

**IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA**

APPEAL No. 175/2020

(Civil Jurisdiction)

BETWEEN:

GILBERT MUTHIYA AND 30 OTHERS

AND

UNIVERSAL MINING AND CHEMICAL

RESPONDENT

**CORAM: CHASHI, NGULUBE AND SHARPE-PHIRI, JJA.
On 19th April, 2022 and 4th May, 2022.**

For the Appellants: *Mr W. Mwenya, Messrs Lukona Chambers*

For the Respondent: *No appearance*



J U D G M E N T

NGULUBE, JA, delivered the Judgment of the Court.

Case referred to:

1. *Time Trucking Limited vs Kelvin Kapimpi, CAZ Appeal Number 03/2018.*

Legislation referred to:

1. *The Employment (Amendment) Act Number 15 of 2015*
2. *The Employment Act, Chapter 268 of the Laws of Zambia*
3. *The Employment Code, Act Number 3 of 2019*
4. *The Court of Appeal Act, Number 7 of 2016*

1.0 INTRODUCTION

1.1 This appeal is against the Judgment of the High Court delivered by Bowa J, who held that, the appellants were not entitled to gratuity and reversed the decision of the Kafue Subordinate Court.

2.0 BACKGROUND

2.1 The brief background to this appeal is that the appellants commenced an action in the Kafue Subordinate Court seeking damages for breach of contracts that were entered into between the appellants and the respondent on different dates, payment of gratuity, payment of two months' salaries for every year served, with interest and costs.

2.2 The appellants claimed that they were employed by the respondent in various positions and were paid a daily wage of K33, in comparison with other employees of the respondent in the same positions and doing the same work.

2.3 The appellants stated that they had engaged the respondent on several occasions seeking to be placed on permanent employment or have their conditions of employment improved as they worked

under dangerous conditions of employment and needed to have issues regarding their safety at work addressed.

2.4 The respondent advised the appellants to resign before they could be employed on new contracts of employment and the appellants tendered in their respective resignations on 3rd May, 2018. However, on 11th May, 2018, the respondent informed the appellants that there was no work for them and then paid them their respective leave days for the five years that they had been in the employ of the respondent.

2.5 The appellants claimed that they were entitled to terminal benefits under the general and minimal wages conditions of service. The respondent refused to pay the appellants, arguing that they were not entitled to gratuity or terminal benefits as this was not provided for in their terms and conditions of service. The appellants then commenced an action in the Subordinate Court at Kafue, seeking damages for breach of contract made on different dates with the respondent, payment of gratuity, payment of two months' salary for every year served and costs.

2.6 In determining the matter, the Subordinate Court found that the appellants were casual employees who were in the employ of the

respondent for periods in excess of one year. The court opined that in terms of **Section 28A and 28B of the Employment (Amendment) Act¹**, the appellants were, after six months deemed to have served under short term contracts which graduated into fixed term contracts after one year.

2.7 The court was of the view that by virtue of **Section 24(5) of the Employment (Amendment) Act¹**, the respondent as employer was under an obligation to produce records of the contracts of employment but failed to do so. The court stated that the appellants' respective representations on the contents of the agreements was evidence of the terms and conditions. The court came to the conclusion that the oral contracts had provision for gratuity, which was payable from the dates when the status of the appellants changed from casual to employees under fixed term contracts.

2.8 The respondent, dissatisfied with the decision of the Subordinate Court appealed to the High Court, advancing three grounds of appeal couched as follows-

1. ***That the Trial Magistrate misdirected herself in law and in fact when she held that all the 37 Plaintiffs be paid gratuity to be calculated with effect from the time that their status***

