

**IN THE INDUSTRIAL RELATIONS COURT  
HOLDEN AT NODLA**

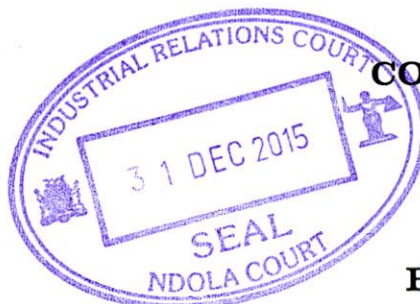
**COMP/53/2015**

**BETWEEN:**

**MULAKO MWANAMBUYU  
AND 2 OTHERS**

**AND**

**MUKUBA HOTEL**



**COMPLAINANTS**

**RESPONDENT**

**BEFORE:**

**Hon. Judge E.L. Musona**

**MEMBERS:**

- 1. Hon. W.M. Siame**
- 2. Hon. J. Hasson**

**For the Complainant : In Person**

**For the Respondent : Mr. J. Kabuka of Messrs J. Kabuka and Co.**

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**JUDGMENT**

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**Date : 31<sup>st</sup> December, 2015**

**CASES REFERRED TO:**

- 1. Galaunia Farms Ltd v National Milling Corporation (2004) ZR.**
- 2. Wilson Masauso Zulu v Avondale Housing Project (1982) ZR.**

This Complaint was filed by M/Mulako Mwanambuyu, M/Josphat Phiri, and M/Godfrey Mutambo. The Complaint was filed against

Mukuba Hotel. We shall, therefore, refer to the Complainants herein simply as Complainants and to Mukuba Hotel as the Respondents which is what the parties to this action actually were.

The Complainant's claim is for the following relief:

1. Compensation for termination of contract.
2. Payment of service charge allowance.
3. Payment of responsibility allowances.
4. Any other relief the court may deem fit.

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

We shall now consider the evidence in this case.

Two of the three Complainants gave evidence. These were (1) M/Mulako Mwanambuyu and M/Josephat Phiri. Their evidence covered the third Complainant as well. The third Complainant was M/Godfrey Mutambo who did not give evidence.

M/Mulako Mwanambuyu was first to testify for the Complainants. We shall refer to him as CW1.

The evidence for CW1 was that he was employed on 1<sup>st</sup> December, 2013 on a three year contract. The contract was due to end on 30<sup>th</sup> November, 2016 but was terminated on 19<sup>th</sup> May, 2015. No reasons were given for the termination of contract.

The second Complainant's witness was M/Josphat Phiri. We shall refer to M/Josphat Phiri as CW2. The evidence for CW2 was that he was employed as a Chef by the Respondent in 2008. He did not recall the actual date when he was employed. All he recalled was that it was in January 2008. It was a 3 year contract.

Having stated the evidence for the Complainants, we must now consider the relief sought.

1. Compensation for termination of contract

We have looked at the contract of employment. That was produced and exhibited as 'ABM1'. We have looked at Clause 19 of 'ABM1'. Clause 19 is the termination clause. It was the wish and agreement of the parties that either party may terminate the contract with or without reasons by giving one month written notice or pay the other party one month's pay in lieu of notice.

The Respondent exercised their right to invoke the termination clause which even the Complainants were at liberty to exercise if they wished since that was their agreement. No evidence has been brought to the fore to suggest that there was any ulterior motive in the manner the contracts of employment were terminated. The court can only set aside the termination of contract if it is shown that there were ulterior motives in the termination of contract.

The claim, therefore, fails.



2. Payment of service charge allowance

The Complainants did not adduce any evidence to support this claim. CW1 only alluded to this claim during cross examination when he in fact admitted that he was paid terminal benefits and also admitted receiving payment for service charges.

This claim, therefore, fails.

3. Payment of Responsibility allowance

The Complainants did not adduce evidence to support this claim. They said nothing about this claim. They did not even tell the court what responsibilities they held which should attract the allowance prayed for.

This claim, therefore, fails.

4. Any other relief the court may deem fit

We have gone through the whole of the evidence in this case. There is no claim which the Complainants proved. There is, therefore, no relief which we can give the Complainants.

We have looked at the case of **Galaunia Farms Ltd v National Milling Corporation Ltd (1)**, where the Supreme Court stated that the Plaintiff must prove his case.

Also in the case of **Wilson Masauso v Avondale Housing Project (2)**, the Supreme Court stated that if the Plaintiff does not prove his case he cannot be entitled to judgment whatever may be said of the opponent's case. We have been well guided.

We have found that this Complaint is destitute of merit and we dismiss it in its totality.

Leave to appeal to the Supreme Court within 30 days from today is granted.

We shall order no costs.


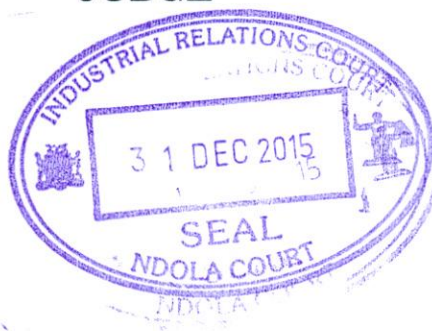
Delivered and signed at Ndola and parties shall uplift their judgment on 31<sup>st</sup> December, 2015.



Hon. E.L. Musona  
**JUDGE**



Hon. W.M. Siame  
**MEMBER**



Hon. J. Hasson  
**MEMBER**