IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 25/2011**
HOLDEN AT KABWE **SCZ/8/28/2011**
(Civil Jurisdiction)

BETWEEN

MARTIN LUKWESA **APPELLANT**

AND

AFROX ZAMBIA LIMITED **RESPONDENT**

Coram: Chibomba, Muyovwe, JJS and Lisimba Ag. JJS
On 4th November, 2014 and on 7th October, 2016

For the Appellant: Mr. M. Sakala, of Messrs Corpus Legal Practitioners.
For the Respondent: Ms.M. Bwalya, of Messrs Musa Mwenye Advocates.

JUDGMENT

Chibomba, JS, delivered the Judgment of the Court.

Cases referred to: -

1. **Chilanga Cement Plc vs. Kasote Singogo (2009) ZR 122.**
2. **Zambia Privatisation Agency vs. James Matale(1995-1997) Z.R. 157.**
3. **R vs. United Petroleum 2012 FWA 2445.**
4. **Polkey vs. A. E. Dayton Services Limited (1988) A.C 344 HL.**
5. **Moon vs. Homeworthy Furniture Limited (1977) I.C.R. 117.**
6. **Gerald Musonda Lumpa vs. Maamba Collieries Limited (1988-1989) Z.R. 217.**
7. **Ndongo vs. Moses Mulyango, Roostico Banda (2011) Z.R.(Vol. 1) 187.**

Legislation and Other Materials referred to:-

1. **Employment Act, Chapter 268 of the Laws of Zambia.**
2. **Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.**
3. **Principles of Labour Law, 3rd Edition, Roger W. Rideout.**
4. **Employment Law and Practice, 1st Edition, John Sprack.**

When we heard this Appeal, Hon. Mr. Justice Lisimba sat with us. He has since retired. This is therefore, a majority Judgment.

The Appellant appeals against the Judgment of the Industrial Relations Court which dismissed his Complaint on ground that the termination of his employment by redundancy was not wrongful, null and void or unlawful.

The facts leading to this Appeal are not mainly in dispute. These are that on 20th November, 2006 the Appellant was employed as a Branch Services Supervisor, by the Respondent which was operating as BOC Gases Zambia Plc. In April, 2008 the Respondent undertook a restructuring exercise. The Appellant's position was not initially included among the positions to be restructured. However, on 31st December, 2008 the Respondent terminated the Appellant's employment citing redundancy as the reason.

Dissatisfied with the termination of his employment by redundancy, the Appellant filed a Complaint in the Industrial Relations Court in which he prayed for an order or declaration that the redundancy effected on 31st December, 2008 was wrongful, unlawful or null and void, damages for wrongful and or unlawful dismissal, interest, costs and any other relief the Court would deem fit.

The Respondent disputed liability and the matter proceeded to trial. At trial the Appellant's position was that the termination of his employment by redundancy was wrongful because his position was split into two, with two different people being employed while the

responsibilities of those positions were the same as the one that he had. He also claimed that he was not consulted before his employment was terminated by redundancy. On the other hand, the Respondent's position was that all employees including the Appellant were consulted and that the redundancies were done in two phases and that the officers employed in the two positions after splitting the Appellant's position were better qualified than him and had served the company for a longer period than him.

The court below heard the evidence from the parties which it considered together with the submissions by the learned Counsel for the parties and was of the view that two issues had been raised for determination. These were:-

> "i). **Whether the Respondent's termination of the Complainant's employment by reason of redundancy was wrongful, unlawful and or null and void.**
>
> ii). **Whether the Complainant was entitled to Notice before redundancy."**

The court below came to the conclusion that on the facts and evidence before it, the termination of the Appellant's services through redundancy was not wrongful, unlawful or null and void as the Respondent had complied with the Handbook on Conditions of Employment and Service Benefits for Permanent Employees (the Handbook) which among others, provided for redundancy by inter alia,

payment of one month salary in lieu of notice. The court below also agreed with the submission by the learned Counsel for the Appellant which distinguished this case from the case of **Chilanga Cement Plc vs. Kasote Singogo**[1], and concluded that the Appellant did not prove his case on a balance of probabilities that he was entitled to any of the reliefs sought and dismissed his Complaint.

