

**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE KITWE DISTRICT REGISTRY**  
**(Civil Jurisdiction)**

**2007/HK/45**

**BETWEEN:**

**EVANS CHONGO MUSONDA**  
**PLAINTIFF**

(Suing as Administrator of the estate of the late Charles Kabesha)

**AND**

**AFRICAN EXPLOSIVES LIMITED**

**DEFENDANT**

Before the Honourable Mrs. Justice R.M.C. Kaoma in Open Court  
on this 7<sup>th</sup> day of June, 2013

For the Plaintiff: Mr. C. Chali - Nkana Chambers

For the Defendant: Mr. T.M. Chabu - Ellis and Co.

---

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

---

**Cases referred to:**

1. Agholor v Cheesebrough Pond's (Zambia) Limited (1976) Z.R. 1
2. Gerald Musonda Mumba v Maamba Colloiers Limited (1988-89) Z.R. 217
3. Hapeeza v Zambia Oxygen Limited (1988-89) Z.R. 202
4. Zambia Airways v Musengule - SCZ
5. Smith and Others v Moore Paragon Australia Limited (2004) AIRC 57
6. Marshal v Harland & Wolff Limited (1972) 1 WLR 899
7. Barclays Bank (Z) Ltd v Walisko and Company and Anr (1980) Z.R. 7
8. New Plast Industries v Commissioner of Lands and Anr (2001) Z.R. 51
9. Faramco Ltd and Ors v Kaunda Investments Ltd-Appeal No. 50/2006 33

**Legislation referred to:**

1. Employment Act, Cap 268 and Employment (Amendment) Act 1997
2. Pneumoconiosis Act, Cap 217
3. Workers Compensation Act, Cap 271
4. Workers' Compensation Act, No. 10 of 1999

## 5. Minimum Wages and Conditions of Service Act

By amended writ of summons and statement of claim issued on 26<sup>th</sup> November, 2008 the plaintiff claims against the defendant (i) damages for wrongful termination of Mr. Charles Kabesha's employment, (ii) damages for disease contracted at the defendant company, (iii) an order for refund of medical expenses which Mr. Charles Kabesha incurred during his sickness and full cost of procurement of oxygen therapy, (iv) damages for anguish and mental torture, (v) payment of all terminal benefits and allowances, (vi) any other relief the court may deem fit and (vii) costs.

On 27<sup>th</sup> April 2009, the defendant filed the defence at pages 17 to 18 of the Bundle of Pleadings admitting paras 2, 3, 5 and 6 of the statement of claim, but denying the other allegations.

The plaintiff testified and called Dr. Faustina Mulenga, a medical practitioner at Ronald Ross Hospital in Mufulira as a witness. The defendant called two witnesses, Mike Mwanate, the Human Resource Manager and Misheck Kaseka, the branch chairman of the National Commercial and Industrial Workers in Zambia Union.

The plaintiff's evidence is that he is an administrator of the estate of the late Charles Kabesha who was working for the defendant company before his demise. In 2004 the deceased was employed on contract which was renewed yearly. In 2006 while the

deceased was on duty he fell ill. He was taken to Ronald Ross hospital with a condition of having difficulties to breath.

The hospital conducted investigations and found that the deceased had T.B. He was referred to the University Teaching Hospital where it was discovered that he had pneumoconiosis, a health hazard condition. Later the hospital gave them the medical report at pages 15 to 16 of the plaintiff's Bundle of Documents which indicated that the deceased was suffering from advanced occupational lung disease. The hospital recommended long term intermittent oxygen therapy; that a medical board should be instituted to advice on whether or not the deceased should continue to work; and that the pulmonary hypertension needed a trial of nifedipine and frusemide. He said during his time in hospital, the deceased never received any help from the employer. Instead he was served with the letter of termination of contract at page 13 of the same Bundle.

