

**IN THE HIGH COURT FOR ZAMBIA**

**IRC/ND/70/2018**

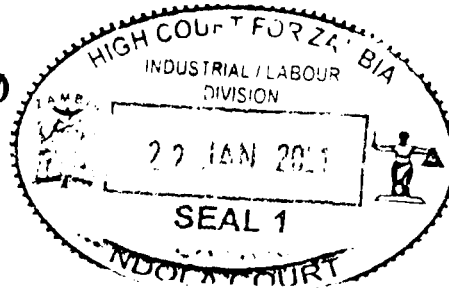
**INDUSTRIAL/LABOUR DIVISION**

**HOLDEN AT NDOLA**

**(LABOUR JURISDICTION)**

**BETWEEN:**

**LAZAROUS MUNTETE**



**COMPLAINANT**

**AND**

**AFRICAN BANKING CORPORATION (Z) LIMITED RESPONDENT**

**Before: The Honourable Mr. Justice D. Mulenga this 22<sup>nd</sup> day of January, 2021.**

For the Complainant s : Mr. M. Nzonzo of Messrs S L M Legal Practitioners

For the Respondent : Miss. N. M. Mulenga of Messrs Isaac and Partners

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## **JUDGMENT**

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Cases referred to:-

1. Wilson Masautso Zulu v Avondale Housing Project (1982) Z.R. 172
2. Zambia National Provident Fund v Yekweniya Mbiniwa Chirwa (1986) ZR 70 (SC)
3. National Breweries Limited v Phillip Mwenya (2002) Z.R 118
4. National Breweries Limited Plc v Patrick Simfukwe Appeal No. 5 of 2020

5. *Chasa Ng'onga v Alfred H. Knight (Z) Limited Selected Judgment No. 26 of 2019*
6. *Chilanga Cement Plc v Kasote Singogo (2009) Z.R. 122*
7. *Swarp Spinning Mills Plc v Chileshe and Others (2002) Z.R 23*

The Complainant presented his Notice of Complaint with the affidavit in support on 13<sup>th</sup> September, 2018, the same was amended and filed into Court on 18<sup>th</sup> May, 2019 on the grounds that the Respondent terminated his employment wrongfully, unlawfully and or unfairly. That the Respondent dismissed him in a manner that was actuated with malice and arbitrariness.

The Complainant, therefore sought damages for unlawfulness, unfair and or wrongful dismissal from employment. In the alternative an order for reinstatement and or any other relief which this Court may deem just and equitable.

The Complainant deposed through the affidavit in support that he was employed on Permanent and Pensionable by the Respondent on 1<sup>st</sup> July, 2005 by virtue of a merger between Finance Bank Limited and the Respondent. The Complainant was Branch Manager and stationed at Chingola Branch.

According to the Complainant when he joined the Respondent Bank, he was in charge of a team of various employees including a Branch Operations Manager, one Elizabeth Mukupa who had developed a negative attitude towards work and undermined his authority as well

as displaying inertia when she executed her tasks which the Complainant assigned her.

The Complainant deposed that his usual work station was the former Banc ABC Branch at Chingola and he only used to go to Finance Bank Branch also situate at Chingola, from time to time in order to supervise the rest of the members of his team, during the transition period.

The Complainant deposed that as part of the merger all the other employees from Finance Bank Branch at Chingola were moved to what used to be Bank ABC sometime in December, 2017, after which he noticed that Elizabeth Mukupa began to influence other members of the team to ignore most of his instructions in a quest to frustrate him. According to the Complainant he notified the Region Manager, Regional Branch Manager Operations and the Head of Retail Banking of the said negative happenings at the Branch, and the poor working relationship which resulted into lack of cohesion in the team.

The Complainant deposed that between 3<sup>rd</sup> and 4<sup>th</sup> week of February, 2018 the said Elizabeth Mukupa applied to proceed on leave, scheduled to commence from the 1<sup>st</sup> week of March, 2018, however, the Complainant assigned her to ensure that she submitted a Branch Continuity Report before proceeding on leave. The Complainant averred that Elizabeth Mukupa proceeded on leave without taking active steps to submit the Branch Continuity Report and upon being reminded about the said report, on her return from leave, she reported to Management that the Complainant was victimizing her.

The Complainant contended that Elizabeth took a dogmatic attitude towards work related matters and started to cooperate only with one member of the department, one Naomi Sichilongo.