Dissatisfied with the decision of the court below, the Appellant has appealed to this Court advancing three grounds of Appeal as follows:-

> "1. **The learned trial court erred in law and fact when it held that the Respondent properly terminated the services of the Appellant by way of redundancy when in fact no redundancy had occurred in respect of the work for which the Appellant was employed.**
>
> 2. **The learned trial court erred in law and fact when it held contrary to the law that by payment in lieu of notice, the Respondent properly and lawfully terminated the services of the Appellant.**
>
> 3. **The learned trial court erred in law and fact when it held that the termination of the Appellant by way of redundancy was not a sham and that there was a second restructuring process pursuant to which the Appellant was terminated."**

The learned Counsel for the Appellant Mr. Sakala, relied on the Appellant's Heads of Argument filed.

Before we proceed to sum up the Appellant's Heads of Argument, we wish to observe at this stage that there is a disparity in the manner grounds 1 and 2 of this Appeal have been couched in the Memorandum

of Appeal and in the Appellant's Heads of Argument. In the Appellant's Heads of Argument, ground 1 reads as follows: -

> **"1. The learned Honourable Deputy Chairman sitting with the Honourable members erred in law and fact when she held that the Appellant's conditions of service provided for termination of employment by redundancy in the form of payment of one month salary in lieu of notice."**

We also wish to observe that since the Appellant did not apply to amend his Memorandum of Appeal, it was inappropriate for the Appellant to sneak in a ground of Appeal in his Heads of Argument which is different from the ground in his Memorandum of Appeal.

As regards ground 2, we have observed that what appears as ground 2 of appeal in the Heads of Argument is in fact ground 1 in the Memorandum of Appeal.

Therefore, we shall determine these two grounds as cast in the Memorandum of Appeal.

We have also noted that in the Heads of Argument, the Appellant's arguments in support of ground 1 appear to relate to ground 2 in the Memorandum of Appeal while the arguments in support of ground 2 appear to relate to ground 1 in the Memorandum of Appeal.

We have further noted that although the Appellant did not argue ground 3 separately in the Heads of Argument, the arguments in support of this ground appear to have been combined with those in support of grounds 1 and 2.

In view of the manner in which the arguments have been presented by the Appellant, we shall sum up the arguments relating to all the three grounds of Appeal together for the sake of clarity and to avoid repetitions and confusion.

As regards the holding by the trial court that the Appellant's contract of service was properly terminated by redundancy, it was argued that this finding was erroneous as it contumeliously disregarded all the evidence that was adduced in the court below and the law. It was pointed out that Section 26B (1) (a) of the **Employment Act** states that a contract of service of an employee shall be deemed to have been terminated by reason of redundancy if the termination is wholly or in part due to the employer ceasing or intending to cease to carry on the business by virtue of which the employee was engaged; or the business ceasing or reducing the number of employees required to carry out work of a particular kind in the place where the employee was engaged and the business remains a viable and going concern.

Counsel argued that the Respondent's contention that the redundancy was as a result of the restructuring exercise that was carried out in a period of two years was affirmed by the Respondent's witness. That this witness stated that in the new structure, the position of Operations Supervisor was created and headed by an engineer to run

distribution, safety and all other activities at the branch and that a separate position was created to run sales and customer services and was filled by somebody who had experience in the sales and customer services within the company. Based on the above argument, Counsel's position was that this could not have been a valid redundancy as the position of the employee who was made redundant still exists and the business of the employer carries on.

