

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

2020/HP/A010

BETWEEN:

**AFGRI CORPORATION
AND**

APPELLANT

PETER CHANDA

1ST RESPONDENT

TITUS MULENGA

2ND RESPONDENT

ADAMSON SAKALA

3RD RESPONDENT



BEFORE THE HONOURABLE MR. JUSTICE S. V. SILOKA, IN OPEN COURT, ON THE 20TH DAY OF MARCH, 2025

For the Appellant: Mr. A. Akapelwa – Messrs. Chibesa Kunda & Co.

For the 1st Respondent: N/A

For the 2nd Respondent: N/A

For the 3rd Respondent: N/A

J U D G M E N T

CASES REFERRED

1. Colgate Palmolive Zambia Inc Vs Chuka and Others (Appeal No. 181 of 2005) SCZ;
2. Jinikson Vs Oceana Gold (NZ) Limited (ECWA Civ 98) (2009);
3. Printing and Numerical Registering Company Vs Simpson (LR 19 E4 462;
4. Attorney General Vs David Lubula and 49 Others (SCZ Appeal No. 06/2014);
5. Barclays Bank Zambia Plc Vs Zambia Union of Financial Institutions and Allied Worker (2007) ZR 106; and
6. Mike Musonda Kabwe Vs BP Zambia (1997) SCJ page 52.

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *Section 17 of the Employment Act, Chapter 268 of the Laws of Zambia; and*
2. *Labour Law in Zambia; An Introduction, 2nd Edition.*

1.0 INTRODUCTION

- 1.1 This Matter came before me by way of Appeal from the Subordinate Court sitting at Lusaka.

2.0 BACKGROUND

- 2.1 The brief background to this matter is that the Respondents herein were employed by Afgri Corporation as general workers in 2012.
- 2.2 In February 2018, the Appellants herein informed them that they had decided to reduce their salaries from K1,170.00 to K700.00 and gave them an option of either to continue or stop work if not happy with the reduction.
- 2.3 The Respondents opted not to continue and demanded to be paid their dues. The dues were incorrectly paid and as such the matter proceeded to the Subordinate Court.

3.0 MATTER BEFORE THE SUBORDINATE COURT

- 3.1 In the Court below, the Court found that the Plaintiffs were employed by the Defendants and that they were declared redundant when their salaries were reduced from K1,170.00 to

K700.00. The Court also found that the Plaintiffs were also to be paid their accrued leave days.

- 3.2 Dissatisfied with the decisions of the Subordinate Court, the Defendants (now Appellants) launched two (2) Grounds of Appeal couched as follows:

Ground 1

The Court erred in law and in fact when she found that the Defendants' representative did not produce any contracts to show that the Plaintiffs were employed on a monthly basis and when she subsequently found that the Plaintiffs were employed on permanent basis contrary to the overwhelming evidence on record to the effect that the Plaintiffs were employed on monthly contracts and that the said contracts were not continuous.

Ground 2

The Court below erred in law and in fact when she found that the resignation by the three (3) Plaintiffs amounted to redundancy and when she proceeded to award the Plaintiffs' payment of leave days at 2 days for each month served and two months' salary for each year served contrary to the evidence led by the Defendant that there were months when

the Plaintiffs did not carry out any work for the Defendants, as such, the said award amounts to unjust enrichment on the part of the Plaintiffs.

4.0 APPEAL TO THIS COURT AND THE ARGUMENTS BY THE PARTIES

4.1 The Appellant has now appealed to the High Court on two grounds as follows:

1) Ground One:

The Court erred in law and fact when it held that the Plaintiffs were employed on a permanent basis.

4.2 It was Counsel's submission that the Court below erred when she did not take cognizance of the evidence put before Court in making her decision and therefore erred on a factual basis in stating that the Appellants herein did not produce any contracts to prove that the Respondents were employed on a monthly basis.

4.3 It was Counsel's submission that the Appellants' List and Bundle of Documents filed on 1st April, 2019 produced records of oral contracts that show that the Respondents were employed on a monthly basis which records are sufficient proof to show that the Respondents were employed on a monthly basis.

4.4 According to Counsel, oral contracts were submitted before Court and that the said contracts were made pursuant to the **Employment Act, Chapter 268** of the **Laws of Zambia (The Employment Act)**.

4.5 The **Employment Act in Section 17** provides that:

“All contracts of service, other than contracts which are required by this Act or any other law to be made in writing, may be made orally.

...in the absence of any agreement to the contrary, an oral contract shall be deemed to be a contract for the period by reference to which wages are calculated provided that where wages are calculated by reference to any period of less than a day, then, in the absence of any agreement to the contrary, any such oral contract shall be deemed to be a daily contract”.