The Complainant also averred that when as a Branch Manager, he effected some routine staff movement, he came to learn that Naomi Sichilongo had embarked on engaging in efforts to influence her transfer of Section by Senior Management by purporting that she was being victimized by the Complainant.

In respect to express facts reading to his dismissal from employment, the Complainant deposed that on 26<sup>th</sup> April, 2018 a customer received a sum of K750, 000.00 in the bank, but the same was not reflecting in his account. The said client therefore queried the Complainant as he wanted to draw an amount of K100, 000 from the said sum of money. The Complainant explained that after verifying the receipt of K750,000.00, in the Bank system and having found proof from the Respondent's Central Treasury department confirming that there was receipt of funds from Barclays, he issued instructions for the customer to be paid K100,000.00.

The Complainant averred that he was taken aback to learn after 10 days when he received a call from the Respondent's Head Office, Frauds and Investigations at Lusaka Head Office, enquiring about the payment to the said Client. The Complainant was asked to render a report and was at the same time threatened with suspension from work.



The Complainant deposed that he promptly submitted a report requested from him and he convened a meeting of all members of his department to brief them over the matter and encouraged a spirit of teamwork. In that meeting the said Naomi Sichilongo and Elizabeth Mukupa were not present. However, to the Complainant's utter shock he was on 9<sup>th</sup> May 2018, served with a letter of suspension and consequently charged with failure to carry out reasonable and lawful instructions, dishonesty during the course of employment and intimidation or incitement to violence.

The Complainant deposed further that he exculpated himself as per exhibit marked "**LM4**". According to the Complainant whereas he was charged with the offence of failure to obey lawful instructions, the Respondent did not specify in the charge form neither during the disciplinary case hearing, what instructions he failed to obey.

The Complainant deposed that the Respondent's disciplinary committee dropped the charge on an offence of "Dishonesty Conduct", but found him guilty of the other offences of 'failure to obey lawful instructions and intimidation or incitement to violence'.

It is the Complainant's contention that the Disciplinary Committee erred to dismiss him on the basis that the sanction for the said offences is Written Final Warning. (Ref. to the letter of dismissal, otherwise exhibit "**LM 11**"). The Complainant appealed against dismissal to the Country Head of Human Capital, however, the Respondent did not act on the said appeal within 10 days prescribed by the Respondent's grievance code, and only communicated to the

Complainant that his appeal was unsuccessful, 21 days after and upon diverse reminders.

The Complainant contended that the Respondent violated its own disciplinary procedure for not affording him an opportunity to face his accusers during the disciplinary case hearing.

The Complainant was the only witness for his case, he is hereinafter referred to only as "CW1".

The gist of CW1's oral testimony is that the Respondent Bank charged him with three disciplinary offences namely, dishonesty conduct, intimidation and threatening violence and failure to follow lawful instructions.

CW1 averred that the offence of Dishonest Conduct arose from the transaction where a client of the Respondent Bank had received K750, 000.00, however, the same was not credited to his account at the time, though the same amount was sitting with the Respondent bank.

The said client, therefore, approached the Respondent's Branch with the view to withdraw against the said amount, the sum of K100, 000.00.

CW1, testified that, he contacted the Respondent's treasury via phone and e-mail in his quest to confirm whether or not the amount of K750, 000.00 in favour of the client was receipted by the Respondent. According to CW1, the treasury conformed having receipted

K750, 000.00 in favour of the client, but the same was not yet credited to his bank account. In view of the said position, CW1 felt that he was obligated to pay the client on demand of K100, 000.00. Further, that he believed that the client's bank account was going to be credited with the reported amount before closure of business on the material date.

CW1 averred that at the disciplinary hearing, a witness by the name of Mwape Kambafwile, Head of Sales in Global Markets exonerated him that he did not have any intent to defraud the Respondent Bank in that particular transaction as the customer had already transferred the funds from Barclays and the funds were within the Bank, but due to operational challenges, the funds could not be uploaded onto the customer's account on that day (Ref. to exhibit **LM 9**, paragraph 7 in the Complainant's affidavit in support of Complainant). CW1, therefore, averred that the offence of dishonesty conduct was dropped by the Respondent's Disciplinary Committee. However, he was found guilty on the other two offences of failure or refusal to carry out reasonable and lawful instruction, and a social offence of Intimidation or Incitement to violence.