Counsel pointed out that the Appellant was employed as a Branch Services Supervisor and the functions that he executed included production, sales, stores, distribution works and transport. But that his position was split into two distinct departments falling under the Operations Supervisor and Centre Supervisor. However, that the new positions that were created still perform the functions of the Appellant's position. Therefore, that the declaration of redundancy of the Appellant was a mere sham. Hence, the court below should have warned itself of this fact and that this Court, in fact, dealt with a similar situation in **Zambia Privatisation Agency vs. James Matale**[2] case where it observed that:-

> **"The court was fortified that it had the powers to delve into or go behind the reason given for the termination of the Respondent's employment. The Court in the case found that the Respondent was terminated as an excuse to get rid of him using redundancy and was done in bad faith."**

It was argued that the Respondent's first witness exposed this sham as the witness stated that the position of the Branch Services Supervisor was Grade 9 while that of Centre Supervisor was at Grade 10 and Operations Supervisor at Grade 11 and that at the time Ms. Mbinga was appointed Sales and Customer Services Supervisor, she had over ten years of service with the company and that the position of Operations Supervisor was filled by Addu Choonga with more than five years' service in the company. It was submitted that the court below therefore, misdirected itself in agreeing with the Respondent that there was no sham because the position of the Appellant had been split. And that this was a misdirection on the part of the court below when it considered the splitting of the Appellant's position as amounting to redundancy when in fact, the job for which he was employed had not ceased to exist.

With respect to the holding by the trial court that by payment in lieu of notice, the Respondent properly and lawfully terminated the services of the Appellant, reference was also made to clause 6.1 and 2 of the Handbook which provides that all employees are entitled to give or receive one month's written notice or a longer period of notice (e.g. 3 months) where their individual contracts of service specify such a period.

It was argued that redundancy ought to be followed by the requisite period of notice and that since the Appellant's written contract is silent on the notice period for redundancy, the case of **Zambia Privatisation Agency vs. James Matale**[2] is instructive. In that case, we stated that in the absence of any express terms, the period of notice must be reasonable and that as to what constitutes a reasonable notice depends on the facts of each case.

Counsel argued that the record in this matter shows that the Respondent embarked on a redundancy exercise as evidenced by the letter dated 28th April, 2008 and that the Respondent confirmed the Appellant's position as Branch Services Supervisor but that however, despite this confirmation that his position would not be affected by the redundancy process, the Respondent proceeded to declare the Appellant redundant without giving him any prior notice. The Appellant relies on the letter dated 30th December, 2008 to support his argument that he was not given any prior notice of redundancy.

It was argued that the court below however did not address its mind to the notice period required before the Appellant could be declared redundant. Reference was also made to clause 31.1 of the Handbook which allows the Respondent whenever it deemed fit to effect

redundancy or retrenchment, to inform the relevant authorities of its intention, at least, one month before redundancy is effected.

To further this argument, Counsel argued that the Respondent was mandated to take into account the provisions of the **Employment Act, Chapter 268 of the Laws of Zambia** which when read together with the Handbook, shows that in effecting redundancy, an enabling environment should have been provided to the Appellant by the employer so that he could prepare himself and his family, more so here where the Appellant had been advised that his position would not be affected by the restructuring process. In support of the above argument, the case of **Chilanga Cement Plc vs. Kasote Singogo**[1] was cited in which we guided on the reasonable steps required to minimize the impact of redundancy on the employee.

Counsel argued that the Appellant was never engaged nor was he made aware of the impeding loss of his job as the termination letter was served on him on 30th December, 2008, a day before he was declared redundant. This did not permit the Appellant reasonable time to prepare himself nor did this conform with statutory law, case law, the Appellant's contract and the Handbook as he had been advised that despite the restructuring process, his position would not be affected.

It was further pointed out that even though the **Employment Act** does not apply to written contracts, when terminating the services of an employee for reasons of redundancy, Section 26B (2) (a) and (b) of the Act requires the employer to notify the representative of the employees of the impending redundancies, the number of employees to be affected and the period within which the termination is intended to be carried out. And that the employee's representative must also be afforded an opportunity for consultations on the measures to be taken to minimize the terminations and the adverse effects it has on the employees as well as finding alternative employment for the affected employees.

