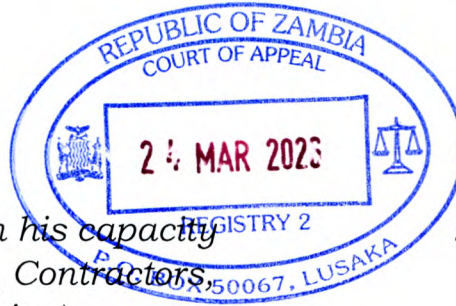


IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

APPEAL NO. 226/2023

BETWEEN:

LEVI CHIMFWEMBE *(Sued in his capacity*
as General Secretary for Mine, Contractors
Factory and Allied Workers Union)



APPELLANT

AND

SAMPA LEONARD MUSONDA

RESPONDENT

CORAM: CHASHI, NGULUBE AND BANDA-BOBO, JJA.
On 18th February and 24th March, 2026.

For the Appellant: Mr E. Chibeluka, Messrs Chibeluka and Partners

For the Respondent: In Person

J U D G M E N T

NGULUBE, JA delivered the Judgment of the Court.

Cases referred to:

1. *Wilson Masauso Zulu vs Avondale Housing Project Limited (1982)*
ZR 172
2. *Holmes Limited vs Buildwell Construction Company Limited (1973)*
ZR 97

3. *Rosemary Ngorima vs Zambia Consolidated Copper Mines, SCZ Appeal Number 149 of 2011*
4. *Zesco Limited vs Linus Chanda, CAZ Appeal Number 024 of 2016*

Legislation referred to:

1. *The Industrial and Labour Relations Act, Cap 260 of the Laws of Zambia*
2. *The Employment Code Act Number 3 of 2019*

1.0 INTRODUCTION

- 1.1 This is an appeal against the Judgment of Honourable Mr. Justice D.C. Mumba of the High Court, Industrial Relations Division that was delivered on 24 February, 2023. By that Judgment, the court found that the respondent had, on a balance of probabilities proved that he was owed K278,766.00 for the payment of gratuity, K80,605.76 for the payment of leave benefits, refund of NAPSA contributions amounting to K15,000.00 and payment of salary arrears in the sum of K10,980.00.
- 1.2 The court found that the total sum due to the respondent was K385,345.76 with interest at short term commercial deposit rate as determined by the Bank of Zambia.

2.0 BACKGROUND

- 2.1 The respondent was employed by the appellant on 11 December, 2014, as Director of Administration and Human Resources. Some of the conditions of service in his contract of employment were that at the end of the contract, the respondent would be entitled to the payment of four months' salary for each of the years served based on his last salary.
- 2.2 According to the respondent, his last salary in the employ of the appellant was K10,100.00. The respondent worked for seven years and he claimed the sum of K282,800.00. He also stated that he was owed the sum of K70,700.00, as he accrued 210 leave days. He claimed the sum of K15,000.00, which he asserted was deducted by the respondent from his monthly salaries as statutory contributions to NAPSA, for the said deductions he claimed the sum of K28,700.00. The respondent's total claim was for the sum of K397,200.00 with interest and costs.
- 2.3 In his evidence, the respondent testified that he was appointed President of the Union by the Supreme Council of the appellant in November, 2016, and that he worked in that capacity up to 15 November 2021, when the appellant relieved him of his duties.

He went on to compute his terminal benefits and the appellant paid him a month's salary in lieu of notice.

2.4 The respondent stated that the appellant later changed its position on the payment of the respondent's terminal benefits and disputed his computation of his terminal benefits. He maintained that his claim for terminal benefits was for the period 1 December, 2014 to November, 2021.

2.5 On its part, the appellant averred that the computation of terminal benefits which was done by the respondent was wrong because it was based on the contract "SLM2" which the appellant had withdrawn due to anomalies and that the said contract was not recognised by the appellant. It was further averred that the calculation for leave pay and gratuity should have been based on K1,700.00 and K4,500.00 for the duration of the respondent's employment in his different capacities. The appellant's witness disputed all of the respondent's claims.