CW1's main contention with respect to the offences for which he was found guilty is that the same did not attract summary dismissal from employment but the sanction of "Final Written Warning". Nonetheless contrary to its disciplinary code, the Respondent dismissed him from employment.



In cross examination, Counsel for the Respondent, CW1 admitted that he had worked for the Bank for 13 years and at the time of his dismissal he held the position of Branch Manager. CW1, told the Court that he did not deny the fact that he paid a client money before the receipted sum of money was credited to his account.

CW1 also admitted that at the end of the day the receipted amount in favour of the client was not credited to his account and there was no report of having paid the client from an account with insufficient funds on that particular day.

CW1 reiterated that the offences for which he was found guilty and dismissed from employment are not dismissible offences as they only attracted Final Written Warning, under the Respondent's Disciplinary Code.

The Complaint is opposed and to that effect the Respondent filed into Court an Answer and an affidavit in opposition on 17<sup>th</sup> September, 2019. In its defence the Respondent called one witness Miss Cynthia Katongo Chanda, the Group Employee Relations Manager hereinafter called "RW1".

RW1 testified that the Complainant was an employee of the Respondent Bank for 13 years and rose through the ranks to the position of Branch Manager. Further, that at the time of merger of the Bank, the Complainant ("CW1") underwent interview and psychometric tests.

RW1 averred that CW1 was dismissed from employment by the Respondent as he was charged with three offences because he had breached procedure in handling cash and transaction in the Bank. According to RW1, CW1 acted dishonestly in handling the end of day report as he concealed a physical cash amount of K100, 000.00 with a vault receipt of the same amount, thereby creating an impression that the Branch had closed without a shortage or overage. Further, that CW1 had intimidated his juniors the next day in the Branch following the questioning from the investigations team from Lusaka. RW1, averred that CW1 had breached cash handling procedure 40.5.

RW1 contended that whereas both offences on which CW1 was found guilty attracted Final Written Warnings, the same are very serious offences, and considering the circumstances of the case, the effect of two Final Written Warnings resulted into dismissal from employment. The Respondent relied on exhibit 'LN '6' (in the Disciplinary Code), the same is a 'note'.

RW1 testified that because of the seriousness of the offences, CW1 was suspended from work, during which period it carried out investigations. CW1 was later charged and was given an opportunity to answer to the charge as per exhibit *SN "6-1"*.

The Human Resources Department arranged for a Disciplinary Case hearing and CW1 was duly notified.

On 22<sup>nd</sup> May, 2018, CW1 was heard and had an opportunity whereby he called one witness.

RW1 confirmed that the Respondent had dropped the offence of Dishonesty Conduct, but found CW1 guilty on two other offences.

RW1 maintained that CW1 was given a fair hearing by the Respondent.

In cross-examination, RW1 maintained the Respondent's stance that CW1 was dismissed from employment as the two Final Written Warnings culminated into dismissal. She admitted that apart from the fact that CW1 was dismissed from employment because of the two Final Written Warnings, there was no other reason for the said action of the Respondent.

At the close of the parties' oral testimonies and at the time of writing the judgment herein, only Learned Counsel for the Respondent filed written submission on 10<sup>th</sup> November, 2020. I am greatly indebted to Respondent's Learned Counsels' submissions.

In casu it is not in dispute that the Complainant was employed by the Respondent as Branch Manager stationed at Chingola. It is a fact that the issue leading to the Complaint being charged with three disciplinary offences, arose from the transaction of 26<sup>th</sup> April, 2018. In the said transaction, a Client of the Respondent Bank had received an amount of K750, 000.00 through the Respondent Bank. However, the said amount of money had not yet been credited to his account held at the Branch of the Respondent Bank. When the said Client approached the Complainant as Branch Manager, with a view to withdraw against the said amount, it was found that whereas the

Respondent Bank was in receipt of an amount of K750, 000 the Respondent Bank had not yet credited the Client's account, however, CW1 allowed the Client in issue to withdraw therefrom an amount of K100, 000.00 and it is apparent that at the close of business on the material date, CW1 closed off the day's business without disclosing the shortfall of K100,000.00. Clearly, it was arising from this transaction that the Respondent was motivated to charge CW1 with a disciplinary offence of Dishonesty Conduct. It is also a fact that at the Disciplinary case hearing held on 22<sup>nd</sup> May, 2018, the charge of Dishonesty was dropped (ref to exhibit "LM 11").

