

**IN THE HIGH COURT FOR ZAMBIA COMP/IRCLK/641/2020  
AT THE INDUSTRIAL RELATIONS REGISTRY  
HOLDEN AT LUSAKA  
(Labour Jurisdiction)**

**BETWEEN:**

FRANCIS MACHAKUBE  
LIZZY MANDA  
ETAMBUYU MUNALULA  
SYDNEY MWAPE



1<sup>st</sup> COMPLAINANT  
2<sup>nd</sup> COMPLAINANT  
3<sup>rd</sup> COMPLAINANT  
4<sup>th</sup> COMPLAINANT

**AND**

CITY UNIVERSITY OF SCIENCE AND TECHNOLOGY

**RESPONDENT**

**Before Hon. Mr. Justice E. L. Musona on the 3<sup>rd</sup> day of April  
2024**

*For the Complainants:* Ms. M. Seketi, Mesdames Chalwe & Kabalata Legal  
Practitioners.

*For the Respondent:* No Appearance

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

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**Legislation Referred to:**

- 1. The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.**
- 2. The Employment Code, Act No. 3 of 2019**

**Cases Referred to:**

- 1. Redzilla Limited v Abuid Nkazi and Others SCZ Judgment No. 7 of 2011**
- 2. Liebherr Zambia Limited v Cleopatra Ngandu Mandandi CAZ Appeal No. 182/2021**
- 3. Zambia Electricity Supply Corporation v Muyambango (2006) ZR 22**
- 4. Aliza Vekhnik v Casa Dei Bambini Montessori Zambia Limited- CAZ Appeal No. 129/2017**
- 5. Care International Zambia Limited v Misheck Tembo SCZ Selected Judgment No. 56 of 2018**
- 6. Supabets Sports Betting v Batuke Kalimukwa SCZ Judgment No. 7 of 2019**
- 7. Dennis Chansa v Barclays Bank Zambia PLC SCZ Judgment 8/128 of 2011**

8. *Charles Ng'onga v. Alfred H. Knight (Z) Limited, SCZ Selected Judgment No. 26 of 2019*
9. *Swarp Spinning Millis Ple. V. Sebastian Chileshe and Others (2002) Z.R. 23 (S.C.)*

Other Works Referred To:

1. *W.S Mwenda, (2004) Employment Law in Zambia. Lusaka, University of Zambia Press,*
2. *Winnie Sithole Mwenda, (2021) Comprehensive Guide to Employment Law in Zambia, University of Zambia Press.*

## 1.0 COMPLAINANTS' CASE

- 1.1 On 12<sup>th</sup> October 2020, the Complainants filed a Notice of Complaint and an Affidavit in Support of the Complaint pursuant to **Section 85 (4) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.**
- 1.2 The grounds upon which the Complaint was presented were that the Complainants were employed by the Respondent on various dates as Supervisor, Janitor, Head Chef and Cleaner respectively as shown by **Exhibit 'FM1'**, copies of contracts of employment.
- 1.3 The Complainants claimed that on 26<sup>th</sup> March 2020 the Respondent verbally informed them to stop reporting for work as it was reducing its workforce.
- 1.4 Further, the Complainants claimed that during the course of their employment, the Respondent owed them unpaid salaries for over a period of 4 years. This prompted them to

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commence an action against the Respondent on 20<sup>th</sup> July 2020 under Complaint No. IRC/415/2020 for the recovery of the salary arrears from 2016 to 2020 and serve the Respondent court process of 11<sup>th</sup> August 2020.

- 1.5 The Complainants claimed that after receiving the court process, the Respondent terminated their contracts of employment through letters (Exhibit **"FM4"**) referenced "Receipt of Court Process". The letters stated that the termination resulted from the Complainants' decision to commence court process against the Respondent.
- 1.6 Further, the Complainants averred that the Respondent on 13<sup>th</sup> August 2020, charged them with unruly and insubordinate behaviour through Disciplinary Hearing Notices. They averred that they were given 48 hours to respond to the charges otherwise sanctions would be imposed in accordance with the Respondent's Disciplinary Code and Grievance Procedures Policy.
- 1.7 The Complainants averred that they did not respond to the letters nor attend the disciplinary hearing on belief that the same was mala fide in that the Respondent singled them out of the 21 employees who sued it for recovery of salary arrears.

