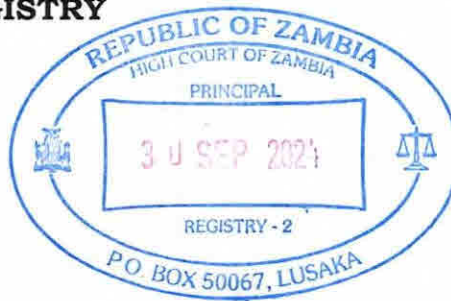


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2021/HP/1003



BETWEEN:

**EMMY SHANZI KAIRA
AUDREY KALWALA
MEMORY KOMAKI
CECILIA MUNDIA
PATIENCE BWALYA JERE
FABIAN MULEYA**

**1st PLAINTIFF
2nd PLAINTIFF
3rd PLAINTIFF
4th PLAINTIFF
5th PLAINTIFF
6th PLAINTIFF**

AND

STANDARD CHARTERED BANK ZAMBIA PLC**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 30th DAY OF
SEPTEMBER, 2024.**

*For the Plaintiffs : Mr. G.S. Cornhill and Ms N. Tembo, Messrs Wilson & Cornhill
For the Defendant : Mr. Mwape Chileshe and Mrs Cynthia Chifwelu Muzumara,
Messrs Eric Silwamba, Jalasi & Linyama Legal
Practitioners*

J U D G M E N T

CASES REFERRED TO:

1. *Wilson Masauso Zulu v Avondale Housing Project Limited 1982 ZR 172*
2. *Richard Muchaka Mwanambulo v Ponovan Musoka Hikakako Appeal No 151 of 2000*
3. *ZUFLAW v Barclays Bank Plc Appeal No 17 of 2007*
4. *Chilanga Cement Plc v Kasote Singogo SCZ No 13 of 2009*
5. *Zambia Consolidated Copper Mines Investments Holdings Limited Plc v Woodgate Holdings Limited 2011 Vol 1 ZR*
6. *Barclays Bank Zambia Limited Plc v Weston Luwi and Suzgo Ngulube Appeal No. 7 of 2012*
7. *National Milling Corporation v Angela Chileshe Bwembya Silwambe SCZ Appeal No 171/2015*
8. *Josiah Subukanya, Bernard Chewes & 117 others v The Attorney General SCZ Appeal No 197/2015*

9. *Mugford v Midland Bank Plc* ⁽¹⁾

LEGISLATION REFERRED TO:

- 1. *The Employment Act, Chapter 268 of the Laws of Zambia***
- 2. *The Employment Code Act No 3 of 2019***

OTHER WORKS REFERRED TO:

- 1. *A Comprehensive Guide to Employment Law in Zambia, by Winnie Sithole Mwenda and Chanda Chungu, University of Zambia Press, 2021***
- 2. *Labour Law in Zambia: An Introduction 2nd Edition, by Chanda Chungu and Ernest Beele Juta and Company (Pty) Ltd, 2020***

1. INTRODUCTION

1.1 The Plaintiffs, Emmy Shanzi Kaira, Audrey Kalwala, Memory Komaki, Cecilia Mundia, Patience Bwalya Jere and Fabian Muleya are all former employees of the Defendant, Standard Chartered Bank Zambia Plc, a company that is incorporated in Zambia, and has its' registered office at Lusaka. They commenced these proceedings on 26th August, 2021, by way of Writ of Summons which was accompanied by a statement of claim and the other requisite documents.

1.2 The Writ of Summons and statement of claim were subsequently amended on 30th August, 2021, and the reliefs sought are:

- a. An Order that the termination of Emmy Shanzi Kaira and the others was wrongful and unlawful;*
- b. Damages for wrongful and unlawful termination of employment;*

- c. *An Order to compel Standard Chartered Bank Zambia Plc to recompute the redundancy package to include all the completed years of service;*
- d. *A refund of Ninety (90) percent of the insurance premiums and the value of six months instalments on each loan facility which were recovered from Emmy Shanzi Kaira and the others' redundancy package;*
- e. *With respect to Emmy Shanzi Kaira and Fabian Muleya, an Order to:*
 - i. *Restore the facility to Kwacha, being the currency in which the facility was contracted;*
 - ii. *An Order to Standard Chartered Bank Zambia Plc to account for any foreign exchange losses to Emmy Shazi Kaira and Fabian Muleya;*
 - iii. *An Order for Standard Chartered Bank Zambia Plc to refund any and all recoveries from the facility on the ground that the facility was a benefit and not a loan;*
 - iv. *Alternatively, Emmy Shanzi Kaira and Fabian Muleya claim a discount of Twenty (20) percent to apply to any recoveries on the facility;*
- f. *With respect to Patience Bwalya Jere damages for nervous shock and mental distress; and*
- g. *Interest, Costs and any further ancillary relief.*

2. STATEMENT OF CLAIM

- 2.1 The basis of the claims, as set out in the amended statement of claim, reveals that Emmy Shanzi Kaira and the others:

were at the material time employees of Standard Chartered Bank Zambia Plc until their services were terminated by redundancy, at the instance of Standard Chartered Bank Zambia Plc.

- 2.2 In that respect, the averment was that by an email dated 9th November 2018, Standard Chartered Bank Zambia Plc advised its' employees in the Retail Banking Department, among them Emmy Shanzi Kaira, Audrey Kalwala and Fabian Muleya of the intended changes to the department where they worked, to the effect that their existing roles were likely to be affected, and they were invited for a meeting to discuss the intended changes.
- 2.3 It was also stated that the email outlined the criteria which was to be used by Standard Chartered Bank Zambia Plc to determine which roles would be affected by the changes. The averment was that the criteria included a combination of an interview for the remaining roles in the department following the changes and an assessment of the employees' performance.
- 2.4 Thus, following the interviews, Emmy Shanzi Kaira, Audrey Kalwala and Fabian Muleya were informed on diverse dates by letter, formally that their roles were at risk of redundancy. It was stated that on receipt of the letter, Emmy Shanzi Kaira wrote to Standard Chartered Bank Zambia Plc asking for further and better particulars on the redundancy process, including the redundancy package, and the treatment of

existing liabilities which Emmy Shazi Kaira and the others had with Standard Bank Zambia Plc.

- 2.5 The assertion was that no further meetings or consultations were had, and Memory Komaki learnt of her role being at risk of redundancy and subsequent termination whilst she was on maternity leave. She contended that no meetings or consultations were conducted. With regard to Cecilia Mundia her contention was that she learnt of the intended changes by electronic mail.
- 2.6 Further assertion was made that Emmy Shanzi Kaira, Audrey Kalwala, Cecilia Mundia and Fabian Muleya attended interviews, and they were advised that their jobs were at risk. Patience Bwalya Jere's assertion was that she learnt of the intended redundancies vide a letter inviting her to a meeting entitled 'town hall'. She also stated that she learnt of the changes to the Retail Banking Department and her role being at risk of redundancy, by a letter which referred to a meeting termed 'town hall', which was called by Standard Chartered Bank Zambia Plc. She equally contended that no meetings or consultations were conducted until her employment was terminated.
- 2.7 It was stated that Standard Chartered Bank Zambia Plc terminated the contracts of employment for Emmy Shanzi Kaira and the others on 11th January, 2019, which terminations were effective 11th February, 2019. The averment was that in the said letters of termination, Emmy

Shanzi Kaira and the others were sent on garden leave with immediate effect on the following conditions:

- i. Not to attend Standard Chartered Bank Zambia Plc's premises unless invited;
- ii. Not to contact any client, supplier or employee of Standard Chartered Bank Zambia Plc without the specific approval from the Line Manager; and
- iii. To immediately inform the Line Manager if any client, supplier, or employee of Standard Chartered Bank Zambia Plc tried to contact them.

2.8 As for the redundancy package that was payable, it was stated that Standard Chartered Bank Zambia Plc informed Emmy Shanzi Kaira and the others that the redundancy packages would be paid at Two (2) months per each year worked. The averment was that by virtue of Emmy Shanzi Kaira and the others employment, they were entitled and they did procure diverse credit facilities from Standard Chartered Bank Zambia Plc, which were secured by credit life policies which were issued by Sanlam Life Insurance Zambia Limited.

2.9 It was stated that by virtue of the said credit policies, Emmy Shanzi Kaira and the others were offered six months instalments of the loans in the event of loss of employment through retirement and resignation. Further, in the event of early settlement of the loans, Emmy Shanzi Kaira and the others were entitled to a refund of ninety percent (90%) of the premium for the credit life facility.

2.10 The assertion was that the redundancy package for Emmy Shanzi Kaira and the others was calculated as follows:

- i. Unpaid salary up to the date of termination, 11th February, 2019;
- ii. Leave days outstanding up to 11th February, 2019;
- iii. Two (2) months' salary for every completed year of service; and
- iv. Repatriation where applicable.

2.11 It was contended that wrong figures with respect to the number of years served were used to calculate the redundancy package as shown below:

Name	Date employed	Date terminated	Years served	Years computed
Emmy Shanzi Kaira	07/11/2003	11/02/2019	13 years 3 months	11
Audrey Kalwala	17/03/2003	11/02/2019	15 years 11 months	13
Memory Komaki	16/06/2008	11/02/2019	10 years 8 months	9
Patience Bwalya Jere	01/07/2002	17/02/2019	16 years 5 months	15
Cecilia Mundia	04/03/1991	11/02/2019	26 years 11 months	22

2.12 The contention was that notwithstanding that Emmy Shanzi Kaira and the others did not accept the redundancy package,

Standard Chartered Bank Zambia Plc proceeded to pay them their redundancy packages, less any monies that they owed the said Standard Chartered Bank Zambia Plc. In that regard, it was stated that all the outstanding loans were recovered from the redundancy packages and auto loan facilities which were availed to Emmy Shanzi Kaira and the others.

2.13 Thereafter, Emmy Shanzi Kaira and the others sought assistance from the Ministry of Labour, and after several meetings were held, Standard Chartered Bank Zambia Plc offered Emmy Shanzi Kaira and the others a Twenty (20) percent discount on all the credit loan facilities, and Emmy Shanzi Kaira and the others were accordingly credited. However, Standard Chartered Bank Zambia Plc refused to extend the Twenty (20) percent discount to the auto loan facilities which were availed to Emmy Shanzi Kaira and Fabian Muleya.

2.14 It was stated that the auto loan facility was unilaterally assigned by Standard Chartered Bank Zambia Plc to ABSA Bank Zambia Plc, and was converted into United States Dollars without the consent of Emmy Shanzi Kaira and Fabian Muleya. Further averment was made, that despite several requests, demands and reminders, Standard Chartered Bank Zambia Plc had insisted that the auto loan facility was not a loan facility, but a benefit which was due to Emmy Shanzi Kaira and Fabian Muleya.

- 2.15 The assertion was that Standard Chartered Bank Zambia Plc recovered the outstanding amounts on the auto loan facility from Emmy Shanzi Kaira and Fabian Muleya's redundancy packages, although Standard Chartered Bank Zambia Plc claimed that the facility was a benefit and not a loan.
- 2.16 With regard to the redundancy being wrongful, the particulars were stated as:

a. Memory Komaki

Her employment was terminated within six months of delivery contrary to the ***Employment Act, Chapter 268 of the Laws of Zambia***, which was then in force.

b. Cecilia Mundia

Cecilia Mundia was offered the position of Customer Service Manager (CSM) prior to termination, but she never took up that role. In the interview process prior to termination, she was interviewed as CSM, and terminated on the grounds of poor performance, notwithstanding that she had never at any material time, taken up the role.

c. Patience Bwalya Jere

Patience Bwalya Jere was never interviewed or availed an opportunity to find an alternative position. She was on medical leave during the entire redundancy process, and she was never consulted and she suffered nervous shock and distress when Standard Chartered Bank Zambia Plc suddenly served her a notice that her role

was at risk of redundancy and the subsequent termination of her employment.

2.17 Averment was made, that Standard Chartered Bank Zambia Plc conducted subsequent redundancies in 2019 and 2020 respectively, which affected employees who were similarly circumstanced with Emmy Shanzi Kaira and the others, and offered those employees a much better package than the package which was offered to Emmy Shanzi Kaira and the others.

2.18 The notable disparities between the redundancy packages which were paid were stated as:

- a. The computation of the redundancy packages in the subsequent redundancy factored in all the years that were served, while Emmy Shanzi Kaira and the others were only paid for the periods that they served under permanent and pensionable employment;
- b. Under the subsequent redundancy package, the affected employees were entitled to six months medical cover post termination, while for Emmy Shanzi Kaira and the others, the medical cover ended at termination; and
- c. There was consultation and engagement prior to implementation of the subsequent redundancies.

3. DEFENCE

3.1 In the defence which was filed on 16th September, 2021, the capacities in which Emmy Shanzi Kaira and the others had sued, as well as that of Standard Chartered Bank Zambia

Plc was said to be within Emmy Shanzi Kaira and the others peculiar knowledge.

- 3.2 The averments regarding how Standard Chartered Bank Zambia Plc wrote the email dated 9th November, 2018, advising employees in its' Retail Banking Department, among them Emmy Shanzi Kaira, Audrey Kalwala and Fabian Muleya of the intended changes to the department, and that their roles were likely to be affected, and inviting them to a meeting to discuss the changes was admitted.
 - 3.3 Further admission was made to the assertion that the email outlined the criteria that would be used to determine which roles would be affected by the changes and the criteria to be used as alleged. It was also agreed that Emmy Shanzi Kaira, Audrey Kalwala and Fabian Muleya were interviewed after which they were notified by letter formally that they were at risk of redundancy.
 - 3.4 Standard Chartered Bank Zambia Plc also agreed that Emmy Shanzi Kaira on receipt of the letter, wrote to it requesting further and better particulars as alleged. It was however denied that no further meetings or consultations were conducted, with the defence being that Emmy Shanzi Kaira, Audrey Kalwala and Fabian Muleya fell under management, and their redundancy was pursuant to the terms and conditions in their contracts of employment and the Human Resources Policies which were prevailing at the time.
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- 3.5 It was also contended that the redundancy process which followed, included a group consultative meeting where all the impacted staff, including Emmy Shanzi Kaira and the others were engaged by Management, including Human Resources. The averment was that during that meeting, the rationale for the pending redundancies was shared, along with the criteria which would be used to identify successful candidates for the re-organised business segment.
- 3.6 The defence was also that in addition, the affected staff were invited to pose any questions and to seek clarity over the impending redundancies. It was stated that the criteria which was communicated and was used to identify the successful candidates for the reorganized business, comprised a combination of both a face to face interview and a review of the performance for the past Two (2) years.
- 3.7 It was denied Cecilia Mundia learnt of the intended changes by electronic mail, and that only Emmy Shanzi Kaira, Audrey Kalwala and Fabian Muley attended interviews. The assertion in defence was that Cecilia Mundia also attended the interviews for the remaining roles, after they were advised that their current roles would fall off, and they were unsuccessful in the interviews.
- 3.8 Also denied, was the allegation that Patience Bwalya Jere learnt of the intended redundancies vide a letter inviting her to a meeting entitled 'town hall'. It was contended in defence, that the intended restructuring of the organisation was communicated to all the members of staff by Standard

Chartered Bank Zambia Plc through its' standard mode of communication.

