

**IN THE HIGH COURT FOR ZAMBIA  
HOLDEN AT NDOLA  
(Industrial Relations Division)**

**IRC/ND/52/2021**

**BETWEEN:**

**MUNGOLE TANZALA**

**AND**

**ZANJI LODGE LIMITED**



**COMPLAINANT**

**RESPONDENT**

Before the Hon. Mr. Justice Davies C. Mumba in chambers on the 3<sup>rd</sup> day of May, 2022.

For the Complainant: Mr. T.T Shamakamba, Messrs Shamakamba & Associates

For the Respondent: No appearance

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**JUDGMENT**

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**Cases referred to:**

1. Redrilza Limited v Abuid Nkazi and Others, SCZ Judgment No. 7 of 2011.

**Legislation referred to:**

1. The Employment Code Act No. 3 of 2019.

**Other works referred to:**

1. Winnie Sithole Mwenda and Chanda Chungu: A Comprehensive Guide to Employment Law in Zambia: UNZA Press. 2021.

By notice of complaint supported by an affidavit filed into Court on 17<sup>th</sup> September, 2021, the complainant commenced this action against the respondent seeking the following reliefs:

1. *An order that the complainant's termination of employment was wrongful and unjustified.*
2. *An order for payment of damages for wrongful and unjustified termination of employment.*
3. *An order for payment of terminal benefits.*
4. *Interest.*
5. *Costs.*

In his affidavit in support of the notice of complaint, the complainant deposed that he was employed by the respondent on 1<sup>st</sup> October, 2014 as an accountant and he worked upto 12<sup>th</sup> November, 2019. He deposed that the respondent's Managing Director, by word of mouth, terminated his services without giving him any notice or reason for the termination although he alleged that the complainant was the one that was leaking information to Zambia Revenue Authority on issues to do with non-conformity with paying tax obligations. That the rules of natural justice were not followed in the termination of his employment and as such, the termination was not fair. That he was claiming damages for unfair dismissal, plus interest and legal costs.



When the matter came up for trial on 25<sup>th</sup> April, 2022, there was no appearance on the part of the respondent despite having been served with the notice of hearing and no reasons were advanced for the absence. Therefore, I decided to proceed with the trial of the case.

At the trial, the complainant testified that he started working for the respondent on 1<sup>st</sup> October, 2014 as an Accountant; and he left employment on 12<sup>th</sup> November, 2019. That he used to handle tax matters with ZRA, among them value added tax (VAT), company tax and pay as you earn (P.A.Y.E). He testified that he left employment with the respondent because he had issues with his boss. He explained that there was a VAT audit which was supposed to be done on the respondent in October by the Kitwe ZRA office. That there were some issues pertaining to withholding tax when Government ministries lodged at the respondent lodge. That the Managing Director, Mr. Moses Sikombe, decided to dismiss him on allegation that he was giving information to ZRA and that that caused ZRA to decide to audit the respondent. That the respondent was served with the letter of audit through his e-mail because he was the contact person between the respondent and ZRA. That he presented the letter to the Managing Director.

The complainant explained that the issues to do with Government ministries that arose were that when Government ministries lodged at the lodge, VAT would usually be withheld at source. That

when making returns, he would ask the Managing Director to avail him information on who had paid in order for him to update the returns but the Managing Director would hide the information from him because some ministries would issue invoices directly to the Managing Director and pay directly into his account. That the Managing Director accused him of sending that information to the auditors at ZRA in Kitwe. He stated that the allegations by the Managing Director were not true as he was just doing his job of preparing tax returns for the respondent.

The complainant testified that he did not exhibit any letter of engagement or pay slips as he was employed on a verbal contract; and that the respondent never used to give them pay slips. That he used to be paid by cash. That sometimes they would combine a cheque and cash and would never give a full salary at once. He also testified that the termination of his employment was also done verbally. That the Managing Director just informed him that his job had ended and he should go and rest.

In addition, the complainant informed the Court that he wished to rely on his notice of complainant and the affidavit in support thereof.

I have considered the complainant's affidavit and *viva voce* evidence.



From the evidence, I am satisfied that the complainant was employed by the respondent on 1<sup>st</sup> October, 2014 as an Accountant under an oral contract and his employment was verbally terminated on 12<sup>th</sup> November, 2019.

