

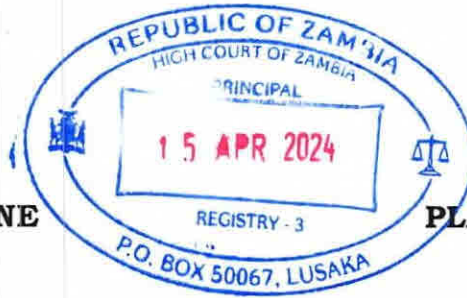
**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2023/HP/354

BETWEEN:

CONNIE MAIWASE ZULU OSBORNE

AND

NATIONAL HIV/AIDS/STI/TB/COUNCIL**PLAINTIFF****DEFENDANT**

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 15th DAY OF APRIL, 2024.

For the Plaintiff : Mr. D.S.M. Sichombo, Messrs D.M. Sichombo Legal Practitioners

For the Defendant : Mr. C. Mulonda, Mrs A. Mungala and Ms. M. Katolo – In house Counsel

J U D G M E N T

CASES REFERRED TO:

1. *Attorney General v D.G Mpundu* 1984 ZR 6
2. *Swarp Spinning Mills Plc v Sebastian Chileshe and others* SCZ No 6 of 2002
3. *Zambia Revenue Authority v Dorothy Mwanza and others* 2010 Vol 2 ZR 181
4. *Jacques Chisha Mwewa v Attorney General (IRC Comp 95 of 8) [2011] ZMIC 8 (25 July 2011)*
5. *Barclays Bank Zambia Limited Plc v Weston Luwi and Suzgo Ngulube* Appeal No. 7 of 2012
6. *Tom Chilambuka v Mercy Touch International* Appeal No. 171 of 2012
7. *Moses Choonga v ZESCO Recreation Club, Itezhi Tezhi* SCZ Appeal No 168 of 2013 [2016] ZMSC 32
8. *Sarah Aliza Vekhnik v Casa Dei Bambini Montessori Zambia Limited* Appeal No. 129 of 2017
9. *Heather Maureen Campbell Musariri v Ischool Zambia Limited* Comp. No. 391/2016 2017 [ZMHC 466] (30 August 2017)

10. ***Spectra Oil Zambia Limited v Oliver Chinyama Appeal No 18 of 2018***
11. ***Richard Mwiinga v PSPF and the Attorney General COMP/IRC/LK/22/2018***
12. ***Zambezi Portland Cement Limited v Kelvin Jivo Kalipas Appeal No. 29 of 2019***
13. ***MP Infrastructure Zambia Limited v Matt Smith and Kenneth Barnes Appeal No 102 of 2020***

LEGISLATION REFERRED TO:

1. ***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, The University of Zambia Press 2021***
2. ***Contract Law in Zambia, by Sangwani Patrick Ng'ambi and Chanda Chungu Second Edition, Juta and Company (Pty) Limited, 2021***

1. INTRODUCTION

1.1 The dispute in this matter centres around whether the contract of employment for the Plaintiff, Connie Maiwase Zulu Osborne who was employed as the Director General of the Council of the National HIV/AIDS/STI/TB Council (NAC) was renewed. Therefore, Connie Maiwase Zulu Osborne, sued the National HIV/AIDS/STI/TB Council (NAC) on 1st March, 2023, by way of Writ of Summons, accompanied by a Statement of Claim and the other requisite documents.

1.2 The reliefs claimed are:

- i. *An Order that the termination of Connie Maiwase Zulu Osborne's employment by the NAC was wrongful, unlawful, unfair and a nullity at law;*
- ii. *An Order for the payment to Connie Maiwase Zulu Osborne as compensation, 36 months' salary, all*

- allowances, and gratuity for the unexpired period of her contract as damages for wrongful, unlawful and unfair termination of the contract of employment;*
- iii. Damages for unlawful termination of employment resulting in diminution of future job prospects;*
 - iv. Damages for mental distress, anguish and inconvenience arising from the unlawful termination of employment;*
 - v. Interest on the above sum at the current bank lending rate from the date of the Writ until the date of payment; and;*
 - vi. Costs and any other relief the Court may deem just and suitable to grant.*

2. STATEMENT OF CLAIM

- 2.1 In her statement of claim, Connie Mwise Zulu Osborne stated that on 1st November, 2022, which was Two (2) months before the expiration of her first contract of employment, she wrote to the Council's Chairperson, Professor Victor Mukonka, informing him of her interest and desire to renew her contract of employment, for a further term of Three (3) years.
- 2.2 She contended that mutually, and by implication, herself and the NAC entered into a second, Three (3) year contract of employment on 3rd January, 2023. Her further averment was that as part of her conditions of service of employment, she would initially be paid the following:
- a. Basic salary being ZMW 374, 268.00 per annum payable in twelve equal monthly instalments;*

- b. *Transport allowance being 30% of basic salary as motor vehicle allowance per month;*
- c. *Accommodation being 20% of basic salary as housing allowance per month; and*
- d. *A yearly gratuity being 35% of the total basic salary earned during the year.*

- 2.3 She stated that on 9th January, 2023, after the expiry of the first contract of employment, the Chairperson purportedly established a Director's General Contract Appraisal Committee. It was Connie Maiwase Zulu Osborne's contention, that she was never interviewed by the Appraisal Committee, and to date, she had never been privy to, nor furnished with any appraisal report, purportedly written by the Appraisal Committee.
- 2.4 Connie Maiwase Zulu Osborne also stated that on 16th January 2023, the Acting Chairperson, Mr. Zoonadi Ngwenya in the company of Council members, Ms. Hellen Mwale and Dr. Mupeta Bobo, entered her office, and arbitrarily terminated her second contract of employment, through physical expulsion and without furnishing her with any valid reasons or any reasons at all.
- 2.5 Her further averment was that on the same date, she was handed a letter entitled '*Expiration of Employment Contract*', which only referred to the contract of employment that had expired on 2nd January 2023. She stated that the letter was widely circulated, and some of the recipients were the Permanent Secretary, the Ministry of Health, the Vice Council

Chairperson of the NAC, the Administration Manager, the Finance Manager and the Internal Auditor.

- 2.6 Connie Maiwase Zulu Osborne averred that based on the letter referred to, the Acting Council Chairperson, directed that she should immediately hand over all the Council property to the Council's Administration Manager, her subordinate, who was tasked to be present, as she undertook the handover exercise. It was stated that she was also directed to hand over the office of Director General to the Acting Chairperson by close of business.
- 2.7 The further averment made, was that out of extreme fear and shock, regarding the verbal and sudden expulsion from office, and termination of her second contract of employment, Connie Maiwase Zulu Osborne remained in muted compliance. Thus, after she complied with the directive by the Acting Council Chairperson, he pursued her through telephone calls and by email, with demands for handover notes.
- 2.8 It was her contention, that as a result, she suffered from mental distress, anguish, reputational damage and inconvenience. Connie Maiwase Zulu Osborne further stated that she competently performed her contractual obligations under the contract of employment, as Chief Executive Officer of the NAC and the Secretariat, in the best interests of the NAC, but the Council elected to deliberately and completely abdicate its' statutory responsibility and obligation, by not furnishing her with any reasons at all, for abruptly terminating her contract in a high-handed fashion.

2.9 She stated that her future job prospects are now non-existent due to how her contract of employment was terminated, the harsh economic climate and the scarcity of similar jobs. It was also averred that Connie Maiwase Zulu Osborne had been greatly inconvenienced, and had suffered mental distress, and she had been unable to obtain employment elsewhere.

3. DEFENCE

- 3.1 In its' defence, which was filed on 25th April, 2023, the NAC averred that according to Clause 5 of the conditions provided for in the letter of appointment, dated 12th December, 2019, it was a condition precedent to the renewal of the contract, that Connie Maiwase Zulu Osborne ought to express her wish to continue employment in writing, One (1) month before the expiry of the contract.
- 3.2 The defence was also that there was no time frame stated in the contract, for the Council to respond to the expression of interest to continue. That nonetheless, it was the discretion of the Council to renew the contract or not. It was contended that Connie Maiwase Zulu Osborne's contract came to an end by effluxion of time on 2nd January 2023, and no second, Three (3) year contract was created, either mutually or by implication.
- 3.3 The averment was that the Council exercised its' discretion not to renew her contract, via its' letter dated 16th January 2023. The defence was also that the conditions of service amenable to Connie Maiwase Zulu Osborne, listed as 4 (a) to (d) were invalid, as her contract had expired.

- 3.4 The NAC averred that Connie Maiwase Zulu Osborne was questioning the same Appraisal Committee by using the term 'purportedly', and it was correct that the Appraisal Committee referred to, was purportedly established, as there was no Board resolution formally establishing it. It was also the NAC's defence, that the Appraisal Committee had never sat, considering that the NAC Charter, in Clause 18.1 and 18.1.7 states in part, that any Committee established is outside the powers of any person, if it is not constituted by the Council.
- 3.5 The NAC denied that Connie Maiwase Zulu Osborne's contract was terminated by Three (3) persons, stating that there was no contract to terminate, as Connie Maiwase Zulu's Osborne's contract expired on 2nd January, 2023 by effluxion of time. Therefore, there was no arbitral termination of any purported contract, as the decision not to renew the contract was a valid Council resolution, which was made on 13th January, 2023.
- 3.6 It was further contended in defence, that Connie Maiwase Zulu Osborne was not physically expelled, without furnishing her with valid reasons. The defence was that the Acting Chairperson, Zoonadi Ngwenya, who handed her the letter of non-renewal, explained the reasons for the meeting, and explained to her that her contract had expired, and that the Council had resolved not to renew it.
- 3.7 It was also stated that Connie Maiwase Zulu Osborne was further informed that the position would in due course be advertised, and she could apply for it. The defence was further that the letter clearly stipulated that her contract had expired,

and in addition, any payments or dues were also tabulated, which were calculated up to 16th January, 2023, to cover the extra days that she had worked.

- 3.8 The defence also contended that, at the same meeting, and in the letter that was written to Connie Maiwase Zulu Osborne, she was advised to hand over NAC and office property to the Administrative Manager, and the Acting Council Chairperson, where applicable.
- 3.9 With regard to the recipients of the letter, the NAC stated that, in the case of the Permanent Secretary, it is under the Ministry of Health, and the expiration of the contract for Connie Maiwase Zulu Osborne had to be communicated to the said Permanent Secretary. Further, in the case of the Vice Council Chairperson of the Council, the Vice Council Chairperson needed to be aware of the development, as the Chairperson at the time was indisposed.
- 3.10 In respect of the Administration Manager, the defence was that notification of the expiry of Connie Maiwase Zulu Osborne's contract was essential, because all human resource issues are handled by that office. As for the Finance Manager, the defence was that said office had to deal with the financial issues immediately, as required. With regard to the Internal Auditor, it was stated that they had to be aware of the matter, so that all the audit aspects were appropriately scrutinised.
- 3.11 The NAC stated that the time frame for the submission of NAC property is not cast in stone, and the fact that Connie Maiwase Zulu Osborne was told to do so by the end of that day, was in

no way irregular, and the meeting to hand over the letter dated 16th January 2023, to Connie Maiwase Zulu Osborne was at 09:30 hours, which gave her adequate and necessary time to conclude the aspects surrounding the handovers.

- 3.12 The allegation that after Connie Maiwase Zulu Osborne complied with the directive for the handover, the Acting Council Chairperson pursued her through phone calls and by email at her home, with demands for handover notes, was said to be within her peculiar knowledge. The NAC however admitted that Connie Maiwase Zulu Osborne was reminded to hand over, to ensure continuity and accountability to the organisational assets and indicate the state of the NAC.
- 3.13 It was stated that Connie Maiwase Zulu Osborne's contention that as a result of the direct verbal expulsion effected by the Acting Council Chairperson on 16th January, 2023, which was associated with harassment and unfair treatment, Connie Maiwase Zulu Osborne had suffered mental distress, anguish, reputational damage and inconvenience was within her peculiar knowledge.
- 3.14 The same was said regarding her contention that she competently performed her contractual obligations under the contract of employment, as Chief Executive Officer of the NAC, and the Secretariat, in the best interests of the NAC, but the NAC deliberately elected and completely abdicated its' statutory responsibility and obligation by not furnishing her with any reasons at all, for abruptly terminating her contract in a high handed fashion.

- 3.15 The NAC while averring that it was within Connie Maiwase Zulu Osborne's peculiar knowledge that her future job prospects are non-existent, due to the manner in which her contract of employment was terminated, as well as the harsh economic climate and scarcity of jobs, contended that the expiration of the contract did not hinge on Connie Maiwase Zulu Osborne's future job prospects.
- 3.16 The defence was further that the NAC could not be blamed for the repercussions of their justified actions on Connie Maiwase Zulu Osborne. It was reiterated that Connie Maiwase Zulu Osborne's contract ended by effluxion of time, and the NAC exercised its' discretion not to renew the contract.

4. EVIDENCE AT TRIAL

- 4.1 At trial, Connie Maiwase Zulu Osborne testified, and she called no other witness, while the NAC called five (5) witnesses.

5. CONNIE MAIWASE ZULU OSBORNE'S EVIDENCE

PW1 – CONNIE MAIWASE ZULU OSBORNE

- 5.1 Connie Maiwase Zulu Osborne, at trial, produced her witness statement as her evidence. In her witness statement, she reiterated the allegations that she had made in the statement of claim, save for a few additions.
- 5.2 She produced her letter of appointment as Director General and the Notice of non-Renewal of her contract of employment, at pages 2 and 12 of her bundle of documents respectively. Connie Maiwase Zulu Osborne also testified that on 2nd January 2023, her Three (3) year contract of employment which commenced on 3rd January 2020, expired by effluxion of time.