- 3.9 Therefore, it was denied as alleged by Patience Bwalya Jere that she learnt of the changes to the Retail Banking Department and her role being at risk of redundancy through the meeting termed 'town hall', which was called by Standard Chartered Bank Zambia Plc, and that no meetings or consultations were conducted until her employment was terminated.
- 3.10 The averment regarding when Emmy Shanzi Kaira and the others' contracts of employment having been terminated was admitted, with addition being made that Standard Chartered Bank Zambia Plc followed all the laid down procedures that are available at law, including wide consultations with the Ministry of Labour.
- 3.11 The allegations made with regard to the conditions which were set out in the letters of termination were admitted, and Standard Chartered Bank Zambia Plc added that the redundancy packages were lawfully calculated, and were in line with **Section 55 (2) of the Employment Code Act No 3 of 2019** and the said terms of redundancy were communicated to the Ministry of Labour, as required by law.
- 3.12 It was denied that by virtue of their employment, Emmy Shanzi Kaira and the others were entitled to, and did procure diverse credit facilities from Standard Chartered Bank Zambia Plc, which were secured by credit life policies which were issued by Sanlam Life Insurance Zambia Limited, and

that the said credit policies offered Emmy Shanzi Kaira and the others Six (6) months instalments of loans in the event of loss of employment through retirement and resignation.

3.13 The defence was that the claim by Emmy Shanzi Kaira and the others for Six (6) months instalments on each loan was unfounded, and that the insurance was offered by African Life Assurance Company (Zambia) Limited. Further, the requirements for any insurance claim under the retrenchment clause were as follows;

- i. Loans disbursed before June 2017, 50% of the outstanding loan is payable at the time of retrenchment;
- ii. For loans which were disbursed between June 2017 and June 2020, 50% of the outstanding loan is payable after application of end of service benefits; and
- iii. All loans disbursed effective 1st July, 2020, 9 months instalments, is payable at the time of retrenchment;
- iv. The claim was to be made within Six (6) months of the redundancy to African Life Assurance Company (Zambia) Limited.

3.14 Denial was made, that in the event of early settlement of the loan, Emmy Shanzi Kaira and the others were entitled to a refund of Ninety (90) percent of the premium for the credit life policy. The defence was that refund on loan assurance was only applicable on early settlement, and that all refunds due for loans which were settled before the final loan

maturity were paid to the applicant for the remaining loan tenor.

- 3.15 It was stated that the Ninety (90) percent refund which Emmy Shanzi Kaira and the others were claiming, was simply the basis of computation, that is Ninety (90) percent of the original loan which was applied for, and not the amount payable.
- 3.16 The defence was also that for all the loans which were subjected to some form of claim like retrenchment, death or permanent disability, no refunds were payable where the claim had been paid. It was contended that the only basis for a refund on Ninety (90) percent portion of the loan, was in cases of early loan settlement, and not after a successful insurance claim.
- 3.17 The allegations regarding what constituted the redundancy packages which were paid to Emmy Shanzi Kaira and the others, and that Emmy Shanzi Kaira and the others were paid the same less any monies that they owed Standard Chartered Bank Zambia Plc was denied. The defence was that the redundancy packages were properly calculated in accordance with the law.
- 3.18 It was denied that all the outstanding loans and auto loan facilities were recovered from the redundancy packages, with the defence being that all the staff in the eligible grades were notified that Standard Chartered Bank Zambia Plc had decided to transfer the Auto Loan Facility to Barclays Bank Zambia (as it then was). Further averment was made, that

Emmy Shanzi Kaira and Fabian Muleya were senior employees, and were therefore entitled to either a car allowance or car loan under the Auto Loan Facility as a benefit.

3.19 It was stated that in view of the fact that Standard Chartered Bank Zambia Plc was responsible for processing the monthly repayments for the vehicles, a United States Dollar agreement with Barclays Bank Zambia was entered into, which offered a much cheaper lending rate on the facilities of 7% to the 24%, which was being paid internally. The defence was that Standard Chartered Bank Zambia Plc exercised its' right to transfer or assign the lease as per the terms and conditions of the auto facility.

3.20 Agreement was made, that Emmy Shanzi Kaira and the others sought assistance from the Ministry of Labour, and that after several meetings, Standard Chartered Bank Zambia Plc offered Emmy Shanzi Kaira and the others, a Twenty (20) percent discount on all the credit loan facilities and Emmy Shanzi Kaira and the others were accordingly credited.

3.21 It was however denied that Standard Chartered Bank Zambia Plc refused to extend the Twenty (20) percent discount to the auto loan facilities which were obtained by Emmy Shanzi Kaira and Fabian Muleya. Denial was made that the auto loan facility was unilaterally assigned to ABSA Bank and converted into United States Dollars without Emmy Shanzi Kaira and Fabian Muleya's consent.

- 3.22 The defence was that the Human Resources Manual which applied to Emmy Shanzi Kaira and Fabian Muleya at the time of their employment, clearly provided that if for any reason the officer's employment with the Bank came to an end, they would have to clear the outstanding liability immediately.
- 3.23 It was also stated that on or about 30th March, 2017 and 5th June, 2016, respectively, Emmy Shanzi Kaira and Fabian Muleya gave Standard Chartered Bank Zambia Plc an undertaking with regard to the motor vehicles stating that in the event that their services with the Bank were terminated or they resigned on their own accord, the outstanding balance on the motor vehicle would become payable on their last working day.
- 3.24 Contention was made that the vehicles were a benefit to the employee, as long as they were in employment as per the staff policy guidelines, and that the benefit fell away once the employment ceased, and immediately became payable to Standard Chartered Bank Zambia Plc.
- 3.25 The particulars of wrongful termination of employment as alleged were denied. It was stated that Memory Komaki's exit was not connected to her condition/pregnancy, and that the redundancy was necessitated by a change in the operational model of the business. As such, the role was no longer required in the new structure, and she was therefore declared redundant, which act was within the confines of the law.

- 3.26 In respect of Cecilia Mundia, her allegations that her employment was wrongfully terminated was denied. It was stated that her exit from employment was by way of redundancy given that her role had fallen away, following the restructuring of the business, and it was not on poor performance as alleged.
- 3.27 Averment was made that at the time of the redundancy, Cecilia Mundia was performing the role of Customer Services Manager, and as per the criteria which was laid out for the redundancy process, the staff were assessed based on a combination of the interview score, and a review of the past Two (2) years' annual performance
- 3.28 However, Cecilia Mundia did not qualify for the remaining role and thus, she was declared redundant.
- 3.29 In respect of Patience Bwalya Jere's assertion regarding the wrongful termination of her employment, the defence was that she was employed as a Client Services Manager. It was stated that when the redundancy exercise commenced, her role fell away, and she was therefore not interviewed for that role. Further assertion was made that despite Patience Bwalya Jere's role being declared redundant, there were other openings on the Bank job portal for which all staff, especially those at risk of redundancy were encouraged to apply for.
- 3.30 Therefore, Patience Bwalya Jere had the opportunity of trying to seek alternative roles by applying as stated during the at-risk conversation, and in the at-risk letter.

3.31 With regard to Standard Chartered Bank Zambia Plc having conducted subsequent redundancies in 2019 and 2020 and that it offered the employees who were thus declared redundant, much better redundancy packages than Emmy Shanzi Kaira and the others the response was as follows:

i. Each redundancy is characterized by its' own terms and conditions. The employees were employed either as contract staff or permanent staff with different terms of employment and different conditions. For employees on fixed term contracts, and they were later converted to permanent staff, they would be paid all their terminal benefits including gratuity for the period that they were on fixed term contract, and a new contract would be entered into for the permanent position.

Thus, the period relating to the number of years which was used to compute the redundancy payment for the period served as a permanent employee was correct.

ii. Each redundancy was characterized by its' own terms and conditions. The medical cover which was given was at Management's discretion, and given purely on ex-gratia basis. The key feature of an ex-gratia payment is that there is no contractual obligation placed on an employer to award it to an employee; and

iii. Consultations were had between Standard Chartered Bank Zambia Plc and Emmy Shanzi Kaira and the others prior to the redundancy process.

3.32 Therefore, it was denied that Emmy Shanzi Kaira and the others were entitled to the reliefs as claimed.

4. EVIDENCE LED AT TRIAL

4.1 At trial, Emmy Shanzi Kaira and the others each testified and they did not call any witnesses, while Standard Chartered Bank Zambia Plc called Four (4) witnesses.

EVIDENCE BY EMMY SHANZI KAIRA AND THE OTHERS

PW1- EMMY SHANZI KAIRA

4.2 In her testimony, Emmy Shanzi Kaira produced her witness statement as her evidence. It was her testimony in that witness statement, that she was employed by Standard Chartered Bank Zambia Plc on 7th November, 2003. Then by an email dated 9th November, 2018, Standard Chartered Bank Zambia Plc advised that the Retail Banking Department, of which she was part, would undergo changes which would affect her role.

4.3 She stated that the email included the following information:

- i. That they were invited to a meeting to discuss the intended changes;
- ii. Outlined the criteria that would be used by Standard Chartered Bank Zambia Plc to determine the roles that would be affected by the changes;
- iii. That the changes would be based on a combination of interviews for the remaining roles in the department following the changes and an assessment of an employees' performance.

- 4.4 It was Emmy Shanzi Kaira's testimony that she attended the interviews, at which she was informed that her role was at risk of redundancy, and she received a letter dated 11th December, 2018, which also informed her of the same. Page 3 of the bundle of documents for Emmy Shanzi Kaira and the others was identified as the said letter.
- 4.5 Still in her testimony, Emmy Shanzi Kaira stated that upon receipt of the letter dated 11th December, 2018, she wrote to Standard Chartered Bank Zambia Plc requesting for details of the redundancy process, such as the package which was payable, and how outstanding liabilities would be treated. As pleaded in the statement of claim, her testimony was that Standard Chartered Bank Zambia Plc did not conduct any further meetings or consultations beyond the interview that she participated in.
- 4.6 Then by a letter dated 11th January, 2019, and which was effective 11th February, 2019, Emmy Shanzi Kaira's employment was terminated, which letter was at page 37 of Emmy Shanzi Kaira and the others bundle of documents. Emmy Shanzi Kaira testified that the letter of termination put herself and other employees who were affected by the redundancy on garden leave with immediate effect under the following conditions:
- i. No to attend Standard Chartered Bank Zambia Plc's premises unless invited;
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- ii. Not to contact any client, supplier or employee of Standard Chartered Bank Zambia Plc without specified approval from the Line Manager; and
 - iii. To immediately inform the Line Manager if any client, supplier or employee of Standard Chartered Bank Zambia Plc tried to contact them.
- 4.7 In relation to the redundancy package which was payable, Emmy Shanzi Kaira's evidence was that Standard Chartered Bank Zambia Plc informed her that it would pay a redundancy package of Two (2) months per each year worked.
- 4.8 Her continued testimony was that during her employment, she was entitled to various credit facilities from Standard Chartered Bank Zambia Plc, which she procured. Emmy Shanzi Kaira stated as pleaded in the statement of claim, that the facilities were secured by credit policies which were issued by Sanlam Life Insurance Zambia, adding that they were at pages 91-93 of Emmy Shanzi Kaira and the others' bundle of documents.
- 4.9 As to the terms of the said credit policies, it was stated that they provided for relief of Six (6) months instalments of any outstanding loans in the event of loss of employment through retirement and resignation. She further testified that in the event of settlement of the loan, she was entitled to a refund of Ninety (90) percent of the premium for the credit life policy.
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- 4.10 In respect of the calculation of the redundancy package, this was stated as follows:
- i. Unpaid salary up to the termination date 11th February, 2019;
 - ii. Leave days outstanding up to 11th February, 2019; and
 - iii. Two (2) months salary for every completed year of service.
- 4.11 Emmy Shanzi Kaira testified that she worked for a total of Thirteen (13) years and Three (3) months at the time her employment was terminated. However, Standard Chartered Bank Zambia Plc computed and paid her redundancy package at a rate of Eleven (11) years instead of Thirteen (13) years and Three (3) months, that Emmy Shanzi Kaira actually served, despite her objection to the said calculations.
- 4.12 Pages 24-29 of Emmy Shanzi Kaira and the others bundle of documents, was said to be copies of Emmy Shanzi Kaira's pay slips, and that page 41 of the said bundle of documents was the redundancy payment.
- 4.13 It was Emmy Shanzi Kaira's testimony that Standard Chartered Bank Zambia Plc recovered all the outstanding loans from the redundancy packages, inclusive of the auto loan facility, which facility letter was at pages 3-5 of Emmy Shanzi Kaira and the others bundle of documents, and whose terms and conditions were at pages 127-134 of the said bundle of documents.

- 4.14 Further in her testimony, Emmy Shanzi Kaira testified that they sought assistance from the Ministry of Labour, and after several meetings, Standard Chartered Bank Zambia Plc offered a discount of Twenty (20) percent on all the credit facilities, and the affected persons were accordingly credited. However, the discount of Twenty (20) percent was not extended to auto loan facility.
- 4.15 The contention was that the auto loan facility was unilaterally assigned by Standard Chartered Bank Zambia Plc to ABSA Bank Plc, and was converted into United States Dollars, without Emmy Shanzi Kaira's consent, with the letter at page 47 of Emmy Shanzi Kaira and the others bundle of documents being stated as evidencing the same.
- 4.16 Emmy Shanzi Kaira's evidence was that Standard Chartered Bank Zambia Plc had insisted that the auto loan facility was not a loan facility, but a benefit due to her, despite several requests, demands and reminders. It was stated that the outstanding amount on the auto facility was recovered from Emmy Shanzi Kaira's redundancy package.
- 4.17 In concluding her testimony, Emmy Shanzi Kaira testified that Standard Chartered Bank Zambia Plc conducted subsequent redundancies in the years 2019 and 2020, in which the affected employees were offered much better packages than she was offered. She named the difference in the packages which were paid as:
- i. The computation of the redundancy package in the subsequent redundancy factored in all the years

- served, while Emmy Shanzi Kaira was only paid for the period that she served under permanent and pensionable employment;
- ii. The affected employees were entitled to Six (6) months medical cover post termination, while Emmy Shanzi Kaira's medical cover ended at termination; and
 - iii. There was consultation and engagement prior to the implementation of the subsequent redundancies.

CROSS EXAMINATION OF EMMY SHANZI KAIRA

- 4.18 In cross examination, Emmy Shanzi Kaira testified that Standard Chartered Bank Zambia Plc employed her on 7th November, 2005, and not in 2003, as she had indicated in her witness statement. She told the Court that her initial contract of employment was not in her bundle of documents.
- 4.19 When referred to page 1 of Standard Chartered Bank Zambia Plc's bundle of documents, Emmy Shanzi Kaira agreed that it was her contract of employment, which was dated 4th November, 2005. It was also her evidence that the said contract was from 7th November 2005 until 31st December, 2005 and that she was paid gratuity under that contract.
- 4.20 Agreement was made, that whilst Emmy Shanzi Kaira in paragraph 2 of her witness statement, had referred to an email dated 9th November, 2018, it was not in her bundle of documents. She did however agree, that they were invited to a meeting to discuss the changes, possibly around the 12th, as she was not sure.