It was pointed out that this position was affirmed in **R vs. United Petroleum**[3]. Failure to comply with the obligation to consult results into there being no genuine redundancy and that this basically means that the period for consultation should not have been overlooked by the Respondent because it is there to ensure adequate preparation for the employees.

It was further argued that the manner in which the Appellant's employment was terminated flies in the teeth of the Respondent's Restructuring Memorandum of 2008 which stated that in order to achieve effective communication with each one of the employees in the company, a number of communication sessions had been arranged for all employees.

Therefore, that the court below erred in finding that the payment in lieu of notice was properly founded as that was contrary to statutory and case law, the contractual documents and the restructuring procedures put in place by the Respondent itself. And that as such, the Appellant ought to have been given actual notice of the intended redundancy as opposed to being paid in lieu of notice.

We were on the above grounds, urged to reconsider the decision of the court below and to ultimately reverse it.

The learned Counsel for the Respondent, Ms. Bwalya, also relied on the Respondent's Heads of Argument filed. She responded to grounds 1 and 3 together and then ground 2 on its own. However, by reason of our earlier observations concerning the manner in which the Appellant's arguments were presented, we shall sum up the Respondent's arguments in response to all the three grounds of Appeal together.

In response to the three grounds of Appeal, Ms. Bwalya submitted that the court below was on firm ground when it held that the Respondent properly terminated the services of the Appellant by way of redundancy despite the Appellant's contention that no redundancy had occurred in respect of the work which he was doing and when the court held that the redundancy was not a sham as there was a second

restructuring process pursuant to which the Appellant's employment was terminated.

Counsel argued that the facts of this case show that the Respondent was undergoing a restructuring process and that all the Respondent's employees including the Appellant were informed of the process as well as the Labour Office as required by law. And that a Handbook to this effect was prepared on how the redundancy and the restructuring would be done. Counsel pointed out that the restructuring process begun in August, 2007 and went on for longer than a year as evidenced by the letter written by the Respondent to the Principal Labour Officer to the effect that the restructuring process was likely to result in redundancies and that it would end in June, 2009. Quoting Section 26B (1) of **the Employment Act**, Counsel argued that the House of Lords in **Polkey vs. A E Dayton Services Limited**[4], guided that in a case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair basis upon which to select for redundancy and takes such steps as may be reasonable to avoid or minimize redundancy within his own organisation.

Counsel submitted that the Handbook is in essence an agreement between the employer and the employees and that according to the

Handbook, the Respondent had discretion to declare or not declare the Appellant redundant and that the Respondent complied with the procedure set out in the Handbook, meaning that a redundancy had occurred as agreed.

Counsel submitted that the law stipulates a notice of not less than thirty days to the representative of the employee on the impending redundancies and to inform the representative on the number of employees to be affected and the period within which the termination is intended to be carried out. That in this matter, the Respondent informed the employees of the intended redundancies as required by law, through the Handbook and of the nature of the redundancy package. And that the Respondent also informed the Labour Office of the intended redundancies.

Counsel for the Respondent also submitted that the evidence of the Respondent's witness in the court below was that there was a restructuring process going on in the whole company structure to align the company with the group of companies to which the Respondent belonged. And that in the old structure, the Branch Services Supervisor was in charge of the customer service and distribution. However, that to improve efficiency in the operations of the Respondent Company, the position of Operations Supervisor was created and headed by an

engineer to run distribution, safety and other production activities at the branch and that another position of Center Supervisor was created to deal with sales and customer service and was filled by a person who had experience in sales and marketing.

It was further submitted that the law allows employers to have latitude to organise or run their business profitably while protecting the employees. Hence, the Respondent, in an attempt to ensure that the Organisation ran smoothly, had a right to reorganise itself while protecting the employees' rights. To this end, that the employees that were rendered redundant were paid off according to the provisions of the terms of their employment and the law.