It is further a fact that the Complainant was found guilty on two charges of **"failure or Refusal to carry out reasonable and lawful instructions and intimidation or incitement to violence"**. Each of the offences carry final written warning. Nonetheless, the Respondent concluded that the second written final warning culminated into a dismissal, hence the reason for the Complainant's dismissal from employment.

Considering the evidence adduced, pleadings and the facts of the case herein, it is clear that the issue for determination of this Court is whether the Complainant's dismissal from employment by the Respondent is unlawful, unfair and or wrongful.

I must state at the onset that it has been traditional as guided in plethora of cases that the burden of proof is on the Complainant to establish and prove his case on the balance of probabilities. One of

those case is **Wilson Masautso Zulu v Avondale Housing Project**<sup>1</sup> where the Supreme Court held that:-

Where a plaintiff alleges that he has been wrongly or unfairly dismissed, as indeed in any other case where he makes an allegation, it is for him to prove those allegations. A plaintiff who has failed to prove his case cannot be entitled to a judgment whatever may be said of the opponent's case.

However, from the above traditional position in respect to the onus of proving a case, there now appear to be evidential burden of proof placed by statutory law on the employer (the Respondent) to establish and prove on the balance of probabilities that there was a valid reason for terminating or dismissing an employee from employment.

I opine so because of the provision of **Section 36 (3)** of the Employment (Amendment) Act No. 15 of 2015 of the laws of Zambia, the same provides that:-

**36. (3) The contract of service of an employee shall not be terminated unless there is a valid reason for the termination connected with the capacity, conduct of the employee or based on the operational requirements of the undertaking.**

Clearly, the above provision of the law places a duty on the employer by way of defence to show that there was a valid reason for terminating or dismissing an employee from employment.

In my view, there are two issues which should be addressed in a quest to ascertain whether or not the dismissal of the Complainant from employment was unlawful, unfair and or wrongful. Firstly, there is the issue of whether or not the Complainant was found to have breached his contractual obligations upon which he was made to undergo the Respondent's disciplinary process and secondly, whether the offences for which he was found wanting justified the sanction of dismissal.

In respect of the first issue, Learned Counsel for the Respondent, submitted that the Complainant was dismissed from employment following the laid down procedure which established that he was guilty of the two offences levelled against him based on the evidence before the disciplinary panel. Further, that the Complainant even admitted having breached the Respondent' banking procedure in respect to the transaction in question.

The Respondent therefore, relied on the guidance of the Supreme Court, given in the case of **Zambia National Provident Fund v Yekweniya Mbiniwa Chirwa**<sup>2</sup>, where it was held that:-

Where it is not in dispute that an employee has committed an offence for which the appropriate punishment is dismissal and he is

also dismissed, no injustice arises from a failure to comply with laid down procedure in the contract and the employee has no claim on that ground for wrongful dismissal or a declaration that the dismissal is a nullity.

The above decision was also confirmed in the case of **National Breweries Limited v Phillip Mwenya**<sup>3</sup>.

I must agree that indeed the Complainant herein was charged with three disciplinary offences and was given an opportunity to exculpate himself and subsequently made to appear before a disciplinary committee or panel. The said disciplinary panel found the Complainant not guilty of the offence of “**dishonesty conduct**”.

However, the Respondent found the Complainant guilty of the other two offences upon which it decided to dismiss him.

I agree that the Respondent followed the disciplinary procedure code in finding the Complainant not guilty of the offence of “*Dishonesty Conduct*”, and guilty of the offences of “failure to obey lawful instructions and intimidation or incitement of violence”. Nonetheless, the issue in contention is whether, the Respondent was justified in dismissing the Complainant for failure to obey lawful instructions and intimidation or incitement of violence. The said question bring us to the case of **Zambia National Provident Fund v Yekweniya Mbiniwa Chirwa (supra)**. The brief facts in that case were that, the Respondent

Mr. Godwin J. Kamanga (deceased) was employed by the Appellant in the accounts department. In early 1980, a sum of money was found to be missing from the funds for which the deceased was responsible and on the 8<sup>th</sup> of May, 1980, a letter was written by the Appellant to the deceased referring to his failure to account for the sum of K4, 734.85 and stating that he would be suspended pending the outcome of investigations. At the same time, the matter was put in the hands of the police. On 14<sup>th</sup> May, 1980 the deceased wrote to the appellant urging the withdrawal of the matter from the hands of the Police on the grounds that a number of other instances of loss of money had occurred in the appellant's organization, and it would be bad for the appellant's image for these losses to come to light. That letter finished with the words **"I know I am guilty but you can do something"**. The deceased also paid K1, 000.00 in respect of the discrepancy in his accounts and gave the appellant a cheque for the sum of K3, 800 which cheque was dishonoured on presentation.

