and two Nissan Hardbody HP 300 and that he, on Mr. Butcher's instructions, facilitated change of ownership of the below-mentioned vehicles from the respondent's name to the individuals mentioned below:

- a. The Hino Ranger and Mistubishi Canter were changed from the respondent's name to the name of Mr. Butcher;

- b. A Nissan Hardbody NP300 registration No. ALK 9637 was changed into Mr. John Phaquar's name;
- c. A Nissan Hardbody NP300 registration No. ABJ 9908 went to the Project Manager's name, Mr. Ken Earlia; and
- d. The Nissan Hard body NP300 registration No. ALA 4189 remained in the respondent's name. These changes were made between March, 2022 to June 2022.

4.10 It was his further testimony that his last basic salary before leaving employment was K1,800 and when allowances were added, it went to K3, 200.

4.11 Mr. Assau Phiri was the complainant's 3rd witness. His testimony was that he was employed as a Stores man from 9th September, 2014 until 30th June, 2022. After the employees received the letters giving them notice of retrenchment, he was instructed to take the assets of the respondent company to the residence of Mr. Butcher in State Lodge, Lusaka, which he did. He testified that the process of moving the assets took about 3 weeks because the assets were being moved bit by bit. The assets included concrete mixers, generators, scaffolding; grinders; concrete floating machines and many other items he could not remember.

4.12 He further testified that his last basic salary was K1,900 and that when allowances were added it would go up to K3,200.

4.13 As the respondents did not attend trial, their case remained as stated in the answer and affidavit verifying answer as summarised above.

5.0 Legal Arguments

5.1 Counsel for the complainants, Mr. Lungu SC, filed written submissions for which I am grateful. I have taken into consideration the legal arguments presented in writing this judgment.

5.2 Mr. Lungu S.C, submitted that in its answer, the respondent did not dispute owing the complainants the money claimed, albeit the respondent had failed to pay. He argued that the respondent owed the complainants redundancy benefits. He cited Section 55 of the Employment Code Act, which he reproduced in full in his submissions, as the law relating to redundancy. It was his argument that in accordance with the provisions of section 55, the complainants are entitled to redundancy packages and, as per section 55(3)(b), the complainants are entitled to their salaries for the period they

have not been paid until such time when their redundancy packages are paid in full.

- 5.3 Mr. Lungu S.C urged this court to consider the role played by Mr. Butcher in events surrounding this matter:- he signed the letters of redundancy to the complainants; he swore the affidavit verifying answer wherein he admitted the complainants' claims but made no definite position on when the respondent would pay the complainants; as per oral testimony of the complainants' witnesses, he moved all the company assets to his personal home and directed change of company motor vehicles into personal names of different individuals; service for the notice of hearing was effected on him as he was the one in control of the respondent company but he opted to stay away from the proceedings.
- 5.4 It was Mr. Lungu's submission that in the light of the foregoing, and considering that Mr. Butcher had in his possession all the respondent company's assets, he should be joined to these proceedings. His argument was buttressed by the case of **The Attorney General V Aboubacar Tali and Zambia Airways Corporation LTD (1995) S.J (S.C)⁽²⁾** in which the Supreme Court held that a party can be joined to the matter at any time before judgment if that party has an interest in the matter. This court was thus urged to add Mr. Butcher to the proceedings as he is

the one in control of company assets from which the complainants were supposed to be paid.

5.5 He finally prayed that the complainants' claims be granted by the court.

5.6 On the claim for costs, Mr. Lungu S.C, submitted that he would forego his claim for costs since this matter had been handled on a pro bono basis.

6.0 Findings of Fact

6.1 The undisputed facts of this case are plain to see. The complainants were employed on diverse dates and in diverse positions.

6.2 The complainants were served with notices of termination of employment by retrenchment on 31st May, 2022. The complainants were not paid their dues prompting them to file into court the present action wherein they seek accrued leave days; benefits for the years worked; outstanding salary arrears; costs of and incidental to the action and any other relief the court may deem fit.

