IN THE INDUSTRIAL RELATIONS COURT
HOLDEN AT NDOLA

COMP/36/2015

BETWEEN:

YVONNE CHAMA MWANAKASALE — COMPLAINANT

AND

STANBIC BANK ZAMBIA LIMITED — RESPONDENT

BEFORE: **HON. JUDGE Dr. W. S. MWENDA - DEPUTY CHAIRPERSON**
HON. J.M. BWALYA - MEMBER
HON. G.M. SAMUSUNGWA - MEMBER

For the Complainant : Mr. Derrick Mulenga of Messrs. Derrick Mulenga and Company

For the Respondent : Ms. N. Simachela of Messrs. Nchito and Nchito

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JUDGMENT

Cases referred to:

1. **Zambia Privatisation Agency v Matale (1995 – 1997) Z.R. 157.**
2. **Zambia Consolidated Copper Mines Limited v Matale (1995 – 1997) Z.R. 144.**
3. **Philip Mwale v Spectra IRC Comp /101/2013.**
4. **Redrilza Limited v Abiud Nkazi and Others (SCZ Judgment No. 7. of 2011).**

Legislation referred to:

1. **The Employment Act, Chapter 268 of the Laws of Zambia.**
2. **The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.**

Yvonne Chama Mwanakasale (hereinafter referred to as "the Complainant") filed a Notice of Complaint on 28 May, 2015 against Stanbic Bank Zambia Limited (hereinafter referred to as "the Respondent") which was amended with leave of Court on 10 August, 2015. The grounds upon which the complaint was raised were, firstly, that the termination of her contract of employment by use of a notice clause was wrongful, unlawful and unfair. Secondly, that the Respondent having terminated her services immediately after an adverse or negative performance appraisal, the Complainant believes that her services were terminated for purported poor performance of duties hence she should have been afforded an opportunity to be heard. Thirdly, that the Complainant was discriminated against and/or unfairly treated in the manner her employment was terminated by the Respondent who invoked a notice clause in her case but treated other employees differently and paid them superior separation packages compared to what she was paid.

The Complainant now seeks the following relief:

a) *An order/declaration that the Complainant's termination of employment by the Respondent by the purported notice is wrongful/unlawful and/or unfair;*
b) *The Complainant should be deemed to have been declared redundant and be paid like the other the employees who were placed on redundancy that is two months pay per each year of service;*

c) *Or in the alternative, damages for wrongful/unlawful, unfair and/or discriminatory dismissal or termination of employment of the Complainant by the Respondent;*
d) *Any other relief the Court may deem fit;*
e) *Interest; and*
f) *Costs.*

The Notice of Complaint is supported by an Affidavit deposed to by the Complainant in which she avers that she was employed by the Respondent in June, 1985 as a Bank Clerk and rose through the ranks to the position of Officer - Operations Control, up to 27 February, 2015 when her services were terminated. She was employed on Permanent and Pensionable Conditions of Service for Managerial Staff.

The Complainant avers further that prior to the termination of her employment the Auditor of the Respondent advised it to down size the workforce and that about October, 2015 two employees were placed on redundancy whereupon they were paid two months' pay for each completed year of service. Prior to the termination of her employment in February, 2015, she was assessed as a non- performer through a performance appraisal and being dissatisfied with the said assessment, she raised a grievance with the Respondent. However, before the grievance could be heard and determined, she received a letter of termination of employment.

The Complainant deposes in addition that she served the Respondent for twenty-nine years and eight months (29 years and 8 months) but her employment was terminated by notice when other employees who had served shorter periods of time were afforded meetings and negotiated

their exit and separation from employment. They were also paid superior separation packages than what she received.

It is the Complainant's further averment that one Freeze Mpilipili who had only served the Respondent for seven years and some months was placed on redundancy and paid two months' pay for each year served on a pro-rata basis and one Martin Ngonga was allowed to sign a Settlement and Release Deed with the Respondent and awarded a separation package of K800, 000 plus other remunerations which were far superior to what was paid to her despite her long service.