- 5.3 She contended that on the same date, she mutually and by implication entered into a second, Three (3) year contract of employment under the previous conditions of service of employment with the NAC.
- 5.4 In relation to the Appraisal Committee, that she alleged was established by the Chairperson to appraise her contract on 9th January, 2023, Connie Maiwase Zulu Osborne testified that she never met the Committee, nor was she interviewed by it, but she received copies of their appointment letter. Her evidence was that she was not privy to, nor was she furnished with any appraisal report, that was written by the Committee. Pages 13 and 14 of her bundle of documents were referred to as the letters that were written to establish the Appraisal Committee.
- 5.5 Connie Maiwase Zulu Osborne also referred to the letter that was handed to her, which was titled '*Expiration of Employment Contract*' at pages 15 and 16 of her bundle of documents. Concerning the handing over all NAC property, Connie Maiwase Zulu Osborne referred to the same document at paragraph 2.
- 5.6 It was further Connie Maiwase Zulu Osborne's, testimony that she complied with the directive by the Acting Council Chairperson to immediately vacate office, and that he pursued her through WhatsApp messages and emails at her home, with demands for handover notes. As evidence of the same, reference was made to pages 100 to 105 and 107 to 109 of her bundle of documents.

5.7 She also testified that she had been undergoing psychotherapy treatment due to the trauma, distress and anxiety caused by the abrupt termination of her contract of employment. She referred to pages 105 and 106 of her bundle of documents, as proof of the same.

CROSS-EXAMINATION OF CONNIE OSBORNE BY MR C. MULONDA

5.8 In cross-examination, Connie Maiwase Zulu Osborne testified that her grievance was the premature termination of her contract. She stated that she was employed by the NAC on 3rd January 2023 for Three (3) years. On being referred to pages 28 to 31 of NAC's bundle of documents, Connie Maiwase Zulu Osborne's evidence, was that it was an appointment letter for the previous contract.

5.9 She added that her last contract was to expire on 2nd February 2026. Still in cross examination, and when referred to the contract at pages 23 to 31 of the NAC's bundle of documents, she stated that the contract expired on 2nd February 2023. She agreed that she had an obligation to apply for renewal of the contract, before it expired, by giving One (1) months' notice before expiration.

5.10 Connie Maiwase Zulu Osborne testified that she should have written a notice of renewal of the contract, on 2nd December to the Chairperson of the Council. Her position was that she wrote to him sometime in November, on a date that she could not recall.

- 5.11 It was her testimony, when she was referred to the letter at page 12 of her bundle of documents, that it was the letter she wrote, giving notice of renewal of the contract, which was dated 1st November, 2022 to the Chairperson of the NAC, Professor Victor Mukonka. Connie Maiwase Zulu Osborne told the Court that the letter was received by Professor Victor Mukonka, who directed that a Committee had to be constituted to do the performance appraisal, which comprised Mrs. Karen Sichinga the Vice Chairperson of the NAC, as the Chairperson.
- 5.12 In respect of the other members of the Appraisal Committee, her evidence was that they were Mr. Zoonadi Ngwenya, Chairperson of the Audit Risk and Compliance Committee, Hellen Mwale, the Chairperson of the Programmes Committee, and Ebbie Sichembe, Chairperson of the Finance and Admin Committee.
- 5.13 Connie Maiwase Zulu Osborne stated that the stamps on the letter at page 12 of her bundle of documents were for the NAC, and she denied that her office received the letter, but that it was her office secretary. Her evidence was that the letter was forwarded to Professor Victor Mukonka soon after it was written in November. Still in cross examination, Connie Maiwase Zulu Osborne testified that the acknowledgment of receipt was by email, because Professor Victor Mukonka was in India at the time.
- 5.14 She testified that her employment was terminated, but she agreed that an expired contract could not be terminated. Connie Maiwase Zulu Osborne told the Court that non-renewal

of the contract, is not termination of a contract. She further stated that the NAC should have given her a new contract in writing, when they allowed her to be working. It was also her evidence, that she claimed that she was entitled to a new contract, and the Council should have sat to consider the renewal of the contract before it expired.

5.15 Connie Maiwase Zulu Osborne also in cross examination, testified that she wrote to the Chairperson, Professor Victor Mukonka, and that he instructed her to prepare an Appraisal Committee for her contract, and she did so. When referred to page 80 of the NAC's bundle of documents, her testimony was that they were minutes, of an extraordinary meeting of the NAC, which were dated 12th January 2023.

5.16 She agreed that the renewal of her contract was minuted at page 81. Connie Maiwase Zulu Osborne testified that at page 84, in paragraph 7.0, there was a vote for the renewal of her contract, with Two (2) people voting for the renewal, and Seven (7) voting against. She agreed that her contract was not renewed, after the Council of the NAC voted. Her continued testimony in cross examination, was that she was paid for days that she worked, before the notification of the non-renewal of her contract, from the time the contract expired.

CROSS EXAMINATION BY MS. KATOLO

5.17 Connie Maiwase Zulu Osborne stated that she wrote One (1) letter to Professor Victor Mukonka for renewal of the contract. When referred to page 68 of the NAC's bundle of documents, she testified that it was the notice to renew her contract, which

was dated 3rd November, 2022. On being cross examined further, Connie Maiwase Zulu Osborne explained that she wrote Two (2) letters. Her evidence was that the stamp on the letter at page 68, showed that the letter was received, but it was not very clear. She stated that the date on the stamp could be 2nd November 2022, but that the date stamps were a mistake.

CROSS EXAMINATION BY MR. MUNGALA

- 5.18 Connie Maiwase Zulu Osborne, on being referred to page 1 of her bundle of documents, testified that it was her appointment letter as Director General, which was dated 12th December 2019. She told the Court that she did not start work on that date. She testified when referred to page 4 of her bundle of documents, that it was her contract of employment. Connie Maiwase Zulu Osborne told the Court that it had a commencement date of 3rd January 2020, which was the date on which she started work.
- 5.19 Her further evidence was that the contract provided that it would expire on 2nd January 2023, subject to extension, at the discretion and agreement in writing by the employer. Connie Maiwase Zulu Osborne also stated that the non-renewal of her contract was communicated to her in writing on 16th January 2023. She, however, contended that she did not get an agreement in writing to renew it.
- 5.20 It was also her testimony that on 16th January 2023; she reported for work after Zoonadi Ngwenya sent her a WhatsApp message the previous day to make herself available at 09:30 hours. Connie Maiwase Zulu Osborne explained that Zoonadi

Ngwenya went to the office at 09:30 hours and informed her that her contract had ended on 3rd January 2023. She added that he read the clause on renewal, and stated that it was decided that her contract would not be renewed.

- 5.21 The continued testimony in cross examination, was that Connie Maiwase Zulu Osborne was told to pack, hand over and leave and she did not protest. She further stated that she was told that her position would be advertised, and an acting Director General would be appointed. On other communication to her by Zoonadi Ngwenya, Connie Maiwase Zulu Osborne's evidence was that he had also told her that he would be in the boardroom for her to handover by 17:00 hours.
- 5.22 It was her testimony, that she did not have time to do the handover notes, and Zoonadi Ngwenya harassed her for the said handover notes. She stated that previously at her job at an NGO, she did handover notes, because she was given notice to do so.

RE-EXAMINATION OF CONNIE MAIWASE ZULU OSBORNE

- 5.23 In re-examination, Connie Maiwase Zulu Osborne referred to the letter at page 14 of her bundle of documents dated 9th January, 2023, by Professor Victor Mukonka appointing members of the Appraisal Committee, testifying that it was an agreement in writing.

6. EVIDENCE BY THE NAC

DW1 - ZOONADI JOSEPH NGWENYA

- 6.1 Zoonadi Ngwenya testified that he was a retired management and leadership specialist, who at the relevant time, was the

Acting Chairperson of the NAC. His evidence was that the tenure of the NAC expired on 17th June, 2023. Zoonadi Ngwenya produced his witness statement, and relied on it, as his evidence in this matter.

6.2 In his witness statement, Zoonadi Ngwenya testified that he was appointed by the Minister of Health on 18th June 2020, as Council member of the NAC, in accordance with the National HIV/AIDS/STI/TB Act No. 10 of 2002. He identified his appointment letter, as that at page 32 of the NAC's bundle of documents.

6.3 With regard to his functions as a Council member, and the other Council members, his evidence was that they were the following:

- a. Providing vision and strategic direction in the multi-sectorial national response to HIV/AIDS/STI/TB;*
- b. Providing oversight to management of NAC;*
- c. Reviewing performance of the management of the NAC;*
- d. Reviewing strategic documents, policies and other governance documents of the NAC; and*
- e. Supporting resource mobilisation efforts of the organization.*

6.4 Zoonadi Ngwenya's evidence was further that he was appointed as Acting Chairperson by the Minister of Health, on 12th January 2023, as shown by the letter of appointment at page 79 of the NAC's bundle of documents. He stated his functions as Acting Chairperson, as including the following:

- a. Chairing all Council meetings of the Council;*

- b. Providing leadership to the Council;*
- c. Making certain that the Council has the necessary information to undertake effective decision-making and actions;*
- d. Liaising with key stakeholders, such as the government and cooperating partners on behalf of the Council;*
- e. Promoting constructive relations among Council members and between the Council and Management.*

6.5 Further in his testimony, Zoonadi Ngwenya told the Court that he got to know Connie Maiwase Zulu Osborne when he was appointed as a Council member in June, 2020. His testimony was that she was Director General for the NAC from 3rd January 2020, and that her appointment letter dated 12th December 2019, was at pages 28 to 31 of the NAC's bundle of documents.

6.6 Still in his evidence, Zoonadi Ngwenya stated that Connie Maiwase Zulu Osborne's appointment as Director General was later ratified by the Council, and that the said ratification was at pages 35 to 42 of the NAC's bundle of documents. In respect of her job description, the evidence given was that it was at pages 94 to 98 of the NAC's bundle of documents. The addition was that the job description was prepared by the Human Resources Unit of NAC, and included the following:

- a. Providing leadership in the organization;*
- b. Operational planning and management;*
- c. Program planning and implementation;*
- d. Human resource planning and management;*
- e. Financial planning and management;*

- f. Community relations; and*
- g. Risk management.*

- 6.7 Zoonadi Ngwenya testified that according to the information that was given to him by the current employees of the NAC, the job description was approved by the previous Council. He went on to state that as Acting Chairperson of the NAC, he called for an extraordinary meeting through the Secretariat of the NAC, which was to be held on 13th January 2023. Reference in that regard, was made to the notice of the extraordinary meeting, which was at pages 80 to 81 of NAC's bundle of documents.
- 6.8 He stated that among other things on the agenda, was the consideration of the application for renewal of Connie Maiwase Zulu Osborne's contract of employment. Zoonadi Ngwenya's testimony was that at the extraordinary meeting, the Council had observed that Connie Maiwase Zulu Osborne's contract of employment, which was signed on 3rd January 2020, expired on 2nd January 2023.
- 6.9 His evidence was that in discussing the contract, the Council resolved not to renew the contract of employment following its' expiration, in accordance with Clause 1.2 of her contract of employment. Zoonadi Ngwenya referred to her contract at pages 43 to 50 of the NAC's bundle of documents. He stated that the minutes of the 4th extraordinary meeting, highlighted in particular, Clauses 7.0 and 7.1, which showed the Council resolution.
- 6.10 Further reference was made to the minutes of the extraordinary meeting at pages 82 to 85 of the NAC's bundle of documents,

with Zoonadi Ngwenya testifying that some Council members including himself, prepared the letter of non-renewal of the contract for Connie Maiwase Zulu Osborne on 13th January, 2023. He stated that it was approved by the rest of the Council members.

- 6.11 He identified the said letter as being at pages 86 to 87 of the NAC's bundle of documents. Zoonadi Ngwenya's continued testimony, was that he sent a message to Connie Maiwase Zulu Osborne on 15th January 2023, requesting for a meeting at 09:00 hours on Monday, 16th January 2023. He added that meetings were organized informally, either through messages or phone calls. Zoonadi Ngwenya identified the message that he sent Connie Maiwase Zulu Osborne, as that at page 99 of the NAC's bundle of documents.
- 6.12 It was his testimony, that he delivered the letter in the company of Dr. Patricia Bobo Mupeta and Mrs. Hellen Mwale, both Council members of the NAC. Further in his testimony, Zoonadi Ngwenya stated that Connie Maiwase Zulu Osborne did not appear to be in any extreme fear or shock, with the service of the letter, and her statement that there was a sudden expulsion from office, suggested that there were some arguments that occurred at the point of service of the letter, which he stated, was not the position.
- 6.13 Zoonadi Ngwenya stated that according to his rendition of the events, there was no associated harassment, unfair treatment, mental distress, anguish and reputational damage. His evidence was that at the meeting with Connie Maiwase Zulu

Osborne, he had informed her, that an extraordinary meeting was held, at which the Council had noted that her contract of employment, had expired on 2nd January 2023. He testified that Connie Maiwase Zulu Osborne was also requested to hand over her office to the him, by the close of business on that same day, 16th January 2023.

- 6.14 Zoonadi Ngwenya, also in his testimony, stated that the letter drew attention to the end of her contract by effluxion of time on 2nd January 2023. His evidence was that the meeting with Connie Maiwase Zulu Osborne was cordial and amicable, and he did not receive any complaints from her. He added that she accepted the letter, and did not raise any concerns. Still in his testimony, Zoonadi Ngwenya told the Court that he informed Connie Maiwase Zulu Osborne that he would be in the NAC Boardroom waiting for her handover, but she did not go there at any point.
- 6.15 Thus, he went to her office at 18:00 hours, to inform her that he was leaving, but she had not submitted any handovers at that point.
- 6.16 The continued testimony that Zoonadi Ngwenya gave, was that the institution of the NAC, has the function of being responsible for the multi-sectorial coordination of HIV/AIDS/STI/TB throughout the Republic. He stated that this function is not only essential, but urgent to the service of the Zambian people. Therefore, it followed that the request for the handover notes from Connie Maiwase Zulu Osborne was urgent and necessary for the functionality of the acting Director General.