4.6 It was Counsel’s submission that the above provision establishes that contracts of employment under the Employment Act could be made orally and therefore the Appellant was under no obligation to produce written contracts that established that the Respondents were contracted on a monthly basis.

4.7 Additionally, an oral contract is deemed to be a contract for the period by reference to which wages are calculated unless there is an agreement to the contrary, therefore, where wages are

calculated monthly, the contract is to be deemed a monthly contract.

4.8 It was Counsel's submission that the Appellant acted in accordance with the **Employment Act** which provides in **Section 24** as follows:

"Every employer shall prepare and maintain at his expense, or cause to be prepared and maintained, a record of contract for every employee employed by him under an oral contract of service".

"(2) A record of contract shall be in the prescribed form and shall contain the following particulars:

- a) The name and sex of the employee and his nationality;*
- b) The name, address and occupation of the employer.;*
- c) The date of the employee's engagement and the capacity in which he is to be employed;*
- d) The type of contract;*
- e) The place of engagement;*
- f) The rate of wages and any additional payments in kind; and*
- g) The intervals of payment.*

4.9 It was Counsel's submission that the Court below misdirected itself by holding that the contracts were permanent despite the clear evidence provided by the Appellants to the contrary. It is

trite law that employment is permanent in nature if it exceeds six months. Counsel referred the Court to **Labour Law in Zambia: An Introduction, 2nd Edition (page?)** where it reads:

“...employment is permanent in nature if it exceeds six months, is not regarded as casual work and is commenced and regulated under a written contract of service.

Permanent employment is also employment that is necessary for the continued sustainable operation of the undertaking or that is core to the objective of the undertaking.

4.10 It was also submitted by the Appellant that the nature of the contracts between the Appellant and the Respondents clearly establish that the contracts did not create permanent employment. Further that the Trial Court erred when it determined that the Respondents were employed on a permanent basis and secondly when she held that the Appellant had not put forth any evidence to establish that the Respondents were employed on a monthly basis.

4.11 It was Counsel’s submission that the consequence of the decision of the Court below is that any contract despite being for a fixed period, if renewed beyond a period of 6 months, however sporadic such contract may be deemed a permanent contract.

Ground 2

- ii. The Court erred in law and in fact when it rendered the resignations by the Respondents as redundancies and awarded them accrued benefits.**

4.12 It was Counsel's submission that the Court below erred when she determined that the voluntary resignations of the Respondents amounted to redundancies.

4.13 It was also Counsel's submission that the Trial Court erred by finding that the Appellants herein owed the Respondents accrued benefits despite evidence being provided that the Respondents were paid their dues following their resignations.

4.14 It was Counsel's submission that the Respondent's employment was terminated by the Appellant at the beginning of 2018 and the Respondents were all paid one month's pay in lieu of notice.

4.15 It was Counsel's further submission that the record will show that the Appellant produced evidence before the lower Court which establishes that the Respondents were paid all their dues and duly acknowledged receipt of the same as per page 26 to 52 of the Record of Appeal. Additionally, the Respondents indicated that they would have no further claims against the Appellants.

5.0 THE HEARING

- 5.1 The Hearing of the Appeal took place on the 13th of June, 2024. During the Hearing, Counsel submitted that he would not augment the Appeal by way of viva voce submissions and that he would rely on the Heads of Argument filed entirely.

6.0 ANALYSIS AND DECISION OF THE COURT

- 6.1 I have had occasion to consider the Record of Appeal, Heads of Argument and the Judgment appealed against. In making my determination of this Appeal, the two grounds will be considered individually because they are not related.

Ground one:

- i. The Court erred in law and fact when it held that the Plaintiffs were employed on a permanent basis.**

- 6.2 It was Counsel's argument that the Appellant herein entered into an oral monthly contract with the Respondents.
- 6.3 It was Counsel's further argument that an oral contract is deemed to be a contract for the period of reference to which wages are calculated unless there is an agreement to the contrary.
- 6.4 Counsel further stretched his argument by submitting that, where wages are calculated monthly, the contract is to be deemed a monthly contract.

6.5 There was no argument in opposition.

6.6 I have carefully considered the arguments of Counsel for the Appellant.

6.7 For this issue to be resolved carefully, I first of all need to consider who a permanent employee is.

6.8 According to the learned **Author of Labour Law in Zambia; An Introduction, 2nd Edition**. The Author states:

“...employment is permanent in nature if it exceeds six months, is not regarded as casual work and is commenced and regulated under a written contract of service”. (Emphasis mine)

6.9 **Section 2** of the **Employment Act No. 15 of 2015** defines permanent as:

“(a) Employment that exceeds six months, is not casual work and is under a written contract...”.

6.10 From a *prima facie* analysis of the provision of the law, it seems that for an employee to be considered permanent, the term of employment must exceed six months and must be under a written contract.