7.0 Issues for Determination

7.1 After analyzing the pleadings and the evidence before court, the issues for determination, in my view, are the following:

- 7.1.1 *Whether or not the complainants are entitled to leave days;*
- 7.1.2 *Whether or not the complainants are entitled to accrued benefits for the years worked; and*
- 7.1.3 *Whether or not the complainants are entitled to outstanding salary arrears; and finally, the issue that was raised in Mr. Lungu, SC's written submissions*
- 7.1.4 *Whether Mr. Butcher should be added to these proceedings.*

8.0 Determination of Issues

8.1 I will begin by analyzing the nature of the termination after which I will delve into the benefits due to the complainants and finally determine the issue of joinder.

8.2 It is important to first determine the nature of termination of the complainants' employment because the mode of termination of employment determines the benefits payable to the affected employee.

8.3 The letters of termination exhibited in the affidavit deposed to by Mr. Oliver Zimba on behalf of the complainants are couched in the following fashion:

Dear Mr.,

It is with deep regret that we formally advise you that due to the past and current economic conditions within our market, we no longer have any active or new contracts to sustain the business.

Therefore, Kay Tow (Z) Ltd Hereby regrettably advises that as of the 31st May, 2022 you are being notified that you have been selected for retrenchment.

Your last day of work with Kay Two (Z) Ltd will be Thursday 30th June, 2022. During this month, we will be consulting with the Labour Department to ensure all processes are followed correctly.

With regard to outstanding payments and retrenchment dues, we will discuss with labour the way forward to ensure that the best possible arrangements are made to remunerate you accordingly.

Yours Sincerely,

(signed)

*Mr. Jonathan Johnstone-Butcher
Managing Director*

8.4 Mr. Lungu, S.C in his submissions, did not attempt to distinguish retrenchment and redundancy. Although the letters written to the complainants stated that they had been selected

for retrenchment, Mr. Lungu, S.C proceeded to submit on redundancy without any argument as to whether retrenchment and redundancy are the same and if not, how are they distinguishable.

- 8.5 The Supreme Court, in the case of **Malise Lubonda and 72 Others v Pierson Mwale (sued in his capacity as Secretary – Roan United Football Club), Lamack Chiti (sued in his capacity as Secretary – Roan United Football Club) and Zambia Consolidated Copper Mines Limited SCZ Appeal No 84 of 2011⁽³⁾** described retrenchment as:

“The process of cutting down or reducing the labour force on account of the organisation’s financial constraints in the bid to maintain the organization as a going concern. It is the process whereby the employer terminates the employment of its unnecessary employees”.

- 8.6 In the case of **Dereck Mukokanwa v Development Bank of Zambia⁽⁴⁾**, the court made a distinction between redundancy and retrenchment. In that case, the employer undertook a restructuring or retrenchment exercise that led to the employee being informed that he would no longer be retained. The Supreme Court examined the communication from the employer as well as the redundancy scenarios provided for in the legislation and confirmed that the employee could not claim

redundancy as the position from which he was removed continued to exist and was filled by someone else.

8.7 The learned authors of **“A Comprehensive Guide to Employment Law in Zambia, Mwenda W.S and Chungu, C,** also hold the view that there is indeed a distinction between retrenchment and redundancy. They submit, on page 303, that *retrenchment or termination for operational requirements on the one hand, as provided for in the Derek Mukokanwa case, takes place when an entity going through financial difficulties or seeking to make its operations more efficient decides to restructure its operations, whereas redundancy, on the other hand takes place when an employer decides that the employee’s services are no longer needed and is due wholly or in part to one of the redundancy situations in section 55(1) of the Employment Code Act”.*

8.8 The authorities above demonstrate that a retrenchment or re-organisation can lead to a redundancy for situation that falls within the ambit of section 55(1) of the Employment Code Act. While the respondent, in paragraph 6 of the affidavit verifying answer, deposed that when their financial woes worsened, they decided to retrench some members of staff, the letters dated 31st May 2022 written to the complainants clearly state that the respondent’ no longer has any active or new contracts to sustain the business’. In my view, it would be safe to conclude that if business became unsustainable, then, the respondent ceased, or intended to cease to carry on business for which the

further provides that where annual leave has been accumulated by an employee whose contract of employment has been terminated, the employer shall pay wages to the employee for the period of the accumulated leave.