- 6.17 He added that an interim Director General needed to be appointed immediately, so that there could be a smooth transition of the leadership, at the level of Director General. It was also stated that Connie Maiwase Zulu Osborne at the time of being told to prepare the handover notes to Zoonadi Ngwenya, did not complain about the shortness of time. Zoonadi Ngwenya testified that neither was the spirit of the request by himself, for her to give details of the activities of what was pending business at the NAC.
- 6.18 He stated that at many institutions, when handover notes are deemed urgent, a synopsis of activities that are pending are handed over, and a detailed brief is given later on. However, that is not what happened in this matter. It was further Zoonadi Ngwenya's testimony, that he received diverse messages from Connie Maiwase Zulu Osborne on 27th, 28th, 29th and 30th January 2023, stating that the handovers could not be completed in the space of time given, and that Connie Maiwase Zulu Osborne also lamented on other issues.
- 6.19 In that regard, reference was made to the printouts of the messages, at pages 99 to 102 of the NAC's bundle of documents. Zoonadi Ngwenya stated that when he observed Connie Maiwase Zulu Osborne's messages, he could tell that she was not pleased with the dealings surrounding the non-renewal, but he did not harass her or press the issue further. He added that Connie Maiwase Zulu Osborne seemed to be operating under the assumption that he directed in haste, that

the NAC property be handed over by herself, to a subordinate officer of the NAC.

- 6.20 It was his testimony that the practice of collecting assets of an institution when an employee ends the employment relationship with the employer, was not akin to Connie Maiwase Zulu Osborne's situation. The contention was that the assets of NAC had to be secure, and there was nothing wrong with the collection, as those were formal procedures which are required by the NAC. Further, there was nothing wrong with the action that the NAC took, to ensure that the property remained safe and secure.
- 6.21 It was Zoonadi Ngwenya's position, that according to his understanding of the administrative operations of the NAC, the Administration Manager, was the office in charge of the collection of property for the NAC, when an employee was leaving the employment of NAC. He stated that the role of that office applied to all employees, irrespective of the status of the employee. Consequently, in this case, it did not matter that the person involved was a Director General.
- 6.22 It was also testified, that there was no second contract, that was entered into on 3rd January 2023, because the contract ended on 2nd January 2023, and it was not renewed. Zoonadi Ngwenya's evidence was that Connie Maiwase Zulu Osborne continued reporting for work until 16th January 2023, and she was paid up to 16th January 2023. However, his contention was that this did not connote an automatic renewal of a contract.

6.23 Referring to the emails and WhatsApp messages at pages 91-93 of the NAC's bundle of documents, Zoonadi Ngwenya testified that a reading of them, showed that there was nothing that connoted harassment to Connie Maiwase Zulu Osborne. He stated that he believed that the contract was merely not renewed, as per the option, given in the contract of employment for Connie Maiwase Zulu Osborne.

6.24 It was also Zoonadi Ngwenya's testimony, that the Council had the liberty to exercise renewal of the contract or not in this matter, and the Council chose not to renew the contract.

CROSS-EXAMINATION OF ZONADI JOSEPH NGWENYA

6.25 In cross examination, Zoonadi Ngwenya stated that the purpose of reviewing management, is to ensure the accomplishment of targets, and if not, to see what can be done to ensure achievement. He added that it is a corporate tool that is sometimes used to determine the termination and renewal of a contract.

6.26 Zoonadi Ngwenya also testified that at the NAC, a Committee duly constituted by the Council conducts performance appraisal, which is triggered by the Chairperson, Finance or Administration members. It was further his testimony, that Connie Maiwase Zulu Osborne was not appraised before the expiration of her contract, or before the communication of the non-renewal of her contract, as it had ended. His evidence was that she was appraised by the Council in 2021.

6.27 Further in cross examination, Zoonadi Ngwenya testified that Connie Maiwase Zulu Osborne's contract was for a fixed term

period of Three (3) years, with the possibility of renewal, for which an application was made. He stated that an extraordinary meeting was called to look at the application. Zoonadi Ngwenya stated that he was appointed as Acting Chairperson of the NAC on 12th January 2023, by the Minister of Health.

- 6.28 It was his testimony that the previous Chairperson was removed after the Minister wrote to him, while the Vice Chairperson was Karen Sichinga. He agreed that he was conversant with the Act, adding that in the absence of the Chairperson, the Vice acts. Zoonadi Ngwenya testified that he was appointed to act as Chairperson, and he denied that Professor Mukonka was the substantive Chairperson at the time.
- 6.29 When referred to the letter at page 14 of Connie Osborne's bundle of documents, dated 9th January, 2023 which was authored by Professor Victor Mukonka on appointment of the Appraisal Committee for the Director General, Zoonadi Ngwenya stated that he signed the letter. His testimony was that an Appraisal Committee was not constituted, as the letter had no effect, because Clause 18.1 of the Charter specifies the appointments of Committees.
- 6.30 It was also his evidence, that he did not communicate with Professor Mukonka, because he was no longer Chairperson. Zoonadi Ngwenya on being referred to the Revised Conditions of Service at page 84 of Connie Maiwase Zulu Osborne's bundle of documents, testified that point (vi) states that the Council

shall annually appraise the Director General. It was testified that Connie Maiwase Zulu Osborne was appraised either at end of 2020 or the beginning of 2021.

- 6.31 He stated that the Council was only appointed in June, 2020, and that this impacted the appraisal. Zoonadi Ngwenya also in cross examination, told the Court that from 3rd January, 2023 to 16th January, 2023, Connie Maiwase Zulu Osborne was working as Director General, on the same terms as those for the contract that had expired. It was his testimony that the letter of 16th January 2023 referred to her previous contract, and that she was in office wrongly, as she had no contract.
- 6.32 Zoonadi Ngwenya's continued testimony in cross examination, was that Connie Maiwase Zulu Osborne's application for renewal of her contract, was only availed to the Council on 13th January 2023. Therefore, she was wrongly in office. He stated that he became aware of the letter on 10th January 2023, but he did not communicate with Professor Victor Mukonka.
- 6.33 Still in cross examination, Zoonadi Ngwenya stated that he was appointed to act on 12th January 2023, adding that he related well with Professor Mukonka. However, he saw no reason to communicate with him after the letter.
- 6.34 Zoonadi Ngwenya's further evidence, was that he did not ask Connie Maiwase Zulu Osborne to leave on 10th January, 2023, as he thought the Council that appoints, would deal with that issue. He testified that from his recollection, Connie Maiwase Zulu Osborne was appointed by the Minister, but the Council

ratified the appointment, after the Auditor General raised issue, as at the time, there was no Council.

6.35 His evidence was also that he met the Minister on 12th January, 2023, but he denied that she directed the dismissal of Connie Maiwase Zulu Osborne. Zoonadi Ngwenya maintained that there was no termination of the contract, as there was no contract to terminate. He stated that the contract had expired. It was his evidence that he had heard of oral agreements, and he had seen the **Employment Code Act**.

6.36 The evidence that was also given, was that there was no antagonism when Zoonadi Ngwenya met Connie Maiwase Zulu Osborne, with Two (2) colleagues. He added that Connie Maiwase Zulu Osborne even made them tea, and he had informed her, that he would be in the boardroom. Zoonadi Ngwenya testified when he did not receive the handover notes by 18:00 hours, he had told Connie Maiwase Zulu Osborne that he was going home.

6.37 It was his testimony, that Two (2) days later, she stated that she was still working on them. Then, after that, he noticed that the tone of her voice had changed. It was stated that as Director General, it is normal to prepare handover by synopsis in a few hours, and thereafter detailed notes are given, when it is urgent. Zoonadi Ngwenya also testified that colleagues can assist when one leaves office, and that Connie Maiwase Zulu Osborne could have asked for more time.

6.38 His testimony was that in the meeting of 13th January 2023, the Finance and Administration did not submit a report.

Zoonadi Ngwenya stated that it was an extraordinary meeting, to reflect on the Minister's meeting of 12th January 2023, and renewal of Connie Maiwase Zulu Osborne's contract.

6.39 When referred to paragraph 5.2.4 of the minutes of the extraordinary meeting of the NAC, which was held on 12th January, 2023, and was at page 83 of the NAC's bundle of documents, Zoonadi Ngenya's testimony was that the Minister advised that the Council had to make decisions whether right or wrong. He stated that they were not guided to make a wrong decision by the Minister. It was his evidence that as a Council, they had not previously voted to elect a Director General.

6.40 Zoonadi Ngwenya stated that voting is a transparent way and he saw nothing wrong with it. In concluding the cross examination, Zoonadi Ngwenya told the Court that they had no document to refer to, apart from the terms and conditions that Connie Maiwase Zulu Osborne had signed.

RE-EXAMINATION OF ZOONADI NGWENYA

6.41 In re-examination, and with reference to paragraph 5.2.4 of the minutes of the extraordinary meeting of the NAC at page 83 of the NAC's bundle of documents, Zoonadi Ngwenya testified that it did not refer to the renewal of Connie Maiwase Zulu Osborne's contract of employment. His evidence was that in arriving at decisions, the Council decided through consensus, and if that was not reached, by vote. He stated that this was what happened on that date.

6.42 He also testified that the Appraisal Committee was ad hoc, and the Chairperson suggested names that were agreed to by the

Council. Zoonadi Ngwenya added that resolutions by the Committee were tabled before the full Council for final determination. It was further testified that Zoonadi Ngwenya met Connie Maiwase Zulu Osborne with Bobo Mupeta and Mrs. Hellen Mwale, as decided by the full Council.

DW2 - AKALILWA MASHEKE

- 6.43 Akalilwa Masheke produced his witness statement as his evidence. This witness explained that he was appointed as Administration Officer for the NAC from 2015 to 2019. He stated that he was currently serving as Administration Manager for the NAC. It was also his testimony, that his functions included, being responsible for human resource and administration, in line with the agreed policies and procedures, and working with partners and government departments in carrying out recruitment and the selection processes for staff of the NAC.
- 6.44 In relation to this matter, his evidence was that he knew Connie Maiwase Zulu Osborne when she was appointed as Director General of the NAC on 3rd January, 2020. Akalilwa Masheke referred to her appointment letter, dated 12th December, 2019, which was at pages 28 to 31 of the NAC's bundle of documents. It was his testimony, that he worked with Connie Maiwase Zulu Osborne for Three (3) years from 3rd January, 2020, until the expiration of her contract on 2nd January, 2023.
- 6.45 The contract of employment was identified as that at pages 43 to 50 of the NAC's bundle of documents. Akalilwa Masheke also testified that there was a notice of the 4th extraordinary

meeting, which was to be held on 13th January, 2023, and he was copied the said the notice, which was at pages 80 to 81 of the NAC's bundle of documents.

- 6.46 He testified that as Administration Manager, he prepared for the meeting, which included logistics and the venue. The evidence that was given, was that the meeting was successful, and it was held on 13th January, 2023, as evidenced by the minutes which bore the same date, and were at pages 82 to 85 of the NAC's bundle of documents.
- 6.47 Further in his testimony, Akalilwa Masheke testified that on 16th January 2023, Zoonadi Ngwenya informed him, along with the Finance Manager, that he had met Connie Maiwase Zulu Osborne, and had informed her about the non-renewal of her employment contract. It was stated that Zoonadi Ngwenya had also informed them, that Connie Maiwase Zulu Osborne should be paid all her dues, as per her contract that expired on 2nd January 2023.
- 6.48 It was added that Zoonadi Ngwenya also gave Akalilwa Masheke a copy of Connie Maiwase Zulu Osborne's letter of expiration of her employment contract, which he identified as that at pages 86 to 87 of the NAC's bundle of documents. Akalilwa Masheke testified that based on Connie Maiwase Zulu Osborne's letter of expiration of contract, he prepared a memorandum to the Finance Unit to authorize the payment of her dues. His evidence was that the memorandum was dated 16th January, 2023, and was at page 88 of the NAC's bundle of documents.

- 6.49 His continued testimony was that after the memorandum was written, Francis Banda, the Supplies Assistant, was assigned to carry out the handover of assets from Connie Maiwase Zulu Osborne, as she was no longer the Director General of the NAC. He stated that this was done through the Stores Clearance Form, which was at pages 89 to 90 of the NAC's bundle of documents.
- 6.50 Akalilwa Masheke explained that Francis Banda's assignment was not strange, as this is what the Stores Unit does for each employee whose employment with the NAC comes to an end, and Connie Maiwase Zulu Osborne was not treated any differently. He stated that after the Store's Clearance Form was signed by Connie Maiwase Zulu Osborne, Francis Banda returned the form to him, as he had to sign on the relevant part on the said Stores Clearance Form.
- 6.51 It was stated that he thereafter assigned Francis Banda to have the assets secured in stores, as required by procedure.
- 6.52 Akalilwa Masheke highlighted that as Administration Manager, he is vested with the custody of employment contracts for all employees of the NAC. It was further his evidence, that contrary to provisions of terms and conditions of service as stated, that it must be submitted to the Council Chairperson, the letter referred to by Connie Maiwase Zulu Osborne in the statement of claim, regarding the notice to renew her contract of employment, it had no proof that it was received by Professor Victor Mukonka, the Council Chairperson, as he then was.