The Complainant deposes in addition that the reason for the Respondent's termination of her contract of employment was its quest to adhere to the advice of auditors to downsize the workforce and that immediately after the termination of her contract of employment, the Respondent amended the conditions of service to include a redundancy provision and that some employees have since benefited from these provisions.

In response, the Respondent filed an Answer in which it avers that the Complainant is not entitled to the claims enumerated in her complaint as she was properly and lawfully terminated by way of payment in lieu of notice on 27 February, 2015 in accordance with the terms and conditions of her employment. Hence the termination of the Complainant's contract of employment was not wrongful, unlawful or unjust in the manner alleged as termination by notice is provided for in the terms and conditions of the Complainant's employment contract. The Respondent denies that the termination had anything to do with the Complainant's

performance appraisal. Further, the Respondent denies that the Complainant was discriminated against in the manner alleged or at all and avers that all employees were dealt with in accordance with their circumstances and terms and conditions of employment.

The Respondent filed an Affidavit in Support of Respondent's Answer which was deposed to by one Richard Chanje, Head - Employee Relations. The Respondent's evidence is that the Complainant was employed in June, 1985 as a Bank Clerk and rose through the ranks to the position of Officer - Operations Control. That the Complainant's employment was terminated by way of payment in lieu of notice as provided in the Complainant's terms and conditions of employment.

Richard Chanje deposes further that in addition to the three months' pay in lieu of notice the Complainant was paid an ex-gratia payment of twelve months' salary. Further, that the amendment of the Respondent's conditions of service had nothing to do with the Complainant's termination which was done in accordance with the terms and conditions of her employment.

The deponent avers further that all employees of the Respondent are treated according to the terms of their employment and separation packages are computed according to the reason advanced for the employee's termination.

In addition, the position that Freeze Mpilipili held at the Respondent bank was declared redundant and no longer exists in the structure of the Respondent thus qualifying him for redundancy benefits as by law

prescribed. That Martin Ngonga approached the Respondent on his own volition and requested for a mutual separation which request the Respondent considered and accepted on agreed terms in May, 2015.

It is the deponent's evidence that the Complainant's position was neither declared redundant nor did she approach the Respondent to request for a mutual separation or at all and thus the Respondent was at liberty to terminate her employment by paying her three months' salary in lieu of notice as provided in the terms and conditions of her employment.

At the trial the Complainant (CW) gave sworn evidence. She did not call any witness. She testified that she joined the Respondent bank in July 1985 and rose through the ranks until June, 2014 when she was appointed Officer-Operations Control, a position she held until the termination of her employment. She said she rendered twenty nine years and eight months of unbroken service. In December, 2014 she was assessed by her supervisor as a non-performer and in accordance with the Appraisal System, she contested the finding.

On 26 February, 2015 she was invited by the Head of Operations, Wisdom Shanengeta via e-mail to travel to Lusaka for what she thought was a mere career progression meeting but was stunned when on 27 February, 2015 she was bluntly told by Mr. Shanengeta and Mr. Ronald Chanje, Head- Supply Relations (who also testified at the trial as the Respondent's witness) at the Grand Palace Hotel in Lusaka, that her employment was being terminated with immediate effect as the bank was exercising its right to terminate her employment and that she would be paid three months' salary in lieu of notice. CW testified that she was paid the sum

of K214,593.96 (rebased currency) as ex-gratia payment but received a net pay of K24,145.40 after the Respondent deducted some outstanding amount due to the bank.

CW testified that she was so shocked by the termination of her employment that she had to call her husband who travelled from Kitwe at night to come and pick her from Lusaka. Upon returning to Kitwe she found that she had been blocked from accessing the company computer system and she was therefore unable to retrieve her documents including her pay slips.