8.12 The Minister of Labour and Social Security issued the Employment Code (Exemption) Regulations, by way of statutory instrument No. 48 of 2020, on 8th May, 2020 which exempts all employees from the application of section 36 of the Employment Code Act which deals with annual leave.

8.13 Statutory Instrument No. 48 of 2020 also exempts all employees from the application of section 37 which provides a formula for payment of accrued annual leave. The two exemptions, read together, therefore, entail that an employee who claims accrued leave days must prove his claim on the basis of the contract or other statute, as may be applicable.

8.14 The complainants did not lead any evidence to substantiate their claim for accrued leave days. The burden of proof is upon them regardless of the position taken by the respondent as held by the Supreme court in the case of **Wilson Masauso Zulu V Avondale Housing Project Limited**⁽⁵⁾ in which it was stated that:

"I think that it is accepted that where a Plaintiff alleges that he has been wrongfully dismissed, as indeed any other case where he makes any allegations, it is generally for him to prove those allegations. A plaintiff who has failed to prove his case cannot be entitled to judgment, whatever may be said of the opponent's case".

8.15 The complainants' failure to prove their claim for accrued leave days means that this claim fails.

Whether or not the Complainants are entitled to benefits for the years worked

8.16 It was Mr. Lungu, S.C's submission that the complainants are entitled to redundancy packages at the rate of 2 months pay for every year served as per section 55(3)(a) of the Employment Code Act.

8.17 In the absence of evidence that a better package was agreed between them, and having found that the termination was a redundancy situation, I find that the formular contained in section 55(3)(a) of the Employment Code Act is applicable to the complainants. The computation of the benefits shall be based on the salaries the complainants were receiving at the time of their separation. In other words, their last drawn salaries. This is in line with the decision in **Zambia Revenue Authority V Chintu Kanga (Sued as Administratrix of the Estate of Godfrey**

Locha) (DECEASED) Appeal No. 219 Of 2015⁽⁶⁾. I shall deal with the period for which the redundancy packages should be paid in a little while. For now, I must address myself to the question of whether the packages are to be calculated on amounts including allowances or not.

8.18 With regard to the question whether ‘pay’, as used in section 55(3)(a) of the Employment Code Act includes allowances, it is noteworthy that while this section provides that the package must be based on “pay”, section 54(1)(d) of the same Act makes reference to “basic pay”. Basic pay excludes allowances whilst ‘pay’ includes allowances, as held in the case of **James Mankwa Zulu and Others v Chilanga Cement. SCZ Appeal No. 12 of 2004⁽⁷⁾**

8.19 To reconcile this seemingly contradictory position of the law as contained in sections 55(3) (a) and 54 (1) (d), I adopt the holding of my learned sister in the case of **Musonda Chizinga v Capstone Management Company Limited⁽⁸⁾** where she held, on page 39 of her judgment, that *“as section 55 is specific to redundancy, redundancy packages should be paid on the basis of “pay” as provided for in section 55(3)(a).”*

8.20 I now return to the effective dates of the computation of the redundancy pay. From the outset, I wish to state that I am

mindful that the Employment Code Act cannot be applied retrospectively. Therefore, the redundancy pay found due under section 55(3)(a) is only payable from 9th May, 2020 when the transition period in which to comply with the Employment Code Act expired, to 30th June, 2022, the effective date of the redundancies. With regard to the period prior to 9th May, 2020, I shall be guided by the law as it then was as contained in the now repealed Employment Act Cap 268 of the Laws of Zambia as it applied to oral contracts such as the complainants', and the Minimum Wages and Conditions Employment Act 1982.