1.8 The Complainants claimed that although the Respondent made monthly deductions from the Complainants' salaries, they discovered that the Respondent violated its statutory obligation to remit those deducted contributions to the National Pensions Scheme Authority (NAPSA) on behalf of the Complainants for the period of their employment. This was evidenced by Exhibit "FM6" copies of the NAPSA printouts. Therefore, the Complainants suffered mental stress and torture.

1.9 Aggrieved by the Respondent's actions, the Complainant commenced the suit herein seeking the following reliefs:

- i. An Order that the Complainants were wrongly, unfairly and unlawfully dismissed;*
- ii. An Order for payment of damages for wrongful, unfair and unlawful termination of employment as Supervisor, Janitor, Head Chef and Cleaner Respectively;*
- iii. An Order for payment of terminal benefits due to the Complainants as a consequence of the termination of their employment with the Respondent;*
- iv. An Order for payment of damages being 36 months for the wrongful, unfair and unlawful dismissal of the Complainants;*
- v. Interest on the sums above;*
- vi. Payment of exemplary damages calculated at the 12 months' salary;*
- vii. An Order that the Respondent remits the contributions into member accounts of the Complainants at the National Pensions Scheme Authority (NAPSA) for all the months that the Respondent did not remit including the penalties due on the Complainants' respective accounts;*
- viii. An Order for payment for all accrued leave days and notice;*

- ix. *Interest at the current Bank Lending rate from the date of the complaint to the date of payment on any sums due;*
- x. *At least 6 months' salary being damages for mental stress;*
- xi. *Costs; and*
- xii. *Any other relief the Court may deem fit.*

## **2.0 RESPONDENT'S CASE**

2.1 The Respondent filed an Answer to the Complaint on 2<sup>nd</sup> February 2021 in which it admitted that it did not regularly pay the complainants' salaries from 2016 to 2020 on account of the COVID 19 pandemic that caused the Respondent to temporarily close from mid-March to July 2020 as per government directive.

2.2 The Respondent denied the allegation that it dismissed the Complainants because of the court process they commenced and averred that the converse is the position hence their claim for their benefits for years served. In other words, the Complainants terminated their employment with the Respondents when they claimed for their terminal benefits in the court process that they commenced. Therefore, the termination was not due to salary arrears but the Court process in which the Complainants demanded their terminal benefits. This is evidenced by exhibits **"MS5-8"**.

2.3 The Respondent denied the allegation that it terminated the Complainants' contracts as an afterthought. The Respondent

averred that the Complainants were served separate letters (exhibit **"MS1-4"**) regarding the disciplinary hearing and confirmation of receipt of court process respectively. It stated that it served the Complainants with disciplinary notices and requested them to exculpate themselves within 48 hours of the notice prior to being served with court process by the Complainants. Therefore, there was no breach of contract or duty by the Respondent.

2.4 The Respondent denied the allegation that it wilfully neglected to remit NAPSA contributions and stated that it entered into an agreement with NAPSA amid the COVID 19 pandemic, through which it would remit the complainants' monthly contributions on an arrear's basis with close supervision of NAPSA as shown by exhibit **"MS9"**. Therefore, this application is premature.

2.5 The Respondent claimed that the termination was not wrongful, unfair or unlawful because the Complainants exercised their right to terminate their employment. Further, that the Respondent merely accepted the termination by sending the Complainants letters. This is because the

Grievance Procedure was an academic exercise which was not attended by the Complainants.

- 2.6 Lastly, the Respondent admitted that it owed the Complainants salary arrears, leave days, NAPSA contributions and terminal benefits which are to be computed in line with the Complainants' conditions of service.
- 2.7 It stated that it could not liquidate all the amounts owed as a lumpsum and requested to liquidate the amounts due in instalments.

### **3.0 REPLY TO ANSWER**

- 3.1 On 29<sup>th</sup> March 2021, the Complainants filed their reply to the Answer in which the deponent averred that the Respondent verbally ordered them to stop reporting for work on 26<sup>th</sup> March 2020 as it was intending to downsize its work force.
- 3.2 In addition, the Respondent calculated the amounts that were due to the Complainants as at that day; including the terminal benefits, and gave them the computations as shown by exhibit "**FM1**".
- 3.3 The Complainants denied the allegation that the salary arrears were as a result of the COVID 10 Pandemic. This is

because the COVID 19 outbreak only became a pandemic in 2020 when the Respondent already owed the Complainants salary arrears from 2016. Similarly, with NAPSA Contributions.