As regards the position held by the Appellant, it was submitted that a redundancy did occur as there was no need and/or requirement for the Respondent to maintain the Appellant in employment. Counsel argued that the Appellant was a holder of a Certificate and a Diploma, while the requirements of the position in question were higher. Therefore, that the Appellant was not qualified for the job.

In support of the above arguments, reference was made to the learned authors of **Employment Law and Practice, 1st edition by John Sprack**, who have stated that:-

> **"Tribunals will not attempt to re-hash the employer's decision as to whether there ought to be redundancies or not, provided that the decision was a genuine one."**

Counsel also referred to the case of **Moon vs. Homeworthy Furniture Limited**[5], where Kilner Brown, J, put it thus:-

> **"There should not be any investigations into the rights and wrongs of the declared redundancy."**

Further, Counsel referred to the learned authors of **Principles of Labour Law, 3rd edition by Rodger W. Rideout** who have stated, at page 164, as follows:-

> **"Although the answer is usually obvious, it is necessary to decide precisely what was the job of the claimant, before it is possible to say whether it still exists."**

Counsel again referred to the learned authors of **Employment Law and Practice** cited above, who have stated thus:-

> **"The first point to make is that it is not necessary for the work to have diminished. There may be just as much work to be done, but the employer has decided that it should be done by fewer people."**

Therefore, that in the current case, redundancy occurred as the Respondent required the Appellant's job to be split into two positions which were upgraded and taken by employees who had higher qualifications and more experience than the Appellant. Counsel argued that it is the fact of the redundancy and not the reason for redundancy that was material.

We must mention here that although Counsel quoted from the learned authors of **Employment Law and Practice, 1st edition by John Sprack** and the learned authors of **Principles of Labour Law, 3rd edition by Rodger W. Rideout**, copies of the said books were not provided and our search in the library proved futile, hence, we were not able verify the references.

It was further argued that the Respondent's witness testified that the restructuring process was on going and would lead to redundancies and that the Respondent did write to the Principal Labour Officer on 7th October, 2007 informing him that the restructuring would continue to the end of 2009.

It was submitted that where there is a written contract of employment between an employee and employer, each party has a right to terminate the contract in accordance with the provisions of that contract. Counsel referred to Section 36 of the **Employment Act** to support this view and to several other decisions including the case of **Gerald Musonda Lumpa vs. Maamba Collieries Limited[6].**

In conclusion, Counsel referred to the case of **Ndongo vs. Moses Mulyango, Roostico Banda[7]** where it was held that an appellate Court will not reverse findings of fact made by a trial judge unless it is satisfied that the findings in question were either perverse, or made in the

absence of any relevant evidence or upon a misapprehension of the facts, or that they were findings which on a proper view of the evidenced, no trial court acting correctly can reasonably make.

We were accordingly urged not to reverse the decision of the court below as the Appellant had not shown that there was lack of relevant evidence and/or misapprehension of the facts or indeed that on a proper view of the evidence, the court below was not expected to have made the decision that it did.

We have seriously considered this Appeal, together with the arguments advanced in the respective Heads of Argument and the authorities cited. We have also considered the Judgment by the learned Judge in the court below. It is our considered view that the central question raised in this Appeal is whether the termination of the Appellant's contract of employment by way of redundancy was wrongful and unlawful.

We shall consider the three grounds of Appeal together as they are related and also because of the manner in which the Appellant has presented the arguments in support of the three grounds as we have already stated above.

The thrust of the Appellant's arguments in support of the three grounds of appeal is that no redundancy occurred over his position in the Respondent Company. Hence, the trial court erred by holding that the Appellant's employment was properly terminated by redundancy as the redundancy exercise was a sham since his position continued to exist. The thrust of the Respondent's argument in response was that the restructuring process was not a sham and that the redundancy process was done in accordance with the Appellant's contract of employment, the law and the Respondent's Handbook.