8.21 Section 26B(1) of the Employment Act provides that:

"The contract of service of an employee shall be deemed to have been terminated by reasons of redundancy if the termination is wholly or in part due to –

- (a) the employer ceasing or intending to cease to carry on the business by virtue of which the employee was engaged; or*
- (b) the business ceasing or reducing the requirement for the employees to carry out work of particular kind in the place where the employee was engaged and the business remains a viable going concern."*

8.22 I note that subsection (a) above is couched in similar terms as section 55(1)(a) of the Employment Code Act already discussed above. As such, I shall not belabor the point that the circumstances of the termination fall within the ambit of a redundancy even when viewed through the provisions of the 26 B(1) of the Employment Act.

Employment (General) (Amendment) Order 2018 (“the General Amendment Order 2018”), specifies the category of protected employees.

8.26 I have examined exhibit “OZ1” in Mr. Zimba’s affidavit in support of complaint which shows the designations of all 33 complainants. When compared with the schedule in the General Amendment Order, the majority of the designations shown in OZ1 do not fall within the General Amendment Order. Only the designation of driver falls under this Order. I am aware of the view expressed by the Supreme Court in the case of **Tiger Chicks (T/A Progressive Poultry Limited) V Tembo Chrisford and Others Appeal No. 6 of 2020⁽⁹⁾** that an employee whose designation is not covered by the relevant order may, for good cause, be brought under that order. The quote below, taken from page 33 of the judgment in that case is particularly instructive-

“For the Act to apply to them, there ought to be a basis for bringing them into one or other categories mentioned in the Act. In other words, notwithstanding their work designations, which do not answer to any of the categorized positions, it is possible, for good cause as happened in the Kenny Sililo v Mend a Bath, and Kasembo Transport v Kinner for non-categorized employees to be re-categorized into one or another of the identified categories”.

8.27 The complainants did not adduce any evidence that could form the basis upon which this court may re-categorise the employees

into the identified categories. Consequently, only the drivers are protected employees and only they will have their redundancy packages calculated from periods prior to 9th May, 2020, from the dates of commencement of their employment, at the rate of 2 months' basic salary for every completed year served in line with paragraph 11 of the General Order. After 9th May, 2020 the computation shall be at the rate of 2 months pay (inclusive of allowances) for every year served.

Whether or not the Complainants are entitled to outstanding salary arrears

8.28 It was Mr. Lungu, S.C's submission that the complainants are entitled to their salaries for the period they have not been paid until such time they are paid their redundancy packages. In support of this argument, reliance was placed on section 55(3)(b) of the Employment Code Act which provides that an employer who fails to pay the redundancy payment in full on the last day of duty of the employee shall continue to pay the employee full wages until the redundancy package is paid.

8.29 It is not in dispute that the complainants were not paid their dues on their last day of duty. I am mindful of section 56 of the Employment Code Act which provides that an employer who is unable to pay an employee a redundancy payment in accordance

with section 55 due to the employer's financial incapacity, may apply to the Labour Commissioner for exemption from paying the redundancy payment as a lumpsum or on or before the date of expiry of the notice of redundancy. In accordance with section 56(4), the Labour Commissioner is, within 30 days of receipt of the application, obligated to grant the exemption with or without conditions or refuse to grant the exemption and give reasons for the refusal.

8.30 The respondent, in its letters of termination to the complainants, mentioned that it would discuss the benefits due with the Labour Commissioner. However, it did not provide any evidence of having made an application for exemption and neither did it plead that it was granted an exemption from paying the benefits as a lumpsum or on or before the date of expiry of the notice of redundancy. It is, therefore, safe to conclude that the respondent did not obtain any exemption from the Labour Commissioner. Consequently, I find that the complainants are entitled to be on the respondent's payroll until full payment of the redundancy pay. I, accordingly, grant the claim for salary arrears from 1st July 2022 until the redundancy packages are paid in full.