It can be seen that the decision in **Mbiniwa Chirwa** case was made following the undisputed facts that the plaintiff committed a serious dismissible offence and the same was admitted, therefore, failure to follow the disciplinary procedure was superfluous.

In casu, however the offences of failure to obey lawful instructions and intimidation or incitement of violence are not dismissible offences. The same are provided for by the Disciplinary and Grievance Policy and procedure (exhibit **"LM 33"** and **"LM 34"** in the Complainant's Affidavit in support of complaint).



The offence of “**failure or refusal to carry out reasonable and lawful instructions**” falls under Attitudinal offences and the sanction on first breach is Final Written warning and dismissible for a subsequent breach, (exhibit “**LM 34**”).

In respect to the offence of “**intimidation or incitement to violence**” which falls under ‘**social offences**’, the sanction for the first breach is also “final written warning and dismissal on the subsequent breach (exhibit “**LM 33**”).

Whereas it is uncontroverted that the Complainant was a first offender, the Respondent’s Disciplinary Committee decided to dismiss him from employment, notwithstanding that the offences which were levelled against him were not dismissible. However, the reason for having departed from the sanctions prescribed by the Respondent’s Disciplinary and Grievance Policy and Procedure are as expressed in the letter of dismissal otherwise exhibit “**LM 11**”, the same is partly couched in the following terms:-

**30<sup>th</sup> May, 2018**

**Lazarous Muntete**

**African Banking Corporation Zambia Limited**

**Chingola Branch**

**Chingola**

**Dear Lazarous,**

Re: Dismissal

Reference is made to your Disciplinary Charge dated 11<sup>th</sup> May, 2018 and the subsequent hearing that was held on 22<sup>nd</sup> May, 2018.

It was established that you were charged with the offences of failure or refusal to carry out a reasonable and lawful instruction, dishonesty during the course of employment, and intimidation and incitement to violence as per Annexure 1 of the Banc ABC Disciplinary and Grievance Policy and Procedure.

Having looked at the circumstances leading to your charge, your defence and mitigation, the Disciplinary Committee dropped the charge of dishonesty during the course of employment. They however, upheld the charges for failure or refusal to carry out a reasonable and lawful instruction whose penalty is a Final Written Warning and Intimidation whose penalty is also a Final Written Warning respectively.

Having been given two final written warnings, the second written warning culminates into a dismissal. Therefore, your final verdict is a dismissal.

We hereby inform you that you have been dismissed for the above offences in line with the Disciplinary and Grievance Policy and Procedure.

Your dismissal date is with effect from 4<sup>th</sup> June, 2018.....

(Underlined for emphasis only)

Yours faithfully,

Erick Ngondo

Chairperson – Disciplinary Committee

As alluded to herein above, what is in contention and a matter for determination of this Court is whether the Respondent was justified to dismiss the Complainant for offences which are not dismissal under its Disciplinary and Grievance Policy and Procedure.

The Respondent's Learned advocate submitted and relied on a "Note" in its Disciplinary Code, the same being exhibit "LM 36", the same is couched in the following terms:-

**Note:**

**The code makes provision for progressive disciplinary actions in each category of offence. Discipline will therefore be taken progressively in each category of offence and not necessarily only in regard to a specific offence.**

**The disciplinary action prescribed by the code may be deviated from where justified by the particular circumstances of the case.**

**Accordingly, such an action may be more severe than the prescribed guideline where aggravating circumstances exists, or less severe where mitigating circumstances exists. In certain circumstances and in the case of certain offences, dismissal even for a first offence would be appropriate.**

The Respondent, therefore, submitted that it was its contention that the Complainant was duly dismissed in accordance with the laid down procedures that established that he was guilty of the two

offences levelled against him based on the evidence before the Disciplinary Panel.

