

**IN THE COURT OF APPEAL OF ZAMBIA      APPEAL NO. 225 2021**

**HOLDEN AT LUSAKA**

***(Civil Jurisdiction)***

**BETWEEN:**

**MOFYA MFUNGO**

**HARVESTO MWANDILA**

**LEWIS SINKAMBA**

**TRESFORD CHIYAVULA**

**AND**

**LOCAL AUTHORITIES SUPERANNUATION FUND      RESPONDENT**

**CORAM: CHASHI, MUZENGA AND PATEL, JJA**

**ON: 19<sup>th</sup> September and 2<sup>nd</sup> November 2023**

*For the Appellants : M. Mwangala, Messrs Mutemwa Chambers*

*For the Respondent : M. Nalishuwa and D. Silavwe, Messrs  
Mulenga Mundashi Legal Practitioners*



**1<sup>ST</sup> APPELLANT**

**2<sup>ND</sup> APPELLANT**

**3<sup>RD</sup> APPELLANT**

**4<sup>TH</sup> APPELLANT**

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## **JUDGMENT**

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**CHASHI JA**, delivered the Judgment of the Court.

**Cases referred to:**

- Zambia Telecommunications Company v Eva Banda – CAZ Appeal No. 2 of 2017***

2. *Konkola Copper Mines Plc v Mulenga Chileshe – SCZ Appeal No. 94 of 2015*
3. *Care International Zambia Limited v Misheck Tembo – SCZ Judgment No. 56 of 2018*
4. *Nkhata and Others v Attorney General (1966) ZR, 174*
5. *Zambezi Portland Cement v Kevin Jivo Kalidas – CAZ Appeal No. 29 of 2019*
6. *Sarah Aliza Vekhnik v Casa Dei Bambini Montessori Zambia Limited – CAZ Appeal No. 129 of 2017*
7. *Moses Choongo v Zesco Recreational Club (Itezhi Tezhi) – SCZ Appeal No. 168 of 2013*
8. *Wilson Masauso Zulu v Avondale Housing Project Limited (1982) ZR, 172*
9. *Redrilza Limited v Abuid Nkazi and Others – SCZ Judgment No. 7 of 2011*
10. *Zambia Privatisation Agency v James Matale – SCZ Judgment No. 96 of 1995*
11. *Standard Chartered Bank v Celine Meena Nair – CAZ Appeal No. 14 of 2019*
12. *Chimanga Changa Limited v Stephen Chipango Ngombe (2010) ZR, 208*
13. *Liswaniso Sitali and Others v Mopani Copper Mines Plc (2004) ZR, 176*
14. *Simon Mukanzo v Zambia Consolidated Copper Mines – SCZ Appeal No. 133 of 1999*
15. *Rosemary Mwanza v Standard Chartered Bank Zambia Limited – SCZ Appeal No. 55 of 2009*
16. *Stanley Chipampa v Zesco Limited – SCZ Appeal No. 81 of 2010*



17. *Shepherd Muzhike v Chambeshi Copper Smelter Limited – CAZ Appeal No. 75 of 2019*
18. *Tolani Zulu and Another v Barclays Bank Zambia Ltd – SCZ Judgment No. 17 of 2003*
19. *African Banking Corporation Limited v Lazarus Muntete – CAZ Appeal No. 51 of 2021*
20. *David Banda v Attorney General – CAZ Appeal No. 233 of 2020*
21. *Dennis Chansa v Barclays Bank Zambia Plc - SCZ Appeal No. 111 of 2011*
22. *Josephat Lupemba v First Quantum Mining and Operations Limited - CAZ Appeal No. 120 of 2017*

**Legislation referred to:**

1. *The Employment (Amendment) Act, No. 15 of 2015*
2. *The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia*

**1.0 INTRODUCTION**

1.1 This appeal is against the decision of Hon. Mr. Justice E. Mwansa of the High Court (Industrial Relations Division) delivered on 22<sup>nd</sup> July 2021. In the said Judgment, the learned Judge found that, the Respondent properly terminated the Appellants' employment, by invoking the

termination clause provided in the Administrative Manual which formed part of the Appellants' contract.