- 4.21 On being referred to a document headed Standard Chartered Integration of Priority Banking CR and CA Terms which was at page 30 of Emmy Shanzi Kaira and the others bundle of documents, Emmy Shanzi Kaira's evidence was that it had questions which were frequently asked after the first meeting. She testified that the document was dated November, 2018, and it advised that there would be changes in the bank.
- 4.22 It was agreed that in that document, there was a portion that was written question free, and which stated that a priority team would be selected. Emmy Shanzi Kaira agreed that she was part of that team.
- 4.23 In respect of question 5 at page 31 of the said bundle of documents, Emmy Shanzi Kaira testified that it stated that there would be a selection process, and that those who would be unsuccessful could apply for other positions, and not that it stated that there would be job losses.
- 4.24 Emmy Shanzi Kaira agreed that question 7 stated that there would be interviews. Then with respect to the document headed Priority Banking Changes which was at page 32 of the said bundle of documents, Emmy Shanzi Kaira's testimony was that it was dated 9th November, 2018, and it stated that there would be changes in priority banking, and that it was authored by Cynthia Mwale and Malcolm Chabala.
- 4.25 Emmy Shanzi Kaira agreed that the document was addressed to all employees, including herself. Further

admission was made, that the document referred to a merger of the Priority Banking Client Relationship Team and the Priority Banking Client Acquisition Team.

- 4.26 It was stated that there was an error in paragraph 4 of Emmy Shanzi Kaira's witness statement referring to page 3 of her bundle of documents, as that page was a copy of her auto loan banking facility letter. She agreed that the letter which she alleged that she had written to Standard Chartered Bank Zambia Plc, requesting for details of the redundancy process and the redundancy package, as well as how outstanding liabilities would be treated in paragraph 5 of her witness statement, was not in her bundle of documents.
- 4.27 It was her position that she attended the interviews which were held around the 18th November, 2018, and that no other meeting was held after that. Emmy Shanzi Kaira's testimony, when she was referred to page 110 of Standard Chartered Bank Zambia Plc's bundle of documents, testified that it was minutes of the meeting of aggrieved employees which was dated 30th January, 2019.
- 4.28 She agreed that she was in attendance in that meeting, but she denied that it was held after the town hall meeting. The evidence that Emmy Shanzi Kaira gave, was that it was held after they were put on garden leave. When cross examined further, she stated that the said meeting was held after the town hall meeting. Emmy Shanzi Kaira testified that page 33 of Emmy Shanzi and the others bundle of documents was a

notice to consult on potential redundancies which was dated 11th December, 2018.

- 4.29 She admitted that it was addressed to herself by Deep Pal Singh, the head Retail Banking Zambia. Emmy Shanzi Kaira agreed that she was interviewed for alternative roles, and that Standard Chartered Bank Zambia Plc informed her that she was unsuccessful in the interviews. It was also Emmy Shanzi Kaira's testimony, that page 37 of Emmy Shanzi Kaira and the others bundle of documents, was the notice of redundancy which was written to her.
- 4.30 She agreed that she attended interviews at which her performance was reviewed, and that when she was given the letter, she was informed that guidance would be given. Emmy Shanzi Kaira's response as regards the document at page 114 of Standard Chartered Bank Zambia Limited's bundle of documents, was that in line 18 in the column headed role, it stated release.
- 4.31 It was her testimony that the word release was written after a face to face interview. She testified, when she was referred to paragraph 10 of her witness statement, and Clause 4.4 a (3) of the Master Policy of Credit Life Insurance between Standard Chartered Bank Zambia Plc and African Life Assurance Company Zambia Limited, which was at page 122 of Standard Chartered Bank Zambia Plc's bundle of documents, that it provided for instances in which benefits would not be paid.

- 4.32 Emmy Shanzi Kaira testified that she was paid a refund for early settlement. Her evidence was also that Clause 4 of the Master Policy of Credit Life Insurance between Standard Chartered Bank Zambia Plc and African Life Assurance Company Zambia Limited at page 127, superceded Clause 3.6 which was at page 118.
- 4.33 Her continued evidence in cross examination, was that the document at page 39 of Standard Chartered Bank Zambia Plc's bundle of documents, was not titled, and she could not recall if it was a Human Resources Manual. Emmy Shanzi Kaira nevertheless agreed that page 40 of the said bundle of documents was a Human Resources Manual.
- 4.34 She stated that at page 62 which was part of the said Human Resources Manual, provision for redundancy was made, and that her redundancy package was calculated as provided at the said page. Her contention however, was that the redundancy package was wrongly calculated, as it was based on Eleven (11) years of service, and not the Fourteen (14) years that she had worked.
- 4.35 Emmy Shanzi Kaira's evidence was that she had no document to show how long she had worked. It was her testimony that she undertook to settle the balance of the lease on her motor vehicle on her employment being terminated. Her evidence, when she was referred to Clause 11.6 of the Human Resources Manual, at page 57 of Standard Chartered Bank Zambia Plc's bundle of documents, was that it spoke to clearing of liabilities with

Standard Chartered Bank Zambia Plc on termination of employment.

- 4.36 Emmy Shanzi Kaira testified that her car allowance was K6000.00, and that Standard Chartered Bank Zambia Plc gave her a VAT refund when she cleared the loan. It was further her evidence, that Standard Chartered Bank Zambia Plc used to pay ABSA Bank. In concluding the cross examination, Emmy Shanzi Kaira stated that she was unaware that medical cover was given at Standard Chartered Bank Zambia Plc's discretion, and that it was ex-gratia.

RE-EXAMINATION OF EMMY SHANZI KAIRA

- 4.37 In re-examination, Emmy Shanzi Kaira clarified that she did not sign the Human Resources Manual, adding that she just saw it in Court. She also stated that she was employed by Standard Chartered Bank Zambia Plc on 7th November, 2005, and that she officially stopped work on 11th February, 2019, after having served for Thirteen (13) years and Two (2) months.
- 4.38 Further clarity was given that Emmy Shanzi Kaira was refunded Ninety (90) percent of her personal loans after she followed up, and that she was also refunded on the mortgage after she had left employment, following engagement with the Ministry of Labour.

PW2-AUDREY KALWALA

- 4.39 Audrey Kalwala also produced her witness statement as her testimony before Court. In that witness statement, Audrey Kalwala testified that Standard Chartered Bank Zambia Plc

employed her 17th March, 2003, as seen on the document at page 1 of Emmy Shanzi Kaira and the others supplementary bundle of documents, which was a copy of her identity card.

4.40 She like Emmy Shanzi Kaira, testified with regard to how the employees were notified by email, of the intended changes to the Retail Banking Department, and that roles would be affected.

4.41 Audrey Kalwala's further evidence, was that she was notified that her role was at risk of redundancy through a letter, and also through an interview that Standard Chartered Bank Zambia Plc conducted. She alleged that no further meetings or consultations were held. Her evidence also repeated the averment in the statement of claim regarding the issuance of the redundancy letters, and the conditions which were stated therein.

4.42 It was also her testimony, that she was notified that she would be paid a redundancy package of Two (2) months pay for each year served. Like Emmy Shanzi Kaira, her testimony was that during her employment, she was entitled to various credit facilities which she obtained, and which were secured by Sanlam Life Insurance Zambia Limited, which policies were at pages 91-93 of Emmy Shanzi Kaira and the others bundle of documents.

4.43 The terms of the said policies were stated as testified by Emmy Shanzi Kaira. Further testimony was given by Audrey Kalwala with regard to how the redundancy packages were calculated, and Audrey Kalwala testified that she worked for

Fifteen (15) years and Eleven (11) months. However, her redundancy package was calculated and paid at Thirteen (13) years, despite her objection to the calculation.

4.44 Audrey Kalwala like Emmy Shanzi Kaira, testified that they sought the intervention of the Labour Office, and that after several meetings, Standard Chartered Bank Zambia Plc gave a discount of Twenty (20) percent on all credit loan facilities and they were accordingly credited.

4.45 The testimony also repeated Emmy Shanzi Kaira's evidence with regard to how subsequent redundancies were conducted by Standard Chartered Bank Zambia Plc, and how those affected by the redundancies were paid.

CROSS EXAMINATION OF AUDREY KALWALA

4.46 It was Audrey Kalwala's evidence in cross examination, that while she had stated in paragraph 1 of her witness statement, that she was employed on 17th March, 2003, she did not have a copy of her contract of employment. Her further testimony was that she joined Standard Chartered Bank Zambia Plc as a Know Your Customer (KYC) officer, and that at the time she left the Bank's employment, she was a Relationship Manager Priority Banking.

4.47 She agreed that she attended the meeting at which the changes to be made were discussed in November, 2018. Audrey Kalwala stated that the letter which she had referred to in paragraph 4 of her witness statement was submitted to her lawyers, but it was not in the bundle of documents. She maintained that no other meetings or consultations were

had, but she agreed that she attended the interview which Standard Chartered Bank Zambia Plc conducted.

- 4.48 On being referred to the minutes of the meeting of aggrieved employees which was held on 30th January, 2019, and were at page 110 of Standard Chartered Bank Zambia Plc's bundle of documents, Audrey Kalwala testified that she was in that meeting with the Human Resources Manager Carol Zimba, Mutu Mubita and the others who were indicated as having been in attendance. She clarified that she was present in the meeting via telephone.
- 4.49 It was also testified that Audrey Kalwala attended an interview via phone, and not face to face. She agreed that she was allowed to ask questions during the meeting, and her evidence was that after she attended the interview, Standard Chartered Bank Zambia Plc informed her that she was unsuccessful.
- 4.50 In that regard, she testified that at page 114 of Standard Chartered Bank Zambia Plc's bundle of documents, her name was indicated in line 20, with a recommendation that she be released. Audrey Kalwala agreed that she was paid a refund for early settlement of the loan, and that Clause 3.6 at page 118 was superceded by Clause 4.0. Her evidence was further that the formula showed how the Ninety (90) percent was calculated.
- 4.51 Audrey Kalwala agreed that she had seen the Human Resources Manual before, and that Clause 14 of that manual provided for redundancy. Her testimony was that the
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redundancy package was calculated in accordance with Clause 14 of the Human Resources Manual. It was her evidence that Standard Chartered Bank Zambia Plc wrongly calculated her redundancy package based on Thirteen (13) years of service, and not Fifteen (15) years.

- 4.52 Audrey Kalwala also stated that in 2003, she had signed a contract for Six (6) months, and then there was change in the law. She agreed that she was paid gratuity at the end of the contract, but she did not recall how many contracts she signed. Still in cross examination, Audrey Kalwala testified that she was paid gratuity at the end of each contract, and that she was aware that medical cover was given at Management's discretion, and on a purely ex-gratia basis.

RE-EXAMINATION OF AUDREY KALWALA

- 4.53 In re-examination, Audrey Kalwala testified that as at 30th January, 2019, she was on garden leave, so she was at home. She explained that she became aware about the Human Resources Manual after she had left employment.

PW3-MEMORY KOMAKI

- 4.54 This witness also produced her witness statement as her evidence before Court, after an application was made to delete paragraphs 17 and 18 of the said witness statement.
- 4.55 Her evidence as contained in that witness statement, was similar to that which was given by Emmy Shanzi Kaira and Audrey Kalwala, save for her testifying that she was employed by Standard Chartered Bank Zambia Plc on 16th June, 2008. Memory Komaki also added that at the time the

email dated 9th November, 2018 was written to employees notifying them about the changes, she was on maternity leave.

CROSS EXAMINATION OF MEMORY KOMAKI

- 4.56 In cross examination, Memory Komaki testified that she was employed on 16th June, 2008. She agreed that she did not have her contract of employment in her bundle of documents, adding that she had been unable to find it. When referred to page 12 of Standard Chartered Bank Zambia Plc's bundle of documents, Memory Komaki testified that it was an offer of employment in her name, which was dated 11th December, 2009.
- 4.57 She agreed that she had seen it before, and that she signed it. Her evidence was that she was on probation from 16th June, 2008. Further in cross examination, Memory Komaki testified that she saw the email dated 9th November, 2018 after someone called her, and informed her about it. Whilst stating that she had submitted the email, Memory Komaki agreed that it was not in the bundle of documents. Her evidence was that she was notified of the intended changes via email, when she was on maternity leave.
- 4.58 With respect to the minutes of the meeting for affected employees which was at page 110 of Standard Chartered Bank Zambia Plc's bundle of documents, and was dated 30th January, 2019, Memory Komaki's evidence was that she attended that meeting, adding that she had returned from

maternity leave at the time. She could not recall if she attended that meeting via teleconference.

- 4.59 Memory Komaki did however, agree that she attended a face to face interview, and that Standard Chartered Bank Zambia Plc informed her that she was unsuccessful. She also agreed that she was paid a refund for early settlement of her loans and that Clause 4 superceded Clause 3.6.
- 4.60 Memory Komaki admitted having seen the Human Resources Manual before, and she testified that at page 62, the redundancy pay was set out. She contended that her redundancy pay was not made according to the number of years that she had served, and she told the Court that she was not paid gratuity, as she was not on contract.
- 4.61 When referred to page 84 of Standard Chartered Bank Zambia Plc's supplementary bundle of documents, Memory Komaki's testimony was that it was a fixed term contract which was dated 15th May, 2009, and at page 87 of the same bundle of documents in Clause 14, provision was made for the payment of gratuity.
- 4.62 She agreed that page 89 of the said further supplementary bundle of documents was another fixed term contract for herself which was for the period 16th June, 2008 to 16th June, 2009.
- 4.63 Memory Komaki also agreed that at page 92 of the same bundle of documents was a Clause which provided for gratuity. However, she did not recall ever having received gratuity, although she signed the contracts. She was

unaware that medical cover is given at management's discretion and is an ex-gratia payment.

RE-EXAMINATION OF MEMORY KOMAKI

4.64 In re-examination, Memory Komaki clarified that she was only employed once on a fixed term contract by Standard Chartered Bank Zambia Plc.

PW4-CECILIA SIBESO MUNDIA

4.65 In her testimony, Cecilia Mundia produced her witness statement as her testimony, after an application was made to include the words, 'I had not', after the words 'even though' in paragraph 9 of her witness statement. This was also after the words 'auto loan' were deleted from paragraph 18 of the said witness statement.

4.66 The evidence as set out in Cecilia Mundia's witness statement, was similar to the witnesses who had testified before her. The variation was that she testified that she was employed on 4th March, 1991, and that she was informed that her employment would be terminated on the grounds of poor performance, even though she had assumed the position of Customer Services Manager.

4.67 Cecilia Mundia also alleged that Standard Chartered Bank Zambia Plc computed her redundancy package at Twenty (22) years, instead of Twenty-Six (26) years and Eleven (11) months that she had actually worked.

CROSS EXAMINATION OF CECILIA MUNDIA

4.68 When cross examined, Cecilia Mundia testified that her full names are Cecilia Sibeso Mundia. She stated that she did

not forget to include the name Sibeso in her witness statement. It was further her testimony, that she started working for Standard Chartered Bank Plc on 4th March, 1991, even though a copy of her contract of employment was not before Court. She agreed that she received the email dated 9th November, 2018.

- 4.69 Cecilia Mundia testified that while she was offered the position of Customer Service Manager, she did not take up that position, as the letter appointing her was cancelled. Her evidence was that the said letter was not in the bundle of documents. Nevertheless, Cecilia Mundia agreed that she attended an interview, at which she was notified that her job was at risk, on a date that she did not recall in 2018.
- 4.70 Further agreement was made, that Cecilia Mundia received a letter on 20th December, 2018, and not in 2022, which informed her of the same. Her continued testimony in cross examination, was that she was aware of the meeting of 30th January, 2019, which was held for employees who were affected by the redundancy, stating that as she was on the Copperbelt, she attended that meeting via phone.
- 4.71 Cecilia Mundia's evidence was further that she also attended the interview via phone, at which her performance was reviewed. It was her testimony, that she was not successful but she only received a letter of redundancy. She stated that she had worked for Standard Chartered Bank Zambia Plc for a long time, and she had seen the Human Resources Manual which was at page 39 of its' bundle of documents.