- 6.53 He added that in fact, the letter was stamped by Connie Maiwase Zulu Osborne's own office, and it did not show that the Council Chairperson received the letter. Therefore, there was no arbitrary termination of any purported contract of employment, as the contract for Connie Maiwase Zulu Osborne had come to an end, by effluxion of time.
- 6.54 It was also Akalilwa Masheke's testimony, that Connie Maiwase Zulu Osborne's being notified of the expiration of employment contract, was in order, and there was nothing unjustifiable about the action.
- 6.55 In relation to the allegation that Connie Maiwase Zulu Osborne was defamed by informing other parties of the notice of expiration of her contract, Akalilwa Masheke contended that it was not true, because the parties that were informed of the expiration of the contract, were supposed to be informed of the developments at the NAC. He gave examples of such as follows:
- a. *NAC is a statutory body under the Ministry of Health, as such the Permanent Secretary and the Minister had to be communicated to about Connie Maiwase Zulu Osborne's expiration of employment.*
 - b. *It was also essential for the Vice Chairperson to be aware of the development, since the Council Chairperson was indisposed and the Administration and Finance Managers had to be aware because all human resource and administration issues are handled by the office of Administration Manager and all finance*

matters are handled by the office of the Finance Manager.

c. Zoonadi Ngwenya, as Acting Chairperson was responsible with regard to the handover notes by Connie Maiwase Zulu Osbourne.

6.56 It was also testified that there was no physical removal of Connie Maiwase Zulu Osbourne from the office of Director General, with Akalilwa Masheke contending that she was treated with the utmost respect.

6.57 His evidence was further that Francis Banda, the Supplies Assistant, was on the material day of 16th January 2023 assigned by him, to drive Connie Maiwase Zulu Osbourne to her home, so as to ensure that she arrived safely. He stated that the procedure is that where an employee has had non-renewal of their employment contract, it follows that the protection of the NAC property becomes essential.

6.58 Thus, Akalilwa Masheke testified that there was no associated harassment and unfair treatment of Connie Maiwase Zulu Osbourne, and there was no termination of her employment contract, in that instance, as the employment contract had expired, and there was no reason needed to be given, as the contract was merely not renewed, contrary to Connie Maiwase Zulu Osbourne's assertion.

6.59 The contention was further that the expiration of the employment contract, did not hinder Connie Maiwase Zulu Osbourne's future job prospects. Akalilwa Masheke testified that Connie Maiwase Zulu Osbourne was paid prorated gratuity,

prorated salary, leave days, and any other duties if any, which were owed to her, as at 16th January, 2023. Therefore, his position was that she has no valid claims to make before this Court.

CROSS-EXAMINATION OF AKALILWA MASHEKE

- 6.60 Akalilwa Masheke, when cross examined, stated that he was responsible for Human Resources and administration. His evidence when referred to paragraph 16 of his witness statement, was that before the expiration of a contract, Human Resources does not intervene, but an employee writes to renew the contract.
- 6.61 He also testified that it is not normal for Human Resources to inform the Council of the expiration of the contract, but that that the employee is aware of the date of expiry of their contract. Akalilwa Masheke stated that he does not inform the Council but the CEO does, as the Secretary of the Board.
- 6.62 He further testified that Human Resources is not only a repository of employment contracts for all employees, but that it is responsible for all other employees. However, Akalilwa Masheke testified that the CEO reports directly to the Board. Further in cross examination, Akalilwa Masheke told the Court, that he was not assigned to inform the Council of the expiry of the CEO's contract, but he had business in commenting on it, because he was the custodian of the contract, and he knew that it was expiring, Six (6) months before it expired.
- 6.63 He also testified that Connie Maiwase Zulu Osborne had no claim for renewal of contract, because it had expired, adding

that from 3rd January 2023 to 16th January 2023, Connie Maiwase Zulu Osborne had no relationship with the NAC, because her contract had expired, and there was nothing in writing for her to continue working.

- 6.64 He told the Court that Connie Maiwase Zulu Osborne was paid pro rata for the services that she provided from 3rd January 2023 to 16th January 2023. Akalilwa Masheke stated that the payment was for services rendered outside the employment relationship. Still in cross examination, he testified that an implied contract does not only exist, where there is renewal. He admitted to being familiar with the ***Employment Code Act No. 3 of 2019***, but maintained that there was no contract between 3rd January, 2023 and 16th January, 2023.
- 6.65 Akalilwa Masheke when referred to the minutes of the extraordinary meeting dated 12th January, 2023, at page 82 of the NAC's bundle of documents, testified that he was part of the meeting, but stated that he had to leave at one point, and therefore, he was not part of the deliberations. He stated that no other meetings were thereafter held.
- 6.66 In relation to this matter, his testimony was that at the time of his testimony, there was no Council in place, and there was no Director General. Further in cross examination, Akalilwa Masheke told the Court that they prepared the exit for Connie Maiwase Zulu Osborne, as they were informed.
- 6.67 With regard to the meeting, his evidence was that the minutes were a true reflection of what transpired in the meeting, as they were signed on 13th January 2023. He also stated that there

was an acting Director General on secondment from the Ministry of Health, who went there after the minutes of the meeting, and who was in charge of corporate governance at the NAC. It was also his testimony, that Simataa Simataa, as a Council member, took the minutes of the meeting, even though the same was not reflected in the minutes.

6.68 Akalilwa Masheke explained that Simataa Simataa was nominated to take the minutes of the meeting, as per procedure, when there was no CEO. He added that the Act guides that the Secretary is the CEO. The continued testimony in cross examination, was that it was beyond Akalilwa Masheke, to state that it would have been prudent to indicate in the minutes, that someone was nominated to act as Secretary.

6.69 He testified that he was not involved in constituting an Appraisal Committee for the Director General, testifying that this was done by the Director General's office. He added that it is normal practice to consider renewal of a contract after it has expired. Also, in cross examination, Akalilwa Masheke stated that he could not recall if Connie Maiwase Zulu Osborne claimed for defamation. When referred to Connie Maiwase Zulu Osborne's bundle of documents, it was his testimony that there was no claim for defamation.

6.70 He testified that Connie Maiwase Zulu Osborne left the office voluntarily around 18:00 hours, after being given notice in the morning.

DW3 -FRANCIS MELEKI BANDA

6.71 Francis Meleki Banda produced his witness statement as his testimony. His evidence as contained in that witness statement, was that he was employed by the NAC as an Office Assistant from 2011 to 2015. His evidence was that he was currently serving as a Supplies Assistant. Francis Meleki Banda named his duties as including the following:

- i. to provide efficient and effective stores management processes for procured goods and equipment;*
- ii. maintain adequate stock levels of consumable and non-consumable items; and*
- iii. maintain a record of physical assets.*

6.72 He told the Court that on 16th January, 2023, Akalilwa Masheke informed him that the employment contract for Connie Maiwase Zulu Osborne, the Director General, had not been renewed. Thus, he was assigned to carry out the stores' clearance process for Connie Maiwase Zulu Osborne. With reference to the Stores Clearance Form at pages 89 and 90 of the NAC's bundle of documents, Francis Meleki Banda testified that it had three parts.

6.73 His evidence was that the first part, is where the assets of the NAC are recorded, as belonging to the employee. Then the second is clearance of fixed asset inventory, which serves the same purpose as the first part, but which goes further to enter the serial numbers. The third part was stated as being where

the parties sign, being the separating officer (employee), himself and the Administration Manager.

- 6.74 Francis Banda further in evidence, testified that he filled in the relevant sections, and then went to the office for Connie Maiwase Zulu Osborne to give her the Stores Clearance Form to sign, as a true reflection of the items that were within her custody. He stated that she was cordial and she agreed to sign. It was also his testimony, that the environment was not hostile, and she did not question his role in the asset recovery process.
- 6.75 Francis Meleki Banda's evidence was that on the same day, Connie Maiwase Zulu Osborne handed over the items listed on the Stores Clearance Form, apart from the laptop. He named the items that were handed over, as including the printer, Two (2) phones and a tablet. It was added that Connie Maiwase Zulu Osborne was given a week to handover the laptop because she had to remove her personal data from it.
- 6.76 Further in evidence, Francis Meleki Banda stated that in his delegated responsibility from the Administrative Manager with regard to asset management, he ensures that all employees irrespective of rank, submit the assets that are in their possession, at the end of their relationship with the employer.
- 6.77 It was also his evidence that the Administration Manager also assigned him to drive Connie Maiwase Zulu Osborne home because he is an authorised NAC driver, with a government competence. He added that the task was not odd or strange, because there had been many times, when he was assigned to transport products or human resource of the NAC.

- 6.78 Francis Meleki Banda testified that on the way to her home, he had chatted with Connie Maiwase Zulu Osborne, who had complained about the manner in which her employment separation was done, and that she needed more time to prepare the handovers. It was his evidence that the environment in the motor vehicle was not hostile.
- 6.79 Francis Banda stated that he drove Connie Maiwase Zulu Osborne home, because she was no longer an employee, and in any eventuality occurring, the NAC would be held responsible and it had to ensure the preservation of its' asset. He added that Connie Maiwase Zulu Osborne still had to be treated in a dignified and respectful manner, as the former Director General of the NAC.
- 6.80 In his further testimony, Francis Meleki Banda stated that on 26th January, 2023, Connie Maiwase Zulu Osborne called him to go and pick up the laptop from her home, and he informed the Administration Manager, who gave him a go ahead. His evidence was that the laptop was surrendered in good condition.

CROSS EXAMINATION OF FRANCIS MELEKI BANDA

- 6.81 This witness was not cross examined.

DW4 - ANNIE KALUMBI KALESHA

- 6.82 Annie Kalumbi Kalesha identified her witness statement and relied on it, as her testimony at trial. Her evidence as contained in that witness statement, was that she had worked for the NAC as Financial Accountant from 2015 to 2020. She told the Court

that she was currently working as Finance Manager for the NAC.

6.83 With respect to her duties, it was her testimony that they were generally the following:

- i. *ensuring efficient management of finance of the NAC;*
- ii. *preparing financial reports for both the donors, management and the NAC; and*
- iii. *being responsible for planning, budgeting and financial monitoring of the NAC.*

6.84 Annie Kalumbi Kalesha explained that she knew Connie Maiwase Zulu Osborne when she was employed as Director General of the NAC in 2020. She added that Connie Maiwase Zulu Osborne was also her immediate supervisor. It was further her testimony, that on 16th January 2023, Connie Maiwase Zulu Osborne sent Betina to call her, and when she went to her office, she was informed that Connie Maiwase Zulu Osborne's contract had not been renewed, and that it was her last day as Director General of the NAC.

6.85 Annie Kalumbi Kalesha stated that on the same date, Zoonadi Ngwenya had informed her and Akalilwa Masheke that he had met with Connie Maiwase Zulu Osborne, and had informed her of the non-renewal of her contract of employment. She added that Zoonadi Ngwenya had further informed them that Connie Maiwase Zulu Osborne should be paid all her dues, as required by her expired contract, which came to an end on 2nd January 2023.

- 6.86 Still in her evidence, Annie Kalumbi Kalesha stated that later on the same day, she received a copy of the letter of expiration of the contract, which was at pages 86 to 87 of the NAC's bundle of documents. She told the Court that Zonnadi Ngwenya gave her a copy of the letter, so that she could begin the process of paying Connie Maiwase Zulu Osborne her dues. Then on 17th January 2023, she received an internal memo, dated 16th January 2023, from Akalilwa Masheke, which was referenced '*Expiration of employment contract for Connie Osborne*' stating that the said internal memorandum was at page 88 of the NAC's bundle of documents.
- 6.87 It was her testimony, that preparation of the payroll for the NAC usually begins on the 10th of every month, which meant that Connie Maiwase Zulu Osborne's dues, had to be included in the January 2023 payroll, to avoid delays of the amounts due to her. Annie Kalumbi Kalesha testified that the purchase request for Connie Maiwase Zulu Osborne was raised by the Administration Unit on 23rd January, 2023, in the NAC's accounting system. She identified the said purchase requisition as that at page 103 of the NAC's bundle of documents.
- 6.88 Her evidence was also that on 24th January, 2023, Connie Maiwase Zulu Osborne was paid ZMK 67,019.04, and the standard file interchange was shown at pages 76 to 77 of the NAC's bundle of documents. Annie Kalumbi Kalesha stated that the amount of ZMK 67,019,04, was as at 16th January 2023, testifying that the payslip had included various dues, as shown at page 73 of NAC's bundle of documents. She added that the

payslip was dated 23rd January, 2023 because that was the date on which employees at the NAC were paid their salaries.

6.89 In her continued testimony, Annie Kalumbi Kalesha's evidence was that the payslip showed gratuity in the amount of ZMK 4,929.87, because that was the amount due to Connie Maiwase Zulu Osborne as at 16th January, 2023. She also testified that gratuity at the NAC is paid through the payroll yearly, so as to liquidate what is due to various employees, in order to avoid accumulation of staff debt. She further stated that the following was paid in reference to gratuity:

a. Connie Maiwase Zulu Osborne was paid the amount of ZMK 130,993.80 for the year 2020 in February 2021 as shown on page 69 of the NAC's bundle of documents.

b. Connie Osborne was paid ZMK 130,993.80 for the year 2022 in December, 2022, as shown on page 73 C of the NAC's bundle of documents.

6.90 It was testified that the amount paid on 23rd January 2023 showed a prorated rate for the gratuity due to the Connie Maiwase Zulu Osborne. Annie Kalumbi Kalesha also stated that Connie Maiwase Zulu Osborne was not entitled to any other payments, as all her dues were paid, according to the Finance Unit.