He said he wrote to Ronald Ross hospital expressing disappointment that they were not aware of the medical report from the hospital. The hospital replied by the letter at page 19 of the same Bundle indicating that a Medical Board was not instituted to assess the illness of Charles Kabesha and that as a lower hospital they could only give sick notes. He concluded that at the time the letter of termination was ready to be served on the patient, the defendant delayed because they feared his response. When asked by the Court to clarify what job the

deceased was employed to do, he said the deceased was a machine operator of equipment used in making explosives and that he was working from the plant.

When asked by Mr. Chabu he admitted that the deceased's conditions of employment were set out in the contract of employment at pages 2 to 4 of his Bundle of Documents; that in the extension of contract at page 11, either party could terminate the contract for any reason by giving thirty calendar days' notice; and that in the termination of contract at page 13 the deceased was to be paid one month's salary in lieu of notice, but he was not paid up to the time the contract was supposed to expire. He is not aware of payment of gratuity and leave days. On the remittance advice, copy of a cheque, payroll sundry payment sheet and requisition for cheque at pages 3 to 5 of the defendant's Bundle of Documents, he said the deceased was paid for the period for which they have not sued. He said the deceased died on 23<sup>rd</sup> February, 2007.

On the medical certificate of the cause of death dated 26<sup>th</sup> February, 2007 at page 6 of the same Bundle, he admitted that the cause of death was silicosis and that they were told that this is the same as occupational lung disease. He said at the time the deceased died he (plaintiff) had already sued the employer and that later he was joined to the proceedings as administrator. He agreed that at the time of his death the deceased's contract had

been terminated. He said the letter from Ronald Ross hospital and the medical certificate as to cause of death show that the deceased died in hospital and that he was taken to UTH where various examinations were done before the hospital came to a conclusion.

He admitted that the medical report from UTH is dated 18<sup>th</sup> December, 2006 while the letter of termination of contract is dated 18<sup>th</sup> September, 2006 and that from the medical report the deceased had a history of difficulties in breathing for a period of four months and was on anti-tuberculosis medication for three months. He accepted that the doctor did not include in the report what caused advanced occupational lung disease; and that the recommendation to institute a medical board came after the deceased's contract was terminated. He admitted that there was no report made at the defendant's premises to ascertain that the deceased contracted the illness at work. They relied on the hospital's findings.

Dr. Mulenga testified that in 2006 Charles Kabesha passed through the hospital ward which he was superintending with problems relating to respiratory system. They did a number of investigations and eventually referred him to UTH because he was not getting better. He does not recall getting a feed back with regard to what transpired there, but he learnt that he passed on at Ronald Ross hospital. He said there was correspondence from a family member inquiring whether the deceased passed through a medical board. They told the family member that no medical board was instituted to discuss the plight of the patient. He said as indicated in the letter at page 19 of the plaintiff's Bundle, Ronald Ross can only act as an agent of the Ministry of Health if

given the mandate to institute a board which is composed of three or four doctors.

He said a patient is examined and a recommendation made to the Ministry. In this case the process did not take place. He confirmed the cause of death in the medical certificate as silicosis. He said this is a process when a person is exposed to silica (a chemical element) for some time. It leads to degeneration of lung tissue. If more percentage of lung tissue is damaged a patient would experience difficulty in breathing which may cause death. He said silica can be found in dust and chemicals depending on where one is working. It is more prevalent underground and in chemical industries. It is one of the occupational diseases and is confined to damage caused by silica to the lungs. He said pneumoconiosis is a process when one is exposed to chemicals generally, other than silica. It also leads to degeneration of lung tissue or progressive damage to lung tissue.

In cross-examination he accepted that asbestos, dust and sulphur-dioxide can lead to pneumoconiosis. He said this is a long term disease; exposure has to be for a long, long time such as 5 or 10 years. He said at the time the late Charles Kabesha was their patient, he did not know where he was residing or if he was exposed to silica or sulphur-dioxide in his residential area. He could not recall writing a letter that Charles Kabesha should be on indefinite light duty or that he could not lift weights of 15 Kilogrammes. He said it is incumbent upon an employer to write



to the Ministry of Health to ask to assess the condition of an employee. In re-examination he said an individual doctor cannot recommend termination of contract on account of illness.