## **2.0 BACKGROUND**

2.1 The brief background to this appeal is that, on 23<sup>rd</sup> May 2017, the Appellants commenced an action against the Respondents by way of a complaint seeking the following reliefs:

- i. A declaration that the purported discharge was unlawful, wrongful and unfair and therefore, it was null and void.**
- ii. Thirty-six months' salary including allowances as compensation for unlawful, wrongful and unfair dismissal from employment, less anything already paid out.**
- iii. Damages for mental torture, mental anguish and mental distress as a result of job loss.**
- iv. Damages for abrupt job loss and resultant embarrassment and inconvenience.**
- v. Damages for grim future job prospects, considering the fact that the complainants were managers employed on permanent and pensionable basis and discharged on**

**reasons that hinge on dishonesty and insubordination.**

- vi. Damages for inflicted sense of inferiority and loss of self-worth occasioned by the differential treatment which they were subjected to.**
- vii. Costs.**
- viii. Further or other relief as the court shall deem fit.**

2.2 According to the attendant affidavit, the Appellants were employed by the Respondent at various times in different departments and their contracts of employment were terminated on 12<sup>th</sup> April 2017. At the time of their termination, the Appellants all served as senior managers in their respective departments.

2.3 Prior to the Appellants' termination, the Appellants and three other senior managers engaged the executive management of the Respondent to table their concerns regarding their conditions of service. A meeting was proposed with the Respondent's Managing Director and a memorandum was drawn up on 14<sup>th</sup> November, 2016 highlighting the issues to be discussed.



- 2.4 However, the meeting did not take off as the Managing Director was indisposed. Subsequently, permission was granted to the Appellants to meet with the Chairman of the Respondent's board of directors and a meeting was convened on 28<sup>th</sup> November 2016.
- 2.5 About five months after the meeting, the Chairman vide a letter dated 6<sup>th</sup> April 2017, addressed to the Managing Director, expressed his displeasure in the manner that the Appellants and the other senior managers presented their issues at the meeting of 28<sup>th</sup> November 2016, citing indiscipline and lack of respect for authority. Subsequently, on 12<sup>th</sup> April 2017, the Appellants' contracts of employment were terminated and the reasons advanced for the termination were; misleading authorities and undermining management.
- 2.6 The Appellants alleged that they were not furnished with any details and particulars of their alleged wrong doing nor were the same proved. Further, that the reasons advanced by the Respondent were bordering on misconduct, as such, the Respondent ought to have

complied with its Disciplinary Code and Grievance Procedure of 2010 (the Code) and conducted a hearing.

- 2.7 Further, that from the seven (7) heads of department who participated in the meeting, only the Appellants were discharged, notwithstanding that all the seven (7) heads of department were similarly situated, as such, the Appellants were not afforded the enjoyment of equal treatment.
- 2.8 The Appellants contended that, their termination was contrary to **The Employment (Amendment) Act No. 15 of 2015 (The Act)** based on the fact that the reasons furnished for terminating the Appellants' contracts were not valid, thus their termination was wrongful, unfair and unlawful.
- 2.9 In its answer, the Respondent was in tandem with the Appellants as regards the Appellants engaging its executive for purposes of discussing their conditions of service. However, the Respondent alleged that permission to have the meeting with the board Chairman was only granted to the Appellants based on the issues highlighted in the memorandum of 14<sup>th</sup> November 2016.



2.10 That however, the Appellants proceeded to prepare a position paper which expanded the scope of the issues that had been highlighted in the memorandum. Further, that the position paper contained various inaccuracies and false information that mirrored anonymous letters that were sent to the Ministry of local government highlighting similar issues. That the conduct of the Appellants amounted to misleading of authorities and undermining management.

2.11 The Respondent argued that the Appellants were not dismissed but that their employment was terminated by way of payment in lieu of notice, in accordance with their respective contracts and the Administrative Manual and were accordingly furnished with reasons for their termination. The Respondent averred that, **The Act** does not place an obligation on the employer to substantiate the reasons for termination. Thus the Respondent acted within the provisions of the law.

2.12 The Respondent denied having subjected the Appellants to differential treatment, but terminated the Appellants



contracts based on their level of participation in the position paper.

### **3.0 DECISION OF THE LOWER COURT**

3.1 Upon considering the evidence and submissions by the parties, the learned Judge found that the termination had been effected pursuant to clause 13.3.2 of the Administration Manual which provided for termination by way of payment in lieu of notice. That therefore, the terminations were neither unfair nor unlawful.

3.2 The learned Judge further relied on the case of **Zambia Telecommunications Company v Eva Banda**<sup>1</sup> and was of the view that because the Appellants were terminated and not dismissed, the arguments on the procedure of termination did not apply. Consequently, the Appellants' claims were dismissed.

