

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

2022/HPIR/ 578

BETWEEN:

SANDRA CHONGO



COMPLAINANT

AND

FAIRVIEW COLLEGE OF EDUCATION

RESPONDENT

Coram: Chigali Mikalile, J this 11th day of August, 2023

For the Complainant: In person

For the Respondent: No appearance

JUDGMENT

Legislation referred to:

1. The Employment Code Act No.3 of 2019
2. The Industrial Relations Court Rules, Chapter 269

Cases referred to:

1. Wilson Masauso Zulu v. Avondale Housing Project(1982) ZR 178
2. Jackson Mwape and 61 other v. ZCCM Investment Holdings Limited Plc,
SCZ Judgment No. 23/2014

Introduction

1. The complainant, Sandra Chongo, commenced this action against the respondent, Fairview College of Education, by Notice of Complaint and affidavit in support thereof on 26th July, 2022, for the following reliefs:-
 - a) Salary arrears
 - b) Leave days
 - c) Gratuity
 - d) Exam and assignment marking
 - e) Costs and any other relief the Court may deem fit

Affidavit evidence

2. The complainant deposed that she was employed by the respondent on 6th December 2021 as a full time lecturer. Exhibited to the affidavit is the letter of appointment to that effect. On 14th June, 2022, she gave the respondent notice of resignation due to non-payment of salaries.
3. According to the complainant, she pursued the respondent to pay her dues but all was in vain. Consequently, she decided to seek the help of a labour consultant whose efforts to recover her dues also proved futile. She thus beseeched this Court to help her recover the money owed to her.
4. The respondent did not file an answer.

Evidence at trial

5. The respondent did not appear at the trial and upon being satisfied that the complainant had duly served the respondent with the notice of hearing, I proceeded to hear the complainant in the respondent's absence. It is after all settled law that no procedural injustice is occasioned when a party who is aware of the proceedings decides not to turn up at.

6. The complainant testified that due to nonpayment of her salary, she had challenges with transport as she was staying far from her place of work. She was only paid the full salary in the sum of K 3000.00 for December, 2021 in March, 2022. For January, 2022, she only received the sum of K 2,000.00 leaving a balance of K 1000.00. She was not paid for February, March, April, May and June.

7. The complainant also testified that for the month of April, she was supposed to receive half salary amounting to K 1,500.00 as she did not work for the whole month. Further, she was entitled to payment in the sum of K1,533.00 for marking exam scripts for the students. In aid of this claim, she produced a document on which she did the computation and it was admitted in evidence marked as "SC1".

8. She testified that when she resigned, she decided to seek the assistance of Palace labour consultants who served the respondent with summons on 22nd June but the respondent never came for mediation which was scheduled for 24th June. On 27th June, 2022,

the complainant received a response to her resignation letter from the respondent through WhatsApp.

9. The complainant's evidence was that the respondent never used to issue pay slips. She used to receive her pay through mobile money transactions or cash.
10. Concerning leave pay, she testified that she never went on leave throughout her tenure.
11. In terms of gratuity, she is claiming the sum of K 4,500 which is 25% of K 3000.00 x 6months.

Consideration and decision

12. I have carefully considered the evidence on record. I remind myself that the complainant has a duty to prove her claims and failure of a defence does not entail that she automatically succeeds. This is in tandem with the authority of **Wilson Masauso Zulu v. Avondale Housing Project**⁽¹⁾ in which the Court stated that a plaintiff who has failed to prove his case cannot be entitled to judgment, whatever may be said of the opponent's case.
13. Therefore, the issue I am called upon to determine in this instance is whether the complainant is entitled to her claims as outlined in her complaint.

Salary arrears

14. On record is a letter of appointment in the complainant's name. It has a date stamp of 6th December, 2021 bearing the respondent's name. The letter indicates that the complainant's salary is K 3,000.00 per month. In the absence of evidence to the contrary, I

the considered view that the complainant is entitled to leave days as provided for by law calculated on the basis of the formular in the 5th Schedule of the Employment Code Act . This is exclusive of the months of April and June when the complainant did not work for a full month. This gives a total of 10 days and translated to leave pay of K 1,153.85.

Gratuity

20. Under this head, the complainant claims that she is entitled to K 4,500.00. According to section 3 of the Employment Code Act, gratuity means:

“A payment made to an employee in respect of a person’s service on expiry of a long-term contract of employment based on basic pay earnings that have accrued to the employee during the term of service.”

21. A perusal of the letter of the appointment letter reveals that the contract period was not stated. What is stated is that the complainant would be on probation for 3 months. Further, a perusal of the demand letter written on behalf of the complainant dated 13th July, 2022 reveals that the complainant’s probation was extended for a further 3 months. The fact that she worked from December, 2021 to June, 2022 entails that the complainant had only just served her probation. The record is devoid of proof that the probation was successful.

22. It follows, therefore, that the complainant cannot be said to have worked under a long term contract as envisioned in the definition of gratuity cited above. As such, I am not satisfied that she is entitled to be paid gratuity. The claim, therefore must fail.

Exam and assignment marking

23. The complainant is claiming the sum of K1,533.00 for marking assignments and exam scripts. To prove this claim, she produced a handwritten document which has various figures and the amount in issue. It was the complainant's testimony that she drafted the document herself.
24. I am of the considered view that this document cannot stand as proof of the claim because it was not acknowledged by the respondent. In short, it was not legitimized.
25. Furthermore, the appointment letter has a detailed job description and states that the complainant would be responsible for, among other things, "*setting and marking at least two assignments per course assigned*" and "*setting and marking the final examination.*" Clearly, these duties were an integral part of her role. Nowhere in the letter of appointment is it stated that the complainant would receive allowances for the said duties.
26. I am, therefore, of the view that the said duties were catered for in the monthly salary of K 3,000.00. This claim thus lacks merit.

Any other award and costs

27. After careful perusal of the record, I am of the view that the evidence has not established any other relief that the complainant may be granted.
28. In terms of costs, as highlighted earlier in the judgment, the respondent neither filed an answer nor attended the hearing. I find this to be unreasonable behaviour envisaged by Rule 44 of the

Industrial Relations Courts Rules, Cap 269. The respondent is therefore condemned in costs for these proceedings.

Conclusion and orders

29. The complainant has succeeded to the extent shown above. She has proved to the Court's satisfaction that she is owed salary arrears and leave pay. The claims for gratuity and marking allowance have failed.

30. I therefore make the following orders:

(i) The respondent shall pay the complainant the following sums:

Salary arrears	K	13,000.00
Leave pay	K	1,153.85
Total	K	<u>14,153.85</u>

(ii) The judgment sum shall attract interest at short-term bank deposit rate from the date of complaint to the date of judgment and thereafter, at the current lending rate as determined by the Bank of Zambia until full payment.

(iii) Costs are for the complainant.

Delivered at Lusaka this 11th day of August, 2023



M.C. Mikalile

HIGH COURT JUDGE