3.0 DECISION OF THE COURT BELOW

3.1 After considering the evidence and the submissions by the parties, the learned Judge formulated the following questions for his consideration –

- 1. Whether the computation of the respondent's terminal benefits in respect of gratuity and accrued leave days should be based on his contract of employment "SLM2" entered into between the parties on 15 December, 2014.**
- 2. Whether the respondent is entitled to the refund of K15,000.00 being deductions for his NAPSA contributions but not remitted to NAPSA and the payment of salary arrears in the sum of K28,700.00.**

3.2 In resolving the first question on computation of the respondent's terminal benefits, in respect of gratuity and accrued leave days the court found that it was based on the respondent's contract of employment "SLM2" entered into between the parties on 15 December, 2014.

3.3 The lower court found that the contract of employment "SLM2" was executed between the parties on 15 December, 2014 and that the parties entered into the contract of employment freely and voluntarily. The court reasoned that the contract of employment "SLM2" was the basis for the calculation of the respondent's gratuity and leave benefits. The court found that there was no dispute that the respondent's exit salary was K10,100.00 and accordingly directed that the said salary be the basis for the computation of the respondent's terminal benefits.

- 3.4 On the second question whether the complainant is entitled to the refund of K15,000.00 being deductions for NAPSA contributions, as well as the payment of salary arrears in the sum of K28,700.00, the lower court found that the appellant did not deny deducting the sum of K15,000.00 from the respondent's salaries which was supposed to be remitted to NAPSA as his contributions to the pension scheme.
- 3.5 The court found that the money was not remitted to NAPSA and went on to enter Judgment in favour of the respondent in the sum of K15,000.00 for the said NAPSA contributions.
- 3.6 On the issue of the claim for salary arrears, the court found that the respondent had no documentary evidence to prove that he was owed K28,700.00. The court found that the respondent had, on a balance of probabilities proved that he was owed the sum of K2,745.00. The court found that the respondent proved that he was owed K10,980,000 in salary arrears and entered Judgment in favour of the respondent for the said amount of K10,980.00.
- 3.7 The court found that the total sum due to the respondent was K385,345.70, with interest at short term commercial deposit rate.

4.0 GROUNDS OF APPEAL

4.1 The appellant was dissatisfied with the judgment of the lower court and appealed to this court, advancing the following nine grounds –

1. *The court below erred in law and fact when it held that the perusal of the letter of termination of the respondent's employment dated 15 November, 2021 clearly indicated that the appellant decided to terminate the respondent's contract of employment in his capacity as Director of Administration and Human Resource when the letter of termination dated 15 November, 2021 was entirely premised on termination of the respondent's employment as President of the Union for failure to submit the leave of absence from his purported employer Alexander Frazer.*
2. *The court below erred in law and fact when it held that the respondent did not serve the Union as President on a full time basis when the unchallenged evidence of the appellant was to the effect that the position of President was a full time position and the Union Executive Committee subjected the General Secretary, the Deputy General Secretary, the General Treasurer and President who were drawing their salaries from the Union to submit the leave of absence from the companies they were coming from.*

3. *The court below erred in law and fact when it held that it was because of the respondent's employment that he was allowed to contest the elections for the Union's President and subsequently duly elected as Union President when the evidence on record show that the respondent contested the elections for the position of Union President on account of having been nominated by the respondent's purported employer Alexander Frazer.*
4. *The court below erred in law and fact when it held that there being no dispute that the respondent's exit salary was K10,100.00, the said salary shall be the basis for computation of the respondent's benefits when the exit salary of K10,100.00 was for the position of Union President and not for the position of Director of Administration and Human Resource and when the conditions of employment for the position of Director of Administration and Human Resource was not applicable to the position of President.*
5. *The court below erred in law and fact when it held that the respondent had served the appellant from 1st December, 2014 to 15th November, 2021 as Director Administration and Human Resource. During the said period, he had clocked a total of six years, eleven months of service and his exit salary was K10,100.00 and that the respondent is entitled to the payment of gratuity in the sum of K278,760.00 when the*

unchallenged evidence of the appellant was to the effect that the respondent served the appellant Union from 1st December, 2012 to March, 2019 for the period of five years, four months and the respondent never received a salary increment for five years.

