

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

**2024/HP/0180**

**BETWEEN:**

**NANCY CHOLA CHILESHE & 27 others**

**AND**

**ZESCO LIMITED**



**PLAINTIFF**

**DEFENDANT**

**Before the Honourable Lady Justice S. Chocho, in Chambers.**

*For the Plaintiffs : Mr Z. M. Mubiana Messrs Nsapato & Company Advocates*

*For the Defendant: Mr. K Mweemba (senior Manager Litigation)*

*Mrs. J. Kunda (Principal Legal Officer)*

*Mr. W. Sakutadika (Legal Officer)*

*Mr. G. Haakainsi (Messrs LM Chambers)*

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## **R U L I N G**

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**Cases referred to:**

- i) Zesco Limited V Joseph Ndovi And Levy Mwansa CAZ/003/ 2024*
- ii) Antonio Ventriglia V Finsbury Investment Ltd SCZ No. 2/2019*
- iii) Victoria Chileshe Sakala V Spectra Oil Corporation Ltd SCZ No. 2/2018*
- iv) Dickson Ndlovu & 4 Others V Road Development Agency  
2022/CCZ/005*
- v) PC Cheelo and 9 Others V Zambia Consolidated Copper Mines SCZ  
No. 13 of 1999*
- vi) Harold S Ndulwa And Others V Zambia Sugar Plc CAZ Appeal No.  
300/2023*

- vii) ***Cavmont Bank Ltd V John Mwansa Kalinde & 40 Others  
Caz/309/2021 (Delivered In 2023)***
- viii) ***GDC Logistics Z Limited V Kanyata and Others SCZ Judgment No. 17  
of 2019***
- ix) ***Mubita Mwananuka V Armaguard Security Ltd Caz No. 201/2021***
- x) ***PC Cheelo and Others V Zambia Consolidated Copper Mines Ltd SCZ  
No. 27 Of 1999***

**Legislation referred to:**

- i) ***Order 14A of the Rules of the Supreme Court (White Book)***
- ii) ***Section 52 (6) of the Employment Code Act***

1. **INTRODUCTION**

- 1.1. This Ruling is in respect of the application under *Order 14A of the Rules of the Supreme Court* (White Book) in which the Defendant seeks an order for determination of issues on point of law ie to dismiss the action.
- 1.2. The questions posed requiring the Court's determination are as follows: -
  - 1.2.1. Whether or not the Plaintiffs action amounts to multiplicity and an abuse of Court process.
  - 1.2.2. If the answer to the first question is in the affirmative whether this Court has jurisdiction to hear and determine this action.
  - 1.2.3. Whether or not this Court has jurisdiction to hear and determine a claim for wrongful and unfair termination of employment premised on discrimination; and
  - 1.2.4. Whether or not this Court has jurisdiction to determine the plaintiff's claims for wrongful unfair unlawful termination of employment in light of *Section 52 (6) of the Employment Court Act*.

2. **BACK GROUND**

- 2.1. The background to this matter as per pleadings and affidavit evidence on record is that the 27 Plaintiffs are former employees of the Defendant company whose contracts were terminated on various dates between 2021 – 2023.
- 2.2. The Plaintiffs sued and discontinued action against the Defendant company in the Industrial Relations Court and now sue for among other reliefs breach of contract and unfair, wrongful and unlawful termination of employment contracts.

3. **AFFIDAVIT EVIDENCE**

- 3.1. The Defendant avers in it's affidavit dated 20<sup>th</sup> February 2024 that the Plaintiffs were separated from employment on various dates between 15<sup>th</sup> December 2021 to 30<sup>th</sup> March 2022 on the basis that the Defendant company was undergoing reorganization.
- 3.2. The Defendant further avers that some of the Plaintiffs commenced actions at the Industrial Relations Court Division between 25<sup>th</sup> July 2023 to 20 September 2023. The Defendant proceeded to raise preliminary issues in these matters.
- 3.3. The Defendant further avers that the Plaintiffs discontinued the matters at the Industrial Relations Court and recommenced under High Court, General List.
- 3.4. The Defendant avers that there are two matters over the same facts, in this Court and at Court of Appeal.
- 3.5. The Defendant further avers that this Court lacks jurisdiction and mandate to hear and determine industrial relations action or claim based on discrimination.