- 3.4 Although the Respondent claims that it has been remitting contributions to NAPSA since 2019, a search conducted by the Complainants on 9<sup>th</sup> September 2020 shows otherwise.
- 3.5 It was averred that the Respondent misled the Court when it stated that it charged the Complainants prior to receiving court process. This is evidenced by its own letters which show that it received court process on 11<sup>th</sup> August 2020 and the letters terminating the Complainants' employment were issued on 13<sup>th</sup> August 2020.
- 3.6 Further, the Complainants averred that the letters referenced "Receipt of Summons" stated that their employment was terminated by virtue of their legal action, contrary to the Respondent's claim that they were charged for unruly behaviour prior to receiving court process.
- 3.7 The Complainants reiterated that they did not attend the disciplinary hearing nor exculpate themselves within the given 48 hours because the Respondent had already mated



out a judgment by terminating their contracts before according them a hearing. Therefore, the termination and/or dismissal was wrongful, unlawful and unfair.

3.8 Further, they averred that they are entitled to damages for the wrongful, unlawful and unfair termination as well as damages for the mental stress and torture suffered because of the manner in which they were treated by the Respondent.

#### **4.0 THE HEARING**

4.1 The matter came up for hearing on 1<sup>st</sup> November 2023. The 1<sup>st</sup> Complainant, in **examination-in-chief**, reiterated the contents of his complaint and supporting affidavit. He also testified that the Complainants' dismissal was wrongful because in the sequence of events, they were served with letters of termination of employment in response to their complaint for salary arrears.

4.2 Further, the 1<sup>st</sup> Complainant informed the Court that the dismissal was unfair because they were not given an opportunity to exculpate themselves. He stated that despite the letter of termination inviting them to exculpate themselves, the very letter stated that the Complainants

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were dismissed and prohibited from entering the Respondent's premises.

4.3 The 1<sup>st</sup> Complainant testified that the dismissal was unlawful because they were dismissed for seeking court action to obtain their dues from the Respondent.

4.4 The Complainant stated that they were entitled to damages for the wrongful, unfair and unlawful dismissal. He also stated that they were entitled to 32 months' worth of benefits as they had not reached retirement age at the time of the dismissal. He stated that the Court ought to order punitive and exemplary damages for a period of 12 months for failure to remit NAPSA contributions and on the premise that the Respondent's failure to pay them their salaries led them into debt in order to sustain themselves.

-4.5 In addition, the 1<sup>st</sup> Complainant urged the Court to order the Respondent to pay the Complainants the monetary value of their leave days as well as the outstanding NAPSA contributions for the period 2016 to 2020.

4.6 The Complainant was not **cross-examined** and he closed his case.

- 4.7 **PW2** was the 2<sup>nd</sup> Complainant who testified that she was employed by the Respondent on 1<sup>st</sup> April 2012 as Janitor on a permanent and pensionable basis. She stated that in the course of her employment, her salary and that of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Complainants, were in arrears for a period of 4 years.
- 4.8 She stated that the Respondent ordered her and the other Complainants to stop reporting for work as it was in the process of downsizing its work force. Consequently, she, together with nineteen other employees, commenced an action against the Respondent under cause number IRC/415/2020 for the recovery of their salary arrears.
- 4.9 She informed the Court that when they effected service on the Respondent on 11<sup>th</sup> August 2020, they were informed that their employment was terminated forthwith. Further, on 13<sup>th</sup> August, 2020 they received letters that effectively terminated their contracts of employment on account of the legal action they commenced.
- 4.10 PW2 testified that as an afterthought, the Respondent, on 13<sup>th</sup> August 2020 charged them with unruly and insubordinate behaviour through disciplinary notices which gave them 48 hours within which to exculpate themselves.

This was despite the fact that it did not retract its earlier letters of termination. Consequently, the complainants did not respond to the disciplinary charges or attend any hearing.

4.11 PW2 stated that the termination was wrongful, unlawful and unfair because the Respondent singled them out as the leaders of the group of 21 employees who served it with court process.

4.12 Lastly, she testified that a search conducted at NAPSA revealed that the Respondent did not remit the Complainants' contributions for different months despite making monthly deductions from their salaries. She was not **cross-examined**.

4.13 There was no appearance on behalf of the Respondent despite proof of service of the Notice of Hearing.

## **5.0 SUBMISSIONS**

4.1 The Complainants submitted detailed arguments to support their claims. I have taken account of the various arguments made. I will not repeat them but will make references as appropriate in my decision.