### **4.0 THE APPEAL**

4.1 Dissatisfied with the decision of the lower court, the Appellants have appealed to this Court advancing four (4) grounds of appeal couched as follows:

- 1. By non-direction or otherwise, the learned trial Judge misapprehended the law when he recoiled**

to declare that the Appellants' terminations of employment were unlawful on grounds that the same were not wrongful and unfair.

2. The court below misdirected itself in law and fact when it held that arguments on procedure of termination had no place in the case since the Appellants were terminated by way of payment in lieu of notice.
3. The Honourable court grossly erred in law and fact when it held that the Appellants' discharges were not wrongful or unfair because there was no breach of the provisions of the contract of employment or breach of statutory provisions and narrowly interpreting and/or limiting unfairness only to section 108 of Chapter 269 of the Laws of Zambia.
4. The court below erred in law and fact by failing to make a finding on the differential treatment to which the Appellants were subjected to and consequently glossed over the claim despite same being pleaded.



## 5.0 ARGUMENTS IN SUPPORT OF THE APPEAL

- 5.1 Mr. Mwangala, Counsel for the Appellants, relied on the filed heads of argument dated 21<sup>st</sup> September, 2021. Grounds one and three were argued together. Counsel began by citing various authorities including the cases of **Konkola Copper Mines Plc v Mulenga Chileshe**<sup>2</sup> and **Care International Zambia Limited v Misheck Tembo**<sup>3</sup>, on the distinction between unfair and wrongful dismissal.
- 5.2 Counsel then relied on Section 36(3) and (4) of **The Act** which provides as follows:

1. ...

2. ...

3. **The contract of service of an employee shall not be terminated unless there is a valid reason for the termination connected with the capacity, conduct of the employee or based on the operational requirements of the undertaking.**

4. **Reasons that are not valid for termination of contracts include-**

(a). ...

(b). ...

**(c). The filing of a complaint, the participation in proceedings against an employer involving alleged violation of laws or recourse to administrative authorities.**

5.3 According to the Appellants, their contracts of employment were terminated merely for having filed a complaint, participated in proceedings against an employer involving alleged violation of laws or recourse to administrative authorities. It was submitted that the Appellants' terminations were contrary to the provisions of the law cited above, rendering the terminations unlawful and unfair.

5.4 Further that, the reasons proffered for the termination by namely; misleading authorities and undermining management were not linked to the capacity, conduct of the employee or based on operational requirements of the undertaking as envisaged in section 36 of **The Act**.

5.5 Still under ground one, Counsel submitted that contrary to the lower court's finding, instances of unfair termination were not only limited to those outlined under section 108 of **The Industrial and Labour Relations Act**



but other instances are provided for under section 36 of **The Act**. Counsel relied on the case of **Nkhata and Others v Attorney General**<sup>4</sup> and urged us to interfere with the findings of the lower court.

5.6 In support of ground two, it was submitted that the learned Judge erred when he held that arguments on procedure of termination had no place in the case since the Appellants were terminated by way of payment in lieu of notice. The Appellant referred to sections 36 (1) (c) and 36 (3) of **The Act** and the cases of **Zambezi Portland Cement v Kevin Jivo Kalidas**<sup>5</sup> and **Sarah Aliza Vekhnik v Casa Dei Bambini Montessori Zambia Limited**<sup>6</sup> and submitted that even where an employer terminates a contract by way of notice of payment in lieu of notice, the employer is now obligated to furnish the employee with valid reasons for the termination.

5.7 Counsel further relied on the case of **Moses Choongo v Zesco Recreational Club, Itezhi Tezhi**<sup>7</sup> and submitted that *in casu*, the reasons given for the termination had nothing to do with the Appellant's conduct, capacity or employer's operational requirements. And that even

though the reasons advanced by the Respondents were bordering on misconduct, the Appellants were not formally charged with any offence and were not afforded an opportunity to exculpate themselves. The learned Judge therefore misdirected himself when he arrived at the decision that the terminations were neither unfair nor unlawful.

- 5.8 In support of ground four, it was submitted that the lower court failed to adjudicate on the Appellants' differential treatment despite the same being pleaded and evidence led to that effect. That it was clear from the evidence on record that seven (7) heads of department participated in the meeting and only 4, who were the Appellants had their contracts of employment terminated. In support of this position, the case of **Wilson Masauso Zulu v Avondale Housing Project Limited**<sup>8</sup> was cited where it was held that a court has a duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined in finality. We were urged to uphold the appeal.