It was CW's further evidence that her normal retirement date was close and the bank should have appreciated that she had worked for it for twenty nine years and eight months. She testified that her 2014 December appraisal had classified her as a non-performer for the first time in her banking career. The assessment was done by Richard Chipimo, a line manager who had only been in the department since the middle of the year. She stated that on 3 February, 2015 she contested and appealed against her assessment to Mr. Chipimo, urging him to reconsider his finding by referring her assessment to the moderation team as provided in her conditions of service. The issue of her grievance was not attended to and she was still awaiting the response when her employment was terminated.

CW testified that Martin Ngonga who served the bank for about seventeen years opted to resign and the bank engaged in discussions with him relating to his departure and upon agreement they signed a deal which gave Mr. Ngonga, K800, 000 (rebased currency) as a separation package.

CW lamented that Martin Ngonga was allowed to negotiate a separation package whereas her employment was terminated immediately by notice and she was not given an opportunity to negotiate a separation package.

CW further averred that another employee Freeze Mpilipili who was also in management was declared redundant and paid an amount which was far better than what she was paid when they were equally placed and she had even served the bank for twenty nine years and eight months compared to the seven years which Freeze Mpilipili had served.

CW testified that Freeze Mpilipili's benefits were calculated at two months' basic pay multiplied by the number of years served whereas her ex-gratia payment was calculated at one year's basic salary. As for tax on benefits, hers was calculated at 35% whereas Freeze Mpilipili's was calculated at 10%. In this regard CW referred the Court to documents 5 and 114 respectively, in her Bundle of Documents. She wondered why the favourable tax rate which was given to Freeze Mpilipili was not extended to her.

CW testified further that from the documents she had exhibited, it was evident that the bank had planned to scrap off some jobs in a planned reduction of staff exercise and that her employment was terminated as a result of the plan.

It was CW's contention that she was discriminated against by the bank because she was not given the same treatment which the bank gave to Freeze Mpilipili and Martin Ngonga who were both in the same management grade as herself.

Under cross-examination CW admitted that there was a termination clause in her conditions of service but that she was shocked that the bank used it in her case as to her knowledge this was the first time that notice to terminate was used. She, however, admitted that the notice clause was an option available both to her and the bank.

In further cross-examination, CW admitted that Freeze Mpilipili and Martin Ngonga negotiated their packages. She also admitted that the situation between Martin Ngonga and her was different.

CW stated under further cross-examination that she was not aware that the Respondent had given over one hundred notices of termination to employees. She admitted that when the new conditions of employment that provided for redundancy came into effect she was no longer in employment. She said that the new conditions came into effect on 1 March, 2015 while she left employment on 27 February, 2015.

In re-examination, CW stated that Freeze Mpilipili's conditions of service at the time he was leaving employment with the Respondent did not provide directly for redundancy but it was implied. She testified that the new redundancy conditions did not apply to him as well.

CW testified in further re-examination that she expected her line manager Richard Chipimo to take her grievance to the moderation team as per her request and to give her a conclusive feedback but she did not receive any from him.

CW stated that there was a big difference between her and Martin Ngonga because at the time of her termination she was almost reaching retirement whereas he was younger and had served fewer years. Therefore, leaving at that time was not going to be a loss for Martin Ngonga as it was for her since she was leaving after almost thirty years of service.

It was CW's testimony that from the letter of redundancy exhibited at page 112 of her Bundle of Documents, Freeze Mpilipili and the Respondent had started communicating in July, 2014 and he was given opportunities as to where to be placed. His redundancy was only effected at the month end of October, 2014. Further, from paragraphs 1 and 2 of the letter of redundancy it was evident that there were meetings and discussions that took place between Freeze Mpilipili and the Respondent. As far as CW knew, at the time Freeze Mpilipili left the bank, someone else was put in his position.

That marked the close of the Complainant's case.

The Respondent's Head of Employee Relations, one Ronald Chanje gave oral testimony as the Respondent's witness (RW). He averred that the Complainant was employed in 1985 and rose through the ranks to become Officer - Operations Control until her termination on 27 February, 2015. RW testified that the Complainant was terminated pursuant to a contract of employment she was serving under which provided for termination by either party by giving three (3) months' notice or payment of three (3) months' salary in lieu of notice. The bank

invoked the notice clause and terminated the Complainant's employment by giving her three months' salary in lieu of notice.