## **6.0 ISSUES FOR DETERMINATION**

6.1 I have considered all the evidence and arguments on record. I garner that the issue for determination is whether the

Complainants' termination/dismissal was wrongful, unfair and unlawful, thereby entitling them to damages.

6.2 From the onset, I note that the parties seem to use the terms termination and dismissal interchangeably. The Complainants have also proceeded to cite authorities dealing with both terms. Needless to state that, these two terms do not refer to the same situation.

6.3 There is a plethora of cases that elaborate on the distinction between the two terms including **Redzilla Limited v Abuid Nkazi and Others**<sup>1</sup> where the Supreme Court stated as follows:

**“Indeed, there is a difference between ‘dismissal’ and ‘termination’ and quite obviously the considerations required to be taken into account, vary. Simply put, ‘dismissal’ involves loss of employment arising from disciplinary action, while ‘termination’ allows the employer to terminate the contract of employment without invoking disciplinary action.”**

6.4 I have looked at the letters that prompted the cessation of the Complainants' employment. There are two types of letters issued on the same day and served on the Complainants on the same day, in the same envelopes. One letter referenced as “Disciplinary Hearing” narrated the events that took place at a meeting held on 11<sup>th</sup> August 2020 and concluded in the following manner:

**“It is against that prohibited violence and insubordinate behaviour that we invite you to show cause why disciplinary action should not be taken against you for threatening violence, abusive or use of provocative language as well as insubordination. You are given forty-eight hours to respond, failure to which management will proceed to mete out appropriate sanctions in line with the appropriate provisions of the CUST Disciplinary Code and Grievance Procedures Policy.”**

6.5 The other letter referenced as “receipt of court summons” stated as follows in the 4<sup>th</sup> paragraph:

**“Further, please be further guided that by virtue of your legal action, you have ceased to be City University employees with immediate effect, hence your entry into City University premises (Lusaka South or Corporate Office), shall only be with written approval from the office of the Vice Chancellor”**

6.6 Since there is no telling which letter was issued first, as they were both served on the Complainants on the same day, at the same time, I garner that the most possible sequence of events is that on 26<sup>th</sup> March 2020, the Respondent verbally informed the Complainants of its intention to downsize by ordering them not to report for work (as per evidence in the Affidavit in support of Reply to Answer. Consequently, the Respondent computed the amounts due to the Complainants and gave them written documents of the same.

6.7 Following the verbal order, a meeting was held on 11<sup>th</sup> August 2020 between management and the Complainants. The object of the meeting was for management to inform the

Complainants of its intention to downsize (as shown by exhibit **FM5**). During the meeting, the 1<sup>st</sup> Complainant reacted by making threats and walking out of the meeting despite advice to exhaust internal channels. He was accompanied by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Complainants.

6.8 Later, on the same day, the 1<sup>st</sup> Complainant served the Respondent with court process for *inter alia*, recovery of salary arrears and terminal benefits.

6.9 Two days later, on 13<sup>th</sup> August 2020, the Respondent, on one hand, charged the Complainants with threatening violence, abusive or use of provocative language as well as insubordination. On the other hand, the Respondent informed the Complainants that they ceased to be its employees on account of the legal action they commenced.

6.10 The Respondent claims that the Complainants terminated their own employment when they claimed for terminal benefits in their court process. This in my view, is an afterthought as it was not stated in the letter of dismissal. The Respondent merely stated that the complainants' employment ceased "by virtue of [their] legal action". In any event, if this was the true position, the Respondent would not

have charged the Complainants and invited them to exculpate themselves within 48 hours.

6.11 Based on the foregoing, I find that the Respondent initially intended to terminate the Complainants' employment in order to downsize its workforce due to various reasons associated with the COVID 19 Pandemic. However, in a bid to avoid paying terminal benefits, it summarily dismissed the Complainants for commencing a legal action against it for salary arrears.

6.12 Further, it charged them with threatening violence, abusive or use of provocative language as well as insubordination as a way of avoiding the consequences of abrogation of the rules of natural justice.

6.13 In my view, the charges, as well as the disciplinary hearing were otiose because the Respondent informed the Complainants that they ceased to be its employees before the 48 hours it gave them to exculpate themselves lapsed, and prohibited them from entering its premises.

6.14 Having determined that the Respondent dismissed the Complainants, I shall now consider whether the dismissal was wrongful, unfair and unlawful.