After considering the evidence on record, I find that the following are the questions for determination in this matter:

1. Whether the termination of the complainant's employment by the respondent was wrongful and/or unfair thereby entitling him to damages.
2. Whether the complainant is entitled to the payment of terminal benefits.

I will start with the first issue whereby the complainant has claimed for a declaratory order that the termination of his employment was wrongful and unjustified. Under paragraph 4 of the affidavit in support, he stated that the termination of his employment was not fair because the rules of natural justice were not followed. Under paragraph 5 of the affidavit in support of the notice of complaint, he also purportedly claimed for damages for unfair dismissal. What appears clear from the evidence is that the complainant was not dismissed from employment but his contract was simply terminated. In the case of **Redrilza Limited v Abuid Nkazi and Others**<sup>1</sup>, the Supreme Court guided that there is a difference between 'dismissal' and 'termination'. That dismissal

involves the loss of employment arising from disciplinary action while termination allows the employer to terminate the contract of employment without invoking disciplinary action. That, therefore, the terms 'termination' and 'dismissal' cannot and should not be used interchangeably.

In *casu*, the respondent did not invoke any disciplinary action against the complainant but the respondent's Managing Director orally terminated his contract of employment without any notice or reason being given. According to paragraph 3 of the affidavit in support of the notice of complaint, the complainant alleged that his employment was terminated because he was suspected of leaking information relating to the payment of taxes to ZRA. The reason advanced by the complainant was not rebutted in any way by the respondent. Therefore, I accept that that was the reason for the termination of his employment. That being the case, the respondent ought to have formally charged the complainant and given him an opportunity to be heard despite him serving under an oral contract. The failure to charge the complainant and to give him an opportunity to be heard was in breach of the rules of natural justice and the Employment Code Act.

The learned authors, Judge W.S. Mwenda and Chanda Chungu, in their book entitled: **A Comprehensive Guide to Employment Law in Zambia**, state at page 22 as follows:

**"Where a termination is not carried out in line with the law, or where the employer terminates employment without**



**giving a reason, such termination will be referred to as unfair termination and for termination contrary to the contract of employment as wrongful termination."**

On the above authority, I am satisfied that the termination of the complainant's employment was unfair as no reason and notice was given to the complainant. I am also satisfied that the termination of the complainant's employment was wrongful for non-compliance with the rules of natural justice.

The giving of a requisite notice and a valid reason before the termination of an employee's contract of employment are mandatory requirements of the law. Section 52 (1) and (2) of the Employment Code Acts provide as follows:

**"(1) A contract of employment terminates in the manner stated in the contract of employment or in any other manner in which a contract of employment is deemed to terminate under this Act or any other law, except that where an employer terminates the contract, the employer shall give reasons to the employee for the termination of the employee's contract of employment; and**

**(2) An employer shall not terminate a contract of employment of an employee without a valid reason for the termination connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking."**

Section 53 (1) and (2) 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."**

Yet again, the respondent did not comply with the above stated provisions of the law rendering the termination of the complainant's employment unfair.

In summary, the complainant has proved his claims for both wrongful and unfair termination and I will award him damages accordingly.

I have considered all the circumstances of this case and the fact that the respondent unjustifiably and unwarrantedly made the complainant lose his employment in an abrupt manner. Therefore, I award the complainant damages equivalent to six months of his last basic salary plus allowances, with interest at the short-term commercial deposit rate, as determined by the Bank of Zambia, from the date of the notice of complainant to the date of the judgment and thereafter, at 10% per annum until full settlement.



The amount is to be agreed by the parties or assessed by the learned Deputy Registrar in default of such agreement.

The complainant has also claimed for an order for payment of terminal benefits. It is settled by a plethora of authorities that even when an employee is summarily dismissed or the contract of employment is terminated in any other manner, the employee does not lose his or her accrued benefits. However, it is my considered view that the complainant needed to lead evidence specifying the type of accrued benefits and how such benefits accrued to him. Without such evidence being led, the Court finds it extremely difficult to make an open ended award. Therefore, the complainant has, on a balance of probabilities, failed to prove his claim for payment of terminal benefits for the period that he served the respondent.

Leave to appeal is granted.

I make no order for costs. Each party will bear own costs.

Delivered at Ndola this 3<sup>rd</sup> day of May, 2022.

  
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**Davies C. Mumba**  
**HIGH COURT JUDGE**