CROSS-EXAMINATION OF ANNIE KALUMBI KALESHA

6.91 In cross examination, Annie Kalumbi Kalesha testified that she worked in Finance. She also stated that Connie Maiwase Zulu Osborne's first contract expired on 2nd January, and that from

3rd January 2023 to 16th January 2023, authority was given to pay on a pro rata basis, so that there was payment of salary and gratuity on what she earned on the previous contract.

DW5 - LWISHA SHULA CHIBOWA

6.92 Lwisha Shula Chibowa the last witness who was called by the NAC, identified her witness statement, which she relied on as her testimony. In her witness statement, she testified that she was appointed by the Minister of Health on 18th June 2020, to serve as Council member of the NAC, in accordance with the Act. It was also her evidence, that she was also a Principal State Advocate with Nine (9) years' experience, and a representative of the Attorney General.

6.93 With regard to her functions as Council Member of the NAC, she explained them as follows:

- a. *To provide oversight to the management of the NAC;*
- b. *Review performance of management of the NAC; and*
- c. *Review strategic documents, policies and other governance documents of the NAC.*

6.94 Further in her testimony, Lwisha Shula Chibowa told the Court that she got to know Connie Maiwase Zulu Osborne when she was appointed as Council member in June, 2020. She explained that one of her roles, was to attend council meetings whether ordinary or extraordinary. In that respect, she stated that on 13th January 2023, the Council held the 4th extraordinary meeting.

6.95 As to what transpired at that meeting, her evidence was that the Council had observed that Connie Maiwase Zulu Osborne's

fixed-term, three-year contract of employment, which was signed on 3rd January 2020, had expired on 2nd January, 2023. Lwisha Shula Chibowa testified that Connie Maiwase Zulu Osborne had advised the Council that she had authored a written request for consideration of renewal of her contract by the Council. However, the Council members who were in attendance, observed that the said letter had not been availed to them.

- 6.96 It was stated that nonetheless, the Council resolved that the letter be availed to them. Lwisha Shula Chibowa's evidence was that Two (2) letters were availed to the Council, that is One (1) Notice of renewal of contract of employment dated 1st November 2022, and the other dated 3rd November 2022. Her evidence was that the said letters were at pages 67 to 68 of the NAC's bundle of documents.
- 6.97 The further evidence that Lwisha Shula Chibowa gave, was that at the 4th extraordinary meeting, the Council also observed that the request for renewal of Connie Maiwase Zulu Osborne's contract of employment, was effectively made to the Council, on 13th January 2023, which was more than ten (10) days after her contract of employment had expired. She stated that the Council resolved not to renew her contract of employment following its expiration, in accordance with Clause 1.2 of the contract of employment.
- 6.98 Reference was made to the said contract of employment, which was at pages 43 to 50 of the NAC's bundle of documents. In her continued testimony, Lwisha Shula Chibowa stated that the

Council also observed that the contract of employment had in fact terminated by effluxion of time, on 2nd January 2023, and that Connie Maiwase Zulu Osborne had in effect no authority to be in office. The minutes of the extra ordinary meeting were identified as those at pages 82 to 85 of the NAC's bundle of documents.

6.99 It was Lwisha Shula Chibowa's testimony that a letter of expiration of contract was authored and served on Connie Maiwase Zulu Osborne, which letter was at page 86 and 87 of the NAC's bundle of documents.

6.100 She testified that on 20th February, 2023, Messrs DM Legal Practitioners served a letter of demand on the NAC on behalf of Connie Maiwase Zulu Osborne, which contested the non-renewal of her contract of employment. Lwisha Shula Chibowa's evidence was that due to her unique position as Council member, and State Advocate, she was summoned by Zoonadi Ngwenya for a meeting, to assist in deciphering the letter of demand.

6.101 Her testimony was that she studied the letter of demand, and found that Connie Maiwase Zulu's contract of employment expired on 2nd January, 2023, and that the Council had a discretion whether to renew it or not. She stated that this was clearly set out in Clause 1.2 of the said contract of employment, which was at pages 43-50 of the NAC's bundle of documents. Thus, the Council, as shown on the letter at pages 86-87 of its' bundle of documents wrote to Connie Maiwase Zulu Osborne,

advising her that her contract had come to an end due to effluxion of time.

6.102Lwisha Shula Chibowa explained that there is an important clause, being Clause 4.7 that appears in all contracts of employment for senior management, which was conspicuously missing in Connie Maiwase Zulu's Osborne's contract of employment. Her evidence was that said clause provides as follows:

"Renewal of this contract is dependant on successful performance of duty. You shall give one (1) month notice before expiry of contract to express your wish to continue employment in writing."

6.103Lwisha Shula Chibowa then proceeded to refer to the standard contract of employment of a senior manager, which was at pages 104 to 112 of the NAC's bundle of documents. It was her testimony that this vital clause, is also stated verbatim in Clause 4.2 (7) of the Human Resources Operational Manual (HROM). She added that the HROM binds all employees of the NAC, and is treated as part of an employee's contract.

6.104Therefore, her position was that Connie Maiwase Zulu Osborne had an obligation to give the Council One (1) month's notice in writing, advising that her contract of employment was about to expire; and that she was desirous for the Council to consider the renewal of such contract of employment. Reference was made to a copy of the manual at pages 1 to 27 of the NAC's bundle of documents.

6.105 Lwisha Shula Chibowa testified that Connie Maiwase Zulu Osborne could not unilaterally decide to treat her expired contract of employment, as automatically renewed, and continue to work without the written approval of the Council. She added that there was no new contract of employment that was entered into by Connie Maiwase Zulu Osborne and the NAC, as at 3rd January, 2023, as erroneously believed, and claimed by Connie Maiwase Zulu Osborne.

6.106 In concluding her testimony, Lwisha Shula Chibowa stated that the Council acted legally, and was on sound footing in advising Connie Maiwase Zulu Osborne that there was no longer a contract of employment in existence between herself and the NAC.

CROSS-EXAMINATION OF LWISHA SHULA CHIBOWA

6.107 When cross examined, and on being referred to paragraph 3 of her witness statement, Lwisha Shula Chibowa testified that the Act gives the Council jurisdiction to oversee management, particularly, the Director General. Her evidence was further that the Council hires the Director General, and reviews the performance, which she stated, was done twice in Three (3) years. She added that the process is moved by management itself.

6.108 Lwisha Shula Chibowa also testified that in Order for the Council to review the Director General's performance, the Director General, had to submit an assessment to the Council. Then the Council would thereafter constitute an ad hoc committee to review the Director General's performance.

It was her evidence, that the third performance review of the Director General was not moved by the Director General, as was the practice.

- 6.109 It was explained that the performance management reviews performance, in terms of meeting targets. Lwisha Shula Chibowa agreed that it could be used to assess the renewal of a contract, but not necessarily to terminate a contract. She stated that there are laws and rules that guide on the termination of a contract, adding that a contract is not terminated impulsively.
- 6.110 Further in cross examination, Lwisha Shula Chibowa testified that Connie Maiwase Zulu Osborne's performance was not assessed before the expiration of her contract, because she did not move her assessment. When referred to the notice of renewal of Connie Maiwase Zulu's contract of employment dated 1st November, 2022, which was at page 12 of Connie Maiwase Zulu Osborne's bundle of documents, her evidence was that it did not suffice to move the Council for assessment.
- 6.111 Lwisha Shula Chibowa noted that the said letter was addressed to the Chairperson, who at the time had been posted to India to take on a different job. Her testimony was that she did not know if he was sent the letter, but it showed that it was received by the Council, which was unclear how the Chairperson had stamped it with a NAC stamp.
- 6.112 Her contention was that the Chairperson did not sign the letter acknowledging receipt, even though he was still Chairperson in November. The evidence that Lwisha Shula

Chibowa also gave, was that it was not her duty to communicate with the Chairperson, to confirm whether there was service, but it was the duty of the person alleging service. She further testified that the Council interjected ever having received the letter, but that they eventually received it.

- 6.113 On being referred to the appointment of members of the appraisal committee to renew Connie Maiwase Zulu Osborne's contract at page 14 of Connie Maiwase Zulu Osborne's bundle of documents, Lwisha Shula Chibowa testified that she did not know if in the first paragraph in the letter, it showed that Professor Victor Mukonka received the letter, but a literal interpretation indicated that he did receive the letter.
- 6.114 She told the Court that a Council is collective, and that it is led by the Chairperson, who does not make decisions in isolation. Still in cross examination, Lwisha Shula Chibowa testified that when the Council noticed that Three (3) years had elapsed, it needed to ascertain when the time had elapsed, and take up the next steps. It was her evidence that an extraordinary meeting was held on 13th January 2023, to deal with the Director General's contract.
- 6.115 She further stated that the Council had to establish what was happening with the Director General's contract, adding that as a Council, they did not communicate with the Chairperson, as he was no longer Chairperson of the Council.
- 6.116 Lwisha Shula Chibowa also in cross examination, testified that the Director General was collectively responsible to the Council, and not one person. She stated that she could not

recall when the Chairperson, resigned as Chairperson, but that it was before the Council sat on 13th January 2023. She was unsure if he was still Chairperson on 9th January 2023.

6.117 Lwisha Shula Chibowa explained that she did not have prior experience of the renewal of the Director General's contract, as she was appointed to the Council in 2020 for Three (3) years, and so was the Director General. She nevertheless testified that they had the Code, and the law to guide them. It was her testimony that they asked when the contract was coming to an end, and when they asked for the contract, it was not availed to them.

6.118 However, when they sat to consider it, they found that it had expired. Lwisha Shula Chibowa's position was that the Director General had to notify the Council, One (1) month before the expiration of the contract, and that it was not for the Council to chase the Director General for information. She further stated that they did not receive the Director General's letters dated 1st January, 2022.

6.119 She also testified that Zoonadi Ngwenya was acting Chairperson, having been appointed by the Minister. Lwisha Shula Chibowa did not know whether the Minister could appoint someone to act, under the Act. Further, she did not know why the Vice Chairperson was not appointed to act. It was her testimony that she voted at the meeting by a show of hands, and that she had also voted before the Council on many issues.

- 6.120 Lwisha Shula Chibowa told the Court that at the meeting, Simataa Simataa was nominated to act as the Secretary of the meeting, as the Director General had conflict of interest, and management was excused. She stated that the nomination was taken out of necessity, and she did not know if it was reflected in the minutes of the meeting.
- 6.121 When referred to the said minutes of the meeting at pages 82 to 85 of the NAC's bundle of documents, Lwisha Shula Chibowa agreed that the minutes did not reflect that Simataa Simataa was nominated as Secretary of the meeting. She stated that the Council met again on dates that she could not recall, adding that its' tenure ended in 2023.
- 6.122 Her evidence was that the meetings had minutes, but she did not recall attending a meeting to review the minutes of 13th January 2023. Lwisha Shula Chibowa also testified, that the minutes reflected the proceedings, as they were circulated before signing or at a next meeting. Her continued testimony was that they did not receive any correspondence on the performance of the Director General at the meeting.
- 6.123 However, they voted, based on the fact that the Connie Maiwase Zulu Osborne's contract had expired on 3rd January 2023. It was her evidence that the Council had discretion to renew the contract, and the majority decided against renewing the contract.
- 6.124 Lwisha Shula Chibowa, when referred to paragraph 18 of her witness statement, and to the demand letter at page 11 the Connie Maiwase Zulu Osborne's bundle of pleadings, testified

that the letter stated that her second contract was terminated and not renewed. It was her evidence when she was referred to paragraph 19 of her witness statement, that she was the only lawyer on the Council.

- 6.125 The testimony that was also given, was that the Council has a mandate to form ad hoc committees, and she was cooped to the ad hoc committee to look at the demand letter. Lwisha Shula Chibowa also stated that paragraph 20 did not talk about non-renewal, stating that it recited Connie Maiwase Zulu Osborne's claim of termination. Lwisha Shula Chibowa also in cross examination, testified that Connie Maiwase Zulu Osborne was not on contract, but she was providing a service, stealth fully, as she was working after her contract ended on 2nd January, 2023.
- 6.126 It was Lwisha Shula Chibowa's testimony when she was referred to the letter by the Chairperson of the Council, Professor Victor Mukonka, dated 9th January, 2023, which was at page 14 of Connie Maiwase Zulu Osborne's bundle of documents, in the second sentence of paragraph 2, that Connie Maiwase Zulu Osborne was working stealthily. She further testified that she could not speak for Professor Victor Mukonka, and that she dealt with Connie Maiwase Zulu Osborne directly.
- 6.127 Lwisha Shula Chibowa stated that an implied contract arises by conduct, or verbally, where there is no express contract. Her evidence was that there was no implied contract for Connie Maiwase Zulu Osborne, as there is a Council Code,

and her contract stated that it had to be express. She testified that the Council did not pay Connie Maiwase Zulu Osborne.

6.128 Her position was further that the Council advised management of the non-renewal of the contract for Connie Maiwase Zulu Osborne, and it only later discovered what she was paid. Lwisha Shula Chibowa's continued evidence was that the Council did not sanction the payment, and that no one was charged for paying Connie Maiwase Zulu Osborne. She stated that they worked collectively, and that payment was already made by management, adding that she did not put her disagreement in writing.

RE-EXAMINATION OF LWISHA SHULA CHIBOWA

6.129 In re-examination, Lwisha Shula Chibowa referred to page 12 of Connie Maiwase Zulu Osborne's bundle of documents, and paragraph 18 of her witness statement, testifying that in January, 2023, Connie Maiwase Zulu Osborne did not approach the Council. Rather, the Council convened a meeting to question Connie Maiwase Zulu Osborne about her contract, at which Connie Maiwase Zulu Osborne stated that she had applied for renewal of her contract.