We have considered the above arguments and the finding by the court below. We wish to firstly, clarify that as per our decision in the case of **Chilanga Cement Plc vs. Kasote Singogo**[1] and a plethora of other cases, Section 26B of the **Employment Act, Chapter 268 of the Laws of Zambia** referred to by both the Appellant and Respondent does not apply to written contracts. In enacting this provision, Parliament intended to safeguard the interests of employees who are employed on oral contracts of service, which by their very nature would not have any provision for termination by way of redundancy. The Appellant, having entered into a written contract of employment with the Respondent, has no recourse to Section 26B of the **Employment Act**. In addition to the Appellant's contract of employment, there is also the Handbook which contains provisions applicable to the Appellant.

With respect to redundancies, Clause 31.1 of the Handbook provides as follows:-

> **"Terminal Benefits – Redundancy/Retrenchment**
>
> **31.1 When a Company deems it fit to effect Redundancy or Retrenchment, the Company shall inform relevant Authorities of its intention, at least, one month before Redundancy is effected."**

In this case, the evidence on Record shows that on 30th August, 2007 the Respondent informed the Principal Labour Officer of the Ministry of Labour and Social Development of its intention to carry out a redundancy and/or retrenchment exercise which was expected to commence in November, 2007 and run through to about April, 2008.

By a Memo dated 16th January, 2008 which was addressed to all employees, the Respondent informed its employees about the redundancy. The Memo reads as follows:-

> "...
> **Sub: Company Structure Review – 2008**
>
> **BOC Gases Zambia Ltd is undergoing a restructuring review process in order to achieve current and future structures that are aligned to support the business growth agenda.**
>
> **In order to achieve effective communication with each one of you in the company, a number of communication sessions have been arranged, for all employees.**
>
> **It is a requirement that you make yourselves available for these briefings. You are invited to a meeting on the proposed restructuring of BOC Zambia, and particularly your department.**
>
> **The purpose and agenda of the meeting are as follows:**
> - **To discuss reasons for the proposed changes.**
> - **To discuss the proposed structure.**

- **To discuss the impact of these changes.**
- **To clarify the next steps in the communication process.**

Please refer to the attached invitation schedule.

R.L. Kunda."

The attendance register on Record shows that the Appellant was one of the employees who attended the meeting which took place on 26th January, 2008 as he signed the register.

The Record also shows that on 28th April, 2008 the Respondent wrote to the Appellant confirming the change in the salary for the position of Branch Services Supervisor which increased the monthly basic salary to K4,033,000.00. This was during the review and restructuring of the Respondent Company.

On 7th October, 2008 the Respondent again wrote to the Principal Labour Officer informing him that the redundancies and/or retrenchments had not yet been concluded and that this was expected to run through to the end of June, 2009.

The Record further shows that the Respondent circulated a document called the "BOC Gases Zambia Restructuring Communication Process, 2008". This document discussed the changes that were happening in the Respondent Company. It also outlined the possible

effects of the changes including the possibility of redundancies and/or retrenchments.

In view of the above evidence on Record, can it be said that the Appellant was not aware of the impending redundancies and/or retrenchment exercise that the Respondent Company was going through?

In the case of **Chilanga Cement Plc vs. Kasote Singogo**[1], we discussed and guided on the steps the employer is required to put in place so as to minimize the impact of redundancy on an employee. We put it thus:-

> "...
> 4. **Redundancies are planned activities. Being a planned activity, the employee needs to be prepared for the loss of a job. Reasonable measures which should be taken will inevitably include notices, and consultations which are so vital to the planning process.**
>
> 5. **Fairness and good faith demands that an employee should not be ambushed in a redundancy exercise because such an ambush would not mitigate the negative impact of a loss of a job."**