4.72 Cecilia Mundia agreed that the redundancy package was calculated in accordance with Clause 14 at page 62 of the said bundle of documents. Further agreement was made that Cecilia Mundia was paid a refund for early settlement of the loan facilities. She admitted that Clause 4 superceded Clause 3.6.

4.73 The evidence that Cecilia Mundia also gave was that page 134 of Standard Chartered Bank Zambia Plc's bundle of documents was the calculation of her redundancy pay based on Twenty-Seven (27) years' service. It was admitted that in paragraph 14 of her witness statement, Cecilia Mundia had testified that her redundancy pay was calculated at Twenty-Two (22) years, instead of Twenty-Six (26) years and Eleven (11) months. She testified that in view of the calculation at page 134, her evidence in paragraph 14 of her witness statement was incorrect.

4.74 In concluding the cross examination, Cecilia Mundia testified that she was unaware that medical cover was given at Management's discretion, and that it was ex-gratia.

PW5-PATIENCE BWALYA JERE

4.75 Patience Bwalya Jere also produced her witness statement as her testimony. Her testimony was very similar to that which was given by the witnesses before her. The addition was that Standard Chartered Bank Zambia Plc employed her on 1st July, 2002, and that at the time of her termination, she was serving as Client Services Manager-Business Banking.

- 4.76 Patience Bwalya Jere further testified that during the entire redundancy process, she was on medical leave, and she was never consulted during that entire process. She stated that she learnt about the intended changes to the Retail Banking Department through a letter dated 17th December, 2018 which referred to a town hall, which was called by Standard Chartered Bank Zambia Plc, and which she was not aware of. She added that she did not attend the same.
- 4.77 It was also Patience Bwalya Jere's testimony that no meetings or consultations were held until her employment was terminated.
- 4.78 Her evidence was that receipt of the information caused her to suffer nervous shock and distress. Also, in her testimony, Patience Bwalya Jere testified that she was not called for any interview, and neither was she given opportunity to find an alternative position. She told the Court that she worked for Sixteen (16) years and Five (5) months, but her redundancy package was calculated at a rate of Fifteen (15) years.

CROSS EXAMINATION OF PATIENCE BWALYA JERE

- 4.79 In cross examination, Patience Bwalya Jere's evidence was that she was employed on 1st July, 2002. She agreed that she signed on a contract on being employed, although she could not see it in the bundle of documents. She told the Court that the second contract that she signed was at page 116 of Standard Chartered Bank Zambia Limited's supplementary bundle of documents, and that it was for a period of Six (6) months.

- 4.80 Patience Bwalya Jere agreed that at the end of that contract, she was paid gratuity, which payment was at page 106 of the said bundle of documents. She maintained that she was not consulted by anyone during the redundancy process, and she explained that none of the other Plaintiffs had informed her that they were consulted.
- 4.81 Her evidence was that she was present when the Ministry of Labour was consulted. It was stated that Patience Bwalya Jere's collectively signed the letter which was at page 44 of Emmy Shanzi Kaira and the others bundle of documents, which was dated 7th February, 2019. Admission was made that Patience Bwalya Jere attended the meeting whose minutes were at page 110 of Standard Chartered Bank Zambia Plc's bundle of documents.
- 4.82 Her position was that she suffered nervous shock and distress on receiving the news of the impending redundancy, even though she had not produced medical evidence to prove so. Patience Bwalya Jere agreed that in the Notice of Redundancy, she was informed that she would be paid Two (2) months pay for each year served.
- 4.83 She told the Court that she did not know the Human Resources Manual for Standard Chartered Bank Zambia Plc and that she could not remember it. It was stated that Patience Bwalya Jere worked for Sixteen (16) years and some months. She agreed that she was paid a refund for early settlement of the loan facilities, and that Clause 4 superceded Clause 3.6.
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- 4.84 Patience Bwalya Jere was certain that she signed Two (2) fixed term contracts with Standard Chartered Bank Zambia Plc, the first being on 1st July, 2002, and the second on 2nd January, 2003. Her testimony when she was referred to page 100 of Standard Chartered Bank Zambia Plc's bundle of documents, was that it was a fixed term contract dated 2nd April, 2002 which was addressed to herself. She could not recall that contract, even though she signed it at page 4.
- 4.85 Her evidence was that she should have been paid gratuity at the end of that contract, and she disputed having worked for Fifteen (15) years, stating that it was for Sixteen (16) years and Five (5) months. Patience Bwalya Jere was unaware that medical cover was given at management's discretion and that it was ex-gratia.

RE-EXAMINATION OF PATIENCE BWALYA JERE

- 4.86 Patience Bwalya Jere clarified that as at 30th January, 2019, she was on garden leave, and therefore, she was at home and she was not working. She also stated that she signed the fixed term contract in 2002, which was over Twenty (20) years ago.

PW6-FABIAN MULEYA

- 4.87 The last witness for the Plaintiffs was Fabian Muleya. He also produced his witness statement as his evidence. In that witness statement, his evidence was similar to that which was given by the witnesses before him. He added that he was employed by Standard Chartered Bank Zambia Plc on 15th September, 2007 as a Senior Priority Banker.

4.88 It was also Fabian Muleya's testimony, that he attended interviews at which he was informed that his job was at risk of redundancy. He added that on 12th December, 2018, he received a letter which informed him about the same.

CROSS EXAMINATION OF FABIAN MULEYA

4.89 Fabian Muleya when cross examined, testified that he is Mangau Fabian Muleya. It was his testimony, when he was referred to the offer of employment which was dated 26th September, 2007, and which was at page 26 of Standard Chartered Bank Zambia Plc's bundle of documents, that it was addressed to Mangau Fabian Muleya. He reiterated that he is Mangau Fabian Muleya.

4.90 The testimony that he also gave, was that he was employed in 2007 on a date that he did not recall, stating that it could have been on 26th September of that year. Fabian Muleya agreed that the email dated 9th November, 2018 was not in Emmy Shanzi Kaira and the others bundle of documents. Fabian Muleya told the Court that he participated in the interviews, and that no other meeting was called after that.

4.91 When cross examined further, Fabian Muleya agreed that he attended the meeting whose minutes were at page 110 of Standard Chartered Bank Zambia Plc's bundle of documents, stating that this was after he had attended the interview at which his performance was assessed. He could not recall Standard Chartered Bank Zambia Plc having informed him that he was unsuccessful during the interview.

- 4.92 Fabian Muleya agreed that his name was at number 16 on the document which was at page 114 of Standard Chartered Bank Zambia Plc's bundle of documents, and that it was written release against him name. He admitted that he was paid a refund for early settlement of the loans, and that Clause 4 superceded Clause 3.6.
- 4.93 It was Fabian Muleya's evidence that he worked for Eleven (11) years and some months, and he told the Court that he had never seen the Human Resources Manual. He stated that he had a motor vehicle which was issued by Standard Chartered Bank Zambia Plc, and that he undertook to pay the balance on that vehicle when he stopped working.
- 4.94 Fabian Muleya on being referred to Clause 11.6 of the Human Resources Manual at page 57 of Standard Chartered Bank Zambia Plc's bundle of documents, testified that at one point, he was being paid car allowance of K6, 000.00.
- 4.95 He agreed that Standard Chartered Bank Zambia Plc gave him a VAT refund after he cleared the loan. In conclusion, Fabian Muleya agreed that medical cover was given at management's discretion, and that it was on ex-gratia basis.
- 4.96 That marked the close of the case for Emmy Shanzi Kaira and the others.

**5. EVIDENCE BY STANDARD CHARTERED BANK ZAMBIA PLC
DW1- MUTWANYEMBO SANYAMBE MUBITA**

- 5.1 The first witness was Mutwanyembo Sanyambe Mubita. She produced her witness statement as her testimony before the Court. It was her evidence in that witness statement, that

she had worked for Standard Chartered Bank Zambia Plc for Twenty-Five (25) years at the time, and that she had held the position of Head Human Resource from 1st October, 2017.

- 5.2 Mutwanyembo Sanyambe Mubita also testified that Emmy Shanzi Kaira and the others were employed by Standard Chartered Bank Zambia Plc in various positions, as seen from the contracts of employment which were at pages 1-32 of Standard Chartered Bank Zambia Plc's bundle of documents. It was stated that Emmy Shanzi Kaira and the others' redundancy was pursuant to the terms and conditions of their employment contracts, and the Human Resources Policies which were prevailing at the time.
- 5.3 The Human Resources Manual was identified as that at page pages 39-71 of Standard Chartered Bank Zambia Plc's bundle of documents.
- 5.4 Mutwanyembo Sanyambe Mubita's evidence was also that the redundancy process that Standard Chartered Bank Zambia Plc undertook, included a Group consultative meeting, where all the staff who were impacted, including Emmy Shanzi Kaira and the others were engaged by management, including the Human Resource Department, during which the rationale for the impending redundancies was shared, along with the criteria which would be used to identify the successful candidates for the re-organised business segment.

- 5.5 The minutes of that meeting were stated as being at pages 110-113 of Standard Chartered Bank Zambia Plc's bundle of documents.
- 5.6 It was also her testimony, that at that meeting, Emmy Shanzi Kaira and the others, as well as the other affected employees were invited to pose questions and to seek clarity on the impending redundancies, and the candidates for the re-organised business were interviewed face to face, and they also had their performance for the last Two (2) years reviewed.
- 5.7 The evidence that was further given, was that Emmy Shanzi Kaira, Audrey Kalwala, Cecilia Mundia and Fabian Muleya were unsuccessful, and therefore, they were not considered for any role in the re-organised business. Page 114 of Standard Chartered Bank Zambia Plc's bundle of documents was identified as the document which contained the results of the interview.
- 5.8 In respect of the exit from employment of Memory Komaki, Mutwanyembo Sanyambe Mubita's testimony was that there was no connection between her having been on maternity leave, and her being declared redundant. It was stated that her redundancy was necessitated by a change in the operational model of the business, and as such, the role that Memory Komaki held was no longer required in the new structure, and she was as a result, declared redundant.
- 5.9 Further testimony was given that the Human Resource Manual which applied to Emmy Shanzi Kaira and the others

at the time of their employment, clearly provided that if for any reason the officers' employment came to an end, they would be required to clear any liabilities immediately.

5.10 Reiteration was made, that there was consultation between Standard Chartered Bank Zambia Plc and Emmy Shanzi Kaira and the others as evidenced by the minutes of the meeting which was held on 30th January, 2019, which had been seen above. It was stated that Standard Chartered Bank Zambia Plc further clarified on the redundancies as seen from the letter dated 8th February, 2019, which was addressed to Patience Bwalya, and which letter was at pages 145-146 of Standard Chartered Bank Zambia Plc's bundle of documents.

5.11 In respect of the medical cover, Mutwanyembo Sanyambe Mubita testified that each redundancy is characterized by its' own terms and conditions, and that whenever medical cover was given, it was at management's discretion, and was given on a purely ex-gratia basis. Addition was made that a key feature of an ex-gratia payment, is that there is no contractual obligation that is placed on the employer to give it to the employee.

5.12 It was also testified that Emmy Shanzi Kaira and Fabian Muleya made undertakings with regard to the motor vehicles that on their service with the Bank being terminated or they resigned on their own accord, any balances due on their motor vehicles would be payable on their last working day,

as seen from pages 147-154 of Standard Chartered Bank Zambia Plc's bundle of documents.

5.13 In concluding her testimony, Mutwanyembo Sanyambe Mubita stated that the redundancy was a process that was commenced and concluded according to the law and with no wrong doing on the part of Standard Chartered Bank Zambia Plc.

CROSS EXAMINATION OF MUTWANYEMBO SANYAMBE MUBITA

5.14 In cross examination, Mutwanyembo Sanyambe Mubita's evidence was that the redundancy exercise was conceived in 2018, and that it was at a global level. Therefore, to that extent, management had no discretion. She denied that the redundancy was handed over to management after it was conceived at a global level. Her reiteration was that management had no discretion on the redundancy itself, but on the redundancy package.

5.15 In that regard, Mutwanyembo Sanyambe Mubita testified that the redundancy package was within the law, at Two (2) months pay for each completed year served in a permanent role. It was agreed that management in its' discretion, could have offered more than Two (2) months pay. The testimony that was also given, was that medicals did not constitute part of the package.

5.16 Mutwanyembo Sanyambe Mubita stated that paragraph 3 of the defence at page 21 of Emmy Shanzi Kaira and the others bundle of pleadings was correct, as the existing human

resources policies applied. Her evidence was that page 34 of Emmy Shanzi Kaira and the others bundle of documents was not the Human Resources Policy, but the Group Redundancy Policy. The contention was that the same was followed.

- 5.17 Mutwanyembo Sanyambe Mubita testified that the Group Redundancy Policy stated that it would set consistent minimum standards for redundancy processes and procedure, and that the redundancy for Emmy Shanzi Kaira and the others was consistent with the policy at the time of the redundancy.
- 5.18 It was agreed that the subsequent groups of employees who were declared redundant were given medical cover, whilst Emmy Shanzi Kaira and the others were not. The position that was taken, was that there were Two (2) separate redundancies with different conditions. Mutwanyembo Sanyambe Mubita testified that Standard Chartered Bank Zambia Plc was engaged prior to the redundancy.
- 5.19 It was further testified that the different treatment was consistent with the Group Policy, which was at page 34 of Emmy Shanzi Kaira and the others bundle of documents. As evidence of the Group Consultative Meetings which were had, pages 110-113 of Emmy Shanzi Kaira and the others bundle of documents was referred to.
- 5.20 Mutwanyembo Sanyambe Mubita's evidence was that she was part of the meeting. Her continued evidence in cross examination, was that Emmy Shanzi Kaira was given notice

on 11th January, 2019 to stop work on 11th February, 2019. It was stated that the consultation was post the notice, and that at the time, Memory Komaki was still on maternity leave.

- 5.21 She agreed that the letter which was at page 84 of Emmy Shanzi Kaira and the others bundle of documents, did not refer to Memory Komaki having been on leave, and that there was no letter in Standard Chartered Bank Zambia Plc's bundle of documents, which referred to Memory Komaki having been on maternity leave.
- 5.22 On what measures were taken to reduce the suffering for Emmy Shanzi Kaira and the others, Mutwanyembo Sanyambe Mubita testified that their loan deductions were given a Twenty (20) percent discount, sometime in October 2020. It was added that this was done at management's discretion, with no intervention from third parties. When asked if there was a letter from the Ministry of Labour regarding the same, Mutwanyembo Sanyambe Mubita testified that while the letter was there, the intervention came before the said letter.
- 5.23 The testimony was that the internal correspondence was done in September, 2019, while the credits were made in October, 2019. However, the said reduction was not applicable to the auto loan facility, but only to personal loans and mortgages, and that it was at management's discretion.

**RE-EXAMINATION OF MUTWANYEMBO SANYAMBE
MUBITA**

- 5.24 In re-examination, clarification was given that Standard Chartered Bank Zambia Plc was undergoing transformation, and since it is a global international bank, decisions are initiated at the group level to be implemented at country level. Thus, management had no discretion to an extent on the decision to implement the redundancy, but it had lee way to implement the redundancy in line with the laws of Zambia, and any other benefits that it saw fit, at its' discretion.
- 5.25 Mutwanyembo Sanyambe Mubita stated that every redundancy comes with its' own terms and conditions and that the laws of Zambia took a more superior position than the group policy for Standard Chartered Bank Zambia Plc. As such, Two (2) months' pay for each year served was paid, which was more superior than the Group Policy.
- 5.26 Further clarification was given that in computing the redundancy package, medical benefits were not included, as it was a benefit that is offered as and when an employee falls ill, and it is accessed directly from the hospital. The testimony that was also given, was that with each redundancy, Standard Chartered Bank Zambia Plc made decisions based on affordability to extend any terms and conditions.