Mike Mwanate (DW1) confirmed that the late Charles Kabesha was working for the defendant as a plant operator as shown in the letter extending the contract for 12 months dated 14<sup>th</sup> August, 2006 at pages 11 to 12 of the plaintiff's Bundle of Documents. He confirmed that there was a provision for termination by either party by giving thirty calendar days notice of such termination. He said the late Charles Kabesha joined the defendant in 2004 and worked for 2 years. In September, 2006 Charles Kabesha and four union officials, namely Lemmy Kanta, Misheck Kasoka, Thomas Kazingi and Curtis Katongo went to his office to report that it was difficult for Charles Kabesha to walk to the pick-up point between 03.00 hours and 04.00 hours for the morning shift at 05.00 hours because of his condition which was not good. He said Charles Kabesha was assessed by their medical centre and Ronald Ross hospital which recommended to the defendant that he should be on indefinite light duty. The letter was signed by Dr. Mulenga (PW2).

He said Charles Kabesha complained to the union (of which he was a member) that with that condition he should be released from employment. He gave him some days to think about his decision. Two days later Charles Kabesha and the union officials returned to his office. Charles Kabesha informed him that he

could not manage the indefinite light duty and that he wanted to go and rest. In view of that DW1 wrote the termination letter referring to the letter from Ronald Ross hospital. The termination was with immediate effect as per discussion with Charles Kabesha and union officials.

He said Charles Kabesha signed the termination letter on the second page. Payment in lieu of notice was made as shown on pages 3 and 4 of the same Bundle. Charles Kabesha was also paid three months' gratuity at 25% of his salary, leave days and housing allowance as shown on the payment requisition at page 5. He confirmed that Charles Kabesha died in February, 2007, three or four months after the termination of employment. He said Charles Kabesha was a close friend, so he told him about his medical condition. He confirmed that Charles Kabesha was employed as a machine operator and was operating at the detonator plant where they assemble accessories to initiate explosives. He said there is no exposure to chemicals or dust in the plant. He had no idea where Charles Kabesha worked before he joined the defendant. He said from 1993 to date they have had no case of an employee contracting this disease and that safety for employees and the environment is their number one thing.

In cross-examination he accepted that he has not produced the letters from their medical centre to Ronald Ross hospital and from the latter hospital to them. He admitted that the letter from Ronald Ross hospital indicated that Mr. Kabesha should be on

indefinite light duty; not termination and that a medical board was not instituted to determine whether or not he was fit to work. He agreed that there were no minutes to show that Mr. Kabesha requested for termination. He said the discussions were verbal. In re-examination he said they do not take minutes of informal meetings.

The evidence of Misheck Kasoka (DW2) is that as union branch chairman he handled grievances at work, interpret conditions of service to people and advise them on their rights at work and how they could approach management. He confirmed that in 2006 the late Charles Kabesha went to their union branch office. He was the treasurer at the time. Charles Kabesha told him that his health was not okey and that the clinical officer referred him to Ronald Ross hospital where he was placed on light duty, but he could not manage looking at the diagnosis of T.B and the work shift at the plant. He requested that he be escorted to the Human Resource Manager. He asked Charles Kabesha what he wanted. The latter indicated that since he was on contract, it was better that the contract be terminated. He advised Charles Kabesha that T.B is treatable, but the latter said the problem was bigger.

They went to DW1 and explained what Charles Kabesha wanted. The latter also explained the position to DW1. Later he met Charles Kabesha in the compound. The latter told him that he had stopped work. He also learnt that he had been paid. He confirmed

that termination of contract can be by either party upon giving notice.

In cross-examination he said he could not advise an employee or employer to terminate the contract or force Charles Kabesha to stay on as his condition was very bad. He said he had only one meeting with DW1 and that the meeting was not recorded because he just escorted Charles Kabesha to explain what he wanted.