6.15 **Wrongful Dismissal**

6.16 The Court of Appeal in the case of **Liebherr Zambia Limited v Cleopatra Ngandu Mandandi**<sup>2</sup> referred to the learned author, **W.S Mwenda Employment Law in Zambia. Lusaka, University of Zambia Press, 2004** who defines wrongful dismissal at page 40, as follows:

**"The concept of wrongful dismissal is a product of common law; wrongful dismissal is one at the instance of the employer that is contrary to the terms of employment. 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..."**

6.17 My understanding of wrongful dismissal from the above decision is that the concern of this court is not the reasons for the dismissal of the employee from employment, but rather the manner in which the dismissal was effected. The Complainants claim that their dismissal was wrongful because the Respondent did not afford them a hearing to exculpate themselves, in that, it dismissed them the same day that it charged them despite giving them 48 hours to exculpate themselves.

6.18 I am fortified by the case of **Zambia Electricity Supply Corporation v Muyambango**<sup>3</sup> where the Supreme Court guided *inter alia* that the duty of the court is to examine if

there is necessary disciplinary power and if it was exercised properly. The Court of Appeal gave the same guidance in the case of **Aliza Vekhnik v Casa Dei Bambini Montessori Zambia Limited**<sup>4</sup> where it stated as follows;

**“The duty of the Court is to examine whether the employer possessed the necessary disciplinary powers and if the same powers were exercised in due form.”**

6.19 It follows therefore, that the Court in this case, needs to examine if the Respondent had the necessary power to dismiss the Complainants and whether this power to dismiss was exercised in due form. The former is not in issue. As regards the latter, there is, prima facie, procedural impropriety even though no procedural regulations were filed by either party. Accordingly, the claim for wrongful dismissal is successful.

#### 6.20 **Unlawful Dismissal**

6.21 Unlawful dismissal arises where an employer breaches a statutory provision when separating the employee from employment. **The Employment Code, Act No. 3 of 2019** states the following regarding the circumstances in which an employer can dismiss an employee;

**“50. (1) An employer shall not dismiss an employee summarily except in the following circumstances:**

- (a) where an employee is guilty of gross misconduct inconsistent with the express or implied conditions of the contract of employment;
- (b) for wilful disobedience to a lawful order given by the employer;
- (c) for lack of skill which the employee, expressly or impliedly, is warranted to possess;
- (d) for habitual or substantial neglect of the employee's duties;
- (e) for continual absence from work without the permission of the employer or a reasonable excuse; or
- (f) for a misconduct under the employer's disciplinary rules where the punishment is summary dismissal".

6.22 The reason given by the Respondent for dismissing the Complainants does not fall within the permissible grounds provided for above. Therefore, I find that the dismissal was unlawful.

### 6.23 Unfair Dismissal

6.24 According to the case of **Care International Zambia Limited v Misheck Tembo**<sup>5</sup>, the Supreme Court stated the following;

**"Unfair dismissal is dismissal which is contrary to statute and is usually a much more substantial right for the employee and the consequences for the employer of dismissing unfairly are much more serious than those which attend to a wrongful dismissal which is a dismissal which is contrary to the contract of employment."**

6.25 Further, in the case of **Supabets Sports Betting v Batuke Kalimukwa**<sup>6</sup>, the Supreme stated as follows:

**"In order to determine whether a dismissal was fair or unfair, an employer must show the principal reason for the dismissal. That such reason must relate to the conduct; capability or qualifications of the employee performing work of the kind which he was employed by the employer to do...**

**We do acknowledge the legal position that unfair dismissal is a creature of statute with its origins in the need to promote fair labour practices by prohibiting employers from terminating employee's contracts of employment except for valid reasons and on specified grounds.**

**The court is, in unfair dismissal, obliged to consider the merits or substance of the dismissal to determine, whether the reason given for the dismissal is supported by the relevant facts.**"

6.26 I am guided by the Courts' decisions above. In the case *in casu*, the Complainants testified that their employment ceased by virtue of the court action they commenced for the recovery of salary arrears and that they were dismissed the same day they were charged. Therefore, they did not need to exculpate themselves or attend any disciplinary hearing. Although the Respondent disputed this, the evidence on record confirms it.

6.27 I have looked into the merits and/or substance of the dismissal in relation to the facts discussed above. I determine that the dismissal was unfair.

6.28 **Damages for Unfair, Wrongful and Unlawful Dismissal**

6.29 There are a plethora of authorities speaking to the general rule on damages for unfair, wrongful and unlawful dismissal. It is trite law that the normal measure of damages for wrongful, unfair and unlawful dismissal is the applicable

contractual length of notice or the notional reasonable notice where the contract is silent.