He further averred that the Complainant was also paid twelve months' salary as ex-gratia payment, payment in lieu of accrued leave days and payment for the days worked in the last month. This was in addition to her pension benefits (both the employer's and employee's contributions).

RW admitted that he knew Freeze Mpilipili who had worked as a Sales Support Officer in the Corporate and Investment Banking Division of the Respondent bank. He testified that Mpilipili left the bank following a restructuring exercise which took place in the Corporate and Investment Banking Division (CIBD) pursuant to the Client Engagement Programme. RW testified that because of the restructuring, the process of redundancy was embarked on. The Ministry of Labour and Social Security was notified and gave its consent to the same. Eventually Freeze Mpilipili was terminated under the redundancy programme after being found to be an excess staff. RW testified that Mpilipili was paid two months' pay for each year served, three months' pay in lieu of notice, payment in lieu of accrued leave days, payment for days worked and pension (incorporating both the employer and employee contributions).

RW testified that Martin Ngonga approached management and asked for a mutual separation. This led to a series of meetings where a mutual separation package consisting of a flat sum of K800, 000 was paid to Mr. Ngonga in addition to leave pay and days worked.

It was RW's testimony that the circumstances of the three former employees were totally different. In the case of Freeze Mpilipili the restructuring which was applicable to staff in the CIBD applied to him and hence the redundancy whereas Martin Ngonga requested management out of his own volition for a mutual separation. On the other hand, the conditions which applied to the other two did not apply to the Complainant. In her case the bank invoked the contractual clause between the two parties and terminated the contract by notice.

RW testified that the bank had an elaborate annual performance management system in place and the moderated performance ratio of the Complainant in the 2014/2015 cycle was 'not met expectations'. The Complainant was assessed as a below performer for the 2014 annual cycle. He testified that the Complainant had not attained the goals which had been agreed upon between herself and her supervisor.

RW further stated that the appraisal system had its own procedure for employees dissatisfied with the assessment. Those who were dissatisfied were allowed to appeal against the findings. The appeal system however had a time frame attached to it. He testified that he was aware that there was no dispute raised by the Complainant during the period given for employees and management to raise disputes, if any, regarding performance. He said he was aware that by end of December, 2014 there was no dispute by the Complainant to the line manager or an escalation to the Head of Human Resources. The Complainant only appealed on 3 February, 2015 and was, therefore, totally out of time as the process of performance appraisal had gone into another stage where it could not be reversed.

RW testified that after termination of the contract of employment the Complainant was allowed to continue accessing the bank's medical services for three months. She was also allowed to enjoy the preferential interest rates on her loans for six months. She also received her contributions and the bank's towards the pension scheme.

In cross-examination RW admitted that the Complainant served the bank for a longer period than Freeze Mpilipili or Martin Ngonga. He stated that had the Complainant retired at 55 years, she would still have received her pension and ex-gratia payment. He said that the Complainant was about 53 years old when she left the bank.

RW confirmed in further cross-examination that there were no provisions in the contracts of Freeze Mpilipili and Martin Ngonga for the manner in which they exited the bank and also that they were management employees just like the Complainant. He also confirmed that the other two employees received superior separation packages compared to the Complainant despite serving for lesser periods.

In further cross-examination RW testified that as a practice the Respondent does decide on separation packages outside the conditions of service. He also stated that the length of service is irrelevant to the payment due on separation. According to RW, what determines the payment is the method of separation. He disagreed with Counsel for the Complainant that she was treated unfairly.

In re-examination RW stated that there was no appeal by the Complainant which was successfully completed in the 2014/2015 cycle and that the Complainant did not escalate the grievance further following the line manager's response rendering her initial dispute closed at that stage. RW also said that no roles or positions were declared redundant in Operations Division where the Complainant was Operations Control Officer as a result of the recommendation in the Organisation Review.