DW2- MARTIN LUNGU

- 5.27 This witness also produced his witness statement as his testimony before Court.
- 5.28 His evidence as contained in that witness statement, was that he was employed by Standard Chartered Bank Zambia Plc, and that he had held the position of head of Product-Bancassurance since 1st May, 2023. He like Mutwanyembo Sanyambe Mubita testified that Emmy Shanzi Kaira and the others were employed under various contracts of employment by Standard Chartered Bank Zambia Plc as seen at pages 1-32 of Standard Chartered Bank Zambia Plc's bundle of documents.
- 5.29 He further testified that employees of Standard Chartered Bank Zambia Plc are entitled to personal and mortgage loans which are governed by terms and conditions of the Credit Life Assurance Form and Master Policy of Credit Life Assurance Agreement.
- 5.30 Thus, Emmy Shanzi Kaira and the others were entitled to the credit facilities, which were secured by the Credit Life Policies, which were issued by Sanlam Life Insurance Zambia Limited. Addition was made that the policy cover included, retrenchment, which was rider benefit as seen at pages 115 -130 of Standard Chartered Bank Zambia Plc's bundle of documents.
- 5.31 Martin Lungu further testified that the loans and insurance cover for Emmy Shanzi Kaira and the others commenced on 29th November, 2018, and they were retrenched on 1st

March, 2019. It was stated that under Clause 4.4.1 of the Master Policy of Credit Life Assurance Agreement no retrenchment benefits are payable in retrenchment which occurs in the first Six (6) months after the commencement of the cover.

5.32 Martin Lungu's evidence was that this was the period within which Cecilia Mundia and Fabian Muleya fell. The testimony was also that Clause 4.4 of the Master Policy of Credit Life Assurance Agreement, allows for payment of retrenchment benefits where retrenchment claims are submitted to the insurer for settlement within Sixty (60) days from the date of retrenchment. He added that any claims which are submitted after Sixty (60) days are null and void.

5.33 It was Martin Lungu's testimony, that Emmy Shanzi Kaira, Audrey Kalwala and Patience Bwalya Jere were paid as follows:

Plaintiff	Name	Retrenchment Claim Paid (ZMW)
1	Emmy Shanzi Kaira	75, 197.54
1	Emmy Shanzi Kaira	561, 304.64
2	Audrey Kalwala	145, 367.08
5	Patience Bwalya	60, 690.79

5.34 It was testified that these payments were evidenced at pages 1-47 and 131-133 of Standard Chartered Bank Zambia Plc's further bundle of documents. Martin Lungu stated that there is no provision in the Master Policy of Credit Life Assurance

Agreement which provides for Six (6) months relief as claimed by Emmy Shanzi Kaira and the others.

- 5.35 Rather, Clause 4.4.3 of the said policy excludes the payment of redundancy arising from any retrenchment or fair dismissal.
- 5.36 Further testimony was given that the Ninety (90) percent refund of the premium for the Credit Life Policy as claimed by Emmy Shanzi Kaira and the others was misconceived. The position taken was that the Ninety (90) percent refund relates to unearned premium amounts at the time of early settlement of the loan or when the borrower decides to top-up their loan.
- 5.37 Martin Lungu added that insurance for personal loans is paid in advance for the entire loan tenor, and the refund is only payable where there are no accrued benefits provided under the policy.
- 5.38 It was also his testimony that Emmy Shanzi Kaira and the others were paid their respective refunds in line with the pre-agreed computation for early settlement as seen below:

Name	Refunded amount
Emmy Shanzi	6, 176.54
Cecilia Mundia	9, 350.64
Memory Komaki	4, 611.52
Audrey Kalwala	5, 408.97
Fabian Magau Muleya	9, 526.72
Patience Mzalema Bwalya	5, 381.96

5.39 It was also Martin Lungu's evidence that these payments were evidenced at pages 1-47 of Standard Chartered Bank Zambia Plc's further bundle of documents. He stated that Clause 3.7 of the Master Policy of Credit Life Assurance Agreement is clear on the issue of premiums paid, early settlement is risk premium. Therefore, there is no surrender value attached to the policy as seen at pages 115 to 130 of Standard Chartered Bank Zambia Limited's bundle of documents.

CROSS EXAMINATION OF MARTIN LUNGU

5.40 This witness was not cross examined.

DW3- CAROLINE CHIMWENDA ZIMBA

5.41 This witness who is a Senior Human Resources Business Partner at Standard Chartered Bank Zambia Plc also produced her witness statement as her testimony. Her evidence as contained in that witness statement, was that she had worked for Standard Chartered Bank Zambia Plc for over Four (4) years, and that she had held the position of Senior Human Resources Business Partner since 20th November, 2018.

5.42 Like the witnesses before her, her evidence was that Emmy Shanzi Kaira and the others were employed by Standard Chartered Bank Zambia Plc, and that they held various positions. It was also her testimony, that Emmy Shanzi Kaira and the others fell under the management of Standard Chartered Bank Zambia Plc. Therefore, their redundancy was pursuant to the terms and conditions of their

employment contracts, as well as the Human Resources Policies which were prevailing at the time, as testified by Martin Lungu.

- 5.43 Caroline Zimba testified that the redundancy process that Standard Chartered Bank Zambia Plc undertook, included a Group consultative process meeting, in which all the employees who were impacted, and who included Emmy Shanzi Kaira and the others, were engaged by management and Caroline Zimba's department.
- 5.44 Her evidence was that the rationale for impending redundancies was shared along with the criteria that would be used to identify the successful candidates for re-organised business segment.
- 5.45 Reference was made to pages 110-113 of Standard Chartered Bank Zambia Plc's bundle of documents, and pages 118-127 of Standard Chartered Bank Zambia Plc's further bundle of documents.
- 5.46 It was stated that Emmy Shanzi Kaira and the others, as well as the other staff who were impacted, were allowed to ask questions and to seek clarity on the impending redundancies. Like Martin Lungu, her evidence was that candidates for the re-organised business segment were interviewed face to face, and their performance over the last Two (2) years was reviewed.
- 5.47 She also stated, like Martin Lungu, that Emmy Shanzi Kaira, Audrey Kalwala, Cecilia Mundia and Fabian Muleya were unsuccessful in the interviews, and that they were not

considered for any role in the re-organised business. Caroline Zimba also testified like the rest of Martin Lungu's testimony, save with regard to the payments that were made to Emmy Shanzi Kaira, Audrey Kalwala and Patience Bwalya Jere for retrenchment, and the refunds that Emmy Shanzi Kaira and the others were given.

CROSS EXAMINATION OF CAROLINE ZIMBA

- 5.48 In cross examination, Caroline Zimba's testimony was that she joined Standard Chartered Bank Zambia Plc on 20th November, 2018 as Senior Human Resources Business Partner. When referred to paragraph 2 of her witness statement and Martin Lungu's witness statement, her evidence was that there was a difference in the paragraphs, as Martin Lungu's witness statement referred to Standard Chartered Bank Zambia Plc's bundle of documents, while her witness statement referred to Standard Chartered Bank Zambia Plc's bundle of documents, and a further bundle of documents.
- 5.49 She also testified paragraphs 3 of both statements were the same, as well as paragraph 5 and the rest, as the facts were the same. Caroline Zimba added that Counsel had guided on the correct terminology to be used after they submitted their witness statements verbally. Thereafter, when the witness statements were reduced into writing, they had signed them.
- 5.50 Caroline Zimba confirmed that she participated in the redundancy programme, and her testimony was that the

highest period served by One of the Plaintiffs was Eleven (11) years and the lowest Five (5) years.

- 5.51 When referred to page 1 of Standard Chartered Bank Zambia Plc's bundle of documents, Caroline Zimba testified that Emmy Shanzi Kaira joined Standard Chartered Bank Zambia Plc on 4th November, 2005.
- 5.52 She told the Court that Emmy Shanzi Kaira, Audrey Kalwala and Memory Komaki worked for Fourteen (14) years and that Cecilia Mundia worked for Twenty-Eight (28) years.
- 5.53 As to paragraph 1 (b) (iii) in the letter giving Notice of Redundancy, which was at page 72 of Standard Chartered Bank Zambia Plc's bundle of documents, which stated that Emmy Shanzi Kaira and the others were not to contact any client, supplier or employee, Caroline Zimba's evidence was that it was a security measure to control communication during their absence.
- 5.54 She added that such a requirement was not only applicable to redundancy but to other absence, such as leave. When cross examined further, Caroline Zimba stated that paragraph 10 of the defence referred to bank policies, and not security measures. Further testimony was given that Emmy Shanzi Kaira and the others were given consultation at their desired time, and they consulted management in January, and that the evidence as set out in paragraphs 4 and 5 of her witness statement, was one of the consultations.
- 5.55 Caroline Zimba stated that to her recollection, the consultation was on 19th January, 2019, but she was not

one hundred percent sure. She then testified that the consultation was after the notice of termination. It was also her evidence, that she recalled the subsequent redundancies which were conducted after Emmy Shanzi Kaira and the others.

5.56 Her testimony was that they would have been different as every redundancy is guided by its' own terms and conditions, and therefore, the subsequent redundancies may have been more favourable.

5.57 Caroline Zimba testified that the termination letter for Memory Komaki did not refer to her being on maternity leave, and she added that there was no document that referred to her being on maternity leave. Her evidence was that after the redundancy, the packages for Emmy Shanzi Kaira and the others, were adjusted following further consultation with them at Standard Chartered Bank Zambia Plc's discretion, on the loan repayment.

5.58 Agreement was made that the Ministry of Labour participated in the consultation, which resulted in a positive outcome. Caroline Zimba told the Court that management's discretion was exercised in 2019, and Six (6) months later, Standard Chartered Bank Zambia Plc considered a more humane approach on the loans, even though the impacted employees had consented to the loan deductions earlier.

5.59 In concluding the cross examination, Caroline Zimba testified that redundancy is not foreseen, but that it is a possibility.

RE-EXAMINATION OF CAROLINE ZIMBA

5.60 Clarity was given in re-examination, that the Ministry of Labour accommodated Standard Chartered Bank Zambia Plc and the employees who were impacted by the redundancy, over the excessive deductions which affected the said employees.

DW4-MAINZA CHIBUYE

- 5.61 This witness also produced their witness statement as their testimony. The evidence as given in that witness statement was that Mainza Chibuye had worked for Standard Chartered Bank Zambia Plc for Fifteen (15) years at the time and had held the position of Service Delivery Manager from 2011. She, like the other witnesses, testified that Emmy Shanzi Kaira and the others had held different positions at Standard Chartered Bank Zambia Plc.
- 5.62 It was also her testimony, that prior to 30th January, 2019, Standard Chartered Bank Zambia Plc issued Emmy Shanzi Kaira and the others with Notices of Redundancy which contained the redundancy separation dues. Mainza Chibuye further testified that the Notices of Redundancy also referred to all the loans and all outstanding sums that Emmy Shanzi Kaira and the others owed to Standard Chartered Bank Zambia Plc, as seen at pages 72 to 109 of Standard Chartered Bank Zambia Plc's bundle of documents.
- 5.63 Further, Emmy Shanzi Kaira and the others were availed Redundancy Payment Statements, which tabulated all their dues, including the multiplier which was used in arriving at

the total gross package which was due to Emmy Shanzi Kaira and the others. Pages 116-121 of Standard Chartered Bank Zambia Plc's bundle of documents was referred to in that regard.

- 5.64 It was also her testimony that Emmy Shanzi Kaira and the others were paid their salaries and contractual benefits up to the time of termination on 11th February, 2019, as seen at pages 33-38 of Standard Chartered Bank Zambia Plc's bundle of documents, being their final pay slips.
- 5.65 Further evidence was given that vehicles were given to members of staff who were entitled to receive them, as long as they remained in employment, as per the Senior Staff Policy Guidelines, and that the benefit fell away once the employment with Standard Chartered Bank Zambia Plc ceased.
- 5.66 In concluding her testimony, Mainza Chibuye testified that sometime in September, 2018, the Senior Staff Loan Book was transferred from Standard Chartered Bank Zambia Plc to Barclays Bank, now ABSA, as evidenced by the e-mail which was at page 155 of Standard Chartered Bank Zambia Plc's bundle of documents.

CROSS EXAMINATION OF MAINZA CHIBUYE

- 5.67 In cross examination, Mainza Chibuye stated that page 155 of Standard Chartered Bank Zambia Plc's bundle of documents, was the document that communicated that all auto loans were transferred from Standard Chartered Bank Zambia Plc to now ABSA. She agreed that there was no

document on the Court record which showed that Emmy Shanzi Kaira and Fabian Muleya agreed to the conversion of the auto loan facility from Kwacha into United States Dollars.

- 5.68 She did however, state that Emmy Shanzi Kaira and Fabian Muleya were in senior management roles at Standard Chartered Bank Zambia Plc, which provided them with a benefit to either obtain car allowance of K6, 000.00 a month or to obtain a bank vehicle through the auto loan facility, which was paid for in full by Standard Chartered Bank Zambia Plc, as well as the PAYE component to the regulator, Zambia Revenue Authority (ZRA) on a monthly basis.
- 5.69 However, Emmy Shanzi Kaira and Fabian Muleya obtained the auto loan facility in 2016, and forfeited the car allowance. She stated that in August, 2018, Standard Chartered Bank Zambia Plc decided to transfer the auto loan facility to Barclays Bank due to operational inefficiencies, such as costs. It was added that the terms and conditions of the auto loan facility allowed for Standard Chartered Bank Zambia Plc to transfer such a loan.
- 5.70 Mainza Chibuye agreed that Standard Chartered Bank Zambia Plc did not get the consent of the affected employees as they were responsible for settling the monthly payments towards the cars. Her evidence was that the cars belonged to Standard Chartered Bank Zambia Plc until they were fully paid for, after Four (4) years.

5.71 It was also Mainza Chibuye's evidence that at termination, Emmy Shanzi Kaira and Fabian Muleya were not given a choice to go with the vehicles, as the policy stated that they had to pay the balance, and they signed giving undertaking to that effect.

5.72 That marked the close of the case for Standard Chartered Bank Zambia Plc.

6. DECISION OF THIS COURT

6.1 I have considered the evidence and the submissions.

FACTS NOT IN CONTENTION

6.2 It is not in dispute that Emmy Shanzi Kaira and the others are all former employees of Standard Chartered Bank Zambia Plc having been employed at various times. It is common cause that by an email dated 9th November, 2018, Standard Chartered Bank Zambia Plc informed its' employees that there would be a merger of the Priority Banking Client Relationship Team with the Priority Banking Client Acquisition team, and that all Priority Banking frontline staff would be assessed in face to face or telephone interviews.

6.3 It is also common cause that some meeting was held at which the impending changes were discussed, and there were interviews that were held for some staff who would be affected by the changes. The facts that are also not in contention, are that some of the impacted employees who were interviewed, were notified that they were unsuccessful in the interviews, and that they were at risk at redundancy.