## 6.0 ARGUMENTS OPPOSING THE APPEAL

6.1 Mr. Nalishuwa, Counsel for the Respondent, relied on the filed heads of argument dated 22 October, 2021. In response to grounds one and three, Counsel relied on the case of **Redrilza Limited v Abuid Nkazi and Others**<sup>9</sup> and submitted that a contract of employment can come to an end for one of many different reasons such as by termination or dismissal of the employee. That, however, the terms termination and dismissal cannot be used interchangeably. That *in casu*, the Appellants contract of employment came to end by way of termination of contract and not dismissal, therefore the Appellant's reference to unfair and wrongful dismissal is misconceived and irrelevant to the determination of the appeal.

6.2 Counsel further relied on the case of **Zambia Privatisation Agency v James Matale**<sup>10</sup> and submitted that payment in lieu of notice is a permitted form of terminating a contract and as such the learned Judge cannot be faulted for arriving at that decision. However, Counsel acknowledged that, indeed the law has now

placed an obligation on the employer to give a valid reason related to the employee's conduct or capacity or the employer's operational requirements. In that regard, the **Sarah Aliza Vekhnik** and **Zambezi Portland Cement Limited** cases were cited.

6.3 Counsel submitted that in the present case, the Appellants were terminated pursuant to clause 13.3.2 of the Administrative Manual which provided for termination by payment in lieu of notice and furnished with the valid reasons tied to the conduct of the Appellants.

6.4 That the circumstances of the case justified the Appellant's termination, in that, the Appellants were involved in the preparation of a position paper which was at variance with what was contained in the memorandum dated 14<sup>th</sup> November 2016. Further the position paper outlined issues that were not factually correct and thus undermined the trust and respect in the employment relationship between the Appellants and the Respondent. It was argued that trust and respect are critical to the employment relationship and an employee cannot be



expected to keep an employee who is dishonest or breaks the trust relationship. For this position, the cases of **Standard Chartered bank v Celine Meena Nair<sup>11</sup>**, **Chimanga Changa Limited v Stephen Chipango Ngombe<sup>12</sup>** and **Liswaniso Sitali and Others v Mopani Copper Mines Plc<sup>13</sup>** were cited.

6.5 That there is further evidence that, the Appellants undermined the duty of trust and respect based on the similarities between the issues raised in the position paper and two anonymous letters which were sent to the Minister and Permanent Secretary of Local Government, which led to investigations by the office of the Auditor General and the Anti-Corruption Commission. That the position paper amounted to misleading authorities as well as undermining the management. That such conduct justified termination.

6.6 The Respondent conceded that, there was no direct evidence linking the Appellant to the anonymous letters but the similarity to the position paper indicated that they were involved. Counsel relied on the **Chimanga Changa Limited case** and **Simon Mukanzo v Zambia**

**Consolidated Copper Mines**<sup>14</sup> and submitted that an employer is not obligated to prove that an offence was committed but only that he acted reasonably in coming to a decision. It was argued that *in casu*, there was a reasonable inference that the Appellants authored the anonymous letters and in such circumstances an employer is at liberty to terminate that contract of employment.

6.7 In response to ground two, the Respondent reiterated its arguments that the Appellants were terminated and not dismissed and in effecting the termination, the Respondent accordingly proffered valid reasons for the termination. There was therefore no need for the Respondent to have invoked disciplinary proceedings. In support of this position, Counsel relied on the case of **Rosemary Mwanza v Standard Chartered Bank Zambia Limited**<sup>15</sup> and the **Redrilza Limited case**.

6.8 It was further submitted that while the law does place an obligation on the employer to furnish the employee with valid reasons for the termination, such reasons do not need to be substantiated.



6.9 In response to ground four, it was submitted that, the Respondent has the discretion in the manner in which it terminates the employment of its employees subject to it complying with the law. That *in casu*, the Respondent complied with section 36 of **The Act** and the Administrative Manual and that having done so, it could effect termination in the manner it deemed fit. The cases of **Stanley Chipampa v Zesco Limited**<sup>16</sup> and **Shepherd Muzhike v Chambeshi Copper Smelter Limited**<sup>17</sup> were cited as authority for the proposition that an employee has the power of whether to condone the behavior of some employees.

6.10 Regarding the Appellant's argument on differential treatment, it was argued that the same had no legal backing and that evidence on record revealed that the Appellants were in no way similarly circumstanced with the other senior managers who were not terminated. That the decision to terminate the Appellants was informed by the level of participation and involvement in the conduct which led to their termination. We were urged to dismiss the appeal.