He reiterated that Martin Ngonga negotiated a package while the basis of the formula applied to Freeze Mpilipili was redundancy and the Respondent borrowed the formula from the Minimum Wages and Conditions of Employment Act. He testified that the Complainant received the money in the pension scheme as well as twelve months' pay as ex-gratia payment in addition to leave days and the days she worked for in the last month. It was RW's evidence that had the Complainant proceeded on normal retirement, she would have received the money from the pension scheme and an ex-gratia payment.

That marked the close of the Respondent's case.

We have considered the evidence adduced by both parties as well as the submissions and authorities cited by both Counsel in support of their respective cases. We are grateful to learned Counsel for their submissions.

It is common cause that the Complainant was employed by the Respondent in June, 1985 as a Clerk and rose through the ranks to the position of Officer – Operations Control based at the Kitwe Branch. On

26 February, 2015 she was summoned to Lusaka where on 27 February, 2015 she was handed a letter of even date terminating her contract of employment by payment of three months' salary in lieu of notice. She was also paid cash for accrued leave days, pension benefits and an ex-gratia payment of twelve months' salary.

It is also common cause that Freeze Mpilipili from the Corporate Investment Banking Division, who was declared redundant on 28 October, 2014 and Martin Ngonga, who entered into a mutual separation deal with the Respondent on 26 May 2015, got better separation packages than the Complainant. RW explained that the reason for this state of affairs was that the methods of exit for the two former employees were different from that of the Complainant. In the case of Mpilipili, he was declared redundant after being found to be an excess staff. Martin Ngonga approached management and requested that he be separated by mutual agreement. Management agreed to the request. On the other hand, the Complainant's employment was terminated by the bank by invoking the notice clause which was provided in her conditions of service.

We have found the following facts to be in dispute, namely, whether the termination of the Complainant's employment by payment of three (3) months' salary in lieu of notice amounted to an unlawful and wrongful termination or unfair dismissal; secondly, whether the Complainant's employment was terminated for poor performance; thirdly, whether the Respondent phased out the position of Officer - Operations Control which was held by the Complainant through restructuring thereby effectively retrenching and/or declaring her redundant; and lastly,

whether the Complainant was discriminated against in the manner in which her employment was terminated.

We begin our consideration of this matter by concurring with the Respondent in its submission that a contract of employment is a voluntary relationship from which either party can divorce itself and once such a decision is made by one party, the other party must accept the other party's decision. Our stance is premised on the fact that the employment relationship as well as its termination is governed by the Employment Act, Chapter 268 of the Laws of Zambia which provides in Section 36 (1) (c) that a written contract of service shall be terminated in any manner in which a contract of service may be lawfully terminated or deemed to be terminated whether under the provisions of the Act or otherwise.

In the case in casu both parties in their oral testimonies are agreed that there was a termination clause in the contract of employment entered into by the parties. In fact, the Complainant admitted in cross-examination that the termination clause was available to both herself and the Respondent. We agree with the parties that termination by notice or payment in lieu thereof was an avenue that was legally available to both parties.

In this instance there existed in the conditions of service relating to the Complainant's employment a provision for lawful termination of the contract by either party giving the other party three months' notice in writing or payment of three months' salary in lieu of notice. Thus the giving of three months' pay in lieu of notice was a lawful way to

terminate the contract of employment as per the holding in the case of **Zambia Privatisation Agency v Matale (1).**

Having said so however, we are mindful of the fact that the Complainant contends that the termination of her contract of employment by payment of three months' salary in lieu of notice was unlawful for the reason that the Respondent resorted to the notice clause in order to disguise the real reasons for the termination which were the alleged poor performance by the Complainant and the phasing out of her position from the bank structure on the recommendation of an audit report which advised that a restructuring exercise be undertaken in the bank and some positions be phased out. The Complainant urges this Court to pierce through the notice clause veil to unravel the real reasons behind her termination and redress the injustice which the Court will find.