- 6.4 What is also not in dispute, is that Emmy Shanzi Kaira and the others were given notice of redundancy on 11th January, 2019, that their employment would terminate by reason of redundancy on 11th February, 2019. It is further common cause that in the notice of redundancy, Emmy Shanzi Kaira and the others were placed on garden leave from 11th January, 2019, including and until the date of termination of their employment.
- 6.5 The facts that are also not in issue, are that Emmy Shanzi Kaira and the others were paid redundancy packages.

ISSUES IN DISPUTE

- 6.6 It is in contention whether the redundancy of Emmy Shanzi Kaira and the others was wrongful and unlawful, and as a result, they are entitled to be paid damages for wrongful and unlawful termination. It is further in dispute whether Emmy Shanzi Kaira and the others are entitled to have their redundancy packages recomputed.
- 6.7 What is also in dispute, is whether Emmy Shanzi Kaira and the others are entitled to a refund of Ninety (90) percent of their insurance premiums, and the value of Six (6) months loan repayment instalments, pursuant to their Credit Life Policies. It is in contention, whether Emmy Shanzi Kaira and Fabian Muleya are entitled to have their auto loan facilities restored into Kwacha, being the currency in which the facilities were granted.
- 6.8 The issues that are also in dispute, are whether Standard Chartered Bank Zambia Plc is liable to account to Emmy

Shanzi Kaira and Fabian Muleya for any foreign exchange currency losses, and to a refund of all the recoveries from the auto facility on the ground that the facility was a benefit, and not a loan, and in the alternative, whether Emmy Shanzi Kaira and Fabian Muleya are entitled to a discount of Twenty (20) percent on the recoveries on the auto facility.

- 6.9 It is in dispute whether Patience Bwalya Jere is entitled to damages for nervous shock and mental distress.

ANALYSIS

- 6.10 In the testimony that was given by Emmy Shanzi Kaira and the others, it was revealed that after Standard Chartered Bank Zambia Plc employed them and they had worked in various capacities, they were notified by an email dated 9th November, 2018, that there would be changes to the retail department of which they were part.
- 6.11 The testimony also shows that the email notified them that they were invited to a meeting to discuss the changes, and it also explained the criteria that would be used by Standard Chartered Bank Zambia Plc to determine the roles that would be affected by the changes.
- 6.12 It was further testified that the changes would be based on a combination of interviews for the remaining roles in the department following the changes, and an assessment of the employees' performance.
- 6.13 Emmy Shanzi Kaira testified that she was interviewed, and she was informed that her role was at risk, and she was also informed so in a letter dated 11th December, 2018. Then

thereafter, on the said 11th December, 2018, she wrote to Standard Chartered Bank Zambia Plc requesting for details on the redundancy process, such as the package that would be payable, as well as how outstanding liabilities would be treated.

- 6.14 Her contention was that there were no further meetings after that, and the next was that on 11th January, 2019, she received a Notice of Redundancy, which was effective 11th February, 2019, in which the redundancy package payable to her was stated. This she testified, was at Two (2) months pay for each year served, and she testified that she worked for a total of Thirteen (13) years and Three (3) months, having been employed on 7th November, 2003. However, her redundancy package was calculated at Eleven (11) years.
- 6.15 Emmy Shanzi Kaira also testified that all outstanding loans, including the auto loan facility were recovered from her redundancy package.
- 6.16 Audrey Kalwala's testimony was that she was employed by Standard Chartered Bank Zambia Plc on 17th March, 2003, as evidenced by her identity card, which was at page 1 of Standard Chartered Bank Zambia Plc's bundle of documents. Her further testimony was that she was notified that her role was at risk of redundancy through a letter, and also at the interview that Standard Chartered Bank Zambia Plc conducted.
- 6.17 Audrey Kalwala contended that there were no further consultative meetings that were held, and that she was

placed on Garden Leave on 11th January, 2019, when she was given notice of redundancy. With regard to her redundancy package, Audrey Kalwala testified that she was notified that she would be paid Two (2) months pay for each year served, and that the said redundancy package was calculated at Thirteen (13) years' service, and yet she had worked for Fifteen (15) years and Eleven (11) months.

- 6.18 It was also her testimony, that all outstanding loans were recovered from her redundancy package.
- 6.19 Memory Komaki testified that Standard Chartered Bank Zambia Plc employed her on 16th June, 2008. She stated that when Standard Chartered Bank Zambia Plc sent the email dated 9th November, 2008, she was on maternity leave and then on 11th January, 2019, she was given notice of redundancy. She contended that her employment was terminated within Six (6) months of her giving birth.
- 6.20 As regards her redundancy package, Memory Komaki's evidence was that it was calculated at Nine (9) years of service, instead of the Ten (10) years and Eight (8) months that she had served.
- 6.21 Cecilia Mundia, on the other hand testified that she was employed by Standard Chartered Bank Zambia Plc on 4th March, 1991. She stated that in 2018, she was offered the position of Customer Service Manager, but she did not take up that role. Her evidence was however that after Standard Chartered Bank Zambia Plc sent the email dated 9th November, 2018, she attended an interview as Customer

Service Manager, and she was informed that her job was at risk. Then on 20th December, 2018, she received a letter that also informed so.

- 6.22 Her allegation was that Standard Chartered Bank Zambia Plc did not conduct further meetings or consultations beyond the interview that she participated in. As for her redundancy package, it was Cecilia Mundia's evidence that it was calculated at Twenty (22) years' service, and not the Twenty-Six (26) years and Eleven (11) months that she had served.
- 6.23 Patience Bwalya Jere's evidence was that she was employed on 1st July, 2002, and that at the time of her termination, she was serving as Client Service Manager-Business Banking. It was further Patience Bwalya Jere's testimony that during the entire redundancy process, she was on medical leave and she was not consulted.
- 6.24 She stated that she learnt of the changes to the Retail Banking Department, and that her role was at risk of redundancy through a letter dated 17th December, 2018, which referred to a town hall that Standard Chartered Bank Zambia Plc called, which she was not aware of, and neither was she interviewed.
- 6.25 Her contention like the others, was that no meetings or consultations were had after that, until her employment was terminated. Thus, receipt of the information caused her suffer nervous shock and mental distress.

- 6.26 As regards her redundancy package, Patience Bwalya Jere testified that she was paid for Fifteen (15) years of service, yet she had worked for Sixteen (16) years and Five (5) months.
- 6.27 Fabian Muleya's testimony, was that he was employed by Standard Chartered Bank Zambia Plc on 17th September, 2007, as a Senior Priority Banker. He acknowledged having seen the email dated 9th November, 2018, which advised of the changes that would be made to the Retail Banking Department. His evidence was that he attended an interview, at which he was informed that his job was at risk, and he further received a letter dated 11th December, 2018, to that effect.
- 6.28 Fabian Muleya's allegation was that Standard Chartered Bank Zambia Plc did not conduct any further meetings or interviews beyond the interview that he took part in. With respect to his redundancy package, Fabian Muleya stated that he was paid at Two (2) months pay for each year served.
- 6.29 On the part of Standard Chartered Bank Zambia Plc, the evidence as given by Mutwanyembo Sanyambe Mubita, the Head Human Resource, was that Emmy Shanzi Kaira and the others were employed by Standard Chartered Bank Zambia Plc in various positions, and that they served under terms and conditions in addition to the Human Resources Policies which were prevailing at the time.
- 6.30 It was her testimony that when the redundancy process was undertaken, a Group Consultative meeting was undertaken

where all the staff who were impacted, including Emmy Shanzi Kaira and the others, were engaged on the rationale for the impending redundancies, and the criteria that would be used to identify successful candidates for the re-organised business segment.

- 6.31 Thus, Emmy Shanzi Kaira and the others were invited to pose questions, and to seek clarity on the impending redundancy, and candidates for the reorganized business segment were interviewed face to face, and their performance over the last two years was reviewed. It was stated that those who were unsuccessful in the interviews, that is Emmy Shanzi Kaira, Audrey Kalwala, Cecilia Mundia and Fabian Muleya were not considered for any role in the re-organised business.
- 6.32 As for Memory Komaki, whilst Mutwanyembo Sanyambe Mubita acknowledged that she was on maternity leave during the redundancy period, she contended that the termination of Memory Komaki had no connection to her having been on maternity leave, but rather, the redundancy was a result of the change in the operational model of the business, and Memory Komaki's role was no longer required in the new structure. Therefore, she was declared redundant.
- 6.33 With respect to Patience Bwalya Jere, the testimony that Mutwanyembo Sanyambe Mubita gave, was that Standard Chartered Bank Zambia Plc offered clarification on the

redundancy in the letter which was addressed to her on 8th February, 2019.

- 6.34 Mutwanyembo Sanyambe Mubita also testified that a consultative meeting was held with Emmy Shanzi Kaira and the others, as evidenced by the minutes of the meeting dated 30th January, 2019. She further stated that the Human Resources Manual which applied to Emmy Shanzi Kaira and the others provided that if for any reason, they left their employment with Standard Chartered Bank Zambia Plc, they were required to clear any liabilities that they had immediately.
- 6.35 Her evidence was also that Emmy Shanzi Kaira and Fabian Muleya gave Standard Chartered Bank Zambia Plc undertaking that they would clear any balances that were outstanding on the leases under the auto loan facility on their last working day.
- 6.36 As regards the assertion that the subsequent redundancies which were undertaken in 2019 and 2020 offered better redundancy packages than those that were offered to Emmy Shanzi Kaira and the others, Mutwanyembo Sanyambe Mubita's evidence was that each redundancy is characterized by its' own terms and conditions. She further stated that medical cover is given at management's discretion and is on ex-gratia basis.
- 6.37 She clarified that ex-gratia payments place no contractual obligation on the employer to give the employee the same.

- 6.38 Martin Lungu on the other hand, told the Court that loans that there were obtained by employees of Standard Chartered Bank Zambia Plc, whether personal or mortgage loans were governed by the terms and conditions of the Credit Life Assurance Application form and the Master Policy of Credit Life Assurance Agreement which were policies that were issued by Sanlam Life Insurance Zambia Limited, under which retrenchment was included as a rider benefit.
- 6.39 He stated that cover for the loans for Emmy Shanzi Kaira and the others commenced on 29th November 2018, and they were retrenched on 1st March, 2019. Martin Lungu's evidence was that Clause 4.4.1 of the Master Policy of Credit Life Assurance Agreement provided that retrenchment benefits were not payable, where the retrenchment occurred in the first Six (6) months of commencement of the cover, which is the category that Cecilia Mundia and Fabian Muleya fell.
- 6.40 He also testified that Clause 4.4 of the Master Policy of Credit Life Assurance allowed for payment of retrenchment benefits where the retrenchment claims were submitted to the insurer for settlement within Sixty (60) days of the retrenchment, and that any claims that were made thereafter, were null and void.
- 6.41 He outlined the retrenchment benefits which were paid to Emmy Shanzi Kaira, Audrey Kalwala, and Patience Bwalya Jere.

- 6.42 Martin Lungu's testimony was further that there was no provision in the Master Policy of Credit Life Assurance Agreement, which provided for Six (6) months relief as claimed by Emmy Shanzi Kaira and the others. His position was that Clause 4.4.3 of the Master Policy of Credit Life Assurance Agreement excluded payment of redundancy arising from any form of retrenchment or fair dismissal.
- 6.43 His evidence was also that the claim for Ninety (90) percent refund of all premiums for the Credit Life Policy was misconceived. Martin Lungu explained that the Ninety (90) percent refund related to unearned premium amounts at the time of either early settlement of the loan, or when an employee topped up a loan. He added that insurance premiums were paid in advance for the entire tenor of the loan, and that the refund was only applicable when there were no accrued benefits as provided under the policy.
- 6.44 Martin Lungu outlined the refunds that were paid to Emmy Shanzi Kaira, Cecilia Mundia, Memory Komaki, Audrey Kalwala, Fabian Mungau Muleya and Patience Bwalya Jere. He stated that Clause 3.7 of the Master Policy of Credit Life Assurance Agreement was clear on the issue of premiums that were paid, and that early settlement was a risk premium and therefore, there was no surrender value attached to that policy.
- 6.45 Caroline Zimba, the Senior Human Resources Business Partner confirmed that Standard Chartered Bank Zambia Plc held a group consultative meeting at which all the

employees who were impacted by the redundancy were engaged on the rationale for the impending redundancy, along with the criteria that would be used to identify successful candidates for the re-organised business segment.

- 6.46 She like, Mutwanyembo Sanyambe Mubita testified that the impacted employees were allowed to ask questions and to seek clarity on the impending redundancy. Caroline Zimba also confirmed that candidates were interviewed for the re-organised business segment, and that Emmy Shanzi Kaira, Audrey Kalwala, Cecilia Mundia and Fabian Muleya were unsuccessful in the interviews. Thus, they were not considered for any roles in the reorganized segment of the business.
- 6.47 Caroline Zimba confirmed that Memory Komaki was on maternity leave during the redundancy period, but like Mutwanyembo Sanyambe Mubita, she contended that her redundancy was not connected to her having been pregnant. Rather, it was due to changes in the operational model of the business, and her role was no longer needed in the new business model.
- 6.48 She also confirmed that a consultative meeting was held with the impacted employees on 30th January, 2019, and that a letter was written to Patience Bwalya Jere on 8th February, 2019, further clarifying on the redundancy. It was Caroline Zimba's testimony, that the Human Resources Manual provided that employees had to settle all outstanding

liabilities with Standard Chartered Bank Zambia Plc immediately they left employment for whatever reason.

6.49 She also confirmed Mutwanyembo Sanyambe Mubita's evidence as regards the difference in the redundancy packages that were offered to employees who were declared redundant in 2019 and 2020, after Emmy Shanzi Kaira and the others.

6.50 Mainza Chibuye's testimony explained how the redundancy benefits were paid, and that the auto loan facility was applicable as long as an employee who was entitled to the same remained in employment. Then in September, 2018, the auto loan facility was transferred to Barclays Bank now ABSA, as evidenced by a memorandum which was dated 16th August, 2018.

6.51 In the submissions, Emmy Shanzi Kaira and the others contended that Standard Chartered Bank Zambia Plc in paragraphs 8 and 9 of its' defence, had alleged that the redundancy was done in accordance with the terms and conditions of the contracts of employment, and the Human Resources Policies. Further, that a Group Consultative meeting was held at which the rationale and the criteria for the redundancy was explained.

6.52 It was also stated that the intended restructuring of Standard Chartered Bank Zambia Plc was communicated to all the members of staff through Standard Chartered Bank Zambia Plc's standard model, and that Patience Bwalya Jere

had a discussion with the head of department on the impending redundancy.

- 6.53 Further submission was made, that Emmy Shanzi Kaira, Audrey Kalwala, Cecilia Mundia and Fabian Muleya were interviewed, but they were unsuccessful. It was stated that Standard Chartered Bank Zambia Plc's contention was that it terminated the employment of Emmy Shanzi Kaira and the others by following all the laid down procedures.
- 6.54 It was submitted that redundancy is deemed to occur if the termination of employment is due to either the employer ceasing or intending to cease to carry on the business by virtue of which the employee is engaged, or the business reducing the requirement to carry out work of the type which the employee was engaged.
- 6.55 It was stated that it is implicit that the employee loses their job due to diminution of the scale of the employer's operations.
- 6.56 The submission was that Standard Chartered Bank Zambia Plc contended that it calculated the redundancy packages pursuant to **Section 55 (2) of the Employment Code Act No 3 of 2019**. However, Emmy Shanzi Kaira and the others stated that this was not tenable, as their employment was terminated vide the letters dated 11th January, 2019, which were effective 11th February, 2019.
- 6.57 The submission was that the **Employment Code Act No 3 of 2019** was assented to on 11th April, 2019 after the contracts of employment were terminated by redundancy.