I have critically applied my mind to the arguments of the Respondent and the reason given for deviating from the prescribed sanction of "Final Written Warning" to arrive at the more severe sanction of "dismissal. Sight should not be lost of the fact that the reason for dismissing the Complainant was that the second final written warning culminated into a dismissal. I do not agree with the Respondent's reason for its decision that the two Written Final Warnings culminated into dismissal because the two offences for which the Complainant was found guilty arose from the same set of facts and were raised on the same charge sheet. I opine that the discretion which the Respondent's disciplinary committee had and could have duly exercised was to order that the penalty of Final Written Warning for the two offences to run consecutively or concurrently.

I am mindful of the explanatory 'Note' in the Respondent's Disciplinary Grievance and Policy Procedure, quoted herein above. The same 'Note' gives discretionary power to the Respondent's disciplinary committee that it may deviate from the prescribed disciplinary action under the Code. However, the said discretion may only be exercised where there are particular justified circumstances of the case.

Upon perusal of the explanatory 'Note', in this Court's understanding of particular circumstances that may lead to the Disciplinary Committee to deviate from the prescribed disciplinary action to a more severe sanction is where there exist aggravating circumstances. In casu, therefore the Respondent's Disciplinary Committee did not deviate from the prescribed sanction because there were any aggravating circumstances but in its understanding two written Final Warnings culminated in a dismissal. I find the Respondent's conclusion as such to have been arrived at in error and I draw comfort from the decision of this Court and upheld by the Supreme Court in the case of **National Breweries Limited Plc v Patrick Simfukwe**<sup>4</sup> where it was held at page J34 that:-

The Appellant sought to rely on the case of *Phillip Mwenya and Yekweniya Mbiniwa Chirwa*, which propounded the principle that where an employee commits an offence for which he/she can be dismissed, no injustice arises for failure to comply with the procedure in the contract of employment. Clearly, this is an attempt to fit a round peg in a square hole. The offence with which the Respondent was charged did not attract dismissal..... Secondly, as the Court below observed, much as the Appellant had the discretion under the guideline in its Disciplinary rules to impose a stiffer penalty where there were aggravating circumstances, there was a prescribed sanction under 'Note' 1 and 2 for the offence of careless/Reckless driving of Company vehicle which was a suspension and not dismissal.

Having considered the evidence adduced by both parties and the authorities cited, I have come to the inescapable conclusion that the reason given by the Respondent for dismissing the Complainant from employment is not valid. Further, the Respondent in error deviated from the prescribed sanction for the offences proved against the Complainant therefore, I find and hold that the Complainant has proved his complaint on the balance of probabilities, that he was wrongfully dismissed from employment by the Respondent.

In ascertaining appropriate damages for wrongful dismissal to award the Complainant, I have considered the submission by Learned Counsel for the Respondent. She submitted that in the unlikely event that this Court finds in favour of the Complainant, the principle in relation to the quantum of damages and mitigation of loss must be applied. The Court was referred to the case of **Chasa Ng'onga v Alfred H. Knight (Z) Limited**<sup>5</sup>, where the Supreme Court observed that:-

***As a matters stand, we are satisfied that the appellant, as the Party upon whom the duty to mitigate rested, did not demonstrate in his evidence before the lower Court that he had discharged that duty.***

Indeed the Complainant did not call any evidence to establish and prove that because of his dismissal from employment at the instance of the Respondent his endeavours to find alternative employment

failed. However, it is not in dispute that at the time of hearing parties' oral testimonies, the Complainant was unemployed.

Further, it is a notorious fact that in this world economical environment, employment is scarce, worse in the Banking Industry. I am alive to the general rule on measure of normal measure of damages for wrongful termination of employment enunciated by the Supreme Court in various cases including that of **Chilanga Cement Plc v Kasote Singogo**<sup>6</sup> and **Swarp Spinning Mills Plc v Chileshe and Others**<sup>7</sup>. However, I have departed from the rule set there in because apart from the reason that there is scarcity of employment in the Banking Industry, the Complainant as Branch Manager was in Management and finding employment in the said position is not easy. I therefore, in the interest of justice award the Complainant 12 months' salary as damages for wrongful dismissal. Further, I award him interest at the average short term deposit rate from the date of complainant up to the date of judgment and thereafter, at the current lending rate as determined by the Bank of Zambia, up to the date of payment.

Each party shall bear their own Costs.

Informed of Right of appeal to the Court of Appeal within thirty (30) days from the date hereof.

Delivered at **Ndola** this **22<sup>nd</sup> January, 2021.**

.....  
Hon. Justice D. Mulenga  
**HIGH COURT JUDGE**