6.130 It was further her testimony, that the Council had advised Connie Maiwase Zulu Osborne that they had not received the letter for renewal of the contract, and that was when she had availed them a copy of the letter. With reference to the minutes of the extraordinary meeting, which were at pages 82 to 85 of the NAC's bundle of documents, Lwisha Shula Chibowa clarified that Connie Maiwase Zulu Osborne could not sit in

the meeting, as she headed the Council, and her juniors being management, could also not sit in the meeting, even though the minutes did not reflect that position.

- 6.131 She testified with reference to the letter that Professor Victor Mukonka wrote dated 9th January, 2023, which was at page 14 of Connie Maiwase Zulu Osborne's bundle of documents, that the letter was directed to Three (3) specific persons who headed the committees, and that she was not one of them.
- 6.132 Concerning the assessment of Connie Maiwase Zulu Osborne, Lwisha Shula Chibowa informed the Court, that it has a laid down procedure. In that regard, she testified that the Council is informed in advance, of the intention to renew the contract, and that the assessment is used as a tool to renew the contract, based on performance. It was her evidence that in this case, the contract had expired, and the assessment would not have served any purpose. Lwisha Shula Chibowa stated that the Council decided not to renew the contract.
- 6.133 That marked the close of the case for the NAC.

7. DECISION OF THIS COURT

- 7.1 I have considered the evidence and the submissions.

FACTS NOT IN DISPUTE

- 7.2 It is not in contention, that Connie Maiwase Zulu Osborne was employed by the NAC as Director General, for a period of Three (3) years, commencing on 3rd January 2020 up to 2nd January 2023. The facts that are further not in dispute, are that her contract of employment could be extended for a further period at the discretion and agreement in writing of the Council.

- 7.3 It is common cause that renewal of the contract was subject to satisfactory performance. It is further not in contention, that on 1st November 2022, Connie Maiwase Zulu Osborne wrote a letter to the Chairperson of the Council at the time, being Professor Victor Mukonka, which was referenced '*Notice of Renewal of contract of employment*', giving notice of intention to renew her contract.
- 7.4 The facts that are further not in dispute are that on 2nd January 2023, Connie Maiwase Zulu Osborne's contract of employment expired by effluxion of time. It is not in contention that on 9th January 2023, Professor Victor Mukonka appointed Hellen Mwale, Ebby Sichembe and Zoonadi Ngwenya as members of the Appraisal Committee to appraise Connie Maiwase Zulu Osborne's performance for purposes of renewal of her contract, which was to be headed by Hellen Mwale.
- 7.5 Also, common cause, is that on 13th January, 2023, an extraordinary meeting of the Council was called to discuss among others, the contract for Connie Maiwase Zulu Osborne, after Zoonadi Ngwenya was appointed to act as Chairperson of the Council by the Minister of Health on 12th January, 2023. It is not in contention that on 16th January 2023, Connie Maiwase Zulu Osborne was handed a letter by the Acting Chairperson, Zoonadi Ngwenya, referenced '*Expiration of Employment Contract.*'

FACTS IN DISPUTE

- 7.6 It is in dispute whether the NAC and Connie Maiwase Zulu Osborne entered into an implied contract of employment on 3rd

January 2023. The issues that are further in dispute, are whether there was an implied contract that the NAC and Connie Maiwase Zulu Osborne entered into, which was terminated by the NAC. It is also in contention whether the termination of Connie Maiwase Zulu Osborne's contract of employment was wrongful, unlawful, unfair and a nullity at law.

- 7.7 The dispute is also on whether Connie Maiwase Zulu Osborne was paid all her dues after separating from the NAC.

ANALYSIS

- 7.8 The evidence on record, shows that Connie Maiwase Zulu Osborne testified that on 1st November 2022, Two (2) months before the expiration of her contract of employment, which commenced on 3rd January 2020, she wrote to Professor Victor Mukonka, the Chairperson of the NAC, informing him of her interest and desire to have her contract of employment with the NAC renewed, for a further Three (3) year term.
- 7.9 When cross-examined, she agreed that she had an obligation to apply for renewal of her contract of employment, One (1) month before its expiration, and that she should have written the notice on 2nd December 2022. It was her contention, that the Notice that she wrote for renewal of her contract, was received by Professor Victor Mukonka, who directed her to prepare an Appraisal Committee.
- 7.10 When referred to the stamp on the letter requesting for renewal of her contract, Connie Maiwase Zulu Osborne testified that the letter was received by her Secretary. She however stated that she forwarded the notice to Professor Victor Mukonka, who

acknowledged receipt through email. When further cross-examined, Connie Maiwase Zulu Osborne testified that she wrote Two (2) letters of notice for renewal of her contract. Her evidence was that the second letter was dated 3rd November 2023, but she clarified that the date stamp on the said letter, could have been 2nd November 2023, adding that the date stamps were a mistake.

7.11 In defence, Zoonadi Ngwenya, who told the Court that he was appointed to act as Chairperson of the Council, on 12th January 2023, stated that he called for an extraordinary meeting, which was held on 13th January 2023. His testimony was that, at that meeting, among other things, the agenda was to consider the application for renewal of Connie Maiwase Zulu Osborne's contract of employment.

7.12 He stated that at the meeting, it was observed that Connie Maiwase Zulu Osborne's contract had expired on 2nd January 2023, and they resolved not to renew her contract in accordance with Clause 1.2 of her contract. Zoonadi Ngwenya further testified, that there was no second contract that was entered into on 3rd January 2023, because the contract that ended on 2nd January 2023, was not renewed. He stated that Connie Maiwase Zulu Osborne continued reporting for work until 16th January 2023, and she was paid until that date, but that did not connote that she had entered into a new contract of employment.

7.13 He added that the Council was at liberty to exercise the option not to renew the contract. Zoonadi Ngwenya did however testify

that from 3rd January 2023 to 16th January 2023, Connie Maiwase Zulu Osborne was working as Director General, on the same terms as the contract that had expired. Zoonadi Ngwenya's further evidence was that he became aware of Connie Maiwase Zulu Osborne's application to renew her contract on 10th January 2023. However, the said application was only availed to the Board on 13th January 2023.

- 7.14 It was Zoonadi Ngwenya's testimony, that he did not ask Connie Maiwase Zulu Osborne to leave on 10th January 2023, as he believed that it was an issue for the Council.
- 7.15 In relation to the notice for renewal of Connie Maiwase Zulu Osborne's contract, Akalilwa Masheke, the Administration Manager, stated that there was no proof of receipt of the same by Professor Victor Mukonka. It was his testimony that the letter showed that it was only received by Connie Maiwase Zulu Osborne's office.
- 7.16 In cross-examination, Akalilwa Masheke's evidence was that Connie Maiwase Zulu Osborne had no claim for the renewal of her contract of employment, because it had expired. He stated that from 3rd January 2023 to 16th January 2023, Connie Maiwase Zulu Osborne had no relationship with the NAC and there was no communication for her to continue working.
- 7.17 On the other hand, Lwisha Shula Chibowa, a member of the Board, testified that at the extraordinary meeting of 13th January 2023, Connie Maiwase Zulu Osborne intimated that she had written a letter for the renewal of her contract of employment. However, the Council members had observed that

they had not been availed of the letter. Thereafter, Connie Maiwase Zulu Osborne availed them Two (2) letters, that is one dated 1st November 2022, and the other dated 3rd November 2022.

7.18 She stated that the Council had observed that the notice of renewal was effectively made on 13th January 2023, and that the Council resolved not to renew the contract, following its' expiration, in accordance with Clause 1.2 of Connie Maiwase Zulu Osborne's contract of employment. Lwisha Shula Chibowa added that the Council also observed that Connie Maiwase Zulu Osborne's contract had expired by effluxion of time, and she had no authority to be in the office.

7.19 In cross-examination, Lwisha Shula Chibowa stated that Connie Maiwase Zulu Osborne was not on contract, but was working stealthily, as her contract had ended on 2nd January 2023. She also denied that there was an implied contract, as there was a Council Code, and her contract stated that it had to be express.

DECISION

7.20 The evidence on record shows that the parties agreed that Connie Maiwase Zulu Osborne's contract of employment of 3rd January 2020 expired by effluxion of time on 2nd January 2023. With regard to renewal of the said contract, the contract in Clause 1.2 at page 4 of Connie Maiwase Zulu Osborne's bundle of documents, under the heading *Employment* provided as follows:

“This contract of employment shall be for a period of three (3) years commencing on 3rd January 2020 and expiring on 2nd January 2023. This contract may be extended for a further period subject to the discretion and agreement in writing of the Employer.”

7.21 Further, Clause 5 of Connie Maiwase Zulu Osborne’s letter of appointment at page 2 of the said bundle of documents, provided in part as follows:

***“...
The contract is renewable following satisfactory performance and final approval by the Council. You shall one month before expiry of the contract express your wish to continue employment in writing.”***

7.22 In the book, ***A Comprehensive Guide to Employment Law in Zambia, by Winnie Sithole Mwenda and Chanda Chungu, The University of Zambia Press 2021***, the learned authors in discussing expiration of a contract by effluxion of time at page 232 write as follows:

“When a contract expires, the employer has the prerogative to decide whether or not to extend the short or fixed-term contract. The Supreme Court in Zambia in the case of Revenue Authority v Dorothy Mwanza and others, confirmed that the decision to offer a new fixed-term contract is not automatic, and is solely within the employer’s discretion. An employer is not mandated by law to make an offer of renewal unless the contract itself has that provision

or the employee meets criteria outlined in the contract. In the absence of contractual guidelines, the employer retains the sole discretion to decide whether to extend an employee's contract or not."

- 7.23 A perusal of Connie Maiwase Zulu Osborne's letter of appointment, and her contract of employment, show that the renewal of the contract, had to be done on the Council being satisfied with her performance, and at the discretion and agreement in writing of the Council.
- 7.24 The requirement is in line with the decision in the case of **Zambia Revenue Authority v Dorothy Mwanza and others** ⁽³⁾, which is cited by the authors of **A Comprehensive Guide to Employment Law in Zambia**, where it was guided that the decision to renew a fixed term contract, is solely within the employer's discretion. Further, that an employer is not mandated to renew the contract, unless the contract has made that provision, or it gives criteria in the contract.
- 7.25 The contract that Connie Maiwase Zulu Osborne signed with the Council on 2nd January, 2020 gave guidelines that it was renewable for a further period subject to the discretion and agreement in writing of the employer. Further, her appointment letter stated that her contract was renewable following satisfactory performance, and final approval by the Council.
- 7.26 As to the giving of notice to renew the contract, the Human Resource Operational Manual at pages 1-23 of the NAC's bundle of documents in Clause 4.2 (7) at page 9 provides that

an employee shall give One (1) months' notice in writing, before the contract expires of their wish to continue in employment.

- 7.27 Connie Maiwase Zulu Osborne's contention was that following the expiration of her contract, she entered into an implied contract with the Council on 3rd January 2023. In support of this argument, in her submissions, she relied on the case of **Moses Choonga v ZESCO Recreation Club, Itezhi Tezhi** ⁽⁷⁾, where the Supreme Court held that:

"Since the Respondent allowed the appellant to continue his duties for one month after the contract expired due to effluxion of time on 31st July, 2012, it can be implied and properly so, that the contract of employment was extended for the same period and on the same conditions as those contained in the expired fixed term contract of employment."

- 7.28 Her submission was that the principle of legitimate expectation and promissory estoppel under the law of contract, provides that where an employer has conducted itself in such a way that the employee believes that her contract has been renewed and the employee continues to work after the expiry of her contract, the contract is deemed to have been renewed on the same terms as the previous contract for a fixed duration.

- 7.29 Further reliance was placed on the case of **Heather Maureen Campbell Musariri v Ischool Zambia Limited** ⁽⁹⁾ where the complainant worked for Four (4) days after the expiry of her contract of employment, and it was deemed that the

termination was unfair, and she was awarded Twelve (12) months' salary, as compensatory damages.

7.30 Connie Maiwase Zulu Osborne also relied on the case of ***Jacques Chisha Mwewa v Attorney General*** ⁽⁴⁾.

7.31 She further referred to the definitions of *Gratuity* and *Pro rata* payment of salaries under the ***Revised Terms and Conditions of Service, May 2021*** of the Council, and argued that they are paid to an employee, and that confirmed that she was in an employer-employee relationship with the NAC, which the Council terminated. In the same vein, she referred to her pay slip, payment of terminal benefits and salary schedule, stating that at all material times, she was an employee of the NAC and specifically the Director General, on a fixed term contract.

7.32 In its' submissions, the NAC stated that Connie Maiwase Zulu Osborne was on a fixed term contract which expired by effluxion of time. Therefore, there was no contract to terminate. In support of this argument, reliance was placed on the case of ***Richard Mwinga v PSPF and the Attorney General*** ⁽¹¹⁾ where the Court held that:

“Equally, I have looked at the Complainants contract of employment which is exhibited as ‘DRM2’. Clause 1.1 of the contract of employment reads as follows:

“your contract with the public service pension fund board (hereinafter referred to as the Board) is for a period of three (3) years from 1st March, 2015 to 28th February, 2018...It is, therefore, clear from the contract.”

7.33 In the book, ***Contract Law in Zambia, by Sangwani Patrick Ng'ambi and Chanda Chungu Second Edition, Juta and Company (Pty) Limited, 2021*** the learned authors at page 11 define an *implied contract* as follows:

“An implied contract is a contract where there is no specific agreement between the parties. The agreement is not as a result of any express promise by the parties, but it is merely interpreted or inferred from the acts or conduct of the parties and all surrounding circumstances.”