The Complainant alleges that the termination was done in bad faith and to hide the fact that she was being retrenched or declared redundant. She claims that she was discriminated against in the manner she was treated compared to two former employees of the Respondent, namely Freeze Mpilipili and Martin Ngonga who received superior separation packages when they were all management employees. As evidence of the discrimination she was subjected to by the Respondent, she cites the lack of opportunity to discuss her exit package; the inferior separation package she was given notwithstanding that she had served longer than the other two employees; the termination of her employment through the notice clause before her grievance was attended to and the higher rate of tax of 35% on her terminal benefits compared to the 10% applied in the case of Freeze Mpilipili.

We note that in asking the Court to delve behind the termination by notice clause and address the perceived injustice, the Complainant is relying on section 85 (4) of Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia which mandates us to do substantial justice between the parties before us.

The Complainant is also relying on the case of **Zambia Consolidated Copper Mines Limited v Matale (2)** where the Supreme Court held that:

> *In the process of doing substantial justice, there is nothing in the Act to stop the Industrial Relations Court from delving behind or into the reasons given for the termination in order to redress any real injustices discovered; such as the termination on notice or payment in lieu of notice of pensionable employment on a supervisor's whim without any rational reason at all.*

In piercing the notice veil, we remind ourselves of our holding in **Philip Mwale v Spectra (3)** wherein we stated that:

> *While it is correct that this Court is a Court of substantial justice and not fettered from delving into the reasons given for termination in order to redress any real injustice discovered, substantial justice does not by any stretch of the imagination mean that the law must be ignored or sidelined.*

We are also alive to the holding in **Redrilza Limited v Abiud Nkazi and Others (4)** that in appropriate cases where an employer is found to have invoked the termination by notice and the payment in lieu of notice clause contained in a contract of employment in bad faith or maliciously, the Court is entitled to displace the termination, however care must be taken that the case is a deserving one.

We are of the view that this is a deserving case for the Court to pierce the notice clause veil because from the facts surrounding the termination it is apparent that the Respondent used the clause to hide the real reasons for the termination resulting in an injustice to the Complainant.

There is undisputed evidence on record that the Complainant was assessed as a "non-performer" by her supervisor in the 2014/2015 performance appraisal.

The Complainant claims that she contested the appraisal and requested her line manager to take her grievance to the moderation team for its consideration but he did not do so.

The Respondent on the other hand, avers that the Complainant contested the appraisal decision late.

We take the view that the appraisal system allowed the Complainant's supervisor, Mr. Chipimo, to refer the grievance to the moderation team. This was a cardinal aspect of the process and as RW testified, it was a critical stage to avoid subjectivity by the person doing the appraisal.

We note that the Complainant's grievance was neither referred to the moderation team nor was she informed in writing that her appeal was late. It is on record that under cross-examination RW confirmed that at an earlier occasion the Complainant had appealed against an appraisal out of time and it was considered. We are of the view that this evidence of RW proves that this was not the first time that the Respondent had

been requested to consider a late appeal and had duly considered the same. Therefore, the reason given by the Respondent for not hearing the Complainant's appeal, namely, that it was late, does not hold any water. We believe that this was a defence that was made up by the Respondent when faced with this claim by the Complainant.

It is our observation that it was not long after the 2014/2015 performance appraisal issue surfaced that the Complainant was served with a notice of termination of employment. The position we take is that the Respondent's conduct in terminating the Complainant's employment while her appeal was pending was in bad faith and malicious, particularly that the Complainant had rendered twenty nine years and eight months of unbroken service to the bank.

On the question of whether or not the Complainant's employment was terminated on account of poor performance, we are of the view that contrary to the Respondent's submission that the termination of the Complainant's employment had nothing to do with the performance appraisal of 2015, the evidence on record points to the fact that the appraisal was one of the two reasons that led to the termination of the Complainant's employment.

We are aware that in 2012 the Complainant had been given a "non-performer" rating which was adjusted after she appealed and she was able to receive her bonus. Learned Counsel for the Respondent argued that since the Complainant had a negative rating in 2012 but was kept by the Respondent, her termination had nothing to do with her performance. On the contrary, the notice of termination coming so soon

after the negative appraisal, coupled with the line manager's apparent reluctance to take the Complainant's grievance to the moderation team, leaves us with no doubt that the negative appraisal played a significant role in the Complainant's termination.

