

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

2023/HPIR/0213

BETWEEN:

CHARLES MUSONDA

COMPLAINANT

AND



MNS GLOBAL LIMITED

RESPONDENT

Coram: Chigali Mikalile, J this 27th day of March, 2024

For the Complainant: In person

For the Respondent: No appearance

JUDGMENT

Legislation referred to

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

Case referred to:

1. Jackson Mwape & 61 Others v. ZCCM Investment Holdings Limited Plc,
SCZ Judgment No. 23/2014

Introduction

1. The complainant commenced this action on 28th February, 2023 for the following reliefs:
 - (i) Salary arrears
 - (ii) Leave days
 - (iii) Risk allowance
 - (iv) Any other benefit the Court may order

Complainant's affidavit

2. The complainant deposed that he was verbally engaged by the respondent on 21st January, 2015 as a Site Supervisor. His basic salary was K 2,500.00. He worked for 7 years and resigned on 1st January, 2023 because he was not getting his salary for a period of 9 months. According to the complainant, he used to risk his life for the entire duration of his employment as he was living in the Kafue National Park, Mporokoso bush, Sinda bush, Siavonga bush, Mumbwa bush and Namwala bush hence his claim for risk allowance.

Respondent's Answer

3. The respondent did not file an Answer as per the rules provided (Rule 11 of the Industrial Relations Court Rules, Cap 269).

Trial course

4. The matter came up for hearing on 26th March, 2024 and only the complainant was in attendance. I proceeded in the respondent's

absence upon being satisfied that the respondent was duly served with the notice of hearing.

5. The complainant gave evidence on his own behalf and called no other witness.
6. The complainant testified that from the time of his employment, he worked well and was receiving his emoluments regularly. However, he last received his salary in April, 2022. Thus, at the time of his resignation, he was owed salary arrears from May to December, 2022.
7. It was his further evidence that he never went on leave during the whole employment duration and was not paid leave benefits either. Furthermore, he was working in areas such as Kafue National Park, Senga Hills, Kundabila and many other sites in the bush and the respondent had made an undertaking to pay him a risk allowance. The promise was not fulfilled. According to the complainant, he should have been getting K 500.00 in addition to his salary. It was, however, his evidence that he had no proof of this undertaking by the respondent.

Decision

8. I have carefully considered the evidence on record. As stated earlier, the respondent did not file an Answer despite being aware of these proceedings against it. As such, I have no qualms accepting that the complainant was indeed employed by the respondent from 21st January, 2015 to 1st January, 2023. He

was employed on a verbal contract as Site Supervisor and his last salary was K 2,500.00. The complainant ended the employment relationship by resignation due to non-payment of salaries.

9. The complainant's contention is that upon termination of the employment relationship, he was not paid what was due to him in terms of salary arrears, leave pay and risk allowance. It is trite that he who alleges must prove and failure of a defence does not mean that the claimant automatically succeeds on his claims.

10. I will now address each claim.

Salary arrears

11. The complainant's unchallenged evidence is that he was paid his salary throughout his employment tenure except the period May, 2022 to December, 2022.

12. There being no evidence to the contrary, I enter judgment in favour of the complainant in salary arrears for the period of 8 months in the sum of K 20,000.00 (K 2,500 x 8 months).

Leave pay

13. The complainant alleges that he never went on leave for the duration of his employment and never received leave commutation. This evidence remained unchallenged.

14. In the case of **Jackson Mwape & 61 Others v. ZCCM Investment Holdings Limited**⁽¹⁾, the Supreme Court stated that

leave days in this jurisdiction are an accrued right that cannot be taken away.

15. Further, section 36 of the Employment Code provides for leave days as follows:

An employee, other than a temporary or casual employee, who remains in continuous employment with the same employer for a period of twelve consecutive months shall be granted during each subsequent period of twelve months while the employee remains in continuous employment, annual leave on full pay at the rate of at least two days per month.

16. There being no record of oral contract to refer to, I find that the complainant was entitled to 2 working days per each completed month of service. Thus, in line with the law, the complainant accumulated 190 days from February, 2015 to December, 2022.

17. According to the 5th Schedule of the Employment Code, leave is calculated using the formula: full pay multiplied by the number of accrued leave days divided by 26 day. As such, the complainant is entitled to the sum of K 18,269.23 as leave benefits (K 2,500 x 190 days /26 days).

Risk allowance

18. The complainant claims that he was entitled to this allowance by virtue of working on sites in the bush. I note that as with the other claims, there is no evidence challenging this claim. However, I am of the view that the complainant needed to do more to prove this claim. As established, he was employed on a

verbal contract and there is no record of oral contract of employment before court. This means there is no documentary evidence to support his claim and neither has he shown any law that entitles him to this allowance. Further, he has not shown when this allowance took effect, if at all, for the court to be able to determine the amount due.

19. Clearly, the evidence on this risk allowance claim is too vague and it would be unsatisfactory to grant it. The claim is accordingly dismissed for want of evidence.

Costs

20. As stated earlier in the judgment, the respondent neither filed an Answer nor appeared at the hearing despite being aware of the hearing date. This, in my view, is unreasonable conduct envisaged by Rule 44 of the Industrial Relations Court Rules. Thus, it is only proper that the respondent be condemned in costs for this action.

Conclusion and Orders

21. All in all, the complainant has proved on a balance of probabilities that he is entitled to salary arrears for 8 months, from May to December, 2022, and leave benefits for 190 days. The claim for risk allowance is dismissed for want of merit. I, therefore make the following orders for the avoidance of doubt:

- (i) The respondent shall pay the complainant salary arrears in the sum of **K 20,000.00**.
- (ii) The respondent shall pay the complainant leave benefits in the sum of **K 18,269.23**.
- (iii) The total amount due shall attract interest at short-term bank deposit rate from the date of complaint to the date of judgment and thereafter, at the current bank lending rate as determined by the Bank of Zambia until full settlement.
- (iv) The complainant is awarded costs to be agreed or taxed in default of agreement.

22. Parties are informed of their right to appeal.

Delivered at Lusaka this 27th day of March, 2024

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M.C Mikalile

HIGH COURT JUDGE