

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)**

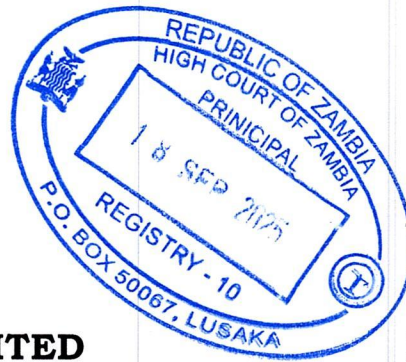
**2022/HP/1438**

BETWEEN:

**AMEDI PHIRI**

AND

**TRADEZONE COMPANY LIMITED**



**PLAINTIFF**

**DEFENDANT**

***Before:* The Honorable Mr. Justice Charles Zulu**

*For The Plaintiff:* Mr. N. Phiri of MPM Legal Practitioners.

*The Defendant:* No Appearance.

---

## **J U D G M E N T**

---

Cases referred to:

- 1. Stephen Mafuta Chiyuka v Ultima Engineering Limited and Mopani Copper Mines Plc (2008/HP/0212).***

Legislation referred to:

- 1. High Court Rules Chapter 27 of the Laws of Zambia.***

### **1.0 INTRODUCTION**

1.0 The Plaintiff, Amedi Phiri took out a writ of summons and statement of claim dated September 16, 2022, against his former employer, Tradezone Company Limited. The claims were drafted as follows:

- 1.2.1 (i) damages for the loss of his employment or in the alternative breach of his contract the quantum or***

*monetary value to be calculated by this Honourable court;*

*(ii) payment of his unpaid leave days;*

*(iii) payment of his pension up to retirement age;*

*(iv) payment of his overtime for working on weekends and holidays from 2008 up to the time the Plaintiff was hounded out of his employment.*

*(v) damages for financial loss, frustration, trauma, inconvenience, embarrassment, depression, pain and anguish, to be calculated by this Honourable Court;*

*(vi) damages for failure to financially take care of his family, loss of his salary, monetary value to be calculated by this honourable Court;*

*(vii) damages for reducing his chances of getting alternative employment due to the manner in which the Plaintiff was hounded out of his employment, the value to be assessed by this Honourable court; and*

*(8) damages for the injury sustained on his left eye whilst on duty for failure of the Defendant to provide protective clothing the value to be assessed by this honourable court.*

1.2 The Defendant filed its defence and counter-claim dated October 7, 2022. The Defendant admitted that the Plaintiff was a general work based on oral contracts, and not a permanent and pensionable employee. The Defendant denied the Plaintiff's claims. In its counter-claim, it sought repayment of unpaid loans and wage advances.

## **2.0 THE HEARING**

2.1 The case was slated for trial on April 1, 2024. On the return date for trial, only the Plaintiff and his Counsel appeared. The Defendant was inexcusably absent. Leave to proceed with trial was granted to the Plaintiff, pursuant to Order XXXV rule 3 of the **High Court Rules Chapter 27 of the Laws of Zambia.**

### **3.0 THE PLAINTIFF'S CASE**

- 3.1 The Plaintiff relied on his witness statement and bundles of documents. He stated that he was employed by the Defendant in 2008, as a general worker on permanent and pensionable basis. He said he was unable to avail copies of his written contract of employment because, the Defendant kept all the copies and was averse to release the copies to him.
- 3.2 He stated that as a result of his hard work and earned trust from his employer, he was promoted to the position of Maintenance Supervisor. He lamented that despite his commitment to work, his employment was unceremoniously terminated by the Defendant.
- 3.3 He recounted that on January 12, 2022, his supervisor, Mr. Shohibi assigned to him the job of mending the roof, but advised his supervisor that mending of the roof was the responsibility of the contractors who caused the damage. He said his response infuriated his supervisor. He said, nevertheless, he proceeded to do the work himself alongside another employee, George, even though he was not qualified to do the said job.
- 3.4 He said following the foregoing, he was scolded at by Mr. Yaya, the Defendant's Director and was asked to report in his casual clothes the next day, and not in his work suit. He said when he reported the next day, he was asked to write three letters of apology for his disobedience. He said he refused to write the three letters, but instead wrote one letter because, he had never disobeyed the Defendant's instructions since his employment in 2008.