In re-examination he said Charles Kabesha had papers from the hospital and that he wanted to stop work because he could not manage. He insisted that executive meetings are minuted, but not issues of grievances.

On 14<sup>th</sup> September, 2012, I conducted a site visit at the defendant company and the plant where the late Charles Kabesha worked. DW1 showed me where they keep materials which they import from South Africa such as glue, delay tags, cobra clips and connectors and carton boxes for packaging. He explained the manufacture process from the coiling machines, to putting tags and packing. He said machine operators interchange and that detonators manufactured in the plant are used to initiate explosives. He said they also make instantaneous electrical detonators using wire from Zamefa which are also used to initiate explosives.

In cross-examination he said there is also on site an emulsion plant which was commissioned two years ago where they make emulsion or liquid explosives whose main ingredient is calcium nitrate or fertiliser and oil. He said Charles Kabesha was an operator at the detonator plant and not at the emulsion plant. He said they do not keep personal records in the plant. In re-examination he said from the contract of employment at page 2 of the plaintiff's Bundle of Documents, the late Charles Kabesha was employed as machine operator in the detonator plant. This in summary is the evidence from both parties.

I have received written submissions from learned counsel for the parties. I shall refer to the submissions in my judgment where necessary. It is not in dispute that the late Charles Kabesha was employed by the defendant on 6<sup>th</sup> September, 2004 as machine operator on terms and conditions contained in the offer of contract of employment at page 2 of plaintiff's Bundle of Documents. The initial period of contract was three months subject to extension by mutual agreement for further periods depending on his performance. The clause on termination of contract provided for termination by either party for any reason by giving thirty calendar days notice of such termination. The employee was entitled to be paid pro rata for actual days worked and accrued leave days. The three months' contract of employment was extended twice.

On 1<sup>st</sup> August, 2005 the contract was extended for one year to 31<sup>st</sup> July, 2006. There is no dispute that the contract was lastly extended on 14<sup>th</sup> August, 2006 for the period 8<sup>th</sup> August, 2006 to 7<sup>th</sup> August, 2007. The original clause on termination of contract was retained and all other terms and conditions of service remained the same. I find that on 18<sup>th</sup> September, 2006, one month and four days later, the contract of employment was terminated with immediate effect as shown in the termination letter at page 13 of the plaintiff's Bundle of Documents. Following the termination Charles Kabesha was examined at University Teaching Hospital. The medical report at pages 15 to 16 of the plaintiff's Bundle was issued. The conclusion was advanced occupational lung disease.

As testified by the plaintiff, it was recommended that the patient be put on long term intermittent oxygen therapy, a trial of nifedipine and frusemide for the pulmonary hypertension, and that a medical board be instituted to advise on whether or not the patient should continue to work. There is no dispute that the late Charles Kabesha's contract of employment was terminated on medical grounds without a medical board being instituted.

From the pleadings and the evidence I think that two main questions arise for decision, that is to say:

1. Whether the late Charles Kabesha's contract of employment was wrongfully terminated
2. Whether the late Charles Kabesha is entitled to damages for the disease known as "Pneumoconiosis" allegedly contracted at the defendant company

The other two issues are as put by Mr. Chabu in his submissions are dependent on the resolution of the first two issues in the plaintiff's favour. These are:

3. Whether the plaintiff is entitled to a refund of medical expenses and full costs of procurement of oxygen therapy
4. Whether the plaintiff is entitled to damages for anguish and mental torture and terminal benefits and allowances

On the first question of whether the termination of the contract of employment was wrongful, Mr. Chali has quoted from paragraph 302 of Halsbury's Laws of England, Fourth edition which defines wrongful dismissal as:

"a dismissal in breach of the relevant provision in the contract of employment relating to the expiration of the term for which an employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled namely.

- (i) The employee must have been engaged for a fixed period or for a period terminable by notice, as the case may be and
- (ii) His dismissal must be wrongful, that is to say without sufficient cause to permit his employer to dismiss him summarily clearly, the plaintiff was engaged by the defendant on a fixed term contract basis which was terminated prematurely by payment in lieu of notice."