Further submission was made, that the law that applied to Emmy Shanzi Kaira and the others at the time, was ***Employment Act, Chapter 268 of the Laws of Zambia***, as amended by ***the Employment Amendment Act No 30 of 1997***.

- 6.58 It was stated that under the Amendment Act, ***Section 15c of the Act***, which previously provided for redundancy was repealed, and ***Section 26B*** was introduced by the Amendment Act, to regulate redundancy under *Part IV of the Act under Oral Contracts*.
- 6.59 Thus, in the case of ***ZUFLAW v Barclays Bank Plc*** ⁽³⁾ the Supreme held that ***Section 26B of the Employment Act*** could not be extended to written contracts, because it fell under the part headed Oral Contracts, and therefore Parliament clearly intended to protect employees who entered into oral contracts.
- 6.60 Further submission was made, that in the case of ***Kasote Singogo v Chilanga Cement Plc*** ⁽⁴⁾, the Supreme Court in upholding the rationale in the case of ***ZUFLAW v Barclays Bank Plc*** ⁽³⁾ held that:

“Redundancy being a planned activity, an employee needs to prepare for the loss of a job. Reasonable measures include notices and consultations should be taken. Fairness and good faith demand that employees should just not be ambushed into redundancy.”

- 6.61 Thus, it was contended that Standard Chartered Bank Zambia Plc, was obliged to consult with Emmy Shanzi Kaira and the others, on the intended redundancies, and to engage them on the redundancy package and other benefits.
- 6.62 It was submitted that the letter at page 37 of Emmy Shanzi Kaira and the others' bundle of documents, which was dated 11th December, 2018, was the first communication from Standard Chartered Bank Zambia Plc, and it advised Emmy Shanzi Kaira that her role would be affected. Then on 11th January, 2019, Emmy Shanzi Kaira and the others were given Notices of Redundancy, which were effective 11th February, 2019.
- 6.63 The contention was that no dialogue of any kind took place between Emmy Shanzi Kaira and the others and Standard Chartered Bank Zambia Plc. The submission was that Standard Chartered Bank Zambia Plc in its' defence, had pleaded that there was no need for consultation, as Emmy Shanzi Kaira and the others were in management, with page 45 of Emmy Shanzi Kaira and the others bundle of documents being referred to.
- 6.64 Also, in submission, it was stated that Mutwanyembo Sanyambe Mubita in cross examination, testified that there were no consultations as Emmy Shanzi Kaira and the others served under written contracts. The submission was also that the only record of the consultation appeared at page 110 of Standard Chartered Bank Zambia Plc's bundle of

documents, which was minutes of a meeting which was held on 30th January, 2019, after the Notice of Redundancy.

- 6.65 It was stated that as shown at page 112, when Emmy Shanzi Kaira and the others complained about the lack of consultation, they were reminded of the different terms of employment between unionized and management employees.
- 6.66 The contention was that it had to take the intervention of the Ministry of Labour for some relief to be given to Emmy Shanzi Kaira and the others on the outstanding loans. It was asserted that as Standard Chartered Bank Zambia Plc was able to adjust after the intervention, that was evidence that there was still room for negotiation, and for relief to be given to Emmy Shanzi Kaira and the others, which would have included medical cover on termination, relief on the loans, as well as engagement on the redundancy package.
- 6.67 Standard Chartered Bank Zambia Plc on the other hand cited a number of cases to submit that Emmy Shanzi Kaira and the others had failed to prove their case on a balance of probabilities. Among the cases cited, were ***Wilson Masauso Zulu v Avondale Housing Project Limited*** ⁽¹⁾, ***Zambia Consolidated Copper Mines Investments Holdings Limited Plc v Woodgate Holdings Limited*** ⁽⁵⁾, and ***Richard Muchaka Mwanambulo v Ponovan Musoka Hikakako*** ⁽²⁾.
- 6.68 In the case of ***Wilson Masauso Zulu v Avondale Housing Project Limited*** ⁽¹⁾ the Supreme Court held as follows:

“A Plaintiff who has failed to prove his case cannot be entitled to judgment, whatever may be said of the opponents case.”

6.69 When it comes to redundancy, the learned authors in the book ***Labour Law in Zambia: An Introduction 2nd Edition, by Chanda Chungu and Ernest Beele Juta and Company (Pty) Ltd, 2020 at page 120,*** state that:

“The term redundancy also referred to as retrenchment or dismissal based on the employer’s operational requirements arises by operation of the law, and usually takes place in three broad instances, which are:

a. Economic reasons- a company that is going through financial difficulties decides to reduce its’ workforce as a cost-saving measure to help the business thrive.

b. Technological reasons- the employer introduces new technology or work practices to improve its’ efficiency.

c. Structural reasons- the company reorganizes its’ business or enterprise and this renders an employee surplus to the requirements”.

6.70 At page 122, the learned authors state that a dismissal based on redundancy will be valid, if it is as a result of the fact that the employer has ceased to carry on business in the place where the employee was employed.

6.71 Further, the learned authors, **Winnie Sithole Mwenda and Chanda Chungu** in the book, ***A Comprehensive Guide to Employment Law in Zambia, University of Zambia Press, 2021 at page 330*** state the purpose of the duty to consult before redundancy is done as:

- (a) To give employer opportunity to explain the reasons for the proposed termination by reason of redundancy.**
- (b) Hear representations on possible ways of avoiding or minimising the effects of the terminations.**
- (c) Discuss and consider alternatives.**
- (d) Reduce the number of employees to be declared redundant;**
- (e) Mitigate the consequences of redundancy.**

6.72 In the case of **Josiah Subukanya, Bernard Chewe & 117 others v The Attorney General** ⁽⁸⁾ it was held that because redundancies are planned, and an employee needs to be prepared for the loss of their job.

6.73 Thus, in the case of **National Milling Corporation v Angela Chileshe Bwembya Silwambe** ⁽⁷⁾, the Supreme Court held that the redundancy which was done without notice to the employees, amounted to bad faith treatment of the employees.

6.74 In this case, it has been seen that the email, which is at page 30 of Emmy Shanzi Kaira and the others' bundle of documents dated 9th November, 2018 was sent to employees of Standard Chartered Bank Zambia Plc notifying them of

the changes that would affect the Priority Banking Client Relationship Team and the Priority Banking Client Acquisition Team as the two would be merged.

- 6.75 The evidence that is on record, further shows that a town hall was called by Standard Chartered Bank Zambia Plc at which the changes were discussed. Then as seen from the testimonies, Emmy Shanzi Kaira, Audrey Kalwala, Cecilia Mundia and Fabian Muleya were interviewed. However, they were unsuccessful in their roles.
- 6.76 At page 33 of Emmy Shanzi Kaira and the others' bundle of documents is a letter that Standard Chartered Bank Zambia Plc wrote to Emmy Shanzi Kaira on 11th December, 2018, notifying her, that further to the meeting which was held on 9th November, 2018 at which the proposed changes were outlined to the Retail Bank model, that attempts to find an alternative role for her was unsuccessful as she was unsuccessful in the interviews.
- 6.77 However, Standard Chartered Bank Zambia Plc would continue working with her to look for an alternative suitable role for her for a period of Sixty (60) days effective 11th December, 2018 to avoid termination of her employment. Her attention was drawn to the Job Watch Facility within PeopleSoft where details of vacant positions could be found, which could be accessed via the Bridge.
- 6.78 The letter also stated that a formal consultation meeting would be held on that date, 11th December, 2018. At pages 45-46 of the said bundle of documents is a letter that

Standard Chartered Bank Zambia Plc wrote to Emmy Shanzi Kaira on 8th February, 2019, with reference to her letter dated 18th January, 2019 clarifying on the redundancy.

6.79 Emmy Shanzi Kaira, Audrey Kalwala, Cecilia Mundia and Fabian Muleya all confirmed that they attended the town hall and that they were interviewed for alternative roles. Memory Komaki also stated that she was interviewed for an alternative role via teleconference and she was informed that she was unsuccessful in the interview. Patience Bwalya Jere testified that she only attended the meeting which was held on 30th January, 2019 after the Notices of Redundancy were issued.

6.80 At page 118 of Standard Chartered Bank Zambia Plc's bundle of documents is a letter which was written to Patience Bwalya Jere on 17th December, 2018 which advised that further to the townhall which was held on 9th November, she was informed that she was at risk of redundancy due to the changes but that Standard Chartered Bank Zambia Plc would continue working with her to avoid loss of employment. She like, Emmy Shanzi Kaira was informed to access the Job Watch Facility.

6.81 The argument by Emmy Shanzi Kaira and the others was that there was no consultation or further meetings after 9th November, 2018 with Standard Chartered Bank Zambia Plc as they were informed that they were not entitled to consultation as they were not unionized staff. They referred to the letters at page 45 and 122 of their bundles of

documents as evidencing the said stance that Standard Chartered Bank Zambia Plc took.

- 6.82 It is true as was argued by Emmy Shanzi Kaira and the others, that when they were given Notice to Terminate their contracts of employment by reason of redundancy, the **Employment Code Act No 3 of 2019** had not yet come into force. That Act was assented to on 11th April, 2019.
- 6.83 It came into force, on 10th May, 2019, by virtue of publication of **Statutory Instrument No 29 of 2019**, in the Gazette, which was signed by the Minister on 9th May, 2019, stating that the Act would commence on the date of publication of the Order.
- 6.84 Be that as it may, the **Employment Code Act in Section 55** provides that an employer intending to terminate a contract by reason of redundancy shall afford the employee or representative of the employee an opportunity to consult on the measures to be taken to minimise the termination and the adverse effects on the employee.
- 6.85 This in line with the ILO Recommendation: Paragraphs 20 to 23 and 25 to 26 of the Termination of Employment Recommendation No. 166 which suggest measures to avert or minimize termination, criteria for selection for termination and mitigating the effects of termination.
- 6.86 Clause 12.0 of the Human Resources Manual at page 117 of Emmy Shanzi Kaira and the others bundle of documents provided that:

“In cases of redundancy, the Bank will notify and liase with the Labour Department officials prior to effecting terminations. The affected business and HR will:

- . Set out the criteria and determine the number of staff to be affected.**
- . Draw up the redundancy package in line with the Labour Laws and any further input from the Labour Department.**
- . Communicate the details to staff and the union representative where applicable.”**

6.87 It has been seen that Emmy Shanzi Kaira and the others were engaged at individual level prior to the redundancy and with regard to Patience Bwalya Jere, in the meeting that was called on 30th January, 2019 after the Notices of Redundancy were issued. The Labour office was only engaged post the termination by way of redundancy.

6.88 This was in breach of Clause 12.0 of the Human Resources Manual which was agreed formed part of the terms and conditions of Emmy Shanzi Kaira and the others employment, as the provision did not discriminate between unionized and non-unionised staff.

6.89 Thus, the question that arises is whether the failure to liase with the Ministry of Labour prior to the redundancy being undertaken made the redundancy wrongful and unlawful?

6.90 In the case of **Chilanga Cement Plc v Kasote Singogo** ⁽⁴⁾, the Court referred to the case of **Mugford v Midland Bank**

Plc (9) where it was guided inter alia, that if there is no consultation with trade unions or individuals when redundancies are contemplated, a dismissal will normally be unfair, unless a reasonable employer would have concluded that consultation would be an utterly futile exercise.

- 6.91 Further, that if a dismissal is unfair because of a failure to consult, the Court must consider whether the consultation would have made any difference or whether any employee would have had a chance of being retained in his employment.
- 6.92 In terms of whether consultation with the Ministry of Labour would have given chance to Emmy Shanzi Kaira, Audrey Kalwala, Cecilia Mundia and Fabian Muleya, to be retained in employment, my view is that it would not, as they were interviewed for alternative roles and they were unsuccessful.
- 6.93 However, when it came to the other conditions that applied as part of the redundancy, it has been seen that Emmy Shanzi Kaira and the other engaged the help of the Ministry of Labour, which saw a Twenty (20) percent reduction being given on the loan and mortgage facilities, that they had with Standard Chartered Bank Zambia Plc, which were payable on them existing employment.
- 6.94 There was some level of consultation with Emmy Shanzi Kaira and the others on measures which were aimed at minimising the redundancy by the townhall, interviews and further clarifications which were given, but without the input from the Ministry of Labour.

6.95 The failure to engage Emmy Shanzi Kaira and the others on the reduction of the loan and mortgage repayments, was later atoned when they sought the help of the Ministry of Labour, as that mitigated the effects of the redundancy. The redundancy for Emmy Shanzi Kaira, Audrey Kalwala, and Fabian Muleya was therefore not unlawful and/or wrongful.

WRONGFUL TERMINATION OF MEMORY KOMAKI

6.96 Memory Komaki's contention was that her termination by way of redundancy was unlawful as it was done whilst she was on maternity leave.

6.97 **Section 15B of the Employment Act, Chapter 268 of the Laws of Zambia** was referred to, which provided that:

"15B. (1) An employer shall not terminate the services of a female employee or impose any other penalty or disadvantage upon such employee for reasons connected with such employee's pregnancy.

(2) In the absence of proof to the contrary, an employer shall be deemed to have acted in contravention of subsection (1) if he terminates the contract of service or imposes any other penalty or disadvantage upon a female employee within six months after delivery."

6.98 It was stated that Standard Chartered Bank Zambia Plc had conceded that Memory Komaki's contract of employment was terminated when she was on maternity leave. Reference was made to the Human Resources Manual at pages 53-54

of Standard Chartered Bank Zambia Plc's bundle of documents, as having provided for maternity leave for One Hundred Forty (140) days.

6.99 Therefore, Memory Komaki's employment was terminated within Six (6) months of delivery, and the law deemed the termination as having been due to the pregnancy.

6.100 Note was made that the burden was shifted to Standard Chartered Bank Zambia Plc to show that the termination was not due to pregnancy. The case of ***Chilanga Cement Plc v Kasote Singogo*** was relied on to submit that the fact that there was an ongoing redundancy exercise, did not assist Standard Chartered Bank Zambia Plc.

6.101 Whilst it was not disputed that Memory Komaki was on maternity leave when the redundancy was done, no evidence was led as to when she went on maternity leave. The law in ***Section 15B of the Employment Act*** placed a burden on Standard Chartered Bank Zambia Plc to justify the termination of employment within Six (6) months of pregnancy.

6.102 The defence by Standard Chartered Bank Zambia Plc was that Memory Komaki's role was at risk or redundancy due to the operational changes in the organisation, and that the termination had nothing to do with her pregnancy.

6.103 Memory Komaki testified that she did not attend the townhall. She stated in cross examination, that she was informed of the email dated 9th November, 2018, and she went and collected a copy of it. She also admitted in cross

examination, that she attended a face to face interview, but she was informed that she was unsuccessful.

6.104 From this evidence, it is clear that Memory Komaki was engaged by Standard Chartered Bank Zambia Plc on mitigating the effects of redundancy, as she even attended an interview for an alternative role. However, she was unsuccessful. Going by the above, Standard Chartered Bank Zambia Plc justified the reason why Memory Komaki's employment was terminated, even though it was within Six (6) months of her pregnancy. Her claim for wrongful termination therefore fails, and it is dismissed.