- 3.5 He said in his letter of apology, he mentioned that he had reminded Mr. Shohibi about the contractors who left the hole in the roof which resulted in the leakages. He said his letter was not an admission of committing any act of disobedience.
- 3.6 He said after he submitted his letter, he was told by Mr. Yaya that he was the source of problems and confusion among his fellow workers in the Company. He added that Mr. Yaya verbally told him that his services were no longer needed, and was ordered to leave the company premises. He said he was never given an opportunity to exculpate his alleged misconduct.
- 3.7 He said five days later, he returned to demand for his pension, leave days, overtime and compensation for loss of sight in his left eye, sustained during the course of his employment. He said the Defendant refused to honour his demands, and only paid him the sum of ZMW800.00 covering pro rata wage bill for a period of five (5) days. He added that the Defendant refused to pay him overtime despite continuously working on Saturdays, Sundays and holidays since his employment in 2008.
- 3.8 And in respect of the alleged injury to his left eye, he said he sustained the same when he was assigned a welding job with George, without the employer providing protective gear. He said as he was welding some pieces of steel entered his left eye. He said at that moment he did not realize how serious the injury was. He added that he reported the incident to his employer before knocking off.
- 3.9 He said the following day, the pain and discomfort in the eye persisted and he visited a clinic, where he started to receive

treatment. He said there was no relief, the pain and injury worsened. He said eventually he got an operation. He said presently he was blind in his left eye. He made reference to his Ophthalmic Report dated July 24, 2024, indicating that he had visual impairment of 30% in the left eye. And the complaint relating to loss of sight was said to have started in 2010.

#### **4.0 SUBMISSIONS**

4.1 The Plaintiff did not file his final submissions, suffice to say he did file his scheduling brief in compliance with the Order for Directions and Order XIX rule 2(2) of the **High Court (Amendment) Rules Statutory Instrument No. 58 of 2020.**

#### **5.0 DETERMINATION**

5.1 It is indisputable that the Plaintiff was employed by the Defendant since 2008, until his termination from employment around January 13, 2022.

5.2 At the outset, something must be said concerning the Plaintiff's pleadings. Generally, a complainant in an employment dispute would be alleging a cause of action touching on wrongful or unfair dismissal, if the manner of termination is brought into question.

5.3 The Plaintiff primarily claims damages for loss of employment or in the alternative damages for breach of contract. However, the pleadings do not disclose whether the termination was wrongful or unfair or how it was wrongful or unfair.

5.4 In terms of pleadings and the evidence adduced, it should be noted that, on the one hand, the Plaintiff alleged that he was

employed on a permanent and pensionable basis, and on the other hand he alleged that he had several renewals of his contract of employment. It should also be remembered that, the Defendant alleged in its defence that the contracts were verbal.

5.5 The Plaintiff's claims are largely based on a written contract or contracts, as stated by the Plaintiff. Therefore, it was cardinal that the contract or contracts should have been produced into evidence, for the court to comparatively assess the facts and the contractual claims herein against the contents of the contract. The excuse that the Defendant refused to avail to the Plaintiff copies of the contract does not cure the deficit of essential evidence in this regard, when the Plaintiff had the opportunity to subpoena a witness from the Defendant.

5.6 The Plaintiff's claims for damages for financial loss, trauma, inconvenience, embarrassment, pain and anguish and emotional distress, remained unsubstantiated. The Plaintiff did not produce evidence with certainty and particularity touching on these allegations. Similarly, damages relating to his inability to provide for his family and loss of salary, loss of opportunity to seek alternative employment was unsubstantiated.

5.7 The Plaintiff also claims damages for personal injury. And I am mindful of what was stated in the case of **Stephen Mafuta Chiyuka v Ultima Engineering Limited & Another<sup>(1)</sup>**, wherein it was held:

5.7.1 ***It has long been established that the employment relationship imposes a duty of care on the employer towards his employees. At common law an employer is under a duty to take***

***reasonable care for the safety of his employees in all circumstances of the case in order not to expose them to unnecessary risk. In other words, an employer owes an employee a duty to take reasonable steps to ensure that the employee is not physically injured or otherwise harmed in working for him.***

5.8 The injury to the Plaintiff's left eye is reported to have occurred in the course of employment. It was alleged that in the course of welding, pieces of steel scattered in his left eye and caused damage to his eye, due to the negligence of the Defendant, by failing to provide protective clothing. In his examination-in-chief, the Plaintiff adduced no evidence when the injury was sustained. The Ophthalmic Report dated July 24, 2024, relied upon by the Plaintiff was only obtained two years after he lost employment, and while the matter was pending litigation.

## **6.0 CONCLUSION**

6.1 In the light of the foregoing, the Plaintiff has failed to prove his case on the balance of probabilities. His case is dismissed.

6.2 I make no order as to costs.

6.3 Leave to appeal is granted.

**DATED THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025**



---

**THE HON. MR. JUSTICE CHARLES ZULU**