Counsel submits that the late Charles Kabesha's contract was terminated on medical grounds without constituting a medical board to determine as to whether or not he was fit to work and that an employee can only be discharged on medical grounds upon recommendation of a registered medical practitioner or by a board. He contends that there being no medical board or

recommendation by a certified medical practitioner, the termination was wrongful and that the plaintiff has proved his case.

On the other hand it is the submission of Mr. Chabu that the defendant lawfully terminated the contract of service by paying the late Charles Kabesha one month's salary in lieu of notice. Counsel has referred me to section 36(1)(c) and (2) of the Employment Act, Cap 268 as amended by Act No. 15 of 1997 which provide 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 and on the report of a registered medical practitioner where owing to sickness or accident an employee is unable to fulfill a written contract of service.

Counsel has also referred to *Agholor v Cheesebrough Pond's (Zambia) Limited* (1) and *Gerald Musonda Mumba v Maamba Colloiers Limited* (2) where it was held that in every pure master and servant contract there is an implied right to terminate on notice, and that if a master gives a reason for termination he is not obliged to substantiate it as it is the giving of notice or pay in lieu that terminates the employment. He further contends that the late Charles Kabesha had come up with an agreement with the defendant for his employment to be terminated after discussions relating to his health and that it is not a requirement under the Employment Act for a medical board to be instituted



prior to termination of an employee's employment contract on account of sickness as the contract may be terminated on the report of a registered medical practitioner.

In the alternative counsel contends that even if there was such a requirement for institution of a medical board prior to termination, failure to comply with such requirement would not render the termination wrongful. He relies on *Hapeeza v Zambia Oxygen Limited* (4) and *Zambia Airways v Musengule* (5). Counsel submits that the termination of the contract was justified as the deceased was paid full salary in lieu of notice after the discussions relating to his illness. Quite rightly as submitted by Mr. Chabu, under section 36(1)(c) and (2) of the Employment Act, the contract of employment can be terminated in any manner in which a contract of service may be lawfully terminated.

Further where owing to sickness or accident an employee is unable to fulfill a written contract of service, the contract may be terminated on the report of a registered medical doctor. Applying section 36(1)(c) of the Employment Act to the present case, I have no doubt that the defendant had the right to terminate the late Charles Kabesha's contract of employment by giving thirty calendar days notice of the termination. I believe that there was also an implied right to terminate by payment in lieu of notice. Admittedly Charles Kabesha was paid in lieu of notice, for the actual days worked and up to October 2006. He was also paid gratuity, housing allowance and leave days.

Of course, as submitted by Mr. Chabu, there is no general obligation on the part of the employer to inform the employee of the reasons of his or her dismissal or of the termination of the contract of employment. Such obligation only exists for termination on the grounds related to conduct or performance of the employee [see section 26A Employment (Amendment) Act No. 15 of 1997]. Even then failure to give an employee the opportunity to be heard or failure to notify a proper officer after dismissing an employee as required by the Employment Act does not render the dismissal wrongful or null and void [see *Hapeeza v Zambia Oxygen Limited* (4) and *Zambia Airways v Musengule* (5)]. It is a fact that the termination of contract was based on the medical report from Ronald Ross hospital recommending that the late Charles Kabesha needed enough rest for an indefinite period of time.

I have no doubt that where owing to sickness or accident an employee is unable to fulfill a written contract of service, the contract may be terminated on the report of a registered medical doctor. The letter from Ronald Ross hospital has not been produced. However, it is clear to me from paragraph 10 of the amended statement of claim that there was a sick note and recommendation from that hospital. It will also be noted that the medical report from the University Teaching Hospital is dated 18<sup>th</sup> December, 2006, two months after the contract of employment was terminated. It was in that medical report that a

recommendation was made for a medical board to be instituted to advise on whether or not Charles Kabesha should continue to work.