## **7.0 ARGUMENTS IN REPLY**

- 7.1 In reply, the Appellants maintained that their employment was terminated solely on the basis that they filed a complaint and administratively engaged the Respondent for purposes of improved conditions of service which was contrary to section 36(4)(c) of **The Act**.
- 7.2 In responding to the Respondent's argument that there is no obligation placed on the employer to substantiate the valid reasons given for termination, the Appellant submitted that the Respondent misapprehended the law and that the intention behind the enactment of section 36 of **The Act** was to curtail circumstances where the employer is invoking the termination clause out of malice. For this position the **Redrilza** and **Zambia Consolidated Copper Mines cases** were relied on. That in the present case, the termination clause was invoked in bad faith and the lower court ought to have interrogated it.

7.3 The Appellants insist that, to ascertain whether or not the reasons given by an employer are valid, the employee ought to be given an opportunity to be heard.

## **8.0 DECISION OF THE COURT**

8.1 We have considered the evidence on record, the submissions by Counsel for the Appellants and the Respondent. We have also considered the Judgment being impugned.

8.2 From the onset, we note as did the lower court that, the Appellants appear to use the terms termination and dismissal interchangeably and have even gone further to cite authorities on dismissal and at the same time also relied on section 36 of **The Act** dealing with termination. Needless to state that, these two terms do not refer to one and the same thing as there is a clear difference between the termination of a contract of employment and a dismissal.

8.3 There is a plethora of authorities on the distinction between the two terms including the **Care International Zambia Limited**<sup>3</sup> and **Redrilza Limited**<sup>9</sup> cases which have been cited by both the Appellants and the



Respondent. In the latter case, the Supreme Court stated as follows:

**“Indeed, there is a difference between 'dismissal' and 'termination' and quite obviously the considerations required to be taken into account, vary. Simply put, 'dismissal' involves loss of employment arising from disciplinary action, while 'termination' allows the employer to terminate the contract of employment without invoking disciplinary action.”**

8.4 We have had a look at the terminations letters as well as the Administrative Manual which formed part of the Appellants' contract. We note that clause 13.2.2 of the Administrative Manual provided for termination by way of payment in lieu of notice. We are therefore inclined to agree with the Respondent that the Appellants' contracts of employment came to an end by way of termination and not dismissal.

8.5 The Supreme Court has in a plethora of cases including the cases of **Tolani Zulu and Another v Barclays Bank Zambia Ltd<sup>18</sup>** and the **Zambia Privatisation Agency v**

**James Matale**<sup>10</sup>, held that payment in lieu of notice is a proper and a lawful way of terminating an employment contract. While we do agree with the Appellants that the reasons advanced by the Respondent for terminating their contracts were bordering on misconduct, the Respondent had a number of options available to it such as invoking disciplinary proceedings or electing to give the notice required or electing to pay in lieu of notice.

8.6 The Respondent elected to pay three month's salary in lieu of notice which as stated in the above cases, was an acceptable form of terminating a contract. The Respondent was not obligated to invoke disciplinary proceedings. Therefore, the arguments and authorities on dismissal and disciplinary proceedings are irrelevant to this case.

8.7 However, having stated that payment in lieu of notice is an acceptable form of termination, the coming in of **The Act** and in particular section 36 (3) now places a duty on the employer, where the termination is at the instance of the employer, to furnish the employee with a valid reason

for the termination. Section 36(3) of **The Act** reads as follows:

**“The contract of service of an employee shall not be terminated unless there is a valid reason for the termination connected with the capacity, conduct of the employee or based on the operational requirements of the undertaking.”**

8.8 In our view, where the reasons advanced by the employer have been called into question, the employer must show that it has a valid reason that it can justify. Contrary to the Respondent’s argument, it is not enough for the employer to merely give a reason. In the case of **African Banking Corporation Limited v Lazarus Muntete**<sup>19</sup> we had an opportunity to consider section 36(3) of **The Act** and in that case we concluded as regards Section 36 (3) of **The Act**, that the law now places an evidential burden on the employer to establish and prove on the balance of probabilities that there was a valid reason for terminating or dismissing an employee.



8.9 *In casu*, the Appellants have challenged the reasons advanced by the Respondent for the termination. The question to be considered therefore is whether the Respondent has substantiated its reasons for the Appellants' termination, in order to comply with the requirement of the law.

8.10 It therefore, becomes necessary for us to consider the facts and circumstances leading up to the termination. The Respondent argues that the Appellants in their quest to table their concerns over the conditions of service, prepared a position paper at the 11<sup>th</sup> hour, which exceeded the scope of the issues that had been highlighted in the memorandum which contained the agreed talking points for the meeting. That the memorandum is what formed the basis of the meeting with the Board Chairman.