From the analysis of the events given above and applying the guidelines from the **Chilanga Cement Plc vs. Kasote Singogo**[1] case, we find that the Respondent complied with the guidelines as the evidence clearly shows that the Appellant was informed of the restructuring process the Respondent Company was undertaking and that there was a possibility of redundancies throughout the Respondent

Company from as far back as 2007. The Commissioner of Labour was also informed of the exercise on two occasions. This was meant to prepare all the employees of the Company including the Appellant so that they could prepare for the possibility of job losses. Therefore, we do not accept the Appellant's claim that he was neither informed nor engaged about the impending job loss such that the receipt of the redundancy letter dated 30th December, 2008 should be considered unfair, in bad faith and an ambush as he has tried to persuade us.

We do not also agree with the Appellant's argument that no redundancy occurred in respect of the work that he was doing as the evidence on Record clearly shows that the position that he occupied was abolished and two new positions were created at mid-management level. These positions were later given to long serving employees who had better qualifications than him. Therefore, the Appellant has not shown that the Respondent was in breach of clause 31.2 of the Handbook which required the Respondent in selecting employees to be retrenched or declared redundant, to take into account among other considerations, operational and productivity needs of the Company, length of service of employee and the individual employee's contribution, performance and merit. It is clear that the Respondent must have taken these issues into consideration when it decided to embark on the

redundancy exercise and to abolish the Appellant's position and to split his job into two.

Further, we have noted, as regards ground 3 of this Appeal that this ground attacks findings of fact by the court below. However, Section 97 of the **Industrial and Labour Relations Act, Chapter 269** of the Laws of Zambia, prohibits appeals that are based on findings of fact by the Industrial Relations Court. What is allowed are appeals that are based either on a point of law or of mixed law and fact. The said Section 97 provides as follows:-

> **"Any person aggrieved by any award, declaration, decision or judgment of the Court may appeal to the Supreme Court on any point of law or any point of mixed law and fact."**

As regards ground 2 of this Appeal and the Appellant's argument that since the Respondent confirmed his employment as a Branch Services Supervisor in the letter dated 28th April, 2008, he was therefore not privy to nor was his position in the Respondent Company part of the redundancy process. It is on this premise that the Appellant has argued that the letter dated 30th December, 2008 terminating his employment by redundancy and informing him that his last working day was 31st December, 2008 was a complete surprise to him and a sham as it flouted his conditions of service contained in his letter of appointment as well as the Handbook as he was not given any notice at all.

The Respondent, in agreeing with the finding of the court below, argued that based on the employment contract and the Handbook, the Appellant's contract of employment was properly terminated by way of redundancy.

We have considered the above arguments. Perusal of the Appellant's letter of offer of employment on Record shows that the Appellant's conditions of employment were covered by the letter of appointment and these are also fully detailed in the Handbook.

In this case, the Respondent chose to terminate the Appellant's employment by way of redundancy in line with clause 31.1 of the Handbook. He was paid his benefits pursuant to clause 31.3 which provides as follows:-

> **"i) Two (2) month's basic salary, per each completed year of service;**
> **ii) One month's Basic Salary in lieu of notice;**
> **iii) One month's Housing Allowance in lieu of notice;**
> **iv) Accumulated leave days and pro rata holiday bonus;**
> **v) Repatriation payment."**

It is our firm view that once the Respondent complied with the provisions of clause 31.1 and 31.3 of the Handbook, it cannot successfully be argued that there was breach of the Appellant's conditions of service as the Respondent clearly complied with the applicable conditions of service and gave the proper termination by

payment of the stipulated package under clause 31.3. Therefore, there is no merit in all the three grounds of Appeal. We dismiss them.

All the three grounds of Appeal having failed, the sum total is that this Appeal has failed on account of want of merit. The same is dismissed.

Considering the circumstances of this case, we order that each party shall bear its own costs.

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H. Chibomba
SUPREME COURT JUDGE

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E. N. C. Muyovwe
SUPREME COURT JUDGE