In my view a contract of employment may be validly terminated on the basis of an employee's illness when that illness had demonstrated an adverse impact on the employee to perform the inherent requirement of their job. In the Australian case of *Smith and Others v Moore Paragon Australia Limited* (5), the Federal Court stated that "the traditional view was that when an employee is so incapacitated by illness or injury that he or she cannot work at least in the longer term, the contract may be frustrated and thus terminated by operation of law and not at the initiative of the employer." This is the doctrine of frustration of contract. It is also clear that considerations are given to the nature of the illness, the period of time involved and what performance of the contract would look like in the future.

If the employee demonstrates that they are able to perform the duties and responsibility of that job, even after a period of absence from work, a termination of employment will not be valid and will be harsh and unreasonable. If an employer has dismissed an employee due to persistent illness the court will consider if the dismissal was fair. Relevant consideration will include whether there was fair consultation with the employee for the true medical position and whether the employer sought a reliable medical

opinion before making his decision. [See *Marshal v Harland & Wolff Limited* (6)].

In this a medical board was not instituted to determine whether or not the late Charles Kabesha was fit to work and that there was no recommendation by a certified medical practitioner. I ought to add that this requirement is not mandatory. It is submitted on behalf of the plaintiff that the termination was wrongful as the required procedure were not followed. I do not agree with this submission. The reasons are simple. First, there is unchallenged evidence by the defence that it was in fact the late Charles Kabesha who requested for termination of his contract because he could not cope with the indefinite light duty that had been recommended by Ronald Ross hospital. Second, at the time of termination there was no evidence that the TB was work related. DW2, the union official who escorted the late Charles Kabesha to DW1's office, said in evidence that Charles Kabesha told him that since he was on contract it was better that the contract be terminated. He even advised Kabesha that T.B is treatable, but he stated that the problem was bigger.

In fact the letter of termination clearly indicated that the contract was being terminated with immediate effect as per their discussion and the medical report from Ronald Ross hospital. The late Charles Kabesha accepted that mode of exit and signed the letter. It seems that he had a change of heart later and sued his employer by his brother-in-law for damages for wrongful

termination of employment. The truth of the matter is that he requested for termination of his contract of employment which was done in accordance with the termination clause in the contract of employment.

I believe that if the defendant had no intention of keeping the late Charles Kabesha in employment, the contract could not have been renewed a month earlier. DW1 was aware from July, 2006 that the late Charles Kabesha was unwell. It is not disputed that the two were personal friends or that Charles Kabesha had explained his condition to him. The medical report from UTH indicates that Charles Kabesha had a history of difficulties in breathing for four months and was on TB medication for three months. On these considerations, I find and hold that the plaintiff has failed to prove on a balance of probabilities that the termination of the contract of employment was wrongful. Therefore this claim is dismissed.

I turn now to the second question of whether the late Charles Kabesha contracted the disease known as “pneumoconiosis” from the defendant’s premises. Mr. Chali has raised this question in his submissions, but he has not addressed the issue in argument.

On the other hand Mr. Chabu has submitted first, that the High Court has no jurisdiction to determine the claim for damages for pneumoconiosis or silicosis on the ground that sections 82(1)(2) (3), 91,95 and 96 of the Workers Compensation Act, Cap 271

provides the procedure for presentation of the said claim by bringing the same before the Commissioner established under that Act; and that the Pneumoconiosis Act, Cap 217 indicates that the claim has to be presented to the Pneumoconiosis Medical and Research Bureau.

Counsel has also referred me to *Barclays Bank (Zambia) Limited v Walisko and Company and Another* (7) where it was held:

“Where an Act of Parliament has specifically laid down the method by which proceedings must be begun, there is no option as to which procedure to adopt. The plaintiff is bound to commence his action by the procedure laid down by the Act.”

Counsel has further cited *New Plast Industries v The Commissioner of Lands and Another* (8) and *Faramco Limited and Others v Kaunda Investments Limited* (9) for the same principle of law. He has urged me to take judicial notice of the provisions under the Workers Compensation Act which he has cited in detail.