- 3.6. The Defendant's application is opposed by the Plaintiffs who filed their affidavit in opposition on 7<sup>th</sup> May 2024.
- 3.7. The Plaintiffs aver that they discontinued all the matters in Industrial Relations Court and abandoned their intention of consolidating their claims and actions at the Industrial Relations Court.
- 3.8. The Plaintiffs further aver that by reason of paragraph 3.7 above there is only one course of action before the Courts.
- 3.9. The Plaintiffs aver that the action is not statute barred and that this Court has jurisdiction to hear and determine the Plaintiffs' action.

4. **THE LAW/SUBMISSIONS**

- 4.1. I have had occasion to review and consider an application having heard counsel for the Plaintiffs and applicant, read the parties in affidavit, skeleton arguments and list of authorities filed herein.
- 4.2. This Court has jurisdiction to determine a matter on point of ***law under Order 14 of the Rules of the Supreme Court (White Book) 1999 edition.***
- 4.3. I shall not reproduce the Parties skeleton arguments. Suffice it to state that I have read and considered them.
- 4.4. The Plaintiffs filed a further list of authorities citing the case of **ZESCO LIMITED V JOSEPH NDOVI AND LEVY MWANSA CAZ/003/ 2024<sup>1</sup>.**
- 4.5. The Defendant submits that this Court lacks the jurisdiction to hear and determine the Plaintiffs' claim. The Defendant relies on various cases including:-

**ANTONIO VENTRIGLIA V FINSBURY INVESTMENT LTD SCZ NO. 2/2019<sup>2</sup>, VICTORIA CHILESHE SAKALA V SPECTRA OIL CORPORATION LTD SCZ NO. 2/ 2018<sup>3</sup>. DICKSON NDLOVU & 4 OTHERS V ROAD DEVELOPMENT AGENCY 2022/CCZ/005<sup>4</sup>.**

“In the subsequent Supreme Court case of **Cosmas Mukuka (sued in his capacity as Secretary General of the Zambia Congress of Trade Unions) V. Jason Mwanza (suing in his capacity as General Secretary of the University of Zambia Lecturers and Researchers Union)**, Supreme Court confirmed that:-

**“Where a matter is purely an industrial relation one, proceedings should be filed in the registry of the Industrial Relations Court; and not in the principle registry of the High Court, which is reserved for matters that do not fall under these specialized courts.”**

The Defendant also relies on Section 52 of the Employment Code Act: -

**(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;**

**(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.**

**(3) An employer shall not terminate the contract of employment of an employee for reasons related to an employee's conduct or performance, before the employee is accorded an opportunity to be heard.**

**(4) An employer shall not terminate a contract of employment of an employee based on reasons relating to-**

*(a) Union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;*

*(b) seeking office as, acting or having acted in the capacity of, an employee's representative;*

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

*(d) a discriminatory ground under section 5;*

*(e) family responsibilities relating to taking care of a member of an employee's immediate family;*

*(f) absence from work during maternity or paternity leave; or*

*(g) temporary absence from work during sick leave or injury.*

*(6) An employee who has reasonable cause to believe that the employee's services have been terminated contrary to this section may report the matter to an authorized officer under section 121 or, within thirty days of the termination lay a complaint before the court."*

*(Emphasis ours)*

4.6. Plaintiff in opposition base their case on the authority in among others: -

**PC CHEELO AND 9 OTHERS V ZAMBIA CONSOLIDATED COPPER MINES SCZ NO. 13 OF 1999<sup>5</sup>. HAROLD S NDULWA AND OTHERS V ZAMBIA SUGAR PLC CAZ APPEAL NO. 300/2023<sup>6</sup>.**

## 5. COURT'S ANALYSIS AND DECISION

5.1. Having regard to the questions raised by the Defendant, in its notice to raise preliminary issue I opine that the same can be consolidated and considered as two main questions.