7.34 In this matter, the evidence reveals that Connie Maiwase Zulu Osborne and the Council did not enter into any express contract of employment on 3rd January, 2023, after her contract expired due to effluxion of time on 2nd January, 2023. That contract made it clear that for her contract to be renewed, she had to give notice, a month before its' expiry, and the Council had to approve the renewal in writing and that it was renewable on satisfactory performance.

7.35 An implied contract, being as one that is inferred from acts or conduct of the parties, as well as the surrounding circumstances, raises the question whether in light of the conduct of the parties and the surrounding circumstances in this matter, it can be inferred that such a contract was actually entered into?

7.36 The record shows that Connie Maiwase Zulu Osborne's contract expired by effluxion of time. She testified that she wrote a notice of intention to renew her contract on 1st

November 2022, and she emailed it, to Professor Victor Mukonka, who was the Chairperson of the Council. The evidence on record further shows that Professor Victor was not in the office, at the time of the notice as he had been sent to work in India. The NAC, through the testimony of Lwisha Shula Chibowa Chibowa, contended that the Board only received the notice of the desire to renew Connie Maiwase Zulu Osborne's contract on 13th January 2023, during the extraordinary meeting that was convened to discuss her contract.

- 7.37 Zoonadi Ngwenya, the person who was appointed to act as Chairperson of the Board on 12th January, 2023, told the Court that he became aware of the application to renew Connie Maiwase Zulu Osborne's contract of employment on 10th January, 2023. It can only be surmised that it was on the basis that he was a member of the Board, as he did not tell the Court how he came to that knowledge.
- 7.38 A perusal of the NAC's bundle of documents at pages 67 and 68, shows that letters that were written by Connie Maiwase Zulu Osborne to Professor Victor Mukonka, who was the Chairperson of the Board, which were referenced '*Notice of renewal of contract of employment –Myself*', which were dated 1st November 2022 and 3rd November 2022 respectively.
- 7.39 It has been seen that in cross-examination, Connie Maiwase Zulu Osborne testified that the letters were stamped as received by her Secretary. It is also worth noting, that Connie Maiwase Zulu Osborne alleged that she emailed the notice for renewal of

her contract to Professor Victor Mukonka, but she did not produce the said email as part of her evidence.

7.40 At page 14 of her bundle of documents, is a letter dated 9th January, 2023, which is referenced 'Appointment as members of the Director General's contract renewal appraisal committee', which Professor Victor Mukonka wrote to Hellen Mwale, Ebby Sichembe and Zoonadi Ngwenya. The said letter was copied to the Director General and Council members. The contents of Professor Victor Mukonka's letter read in part as follows:

"Dr. Connie Osborne, the Director General (DG) for the National HIV/AIDS/STI/TB Council has expressed her wish to have her contract renewed. Her 3-year employment contract with the Council ended on the 2nd January, 2023. Good governance requires that before renewing the DG's contract, she be appraised for the period she served from 3rd January 2020 to 2nd January 2023. From the 3rd January up to the time when your appraisal report is received by the Council, her contract will be deemed as having been extended. It is in this regard, that I am pleased to appoint you to Chair the 3-member DG's Contract Renewal Appraisal Committee...."

7.41 The letter at page 13 also dated 9th January, 2023 and authored by Professor Victor Mukonka was written to Karen Sichinga, the Vice Chairperson of the Council appointing her as Chairperson of the Appraisal Committee that he had constituted to appraise Connie Maiwase Zulu Osborne's

contract of employment. A scrutiny of the letter at page 14, reveals that it does not state the date on which the notice for renewal of Connie Maiwase Zulu Osborne's contract of employment was received. However, it acknowledged receipt of the said notice. On the face of it, this is acknowledgment of receipt, and the instructions that were given in the letter, suggest that the notice, that was given by Connie Maiwase Zulu Osborne for the renewal of her contract was adequate.

- 7.42 The letter by Professor Victor Mukonka stated that Connie Maiwase Zulu Osborne's contract would be deemed as having been extended from 3rd January 2023 until the appraisal report was received by the Council.
- 7.43 As earlier noted, one of the requirements in Clause 5 of Connie Maiwase Zulu Osborne's letter of appointment, was that her contract was renewable after satisfactory performance and final approval by the Board. In his letter of 9th January 2023, Professor Victor Mukonka, stated that good governance required that before renewing the Director General's contract, she should be appraised for the period that she had served from 3rd January 2020 to 2nd January 2023.
- 7.44 Connie Maiwase Zulu Osborne testified that she neither met the Appraisal Committee, nor was she interviewed by it, but she only received letters for its' appointment. She also stated that she did not receive any report from the Appraisal Committee.
- 7.45 In his cross-examination, Zoonadi Ngwenya told the Court that Connie Maiwase Zulu Osborne was neither appraised before the expiration of her contract, nor before the communication of

the non-renewal of her contract. He added that the letter of 9th January 2023, had no effect because Clause 18.1 of the Charter specifies the appointment of committees.

- 7.46 Zoonadi Ngwenya, however, acknowledged that the Revised Terms and Conditions of Service dated May, 2021 at point vi in Chapter Five, at page 84 of Connie Maiwase Zulu Osborne's bundle of documents, state that the Director General's performance must be appraised annually by the Council. He went on to testify that Connie Maiwase Zulu Osborne was appraised either at the end of 2020 or the start of 2021. Zoonadi Ngwenya further stated that the Council was appointed in June 2020 which impacted their appraisal.
- 7.47 A reading of Clause 18 of the Charter for the NAC at page 64 of Connie Maiwase Zulu Osborne's bundle of documents, reveals that it deals with '*Council Committees and relationship with the Council*'. It provides that the Council may constitute committees as it considers necessary. It also states that a committee only has authority to make decisions, delegated to it by the Council, and the committee shall make recommendations to the Council for its' approval or decision.
- 7.48 In this matter, the Committee was constituted by Professor Victor Mukonka in his letter dated 9th January 2023.
- 7.49 With regard to point number vi. on '*Performance appraisal*' in Chapter Five of the Terms and Conditions of service, it clearly stipulates that the Director General's performance must be appraised annually by the Council.

- 7.50 Zoonadi Ngwenya stated that the Council was appointed in June 2020, and that this impacted its' appraisal. He, however, stated that Connie Maiwase Zulu Osborne was appraised at the end of 2020, or the start of 2021. No reasons were given as to why the Council was able to appraise Connie Maiwase Zulu Osborne in 2020 or 2021, but it was unable to appraise her in 2022 and 2023, as required by the Terms and Conditions of Service.
- 7.51 Zoonadi Ngwenya also did not state whether the Board that conducted the appraisal in 2020 or 2021 was the same Board, that considered the renewal of Connie Maiwase Zulu Osborne's expired contract. It was Zoonadi Ngwenya's assertion that the Council's appraisal was impacted, because it was appointed in June 2020. However, this was not substantiated by any reason, as appraisals of Connie Maiwase Zulu Osborne's performance, were done after the Board was constituted.
- 7.52 *Council* is defined in Article 1.3 of the Charter at page 56 of Connie Maiwase Zulu Osborne's bundle of documents as:
- “Means National HIV/AIDS/STI/TB Council”***
- 7.53 Article 7.1 at page 59, of the said bundle of documents states the composition of the Council, which has a membership of Fifteen (15) part-time members, drawn from the Ministry of Community Development and Social Services, the Ministry of Education, the Ministry of Health, the Ministry of Youth Sport and Child Development, the Network of People living with HIV and AIDS, the Zambia Network of Non-Governmental Organisations on HIV and AIDS, Forum for Youth

Organisations, Religious Organisations, the General Nursing Council of Zambia, the Medical Association of Zambia, a representative of the Attorney General, a representative of the media sector, a representative of the traditional healers association, and Two (2) persons from the among members of the public.

7.54 Chapter Five, in item iv of the Terms and Conditions of service at page 84 of Connie Maiwase Zulu Osborne's bundle of documents states that:

"The Appraiser shall be the supervising officer to whom the employee directly reports."

7.55 Then Clause 1.4 of Connie Maiwase Zulu Osborne's contract of employment at page 4 of her bundle of documents, provided that she was accountable to the National HIV/AIDS/STI/TB Council.

7.56 Therefore, the Council is the body, that had power to appraise Connie Maiwase Zulu Osborne's performance. It has been seen that Article 18 of the Charter, at page 64 of Connie Maiwase Zulu Osborne's bundle of documents, authorises the Council to constitute committees which it gives delegated powers. Under Article 18.1.3, a Committee of the Council shall not have authority to make decisions, unless delegated to do so by the Council. It further states that, Committees shall make recommendations to the Council for approval.

7.57 The evidence on record, shows that Professor Victor Mukonka as Chairperson of the Council, constituted the Appraisal Committee, which was supposed to appraise Connie Maiwase

Zulu Osborne's performance, for purposes of renewing her contract of employment. The duties of the Chairperson of the Council, are stated in Article 8 of the Charter, at page 60 of Connie Maiwase Zulu Osborne's bundle of documents as including, but not limited to the following:

1. Providing leadership to the Council and ensure its' effectiveness in all aspects of its' role;
2. Setting Council agenda with the assistance of the Director General;
3. Presiding over Council meetings and directing discussions to effectively use the time available to address the critical issues facing the Council;
4. Ensuring that Council minutes properly reflect Council decisions;
5. Making certain that the Council has necessary information to undertake effective decision making and actions;
6. Facilitating effective contribution of all Council members at Council meetings; and
7. Promoting constructive and respectful relations among Council members and between the Council and management.

7.58 Article 18.1 of the Charter, provides that the Council, may for purposes of performing its' functions constitute committees as it considers necessary and may delegate to any such committee, any of its' functions, as it considers necessary.

Further, that the Council shall agree the terms of reference and procedures of Council Committees.

- 7.59 This being the provision, while Professor Victor Mukonka was at the material time, the Chairperson of the Council, Article 18 of the Charter did not provide that he was the sole person that was vested with authority to constitute a Committee, such as the Appraisal Committee. The decision was collective as a Council. Consequently, his having solely constituted the Committee to appraise Connie Maiwase Zulu Osborne's performance was irregular.
- 7.60 This was more so, as he was reported to be out of the country working in India, at the time, and the Council being the ultimate authority to constitute the Committee, if it so desired, entailed that the other members of the Council had to be involved.
- 7.61 It has been seen that the letter that Professor Victor Mukonka authored on 9th January 2023 also provided that Connie Maiwase Zulu Osborne's contract of employment would be deemed, as extended until such a time when the appraisal report was received by the Board. It is evident that Connie Maiwase Zulu Osborne continued to work as Director General after the expiration of her contract.
- 7.62 As earlier established, Connie Maiwase Zulu Osborne's contract of employment was renewable at the discretion of the Council, and on satisfactory performance, as well as final approval in writing by the Council.

- 7.63 In this matter, the Council did not renew Connie Mwise Zulu Osborne's contract of employment. She was informed by the letter that Professor Victor Mukonka wrote, that an Appraisal Committee had been constituted, and that her contract was deemed to have been extended pending the appraisal report being produced.
- 7.64 The evidence on record reveals that an extraordinary meeting of the Council was held on 13th January 2023, where discussion was had on whether Connie Maiwase Zulu Osborne's contract should be renewed. The minutes of that meeting, which are at pages 80 to 85 of the NAC's bundle of documents, and in particular at page 84, show that the majority of the Board members voted against the renewal of Connie Maiwase Zulu Osborne's contract.
- 7.65 The vote was held after preliminary observations were made, among them, that her contract had expired, and she had not served her notice of renewal on the Council as required.
- 7.66 Connie Maiwase Zulu Osborne claims that she entered into an implied contract with the NAC. The definition of an implied contract, which has already been seen, establishes that it is interpreted or inferred from the acts or conduct of the parties and all the surrounding circumstances.
- 7.67 In this matter, it has been observed that there was no express renewal of Connie Maiawase Zulu Osborne's contract of employment on 3rd January 2023 in writing by the Council, although Professor Victor Mukonka, who was the Chairperson of the Board at the time, made communication on 9th January

2023 to the Board members, that Connie Maiwase Zulu Osborne's desired to renew her contract, and that her contract was extended pending appraisal of her performance.

7.68 What is noteworthy, is that Professor Victor Mukonka's letter is dated 9th January 2023, and Zoonadi Ngwenya only became acting Chairperson of the Council on 12th January 2023. This entails that at the time of Connie Maiwase Zulu Osborne giving notice of intention to renew her contract, Professor Victor Mukonka was still Chairperson of the Council.

7.69 However, the undisputed evidence on record, is that Professor Victor Mukonka was out of the country when Connie Maiwase Zulu Osborne gave notice of her intention to renew her contract. From the letter that Professor Victor Mukonka wrote to the members of the Council for appraisal of Connie Maiwase Zulu Osborne's performance pending renewal of the contract, it entails that he was aware of Connie Maiwase Zulu Osborne's intention to renew her contract.

7.70 Article 9 of that Charter at page 60 of Connie Maiwase Zulu Osborne's bundle of documents, states that in absence of Council Chairperson, the Vice Chairperson assumes the duties of the Chairperson.