Clearly Mr. Chabu is not aware that the Pneumoconiosis Act, Cap 217 and the Workers Compensation Act, Cap 271 were repealed under section 153 of the Workers' Compensation Act, No. 10 of 1999 (the Act). The Act merged the functions of the Workers' Compensation Fund Control Board and the Pneumoconiosis Compensation Board.

The Act provides for compensation of workers or in the event of death, of the worker's immediate family for accidents or disabilities suffered and diseases contracted (occupational

diseases) during the course of employment. Each employer pays a certain amount to the Fund every year. A Commissioner is appointed to administer the Fund and approve claims by workers. For the proper administration of the workers compensation scheme, employers are required by s. 88(1) of the Act to take responsible action by reporting all accidents and diseases at work, including those that do not result in disabilities or death, as soon as possible after occurrence.

Coming back to Mr. Chabu's argument that the High Court has no jurisdiction to determine the claim for damages for pneumoconiosis or silicosis, section 6 of the Act provides as follows:

“(1) Where any injury is caused or disease contracted by a worker by the negligence, breach of statutory duty or other wrongful act or omission of the employer, or of any person for whose act or default the employer is responsible, nothing in this Act shall limit or in any way affect any civil liability of the employer independently of this Act  
(2) Any damages awarded to a worker in an action under common law or under any law in respect of any negligence, breach of statutory duty, wrongful act or omission, under sub-section (1), shall be reduced by the value, as decided by the court, of any compensation which has been paid or is payable to the Fund under this Act in respect of injury sustained or disease contracted by the worker.”

I agree with Mr. Chabu's argument that the claim for compensation for pneumoconiosis or silicosis ought to have been presented to Workers Compensation. In my judgment the employer is required to report all accidents and diseases at work, including those that do not result in disabilities or death for the purpose of compensation.

However, I disagree entirely with the submission by counsel that the High Court has no jurisdiction to make any order regarding such claim as s. 6 of the act is very clear.

Mr. Chabu has submitted in the alternative that there is no evidence to prove that the late Charles Kabesha contracted the disease at the defendant's premises. I agree entirely with counsel that the visit to the defendant's premises and the plant where the late Charles Kabesha worked as machine operator did not reveal exposure to dust or silica and there is no report before me to show that there was presence of chemicals at the defendant company which could have caused the late Charles Kabesha's illness.

Moreover, it is very clear from PW2's evidence that silicosis or pneumoconiosis are long term diseases and that the exposure to silica or chemicals generally has to be for a long, long time such as 5 years or 10 years. The late Charles Kabesha joined the defendant in September, 2004. He worked for only 2 years. There is no evidence of where he worked before he joined the defendant or evidence that he was not exposed to silica or other chemicals in his residential area or where he had worked before. Clearly it is for the plaintiff to prove on a balance of probabilities that the late Charles Kabesha contracted the disease from the defendant's premises. On the facts I am not satisfied that the defendant is responsible for the late Charles Kabesha's illness.





Therefore the claims for damages for pneumoconiosis or silicosis purportedly contracted at the defendant's premises and for refund of medical expenses and full costs of procurement of oxygen therapy equally fail and are dismissed.

With regard to the claim for mental anguish and torture and for terminal benefits and allowances, no evidence was led by the plaintiff. As urged by Mr. Chabu the claim for mental anguish and torture could not have survived the death of Charles Kabesha. Further there is no evidence of what more the late Charles Kabesha was entitled to upon termination of his contract. He was paid his salary up to October, 2006 with leave days, housing allowance and gratuity. Even if I were to find that he was entitled to medical discharge benefits under the Minimum Wages and Conditions of Service Act, perhaps he would have been entitled to three months' pay for each year served. Considering that he had worked for only one month on the renewed contract, his entitlement would not have been much. I conclude that the plaintiff has not proved his claims on the balance of probabilities and I dismiss them. Costs normally follow the event, but on the facts each party shall bear own costs.

Delivered in Open Court at Kitwe this 7<sup>th</sup> day of June, 2013

.....  
**R.M.C. Kaoma**  
**JUDGE**