6.30 I am guided by the case of **Charles Ng'onga v. Alfred H. Knight (Z) Limited**<sup>7</sup>, where the Supreme Court confirmed that the normal measure of damages is an employee's notice period or as it is provided for in the law and can only be departed from when the employee proves that he is deserving of more and the conduct of the employer was so serious that it warrants a higher award of damages.

6.31 Upon reviewing the evidence, it is clear that only the contract of the 4<sup>th</sup> Complainant includes a clause regarding termination notice; specified in Clause 8.0 with a one-month notice. Therefore, the 4<sup>th</sup> Complainant is eligible for damages covering this one-month period.

6.32 The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Complainants' contracts of employment are silent on the issue of notice of termination therefore the applicable length of notice is the one provided for in the law.

**Section 53 of the Employment Code** provides as follows:

**“(1) An employee whose contract of employment is intended to be terminated is entitled to a period of notice, or compensation in lieu of notice, unless the employee is guilty of misconduct of a nature that it would be unreasonable to require the employer to continue the employment relationship.**

**(2) An employer shall, where the contract of employment does not provide for a period of notice, give—**

**(a) twenty-four hours for a contract of employment not exceeding one month;**

**(b) fourteen days for a contract of employment of more than one month but not exceeding three months; and**

**(c) thirty days for a contract of employment of more than three months, except that notice to terminate a contract of employment of more than six months shall be in writing.”**

6.33 Based on the foregoing, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Complainants shall equally be eligible for damages covering thirty days (one-month) period.

6.34 **Exemplary and Punitive Damages**

6.35 In the case of **Dennis Chansa v Barclays Bank Zambia PLC<sup>8</sup>**, the Court held as follows;

**“The circumstances under which courts can exceed the normal measure of damages abound. They include harsh or inhuman treatment causing inconvenience, distress, mental anguish, trauma and grim future prospects to the ex-employee.”**

6.36 The Respondent admitted the allegation that it owes the Complainants salary arrears and that it did not remit all the NAPSA contributions as per statutory requirement. Therefore, I award the Complainants 12 months’ salaries each in damages to be calculated using the gross pay of the last drawn salary.

6.37 **Payment of Terminal Benefits**

6.38 Terminal benefits are sums of money paid to a person for services rendered to an employer during the course of employment. They usually include outstanding money due to the employee at the time of cessation of employment. I am guided by Section 51 of **The Employment Code, Act No. 3 of 2019** which states as follows;

**“(1) An employer who summarily dismisses an employee under section 50 shall pay the employee, on dismissal, the wages and other accrued benefits due to the employee up to the date of the dismissal.”**

6.39 Although the Complainants did not state what constituted their terminal benefits, they pleaded for an order for payment of accrued leave days. The Respondent admitted that it owed the Complainants the monetary value of their leave days. Therefore, I order that the Respondent shall pay the Complainants terminal benefits in the form of accrued leave days which are to be computed in line with their conditions of service.

6.40 **Damages for mental anguish and torture**

6.41 I am guided by the case of **Swarp Spinning Millis Ple. v Sebastian Chileshe and Others**<sup>9</sup> where the Supreme Court stated that the normal measure is departed from where the

termination may have been inflicted in a traumatic fashion which caused undue stress or mental suffering.

6.42 In *casu*, the Complainants have not provided any evidence to show that their dismissal was inflicted in a traumatic fashion which caused undue stress or mental suffering, therefore, they are not entitled to damages for mental stress.

6.43 **Interest**

6.44 I order that the Judgment sums discussed above shall attract interest at the short-term bank deposit rate from the date of the Notice of Complaint to the date of Judgment and thereafter, at current lending rate as determined by the Bank of Zambia from the date of Judgment until full payment.

6.45 **Costs**

6.46 Ordinarily this Court does not award costs in favour of one party. However, Rule 44 of the Industrial Relations Court Rules gives an exception where one party has been guilty of unreasonable delay, or of taking improper, vexatious or unnecessary steps in any proceedings, or of other unreasonable conduct. I am of the view that the failure by the Respondent to appear before this Court for trial falls within the ambit of unreasonable behaviour envisaged in Rule 44 of



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the rules of this Court. For these reasons, I am awarding costs to the Complainants, to be taxed in default of agreement.

6.47 Leave to appeal is granted.

Dated this 3<sup>rd</sup> day of April, 2024



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**Hon. Mr. Justice E. L. Musona**  
**HIGH COURT**