WRONGFUL TERMINATION OF CECILIA MUNDIA

6.105 Cecilia Mundia claims that the termination of her employment by way of redundancy was wrongful, as she was offered the position of Customer Service Manager prior to the termination. However, she did not take up that role. She further testified that after the email dated 9th November, 2018, she was interviewed as Customer Service Manager and she was informed that she was unsuccessful.

6.106 In cross examination, Cecilia Mundia testified that she did not take up the position of Customer Service Manager as the letter of appointment was cancelled. Her evidence was further that she attended an interview via teleconference at which her performance was reviewed.

6.107 Cecilia Mundia did not produce the letter which cancelled her appointment as Customer Service Manager. She did concede that she was interviewed during the process of

redundancy at which her performance was reviewed. Going by this, it cannot be said Standard Chartered Bank Zambia Plc did not engage Cecilia Mundia on mitigating the effects of redundancy by considering her for alternative placement. Her claim for wrongful termination of employment therefore fails, and it is dismissed.

WRONGFUL TERMINATION OF PATIENCE BWALYA JERE

6.108 Patience Bwalya Jere's assertion was that the termination of her employment was wrongful and unlawful, and that it caused her nervous shock and mental distress, as she was on medical leave, and she only learnt of the impending redundancy through a letter dated 17th December, 2018 which referred to a townhall which was called by Standard Chartered Bank Zambia Plc, which she was not aware of, and which she did not attend.

6.109 The contents of the said letter have been seen above. It is not in dispute that Patience Bwalya Jere did not attend the townhall as she was on medical leave at the time. Further, there is no contest that she was not interviewed for an alternative role. She was however advised in the letter dated 17th December, 2018, that she could apply for alternative jobs.

6.110 The question that arises is whether failure to attend the townhall and to be interviewed, for alternative roles within Standard Chartered Bank Zambia Plc, made the termination of her employment by way of redundancy wrongful?

- 6.111 It has been seen from the case of ***Mugford v Midland Bank Plc*** ⁽⁹⁾ that it guided inter alia, that if there is no consultation with trade unions or individuals when redundancies are contemplated, a dismissal will normally be unfair, unless a reasonable employer would have concluded that consultation would be an utterly futile exercise.
- 6.112 Further, that if a dismissal is unfair because of a failure to consult, the Court must consider whether the consultation would have made any difference or whether any employee would have had a chance of being retained in his employment.
- 6.113 It is clear that Patience Bwalya Jere was not interviewed for any alternative role in Standard Chartered Bank Zambia Plc during the redundancy process. Therefore, while her role was at risk of redundancy, Standard Chartered Bank Zambia Plc has not demonstrated what measures it took to mitigate the impending redundancy as regards Patience Bwalya Jere.
- 6.114 By not giving her opportunity to be interviewed for any alternative role, it cannot be said that Standard Chartered Bank Zambia Plc was fair in the manner that it treated Patience Bwalya Jere in the redundancy. Standard Chartered Bank Zambia Plc argued that she had not brought any evidence to show that she suffered nervous shock and mental distress when she was informed of the redundancy.

6.115 The Supreme Court in the case of ***Barclays Bank Zambia Limited Plc v Weston Luwi and Suzgo Ngulube*** ⁽⁶⁾ held that:

*“At common law the measure of damages for wrongful termination of the contract of employment, is determined by the period of notice. The award is equivalent to the salary for the period of notice. However, there are exceptions. The case of *Swarp Spining Mills Limited v Sebastian Chileshe and Others* which Mr. Lukangaba cited, clearly sets out what some of the exceptions to nominal damages are. At this stage, we take the liberty to correct Mr. Lukangaba’s assertion that mental anguish is the only exception. What we said in that case is that the normal measure of damages is departed from where the circumstances and justice of the case so demand.” Therefore, termination inflicted in a traumatic fashion causing undue distress or mental suffering is, but one example. Loss of employment opportunities is another.*

...

Similarly, we hold that the trial Court was entitled, based on the evidence before it, to award damages for cover of distress and inconvenience. An award of 24 months’ salary as damages, therefore does not come to us with a sense of shock, as being excessive, to warrant being set aside.”

6.116 It was noted in the above matter, that termination that is inflicted in a traumatic fashion causing undue distress or mental suffering is an example of wrongful termination of employment. Therefore, by not considering Patience Bwalya Jere for any role made the termination of her employment by way of redundancy traumatic, and obviously it did cause her distress, and I so find.

6.117 The normal measure of damages for wrongful termination is the period of notice. The notice period for redundancy was One (1) month. However, in view of the circumstances in which Patience Bwalya Jere's termination was done, which I have stated was traumatic, I depart from the normal measure of damages, and award her Six (6) months pay as damages. The amount shall carry interest at the average short-term deposit rate from the date of issue of the Writ of Summons until Judgment and thereafter, at the Bank of Zambia lending rate until payment.

ORDER TO RECOMPUTE THE TERMINAL BENEFITS FOR EMMY SHANZI KAIRA AND THE OTHERS

6.118 Under this claim, the contention by Emmy Shanzi Kaira and the others, is that their redundancy pay was calculated not in accordance with the number of years that they had served. The defence by Standard Chartered Bank Zambia Plc was that each redundancy is done according to its own terms and conditions.

6.119 I have referred to Clause 12.0 of the Human Resources Manual which provided for redundancy. It stated that the

redundancy package would be drawn up in line with the Labour Laws and any further input from the Labour Department.

6.120 Citing **Section 108 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia**, Emmy Shanzi Kaira and the others alleged that they were discriminated against. They stated that Standard Chartered Bank Zambia Plc in paragraph 27 of its' defence, had pleaded that each redundancy was characterized by its' own terms and conditions.

6.121 However, the provisions of Section 2.3 of the document in relation to the Standard Chartered Group Redundancy Standard at page 119 of Standard Chartered Bank Zambia Plc's further bundle of documents read as follows:

“2.3 other additional severance benefits (not specified in the Group Redundancy) standard which have historically been offered to redundant employees (save the 2019 redundancies) include:

a. The continuation of medical Aid for 6-12 months following termination date (subject to negotiations with the unions) whatever is negotiated with the union is also offered to non-unionized employees;

b. The Bank shall bear the reasonable costs of transporting employees from their current place of work.... the cost of relocation shall not exceed (USD2, 000).”

6.122 The submission was that above, when read in light of Standard Chartered Bank Zambia Plc's Group Redundancy Policy which was at page 34 of Emmy Shanzi Kaira and the others bundle of documents, whose purpose was stated as, to set consistent minimum standards of redundancy processes and procedures, shows that Standard Chartered Bank Zambia Plc applied the same with disadvantage to Emmy Shanzi Kaira and the others.

6.123 The actual page that refers to Section 2.3 is page 137 of Standard Chartered Bank Zambia Plc's further bundle of documents. That document is a dispensation request for Standard Chartered Zambia Plc to pay a redundancy package that was different from that which is stated in Section 5.1.1 of the Group Redundancy Standard.

6.124 In that document, note was made of the provisions of **Section 55 (3) (a) of the Employment Code Act** on the redundancy package that is payable, of not less than Two (2) months pay for each year served, and other benefits as compensation. There was a request to remove a cap of Fifteen (15) months on the calculation of the redundancy severance pay as the **Employment Code Act** does not provide so when calculating redundancy severance pay, and doing so would be contrary to the Act.

6.125 Then Section 2.3 made the observations as highlighted above which show what other redundancy severance packages were included, save for the 2019 redundancy, which was medical cover for a period of Six (6) to Twelve (12)

months following the termination date, subject to what was negotiated with the union, and what the union negotiated was offered to non-unionised employees.

6.126 It has been seen from this document, that it was only the 2019 redundancy, which affected Emmy Shanzi Kaira and the others that was not done in line with the Group Redundancy Standard which document as seen at page 34 of Emmy Shanzi Kaira and the others bundle of documents was dated 1st January, 2016 before their contracts of employment were terminated by way of redundancy.

6.127 Whilst it is true that each redundancy is negotiated, and it will have its' own terms and conditions, there is a Group Redundancy Standard, and Standard Chartered Bank Zambia Plc has not given any reason why it was only for the 2019 redundancy, that it was departed from.

6.128 It has further been seen that all the other redundancies paid redundancy packages which factored in all the years that were served. The defence by Standard Chartered Bank Zambia Plc was that Emmy Shanzi Kaira and the others initially served on fixed term contracts, and that is why their redundancy packages did not factor the years that they served on fixed term contracts.

6.129 Of very particular note, is that for Cecilia Mundia, her redundancy package calculation is at page 134 of Standard Chartered Bank Zambia Plc's bundle of documents. The number of years served indicated on that document is Twenty-Seven (27). At page 19 of the same bundle of

documents is the letter of employment for Cecilia Mundia which shows that she was employed on 20th March, 1991.

6.130 She was given notice of termination of her employment due to redundancy on 29th January, 2019 after she had served for a period of Twenty-Seven (27) years and Ten (10) months. There is no evidence on record to show that Cecilia Mundia ever served on a fixed term contract, and therefore there was no pro-rated calculation of the redundancy pay for the Ten (10) months.

6.131 In the document at page 137 of Standard Chartered Bank Zambia Plc's further bundle of documents, it was indicated in Section 2.1 (c) that where an employee does not complete one full year of service, Clause 5.1.2 of the Group Redundancy Standard would apply, and the employees service would be rounded up to one year, save that the employee would receive Two (2) months salary in accordance with Section 55 (3) (a) rather than one month's pay.

6.132 It has been seen that Ministry of Labour was not engaged in the drawing up of the redundancy package in breach of Clause 12.0 of the Human Resources Manual. The failure to do so, disadvantaged Emmy Shanzi Kaira and the others, and ultimately led to the failure to actualize the provisions of the Group Redundancy Standard.

6.133 In light of this, while I have found that in terms of averting the redundancy, the failure to engage the Ministry of Labour would not have made a difference Emmy Shanzi Kaira and the others as regards averting the impending redundancy.

However, the said failure disadvantaged them with respect to the redundancy package that was payable to them.

6.134 Consequently, I find that there was unfairness in the calculation of the redundancy package, and Emmy Shanzi Kaira and the others succeed on the claim for recalculation of their redundancy packages in line with the Group Redundancy Standard, that where an employee had not completed a year of service, it would be rounded up to one year, and they shall be paid the difference.

6.135 If the parties do not on agree on the computation, the same shall be done by the Registrar. The amounts found due shall carry interest at the average short-term deposit rate from the date of issue of the Writ of Summons and thereafter, at the Bank of Zambia lending rate until payment.

AUTO LOAN FACILITY FOR EMMY SHANZI KAIRA AND FABIAN MULEYA

6.136 As for the auto loan facility, the submission was that the conversion of the auto loan facility from Kwacha into United States Dollars, had been argued by Standard Chartered Bank Zambia Plc that it had a right to assign the facility, and that the dollar facility was cheaper for Emmy Shanzi Kaira and Fabian Muleya. Further, that the same was a benefit and not a loan facility.

6.137 However, the contention was that when one perused the auto loan facility which was at page 3 of Emmy Shanzi Kaira and the others bundle of documents, it reflected that Emmy Shanzi Kaira was a borrower. Then at page 5, provision was

made for 48 monthly repayments and the interest rate was shown at page 6.

6.138 It was submitted that the facility was replete with diverse provisions on instalment payments, and interest payable and that the outstanding amount was recoverable from the package. Thus, it was incomprehensible that it was benefit as argued by Standard Chartered Bank Zambia Plc, and not a loan.

6.139 The submission therefore was that the refusal to extend the Twenty (20) percent deduction to the auto loan facility was at best, an error of Judgment, as Emmy Shanzi Kaira and Fabian Muleya did not expect that their income would end abruptly, and the redundancy created financial exposure. The prayer was that the Twenty (20) percent relief be also extended to the auto loan facility.

6.140 The defence by Standard Chartered Bank Zambia Plc was that the auto facility was a benefit and not a loan facility which was given to employees who qualified for it, in this case, Emmy Shanzi Kaira and Fabian Muleya. It was stated that Emmy Shanzi Kaira and Fabian Muleya made an undertaking to pay off the auto facility when their employment came to an end for whatever reason.

6.141 The defence was also that Standard Chartered Bank Zambia Plc transferred that facility to Barclays Bank then, now ABSA in line with the terms of auto facility.

6.142 Emmy Shanzi Kaira and the others submitted that a perusal of the auto facility reveals that it is replete with

provisions that show that it was a loan and not a benefit as alleged by Standard Chartered Bank Zambia Plc.

6.143 The auto facility is at pages 127-134 of Emmy Shanzi Kaira and the others bundle of documents. Section 6 of that facility provided that interest was payable on the loan facility in arrears, and on dates set out in the approval. Therefore, from the wording, it was actually a loan facility.

6.144 Then Section 22 of the said auto loan facility provided for transferability of the facility as follows:

“The bank shall be entitled to cede, assign transfer, or make over any of its’ rights in terms of this to any entity appointed by the Bank to recover its’ debts.

Any cessation or assignment agreed to by a party will not relieve the other party of any obligations required to be performed by that party once this agreement which arose prior to any cessation or assignment becoming effective.”

6.145 Section 21.3 of the facility provided for change in currency of the facility.

6.146 At page 155 of Standard Chartered Bank Zambia Plc’s bundle of documents is a letter that was addressed to staff which is dated 16th August, 2018. It referred to feed back and concerns from senior staff, and it advised on transfer of the auto loan facility from Standard Chartered Bank Zambia Plc to Barclays Bank effective September, 2018.

6.147 It can be seen that the transfer of auto loan facility to ABSA was done before the redundancy which was carried out in January, 2019, and was effective February, 2019. That being the position, Standard Chartered Bank Zambia Plc had ceased to manage the auto loan facility at the time of the redundancies. As such, any reduction on the amounts payable under that facility by Emmy Shanzi Kaira and Fabian Muleya on redundancy could not be negotiated.

6.148 The claims relating to the auto facility therefore fail, and they are dismissed.

REFUND OF NINETY (90) PERCENT OF THE INSURANCE PREMIUMS AND THE VALUE OF SIX MONTHS INSTALMENTS ON EACH LOAN FACILITY WHICH WERE RECOVERED FROM THE LOAN FACILITIES

6.149 On the Credit Policy Refund, Emmy Shanzi Kaira and the others submitted that Standard Chartered Bank Zambia Plc had refunded all the claims, and therefore no submission would be made on the same.

6.150 That being the position, the claim was abandoned, as it was paid, and I will not make any Order on the same.

7. CONCLUSION

7.1 Emmy Shanzi and the others have succeeded on the claim for recalculation of their redundancy packages in line with the Group Redundancy Standard, which provided that where in calculating the redundancy package, a year of service would not have been completed, then it would be

considered that they would have served the year, and the employee would be paid Two (2) months' pay for that year.

- 7.2 The recalculated redundancy package if not agreed by the parties, shall be assessed by the Registrar.
- 7.3 Patience Bwalya Jere has succeeded on her claim for wrongful termination by way of redundancy and has been awarded Six (6) months' pay as damages.
- 7.4 The amounts due shall carry interest at the average short-term deposit rate from the date of issue of the Writ of Summons until Judgment and thereafter, at the Bank of Zambia lending rate until payment.
- 7.5 Emmy Shanzi Kaira and the others having succeeded, they are awarded costs, which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THE 30th DAY OF SEPTEMBER, 2024

S. KAUNDA
**S. KAUNDA NEWA
HIGH COURT JUDGE**