- 5.1.1. Whether or not this Court has jurisdiction over the Plaintiffs claim/ actions. (based on time within which to file claim against an employer under Section 52 (6) of the Employment Code Act.
- 5.1.2. Whether or not the current action amounts to a multiplicity of actions.
- 5.2. The two questions are to be dealt with swiftly considering the legal authority in the holding of the Court of Appeal and Supreme Court of Zambia whose judgements are binding on this Court.
- 5.3. The ruling of the Court of Appeal in the matter between Zesco Ltd V Joseph Ndovi CAZ /003/2024, is instructive.
- 5.4. The CAZ in it's ruling stated: -

***“... I am of the considered view that the notice of discontinuance filed by the Respondent, who were the Complainants in the Court below, was valid and took effect from the date it was endorsed in the Registry. Any proceedings that may ensue from the discontinuance will be mere academic exercise in futility...”***

***“In view of the above, all other ground and arguments become otiose as the matter was properly discontinued.”***

- 5.5. It follows then that there is/was no multiplicity of actions as the action at Industrial Relational Court was/were properly discontinued.
- 5.6. For the second question on this Court's jurisdiction, reference is made to the cases of **CAVMONT BANK LTD V JOHN MWANSA KALINDE & 40 OTHERS CAZ/309/2021 (delivered in 2023)**<sup>7</sup>. **GDC LOGISTICS Z LIMITED V KANYATA and OTHERS SCZ JUDGMENT NO. 17 OF 2019**<sup>8</sup>. **MUBITA MWANANUKA V ARMAGUARD SECURITY LTD CAZ NO. 201/2021**<sup>9</sup>.

***“Even though the Industrial Relations Court is now a division of the High Court, it is still guided by it's own rules. The jurisdiction of***

***Industrial Relations Court is limited to settling of labour disputes falling under the Act. It is an alternative forum to the High Court only in cases of labour disputes.”***

***“That The effect of the said holding is that those employment related matters that were previously filed in the High Court before the divisions were created can be competently filed in the General List as was done before.”***

In **PC CHEELO and OTHERS V ZAMBIA CONSOLIDATED COPPER MINES LTD SCZ No. 27 OF 1999<sup>10</sup>**, it was held: -

***“The term industrial relations matters does not have such wide interpretation as to encompass causes of breach of contract or monetary claims for unpaid salaries or redundancy benefits...”***

- 5.7. In casu, the Plaintiffs claims include but not limited to damages for breach of contract payment or balances on gratuity.
- 5.8. I shall now address my mind to whether or not the Plaintiff action should be dismissed as it offends the provisions of Section 52 (6) of the Employment Code Act.

It is clear that for all matters/actions arising out of or based on Section (1), (2), (3), (4), and (5) a party may report the matter to an authorized officer under section 121 or, within 30 days of the termination lay a complaint before the Court.

The Defendant correctly submits that ‘Court’ in the Employment Code Act definition includes the High Court.

- 5.9. The Plaintiffs submit that, termination of their contracts was on various dates between 2021 and 2023. Clearly the 30 days as provided by Section 52(6) has since past.

5.10. In light of paragraph 5.7 – 5.10 above I am of the firm opinion that all of the claims by the Plaintiffs as offends section 52(6) should and must be expunged, they are incompetently before me. However, the Plaintiffs do in their Originating Process show cause of action/claims that do not offend Section 52 and these are competently before me as, for instance the claims at (vi) through to (xv) can be heard and determined, by this Court.

6. **CONCLUSION**

- 6.1. For the foregoing reasons, I find that the preliminary issues raised by the Defendant succeeds in part.
- 6.2. For the avoidance of doubt I find that Plaintiff's claims as appears at (ii), (iii), (iv) and part of (v) on the Write of Summons **BE** and **IS** hereby expunged from the record.
- 6.3. I further order that leave **BE** and **IS** hereby granted to the Parties to amend their originating process (Writ and Statement of Claim, Defence).
- 6.4. Each party to bear it's own costs.
- 6.5. Matter stands adjourned to 28<sup>th</sup> August 15:00 hours for scheduling conference.

**Delivered at Lusaka on 24<sup>th</sup> July, 2024.**



**S. CHOCHO  
HIGH COURT JUDGE**