8.11 Further, that the position paper contained inaccuracies and false information that mirrored anonymous letters that were sent to the Ministry of Local Government which led to investigations by the Auditor General and the Anti-Corruption Commission. That the only inference is that

the Appellants authored the anonymous letters. It is this conduct by the Appellants that amounted to misleading of authorities and undermining management.

8.12 The Appellants, on the other hand, argued that the position paper was merely putting flesh on what was already contained in the memorandum and that this infuriated the Respondent. That therefore, the termination was actuated by malice, based on the fact that the Appellants lodged a complaint on the conditions of service.

8.13 Upon a conjoint reading of the memorandum of 14<sup>th</sup> November 2016 and the position paper, we are of the view that the position paper was merely a detailed account of the issues that were highlighted in the memorandum concerning the Appellants' conditions of service. By expanding on those issues, we do not see how the Appellants actions amounted to misleading authorities and undermining management.

8.14 In any case at page 183 of the record, is a letter from the executive management to the Board Chairman, wherein the Respondent ably responded to the issues raised by

the Appellants in the position paper. By that response, the Respondent were in effect giving their position on the issues raised by the Applicant, which in our view is what the Appellants were seeking. We are therefore at pains to appreciate the reasons advanced for the termination. We express this view because we have examined the record and find nothing suggestive of the Appellants misleading authorities and undermining management to justify termination.

8.15 Further the Respondent also conceded that they did not have direct evidence linking the Appellants to the anonymous letters. This goes to show that indeed the terminations were in bad faith. The Respondent having failed to substantiate its reasons, entails that the termination was unlawful.

8.16 The court below, being a court with the mandate to do substantial justice, ought to have investigated the reasons furnished by the Respondent for the termination and in doing so, exercised its powers to delve behind the termination. Had it done so, it would have discovered



that the termination was in bad faith and rendered it unlawful.

8.17 We note that the Appellants, in the court below, sought thirty-six (36) months' salary including allowances as damages for unlawful termination. Having found that the termination of the Appellants' contracts of employment was unlawful, we are inclined to agree with the Appellants that this is a proper case warranting a departure from the normal measure of damages, considering the traumatic fashion in which the Appellants contracts were abruptly terminated.

8.18 We have also taken into account the fact that the Appellants were employed on a permanent and pensionable basis, which simply means that because of the unlawful termination, the Appellants lost out on a pension. We also considered the difficulty to find gainful employment in a similar role of a senior manager. In the case of **David Banda v Attorney General**<sup>20</sup>, we looked at when a court can depart from the normal measure of damages and we looked at various authorities including the cases of **Dennis Chansa v Barclays Bank Zambia**

**Plc<sup>21</sup> and Josephat Lupemba v First Quantum Mining and Operations Limited<sup>22</sup>** and we held as follows:

**The circumstances under which courts can exceed the normal measure of damages abound. They include harsh or inhuman treatment causing inconvenience, distress, mental anguish, trauma and grim future job prospects to the ex - employee.**

8.19 Based on the foregoing, we award the Appellants twelve (12) months' salaries each in damages to be calculated using the gross pay of the last drawn salary. The damages awarded herein are inclusive of the three months' payment in lieu of notice. The amount shall attract interest at the short term lending rate from the date of commencement of this matter to the date of this Judgment and thereafter at the commercial lending rate till full satisfaction of the same. We find merit in grounds one, two and three.

8.20 Coming to ground four dealing with the Appellants argument on differential treatment, we agree that in employment cases, similarly circumstanced employees

must be treated alike. Therefore, the question to consider is whether the Appellants were similarly circumstanced with the other heads of departments whose contracts of employment were not terminated.

8.21 We have examined the record and we are of the view that the Appellants have not adduced sufficient evidence upon which we can find that the Appellants and the other heads of department were similarly circumstanced. We therefore cannot hold that the Appellants were similarly circumstanced with the other heads of departments.

## 9.0 CONCLUSION

9.1 In sum, the appeal is meritorious and is accordingly allowed. This matter having emanated from the Industrial Relations Division, we shall make no Orders in respect to costs.



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**J. CHASHI**  
**COURT OF APPEAL JUDGE**



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**K. MUZENGA**  
**COURT OF APPEAL JUDGE**



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**A. N. PATEL, SC**  
**COURT OF APPEAL JUDGE**