

**IN THE HIGH COURT FOR ZAMBIA  
INDUSTRIAL RELATIONS DIVISION  
HOLDEN AT LUSAKA**

**COMP/IRC/LK/231/2017**

**BETWEEN:**

**KALAYA JOHNSON,  
MUTETEETE HAMBAYI**

**AND**

**ARM SECURE LIMITED**



**COMPLAINANTS**

**RESPONDENTS**

**BEFORE:** HON. MR JUSTICE E. L. MUSONA

**For the Complainant:** In Person

**For the Respondents:** Mr A. Simubala of Messrs Eric Silwamba  
and Jalasi Legal Practitioners

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

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Date: 19<sup>th</sup> July, 2018

**CASES REFERRED TO:**

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



I remind myself that in cases such as the one in casu, it is for the Complainants to prove their claims and the standard of proof is the degree of substantial justice.

I have looked at the cases of **Wilson Masauso Zulu v Avondale Housing Project Ltd** (1) and **Galaunia Farms Ltd v National Milling Corporation Ltd** (2) and have been well guided. In both cases the court guided that the Complainant must prove his case.

This complaint was filed by M/Kalaya Johnson and M/Muteteete Hambayi against Arm Secure Ltd. I shall, therefore, refer to M/Kalaya Johnson and M/Muteteete Hambayi collectively as the Complainants and to Arm Secure Ltd as the Respondents which is what the parties to this action actually were.

The Complainants claim is for the following relief;

- i. Salary arrears for November and December, 2016.
- ii. Benefits for the years worked.
- iii. Refund for uniform bond.
- iv. Costs and any other benefits the court may order.

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



Both Complainants gave evidence. I shall refer to them as **CW1** and **CW2**. **CW1** was M/Kalaya Johnson.

The evidence for **CW1** was that they were separated from employment on 5<sup>th</sup> January, 2017 and that, therefore, they are entitled to salaries for November and December, 2016 which were not paid to them prior to their separation from employment. **CW1** further stated that they were claiming benefits for the years worked and refund of their uniform bond.

**CW2** was M/Muteteete Hambayi. **CW2** adopted the evidence given by **CW1** but only added that while the monthly salary for **CW1** was K600 the monthly salary for **CW2** was K1,100. He added that the Respondents were deducting K10 monthly as bond for the uniform.

The Respondents gave no *viva voce* evidence but elected to rely on their affidavit in support of their answer which was sworn by M/Hitler Njobvu the Respondent's Human Resources Manager. This was not objected to by the Complainants, particularly, because the Complainants did not wish to cross examine the said M/Hitler Njobvu.

I shall, therefore, proceed to determine this case on the basis of the evidence adduced by the Complainants as well as the Respondents affidavit evidence.

I shall now consider the relief sought



**i. Salary arrears for November and December 2016**

I have gone through the evidence in this case. I have noted that the Complainants were both separated from employment on 7<sup>th</sup> November, 2016. This is evidenced by paragraph 4 of the Complainants' notice of complaint and **exhibit KJ2**. The Complainants' affidavit in support of notice of complaint also confirms that the Complainants' employment was terminated on 7<sup>th</sup> November, 2016.

I have seen, therefore, no basis for the Complainants' claim that they should be paid salaries for November and December, 2016 yet they know and are well aware that their employment ended on 7<sup>th</sup> November, 2016. The only reason why the Complainants want to be paid salaries for November and December 2016 is because they received their dismissal letters on 5<sup>th</sup> January, 2017.

Although the Complainants received their dismissal letters on 5<sup>th</sup> January, 2017, it is not the basis upon which they should anchor their claim for November and December 2016 salaries because they were dismissed on 7<sup>th</sup> November, 2016. The Complainants were on 7<sup>th</sup> November 2016 aware that they had lost their jobs. Consequently, the Complainants did not work for November and December 2016.



It is unwise to claim payment for the period you did not work for unless you can reasonably justify such a claim. I have seen no reasonable justification for this claim in the case in casu. I have also noted that the Complainants were paid for days worked. This is evidenced by **exhibit HN7**. On those basis, therefore, this claim fails.

**ii. Benefits for the years worked**

No exhibit such as a contract was produced to confirm the entitlement to benefits for the years worked.

I have looked at the letter of offer of employment. That letter has some contractual obligations.

Part of clause 9 of the letter reads as follows;

**“This being a permanent contract (open ended), uncompleted periods will be paid on *pro rata*.....”**

Part of clause 10 reads as follows;

**“The employee shall be dismissed without notice and lose all benefits if he is found guilty of .....”**

From the foregoing, it is clear that benefits are payable under this employment offer. The only preconditions on that offer letter are that the separation from employment should not be for reasons of non performance or disciplinary grounds.



What is not clear from the letter of offer of employment is what is to be paid or the quantum of benefits to be paid. The Respondents did not address this issue but in their submission they have argued that the Complainants did not work for a period of 10 years which would have qualified them for terminal benefits. The relevant parts of the letter of offer of employment which allude to benefits do not state any qualifying period. The Respondents did not produce any document to show that 10 years was the qualifying period for benefits.

In the circumstances, I find that the Complainants are entitled to benefits. Whether or not one is dismissed for non performance or on disciplinary grounds, accrued benefits are accrued rights and ought to be paid. The Respondents must have a lien against the Complainants in order to deny the Complainants their accrued benefits. No such lien was pleaded by the Respondents.

**CW1** told this court that he was claiming a month's salary for each year served. No formular was pleaded by the Respondents.

On the above basis, I order that the Complainants be paid by the Respondents one month salary for each year served and/or on *pro rata*.



### iii. Refund of uniform bond

The evidence by **CW1** was that the Respondents had deducted some money from the salaries of the Complainants. This was in respect of the uniforms which the Complainants received from the Respondents. It is this money which was not refunded to the Complainants when the Complainants were dismissed. The Complainants want this money refunded to them.

The Respondents argued in their submissions that the payslips submitted by the Complainants did not reflect any deduction for uniform bond and that the Complainants are not owed any money for uniform bond. The evidence by **CW1** was that the Respondents had deducted money from their salaries for uniform bond. **CW1** did not say that the deductions for uniform bond were running, so those deductions having been effected were no longer running but had been done.

I find that the Complainants had proved their claim for the refund of uniform bond. Accordingly, I order that the uniform bond which was deducted from the salaries of the Complainants be refunded to the Complainants.

I order interest on the successful claims at the short term deposit rate prevailing from date of notice of complaint to the date of judgment and therefore at the current Bank of Zambia lending rate until full payment.



I have seen no other relief due to the Complainants.

I order costs in favour of the Complainants to be taxed in default of agreement.

Delivered and signed at Lusaka this day 19<sup>th</sup> day of July, 2018.



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**HON MR JUSTICE E.L. MUSONA**