Whether Mr. Butcher may be joined to this matter

8.31 In his submissions, Mr. Lungu, SC applied for Mr. Butcher to be joined to these proceedings. This application was premised on the complainants' oral testimony that Mr. Butcher is the one who has in his possession all the respondent company's assets and that he is the one who even gave directives to change ownership of the respondent's motor vehicles into names of different individuals. In support of this claim, Mr. Lungu, SC cited the Attorney General and **Aboubacar Tali** case in which the Supreme Court held that a party can be joined to a matter at any time before judgment, if that party has an interest in the matter. He went on to submit that it was prudent that the former Director, Mr. Butcher be joined to this matter as he was in control of the assets of the Respondent from which the Complainants were supposed to be paid.

8.32 The power of this court to join any person on the court's own initiative or on the application of any person cannot be doubted as it is clearly laid out in section 32 of the Industrial and Labour Relations Act which provides that;

“the Court may, on the application of any person or of its own motion, direct that any person not already a party to proceedings be added as a party, or that any party to proceedings shall cease

to be a party, and in either case may give such consequential directions as it considers necessary”.

8.33 As to the timing of the joinder, I agree with Mr. Lungu, SC that in line with the **Aboubacar** case, a party with sufficient interest may be joined to the proceedings any time before delivery of judgment. The quotation below, from the judgment, from the same case is quite poignant:

“In our view, without prejudicing the outcome of the trial court's judgment, but going by the documentary and oral evidence on record, the joining of the Attorney General in these proceedings would be necessary to ensure that the matters in the cause may be effectually and completely determined and adjudicated upon to put an end to any further litigation...”. (Underlining mine for emphasis).

8.34 In the present case, the gist of the complainants' oral evidence on record is that the respondent's construction assets were moved to Mr. Butcher's residence in State Lodge of Lusaka while ownership of the vehicles was changed from the respondent's name to the names of Mr. Butcher and his fellow directors. The question is whether, in the light of this, and to use the words of

the Supreme Court in the Aboubacar case, the joining of Mr. Butcher is necessary to ensure that the matters in the cause are effectually and completely determined and adjudicated upon to put an end to any further litigation'. To answer this question, I need to consider what the matters are in this case. The kernel of the matter is the claim for payment of redundancy benefits to the complainants. Can this matter be "effectually and completely determined" without Mr. Butcher being party to these proceedings? I do not see why not. The respondent's indebtedness to the complainants has been determined even without Mr. Butcher being made a party.

8.35 If, indeed, Mr. Butcher carried some or all of the respondent's assets to his residence as testified by the complainants, I do not see what would stop execution being levied on those assets at Mr. Butcher's residence or wheresoever situate within this jurisdiction.

8.36 Regarding the change of ownership of vehicles from the respondent to personal names of former directors, I hasten to state that the complainants did not produce sufficient proof or any documentary evidence such as white books of the vehicles to support their assertion.

8.37 As such, I find it unsafe to order joinder on the basis of the oral testimony alone and I, accordingly, refuse to join Mr. Butcher to this matter.

Whether the Complainants are entitled to any other relief that the Court may order

8.38 Going by the documentary and oral evidence on record, I do not see any other relief that the complainants are entitled to.

9.0 Conclusion and Orders

9.1 In conclusion, the complainants have succeeded in their claim for redundancy benefits and salary arrears. The claim for accrued leave days has failed. The application to join Mr. Butcher to these proceedings has also failed.

9.2 I, therefore, make the following orders:

9.2.1 I award the complainants redundancy benefits of two months' pay for every year served with effect from 9th May, 2020 to 30th June, 2022. The complainants, who worked as drivers are, where applicable, further awarded benefits for periods prior to 9th May 2020 at two months basic pay for

every year served from date of commencement of employment to 8th May, 2020.

9.2.2 Computation of the benefits awarded herein for the period prior to 9th May 2020 shall be based on basic pay while for the period after 9th May, 2020 shall be based on the last drawn salaries which shall include all applicable allowances.

9.2.3 The Complainants are entitled to salary arrears from 1st July 2022 until the redundancy packages are paid in full.

9.2.4 Each party shall bear its own costs.

9.2.5 Leave to appeal is granted.

Delivered at Lusaka this 22nd Day of September, 2023.

**MWAKA S. NGOMA
JUDGE.**