- 6. The court below erred in law and fact when it directed the computation of the respondent's leave days to be based on the full pay of K10,100.00 per month when the pay of K10,100.00 was exit salary for the position of President and when the respondent only served for the period of two years eight months as Union President, five years four months as Director Administration and Human Resource with a salary of K2,890.00 per month as Director Administration and Human Resource with a salary of K2,890.00 per month.*
- 7. The court below erred in law and fact when it directed the respondent's leave benefits to be calculated and paid in accordance with Section 37 of the Employment Code Act, 2019 and when it entered Judgment in favour of the respondent in the sum of K80,605.76 when the Employment Contract between the Appellant and respondent was created before the enactment and coming into force of the Employment Code Act, 2019.*
- 8. The court below erred in law and fact when it failed to consider the sum of K40,000.00 paid by the appellant to the respondent based on the appellant computation*

of K61,660.43 as an amount paid towards his exit benefits.

9. *The court erred in law and fact when it awarded the sum of K15,000.00 as NAPSA refunds for the period from December, 2014 to December, 2016 at the rate of K144.50 monthly contributions instead of K3,468.00 when the correct amount for the period in question as the monthly rate of K144.50 is K3,468.00.*

5.0 ARGUMENTS BY THE APPELLANT

- 5.1 In arguing ground one, the appellant submitted that the letter of termination dated 15 November, 2021, was exclusive and conclusive of its contents. It was argued that from the contents of the letter, the respondent was disqualified from holding office as Union President because he failed to provide leave of absence as well as the Registration Agreement from the respondent's employer. The case of ***Wilson Masauso Zulu vs Avondale Housing Project Limited¹*** was referred to and we were urged to reverse the lower court's finding of fact that the appellant terminated the respondent's employment as Director of Administration and Human Resource.
- 5.2 It was argued that that the lower court incorporated terms in the letter dated 15 November, 2021, which is contrary to the parole

evidence rule and the holding in the case of ***Holmes Limited vs Buildwell Construction Company Limited***,² where the Supreme Court held that where parties that have embodied the terms of their contract in a written document, extrinsic evidence would not generally be admissible to add, vary, subtract from or contradict the terms of the written contract.

5.3 In arguing grounds two and ground three, it was submitted that the appellant gave uncontested evidence to the effect that the position of President was a full time position but the lower court disagreed and found that the said position was not full time. That according to the lower Court, the position was dependent on the continuity of the respondent's employment in accordance with ***section 18(1)(a) of the Industrial and Labour Relations Act, Cap 260 of the Laws of Zambia***.

5.4 The appellant argued that the lower court misdirected itself when it relied on ***section 18(1) (a) of the Industrial and Labour Relations Act*** and concluded that the respondent did not serve the Union as President on full time basis on the ground that the provision provides for disqualification to contest election or appointment as an officer of a trade union. The appellant

maintained that the respondent was disqualified from holding the position of President for failure to submit his leave of absence from his employer.

5.5 It was contended that the respondent served as Union President on a full time basis and that was the reason why he was required to submit leave of absence from his employer.

5.6 In arguing ground three, it was submitted that the respondent was nominated by a company known as Alexander Frazer for the position of Union President. It was contended that the lower court's finding that it was because of the respondent's employment that he was allowed to contest the position for Union President was a perverse finding of fact and was contrary to the evidence in the court below.

5.7 In arguing grounds four, five and six of the appeal, the appellant submitted that there was a dispute regarding what the respondent's exit salary was as the parties gave conflicting evidence on the issue.

5.8 It was argued that the respondent's starting salary was K2,800.00 and that he did not receive an increment in the five years and that he ceased to be Director and became President. In accordance

with the document marked "LC5" it was argued that the respondent's basic pay as President was K4,500.00, contrary to the respondent's assertion that his exit salary was K10,100.00. It was further argued that the respondent did not produce any contract of employment for the position of President.

5.9 It was contended that the respondent failed to prove his claim for the benefits based on the exit salary for the position of President as he failed to tender documentary evidence relating to payment of gratuity using the exit salary for the position.

5.10 It was argued that the respondent failed to prove his claims for the sum of K282,800.00. It was submitted that the lower court misdirected itself by awarding the respondent the sum of K278,760.00 using the exit salary for the position of President.

5.11 The seventh ground of appeal attacks the lower Court for directing that the respondent's leave benefits be calculated in accordance with **Section 37 of the Employment Code Act, 2019**, when it entered Judgment in favour of the respondent, as the contract between the appellant and the respondent was entered into before the Employment Code was enacted.