6.11 If the position was to be that way, employees who entered into oral contracts that exceed six months but oral in nature would be left in the cold.

6.12 Therefore, to protect such employees who enter into oral contracts that exceed six months, the Supreme Court has guided that Courts must in addition to the six months considered the intention of the Parties when they entered into the said contract (see **Colgate Palmolive Zambia Inc Vs Chuka and Others**⁽¹⁾).

6.13 In my understanding of the guidance of the Supreme Court, a verbal contract of employment that exceeds 6 months should not fail on the mere fact that it was not in writing but that Courts must decipher the intention of the Parties when entering into the contract.

6.14 This was the guidance laid down in **Jinikson Vs Oceana Gold (NZ) Limited**⁽²⁾ cited for persuasive purposes only where it was stated:

“In considering such matters, the most important inquiry to make is into the real nature of the relationship and it is significant to note that this may change overtime. It may begin as casual but later become permanent, hence the need to determine what the nature of the relationship was”.

6.15 When the intention of the Parties has been deciphered, Courts are duty bound to give effect to that intention of the Parties as guided

in **Printing and Numerical Registering Company Vs Simpson**⁽³⁾

wherein it was stated:

“If there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty in contracting and that their contract when entered into freely and voluntarily shall be enforced by Courts of Justice”.

6.16 Since it has been established that intention is crucial, the question that has to be determined in *casu* is, what was the intention of the Parties when they entered into this contract?

6.17 I must humbly admit that intention however, is seldom if ever capable of positive proof. It can only be inferred from the acts of the Parties to the contract.

6.17 In the case of **Attorney General Vs David Lubulwa and 49 Others**⁽⁴⁾, a case in which the employees who had worked from 1999 to 2023 contended that since they had worked continuously for a period of six months they were permanent employees. The Supreme Court was of the view that from the acts of the Parties, it seemed that the Parties had intentions of making the relationship permanent but that the relationship only lasted less

than 1 – 3 months as such the contract of employment was not permanent.

6.17 In *casu*, the Respondents worked for a long period of time and the inference that can be drawn from the acts of the Parties is that the Parties intended to make the relationship permanent.

6.18 I have arrived at this conclusion because of the extended relationship between the Parties. This relationship as opposed to monthly payments is a clear indication that the Parties intended to make this relationship permanent. This intention is solidified by the continuous employment of two of the Respondents for 6 months, from 2012 to 2018 without any renewal. Having established that the Parties intended to make these contracts permanent, it is immaterial that the Respondents worked for the Appellants at certain times for intervals only. For the reasons aforesaid, Ground 1 fails and the same is dismissed for lack of merit.

ii. Whether the Court erred in law and fact when it rendered the resignations by the Respondents as redundancies and awarded them accrued benefits.

6.18 In this Ground of Appeal, Counsel for the Appellant argued that the Trial Court erred when it held that the Respondents herein

were declared redundant when infact the Respondents voluntarily resigned.

6.19 I have considered the arguments of Counsel for the Appellant.

6.18 In determining this ground, it is important to state from the outset that although the Respondents were employed on oral contracts, the law does protect them against unwarranted termination of employment. This was the guidance espoused in **Barclays Bank Zambia Plc Vs Zambia Union of Financial Institutions and Allied Worker**⁽⁵⁾ where it was held that:

“In enacting Section 26B Parliament intended to safe guard the interest of employees who were employed on oral contracts of service by which nature would have any provision for termination of employment by way of redundancy”.

6.19 Therefore, having determined that though the Respondents herein signed oral contracts but that they were protected by the law, was the Trial Court on firm ground when it held that the Respondents herein were declared redundant?

6.20 In answering the above question, guidance will be sought from the case of **Mike Musonda Kabwe Vs BP Zambia**⁽⁶⁾ where it was held that where a unilateral variation of the contract occurs, the employee is entitled to a redundancy or early retirement.

6.21 It is not in dispute that the Parties did not agree to the variation and reduction of the Respondent's salary. This in essence entails that the contract of employment terminated on the date of the variation of the essential terms of the contract. By unilaterally varying the conditions of the Respondents, the Appellant herein declared the Respondents redundant as per the Mike Musonda case cited above.

6.22 With the above finding in 6.21, I am in agreement with the findings of the lower Court. Therefore, the 2nd Ground of Appeal fails and the same is dismissed for lack of merit.

7.0 CONCLUSION

7.1 The net result of my finding, is that all the two Grounds of Appeal having been found to be unmeritorious, I uphold the Judgment of the Court below and dismiss the Appeal with costs. The same are to be taxed in default of agreement.

**DELIVERED AT LUSAKA IN CHAMBERS THIS 20TH DAY OF
MARCH, 2025.**


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S. V. SILOKA
HIGH COURT JUDGE