We agree with the submission by Counsel for the Respondent that section 26A of the Employment Act falls under part IV of the Employment Act which applies to oral contracts and that since the Complainant was serving under a written contract of employment, the section did not apply to her. However, that fact notwithstanding, the Respondent was not absolved from observing the rules of natural justice, in particular, the right to be heard in her defence on the issue of her performance.

There is evidence on record that there was a recommendation by the Respondent's auditors to restructure the institution. In the Respondent's Organisation Review dated 3 July, 2014 the auditors recommended that certain roles had become redundant and could be removed. The recommendation also affected Operations Business Unit where the Complainant worked as conceded by RW in cross-examination.

Coming to the issue of restructuring of the bank and whether the Complainant's position was declared redundant, the Respondent has denied that the Complainant's position was phased out. However, after critically analysing the evidence before us, we are satisfied that the Complainant's position like Freeze Mpilipili's, was one of the positions or roles that had become redundant and was removed from the Respondent bank's structure in accordance with the auditors' recommendation.

However, while Freeze Mpilipili was declared redundant and paid a superior redundancy package, the Complainant was terminated through the notice clause in her employment contract and paid three months' salary in lieu of notice. We are inclined to concur with the submission by learned Counsel for the Complainant that the Respondent opted to use the notice clause to avoid paying redundancy benefits to the Complainant who had worked for the bank for twenty nine years and eight months and was almost reaching retirement age.

A careful perusal of the conditions of service and as conceded by the Respondent, at the time of the Complainant's termination there was no redundancy provision in the conditions of service, and yet Mr. Mpilipili was declared redundant. The redundancy provision was only introduced on 1 March 2015 after both the Complainant and Mr. Mpilipili had been separated from the bank.

We have also noted the difference in Pay As You Earn (PAYE) tax which was paid by the Complainant and Freeze Mpilipili on their benefits. The Complainant paid tax at the rate of 35% as shown on page 5 of her Bundle of Documents, while Mr. Mpilipili paid tax at the rate of 10% as shown on page 114 of the Complainant's Bundle of Documents. The Respondent has not explained the difference.

There is no dispute that Mr. Martin Ngonga was given a mutual separation package amounting to K800, 000 plus other incentives. Our observation is that although Mr. Ngonga served in a middle management position and for a much shorter period of time compared to the Complainant, his separation package was far more superior to that of the

of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or status.

It is our finding that the evidence before us shows that the Complainant was not treated fairly by the Respondent on separation but the Complainant has led no evidence to show the ground on which the alleged discrimination was based as required by section 108. The onus was on the Complainant to indicate the grounds on which the alleged discrimination was based but having failed to discharge the burden, this ground must fail.

Having succeeded on all claims except for discrimination, we find and hold that:

1. The termination of the Complainant's employment by invoking the notice clause was wrongful as it was done in bad faith.
2. The Complainant be and is hereby deemed to have been declared redundant by the Respondent on 27 February, 2015 and shall be paid a redundancy package of two months' pay per each completed year of service from 1 June, 1985 up to 27 February, 2015.
3. Interest shall be payable on the amount due at the ruling Bank of Zambia lending rate from the date of filing the complaint up to the date of payment.
4. Costs are awarded to the Complainant to be taxed in default of agreement.

Informed of Right of Appeal to the Supreme Court within thirty (30) days hereof.

Delivered at Ndola 15th day of March, 2016.

Judge W.S. Mwenda (Dr)
DEPUTY CHAIRPERSON

J.M. Bwalya
MEMBER

REPUBLIC OF ZAMBIA
JUDICIARY
DEPUTY CHAIRPERSON
15 MAR 2016
INDUSTRIAL RELATIONS COURT
P.O.BOX 70160, NDOLA

G.M. Samusungwa
MEMBER