- 5.12 It was submitted that the Contract of Employment between the appellant and the respondent was entered into on 15 December, 2014, while the Employment Code was enacted on 10 May, 2019. It was argued that the leave days which the respondent accrued were for the period when the respondent held the position of Director Administration and Human Resource from December, 2014 to March 2019.
- 5.13 It was argued that the lower court misdirected itself when it directed that the respondent's leave benefits be calculated and paid in accordance with **Section 37 of the Employment Code**. We were urged to find merit in ground seven for the aforesaid reasons.
- 5.14 Ground eight attacks the lower court for failing to consider the sum of K40,000.00, that was paid by the appellant to the respondent on the appellant's computation of K61,660.43, as an amount paid toward the respondent's exit benefit.
- 5.15 In arguing ground eight, it was submitted that the appellant deposited the sum of K40,000.00 into the respondent's account before the action was commenced and that a total sum of K45,460.00 was paid to the respondent, which the lower Court

did not take into account in considering the benefits due to the respondent. It was contended that the sum of K45,150.00 ought to be deducted from the amount that was to be paid to the respondent as his benefit.

5.16 Turning to ground nine, the lower court is attacked for awarding the sum of K15,000.00, as NAPSA refunds for the period from December 2014 to December, 2016, when the correct amount for the period in question is K3,468.00.

5.17 Further, it was contended that the monthly deduction of K144.50 for the period December 2014 to December 2016, amounted to K3,468.00 and not the sum of K15,000.00, which the lower Court awarded to the respondent. We were urged to allow the appeal.

6.0 RESPONDENT'S ARGUMENTS

6.1 The respondent filed heads of argument on 12 June, 2023.

6.2 Responding to ground one, it was submitted that the lower court was on firm ground when it held that the respondent's employment was terminated on 15 November, 2021. It was submitted that the contract of employment that was mutually entered into by the parties was for permanent employment and after the said employment was terminated, the appellant

deposited one month's salary in lieu of notice plus half a month salary for the fifteen days that the respondent worked from 1 to 15 November, 2021.

- 6.3 It was submitted that the respondent was entitled to leave days from December, 2014 to March, 2019. It was contended that the respondent was appointed to the position of President on the basis of being an employee and member of the appellant's Union. The respondents asserted that he was not an employee of Alexander Frazer and he prayed that ground one of the appeal be dismissed for lack of merit.
- 6.4 Responding to ground two, it was submitted that the lower court was on firm ground when it held that the respondent did not serve in the position of President on full time basis. It was argued that the respondent was a permanent employee for the appellant's union and that his employment was terminated for no reason. The respondent asserted that he was elected unopposed. We were urged to dismiss the second ground of appeal for lack of merit.
- 6.5 Turning to ground three, it was submitted that the lower court was on firm ground when it held that it was because of the respondent's employment that he was appointed to the position

of President. The respondent maintained that he was employed by the appellant on permanent and pensionable basis and that on that basis, he was appointed President of the Union between October and November, 2016.

6.6 According to the respondent, he was re-elected as President in 2019 and was still a member of staff of the appellant's Union. We were urged to dismiss the third ground of appeal for the aforesaid reasons.

6.7 Responding to ground four, it was submitted that the lower court was on firm ground when it held that the respondent's exit salary was K10,100.00, because he was only entitled to one salary which was increased from K2,800.00 to K10,000.00 and that computation of terminal benefits is based on the exit salary.

6.8 In arguing ground five, it was submitted that the respondent's benefits were calculated based on the respondent's exit salary and not his exit position. The case of ***Holmes Limited vs Buildwell Construction Company Limited (supra)*** was referred to where the Supreme Court held that –

“Where the parties have embodied the terms of their contract in a written document extrinsic evidence is not

generally admissible to add, vary, subtract from or contradict the terms of the written contract.”

6.9 It was submitted that the appellant embodied the conditions of employment in the contract signed on 15 December, 2014. It was accordingly submitted that ground five ought to be dismissed for lack of merit.

6.10 Responding to ground six, it was submitted that the lower court was on firm ground when it held that K10,100.00 was the respondent's exit salary and that it should be the basis for calculating the respondent's leave days. The respondent maintained that he worked without break from 1 December, 2014 until 15 November, 2021. We were urged to dismiss ground six for the aforestated reasons.

6.11 Responding to ground seven, it was submitted that the lower court was on firm ground when it held that the respondent's leave benefits be calculated in accordance with the **Employment Code Act Number 3 of 2019**.

6.12 According to the respondent, the appellant terminated his employment in November, 2021, when the Employment Code was in force. It was argued that employment contracts are now

regulated by the Employment Code. We were urged to dismiss ground seven of the appeal.