7.71 Therefore, as Professor Victor Mukonka was out of the country at the time, when Connie Maiwase Zulu Osborne declared her intention to renew her contract, she should have given the correspondence to the Vice-Chairperson, who was the Acting Chairperson at the time. Article 11 states that in terms of

- Section 8 (1) of the NAC Act, the Council may regulate its' own procedure.
- 7.72 Going by the above, guidance should have been sought from the Vice Chairperson who would then have consulted the Council on appraisal of Connie Maiwase Zulu Osborne for purposes of renewal of her contract. It was not for Professor Victor Mukonka, who was out of jurisdiction, to make decisions solely as Chairperson of the Council, but for the Council to do so collectively.
- 7.73 In the case of ***Moses Choonga v ZESCO Recreation Club, Itezhi Tezhi*** (7) earlier cited, the Supreme Court concluded that since the respondent was allowed to work after the expiry of the fixed term contract it could be implied that the contract of employment was extended for the same period, and on the same conditions, as those contained in the expired fixed term contract of employment.
- 7.74 When cross-examined, Zoonadi Ngwenya testified that Connie Maiwase Zulu Osborne was in office wrongly after expiration of her contract, and that from 3rd January, 2023 to 16th January, 2023, Connie Maiwase Zulu Osborne was working as Director General on the same terms, as the contract had expired.
- 7.75 The evidence shows that after her contract expired on 2nd January, 2023, Connie Maiwase Zulu Osborne was working until 16th January, 2023, after an extraordinary meeting of the Council was called, to among others, consider the renewal of her contract. The undisputed evidence on record is that the vote went against the renewal of her contract.

- 7.76 At page 15 of Connie Maiwase Zulu Osborne's bundle of documents, is the letter to herself, from the Council dated 16th January 2023. That letter was referenced '*Expiration of employment contract*'. A reading of the letter shows that she was informed that her contract of 3rd January 2023 had terminated by expiration. She was directed to hand over her office to the Acting Chairperson, Zoonadi Ngwenya. It further referred to the payment of her dues.
- 7.77 The letter made no express mention of the contract of employment having been extended by virtue of the letter dated 9th January, 2023, that Professor Victor Mukonka wrote. What is notable is that point number 3 of that letter, referred to Clause 4.1 of her expired contract of employment, stating that she would be entitled to a salary on a pro-rata basis for the services that she had rendered for less than One (1) month after the expiry of her contract.
- 7.78 In her submissions, Connie Maiwase Zulu Osborne stated that the definitions of gratuity and provision of pro-rata salaries in the *Revised Terms and Conditions of Service* were evidence of an employer-employee relationship between herself and the NAC. She also submitted that she was also referred to as an employee in her payslip for January 2023. Therefore, her argument was that her contract of employment was terminated without reason by the NAC.
- 7.79 Connie Maiwase Zulu Osborne also placed reliance on **Section 52(1) and (2) of the Employment Code Act No. 3 of 2019** which provides that:

“52. (1) A contract of employment terminates in the manner stated in the contract of employment or in any other manner in which a contract of employment is deemed to terminate under this Act or any other law, except that where an employer terminates the contract, the employer shall give reasons to the employee for the termination of the employee’s contract of employment; and

(2) An employer shall not terminate a contract of employment of an employee without a valid reason for the termination connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking.”

7.80 She submitted that the Council’s resolution not to renew the first contract did not address the already existing second contract. Thus, the contention was that non-renewal was used to wrongfully and unlawfully terminate her second contract.

7.81 In arguing that the law requires a valid reason to be provided for terminating a contract of employment, Connie Maiwase Zulu Osborne relied on the cases of **MP Infrastructure Zambia Limited v Matt Smith and Kenneth Barnes** ⁽¹³⁾, **Sarah Aliza Vekhnik v Casa Dei Bambini Montessori Zambia Limited** ⁽⁸⁾ and **Spectra Oil Zambia Limited v Oliver Chinyama** ⁽¹⁰⁾.

7.82 The NAC on the other hand, submitted that there was no contract to terminate, and that Connie Maiwase Zulu Osborne herself, stated that her contract expired on 2nd January 2023.

Therefore, it was not possible to terminate a contract that was not in existence.

7.83 The evidence on record, shows that the NAC has taken the view that Connie Maiwase Zulu Osborne's contract of employment was not renewed by implication.

7.84 Connie Maiwase Zulu Osborne contended that in her letter, notifying her of expiration of her contract, no reference was made to the implied contract, but the NAC undertook to pay her benefits for the days that she had worked after the expiration of her first contract. Therefore, her implied contract was terminated.

7.85 A plethora of authorities have held that there is the need to provide reasons for termination of an employment contract in line with the law, that has evolved over the years in employment law. In the case ***MP Infrastructure Zambia Limited v Matt Smith and Kenneth Barnes*** ⁽¹³⁾, which was relied on by Connie Maiwase Zulu Osborne in her submissions, the Court of Appeal held that:

"The law is clear in so far as it requires the reasons to be given for termination at the employer's instance to be valid."

7.86 The Court of Appeal further in the case of ***Zambezi Portland Cement Limited v Kelvin Jivo Kalipas*** ⁽¹²⁾ stated that:

"because of the enactment of Section 36(1) (c) and 36(3) of the repealed Employment Act (which is now embodied in Section 52(1) and (2) of the Code, an employer who terminates the Contract even by way of

notice must give a valid reason.” (emphasis our own). The need for a period of notice under Section 53 of the Employment Code is independent of the requirement of a valid reason for termination of employment. The fact that notice is duly given, does not justify the termination of employment if it not based on a valid reason, and conversely the existence of a valid reason for the termination of employment cannot relieve the employer of the obligation to give notice, unless the worker is guilty of serious misconduct.”

7.87 It was also the decision of the Court of Appeal, in the case of *Sarah Aliza Vekhnik v Casa Dei Bambini Montessori Zambia Limited* ⁽⁸⁾ with reference to the now repealed *Employment Act Chapter 268 of the Laws of Zambia* that:

“Section 36 of the Act has placed a requirement on an employer to give reasons for terminating an employee’s employment. Employers are no longer at liberty to invoke a termination clause and give notice without assigning reasons for the termination. What is of critical importance to note however is that the reason or reasons given must be substantiated.”

7.88 The authorities highlighted above, show that the law requires an employer to give reasons for the termination of a contract of employment, which are related to the performance of an employee, and which reasons should be substantiated.

7.89 In this matter, the letter which was given to Connie Maiwase Zulu Osborne, notified her that the contract which commenced on 2nd January, 2020 expired on 2nd January, 2023. That as such, her contract had terminated by expiration of time. The letter did not give any reasons relating to performance by Connie Maiwase Zulu Osborne or that her contract of employment had been extended after 2nd January, 2023 pending appraisal of her performance.

7.90 Connie Maiwase Zulu Osborne claims compensation for the termination of the contract, being Thirty-Six (36) months' salary, all allowances, and gratuity for the unexpired period of her contract. She further claims damages for unlawful termination of employment, resulting in diminution of future job prospects, as well as damages for mental distress, anguish and inconvenience.

7.91 In support of her claims, reliance has been placed on the case of *Barclays Bank Zambia Limited Plc v Weston Luwi and Suzgo Ngulube* ⁽⁵⁾. In that case, the Supreme Court 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."

7.92 Based on the decision in the above case, it was submitted that it is trite law, that the normal measure of damages is departed from, where the circumstances and justice of the case so demand.

7.93 In response, the NAC submitted that Connie Maiwase Zulu Osborne's pleadings do not contain any particular or general statement relating to mental suffering. It relied on the case of *Attorney General v D.G Mpundu* (1), as authority. The submission was further that, no medical proof was produced to show that Connie Maiwase Zulu Osborne suffered any damages as alleged.

- 7.94 It was reiterated that Connie Maiwase Zulu Osborne's contract expired by effluxion of time, which does not stop one from being employed, and that she was not blacklisted from the job market. The submission was also that, there was no evidence of distress and anxiety, with the NAC relying on the case of **Tom Chilambuka v Mercy Touch International** ⁽⁶⁾ where the Supreme Court referred to the case of **Swarp Spinning Mills Plc v Sebastian Chileshe and others** ⁽²⁾, where it was held that unless the dismissal is in a very traumatic fashion, the normal measure of damages, is the salary for the period for which notice should have been given.
- 7.95 In this matter, Akalilwa Masheke, the Administration Manager, testified that Connie Maiwase Zulu Osborne was paid prorated gratuity, prorated salary, leave days and any other duties if any, owed to her as at 16th January, 2023.
- 7.96 Annie Kalumbi Kalesha, the Finance Manager's evidence was that Connie Maiwase Zulu Osborne was paid ZMK 67,019,04 as at 16th January 2023, and her payslip included various dues. She also testified that the payslip shows gratuity in the amount of ZMK 4,929.87, because that was the amount due to Connie Maiwase Zulu Osborne, as at 16th January, 2023. She further stated that Connie Maiwase Zulu Osborne is not entitled to any other payments, as all her dues were paid, according to the Finance Unit.
- 7.97 A perusal of the NAC's bundle of documents at pages 72 to 73b shows that Connie Maiwaase Zulu Osborne was paid her dues

in January 2023. She was paid her gratuity, salary and leave pay.

- 7.98 The case of ***Barclays Bank Zambia Limited Plc v Weston Luwi and Suzgo Ngulube*** ⁽⁵⁾ guided on how to determine the damages that are due for wrongful termination, which is equivalent to the salary for the period of notice. In this matter, Connie Maiwase Zulu Osborne's contract of employment was for Three (3) years, and it was a requirement that One (1) months' notice had to be given for renewal of the contract.
- 7.99 The case also guided that the measure for normal damages can be departed from, where the circumstances and justice demand such departure. An example that was given in that case, was where the termination is inflicted in a traumatic fashion, causing undue distress or mental suffering, and also loss of employment opportunities.
- 7.100 Connie Maiwase Zulu Osborne alleges that she suffered mental anguish as a result of the wrongful termination and that her future job prospects also diminished as a result of the termination of her employment.
- 7.101 The evidence on record shows that Connie Maiwase Zulu Osborne was aware that her first contract of employment was coming to an end. She took the step of writing a notice of intention to renew her contract. That Notice was sent to Professor Victor Mukonka, who was out of jurisdiction at the time.
- 7.102 It has also been seen that Professor Victor Mukonka on 9th January, 2023 established an Appraisal Committee which was

to appraise Connie Maiwase Zulu Osborne's performance for purposes of renewing her contract. That communication came after 2nd January, 2023, when Connie Maiwase Zulu Osborne's contract, had come to an end due to effluxion of time.

7.103 What is important, is that when Connie Maiwase Zulu Osborne wrote to the Chairperson of the Council giving notice of intention to renew her contract on 1st and 3rd November, 2022, which was well over One (1) month before her contract was due to expire on 2nd January, 2023, she was aware that Professor Victor Mukonka who was the Chairperson of the Council was out of jurisdiction.

7.104 By her own admission, the letter was stamped by her office entailing that the Council did not receive the letter. However, it has also been seen that Connie Maiwase Zulu Osborne sent an email to Professor Victor Mukonka advising him of her intention to renew the employment contract, as by the letter dated 9th January, 2023, he appointed an Appraisal Committee to evaluate Connie Maiwase Zulu Osborne's performance, so that her contract could be renewed. He also stated that pending the assessment, her contract would be deemed to have been renewed.

7.105 I have already highlighted that Professor Victor Mukonka could not act solely as the Council, as the Council comprises Fifteen (15) members. As Chairperson of the Council, he had the duty to provide leadership by engaging the Vice Chairperson, Helen Mwale Sichinga who by virtue of the Charter, was the acting Chairperson in his absence, to ensure that the processes were

followed to appraise Connie Maiwase Zulu Osborne before her contract came to an end.

7.106 This was particularly so, as renewal of her contract was subject to satisfactory performance, and approval by the Council in writing, in line with her letter of employment, contract and the terms and conditions of employment, which all constituted the terms of her employment, even though her contract of employment did not expressly state that renewal of her contract was based on her performance. However, her letter of employment did.

7.107 Connie Maiwase Zulu Osborne, as the person alleging, did not adduce any evidence of mala fides on the part of the Council, in not appraising her upon being aware of her intention to renew her contract. She did not state that she delivered the letter of intention to renew her contract to the office of the Vice Chairperson of the Council, as the Chairperson was out of the country, and that office refused to accept it.

7.108 What the evidence shows, is that her own office received the letter and did not forward it to the office of the Vice Chairperson so that the Council could act on it, after liaising with Professor Victor Mukonka.

7.109 Connie Maiwase Zulu Osborne, as the person intending to renew her contract of employment, did not comply with the terms and conditions applicable for the renewal of her contract. The Council had to convene an extraordinary meeting to determine her employment status.

8. CONCLUSION

- 8.1 Professor Victor Mukonka as Chairperson alone, could not renew Connie Maiwase Zulu Osborne's contract of employment. As such, his letter dated 9th January, 2023 was of no effect, as the Council collectively had the authority. It therefore follows that when the Council met on 13th January, 2023 to consider the renewal of Connie Maiwase Zulu Osborne's contract of employment, and the vote went against the renewal, the non-renewal could not constitute unlawful and wrongful termination of employment.
- 8.2 There was no requirement to give a reason for the non-renewal of the contract, it having expired due to effluxion of time, even though Connie Maiwase Zulu Osborne had worked as Director General a few days after the contract expired. The facts surrounding this matter do not reveal that by the conduct of the parties, it could be implied that a second contract of employment had been entered into between Connie Maiwase Zulu Osborne and the NAC, as there was no authority granted to her to work.
- 8.3 Therefore, the payment made to her for the services that she rendered as Director General of the NAC after her contract of employment had come to an end, due to effluxion of time; was gratis.
- 8.4 Consequently, Connie Maiwase Zulu Osborne is not entitled to damages for wrongful and unlawful termination, damages for mental distress, anguish and inconvenience, as well as damages for diminution of future job prospects.

8.5 The claims all fail and they are dismissed. This being an employment matter where Connie Maiwase Zulu Osborne's contract of employment was not renewed, I Order that each party shall bear their own costs of the proceedings. Leave to appeal is granted.

DATED AT LUSAKA THE 15th DAY OF APRIL, 2024

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**