6.13 Responding to ground eight, it was submitted that the arguments in ground eight are not compatible with what the respondent was paid, for his terminal benefits. According to the respondent, there was no evidence that the respondent was paid gratuity apart from the K10,100.00, that was paid to him as gratuity on 15 April, 2020, as evidenced on page 106 of the Record of Appeal.

6.14 The respondent asserted that K10,100.00, was paid to him in lieu of notice, while K5,050.00 was his half salary for the 15 days that he worked from 1 to 15 November, 2021. We were urged to dismiss ground eight of the appeal.

6.15 Responding to ground nine, it was submitted that the lower court was on firm ground when it awarded the sum of K15,000.00, as NAPSA benefits because his contributions were remitted to NAPSA. We were urged to dismiss this ground of appeal and to dismiss the appeal, uphold the Judgment of the lower Court and condemn the appellant in costs for being inconsistent.

7.0 APPELLANT'S ARGUMENTS IN REPLY

7.1 The appellant filed arguments in reply which were essentially a repeat of their arguments in support.

8.0 CONSIDERATION OF THE APPEAL AND DECISION

8.1 We have carefully considered the evidence on record, the Judgment being impugned and the arguments by the parties.

8.2 All the grounds are rooted in the question whether the computation of the respondent's terminal benefits should have been based on the Contract of Employment "SLM2".

8.3 The grounds of appeal basically challenge the lower court's finding that the respondent's terminal benefits should have been based on his salary of K10,100.00. We have considered the Judgment being impugned and the arguments of the parties. We note from the pleadings which were in the court below, that the court was asked to make a determination on whether the computation of the terminal benefits should be based on the contract of employment. We are of the view that the determination of the posed question will determine all the other grounds of appeal in this matter.

8.4 It is common cause that the relationship between the appellant and the respondent was governed by the contract of employment.

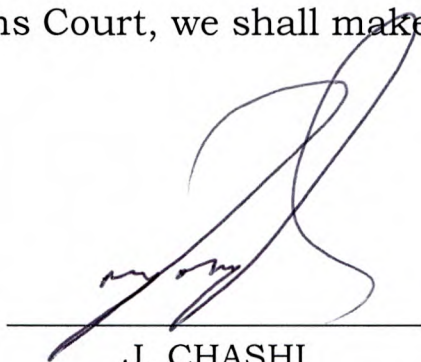
We are of the view that Clause 11 of the Contract of Employment “SLM2” provides that the gratuity payable to the respondent would be calculated based on the exit salary at the rate of four months for each completed year of service.

8.5 We opine that the parties are bound by the said contract and that the lower court could not divert from what was provided for in the said contract. There is evidence, which is common cause that the respondent’s salary was K10,100.00. There is also evidence that the respondent made contributions to NAPSA which were not remitted by the appellant. In that regard, we are of the view that the lower court was on firm ground when it ordered the refund of the respondent’s NAPSA contributions which were not remitted by the appellant.

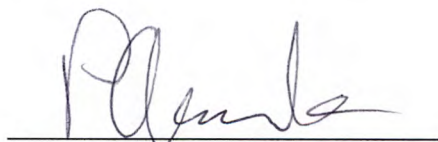
8.6 In the case of ***Rosemary Ngorima vs Zambia Consolidated Copper Mines***,³ the Supreme Court held that it is trite law that in any employer/employee relationship, the parties are bound by the terms and conditions that they set. In the case of ***Linus Chanda***,⁴ the court followed the formula which was provided for in the contract of employment in calculating gratuity.

8.7 We are therefore of the view that the learned Judge in the court below was on firm ground for following what was provided for in the contract of employment as this was the basis of the parties' relationship.

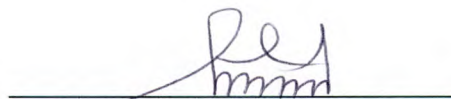
8.8 Having determined as we have above, we do not find merit in grounds one, two, three, four, five, six and seven and eight and they are dismissed. This matter having emanated from the Industrial Relations Court, we shall make no order as to costs.



J. CHASHI
COURT OF APPEAL JUDGE



P. C. M. NGULUBE
COURT OF APPEAL JUDGE



A. M. BANDA-BOBO
COURT OF APPEAL JUDGE