



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**ECONOMIC LIBERALISATION AND THE RISE IN CASUALISATION OF
LABOUR. IS THE LAW ADEQUATE TO PROTECT WORKERS RIGHTS. A
CRITICAL VIEW AT TRANSNATIONAL CORPORATIONS VIS-A-VIS
ZAMBIAN COMPANIES .**

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DEDICATION

Theresa Kangwa Chileshe for being the best mum one can have and to the memory of my father who always encouraged us to excel.

To my late two sisters Rose and Beatrice who contributed so much to my first degree in 1982 to 1986. Beatrice we used to call you “Street Lawyer” because of your advocacy for the respect of the law, you would have been proud that you have a lawyer in the family.

To my sisters Josephine and Aggie for the many times I pounced on you to type my assignments and you willingly put off your other work for my sake. I say thank you for your patience and understanding.

To Hope Chellah who typed my Proposal and many other assignments before this one. Your speed was incredible.

To my Husband Mutema and son Chifula and nephew Ali. You guys were deprived of my attention most of time and disturbed your sleep when I had to work late in the night and sometimes break the night. Thanks for being so patient, supportive and above all believing in me.

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BRIEF INTRODUCTION

Following the economic liberalization of Zambia in 1991, casualisation of labour has been on the rise basically because the employers particularly the so called Investors perpetually engage their employees as casuals to avoid paying certain service benefits such as contributions to the National Pension Scheme Authority (NAPSA) and the Workers Compensation Fund Control Board (WCFCB).

The focus of this chapter is to relate economic liberalization of Zambia and the rise in the casualisation of labour and to examine the various labour instruments intended to protect the worker in particular the casual worker whether they are adequate. The paper shall attempt to show the inadequacies as well as examine the public awareness of the workers themselves in seeking redress where these labour laws are flouted.

WHAT IS CASUALISATION OF LABOUR

Casualisation of labour according to the Ministry of Labour and Social Security is interpreted as the employment that is offered to any employee the terms for which provide for his payment at the end of each day and who is not engaged for a period not longer than 24 hours a day. The Employment Act Cap 268 in the preliminary defines a casual employee as “any employee the terms of whose employment provide for his payment at the end of each day and who is not engaged for a longer period than twenty four hours at a time.” This means if an employee is employed for a week or two, he or she is supposed to be remunerated at the end of each particular day during that period. However in practice most employers find it cumbersome, particularly Investors and employers that employ a lot of workers to pay them at the end of each particular day and for this reason, the wages are normally accumulated up to the end of the month when

they are due for payment. The other meaning of casualisation as used loosely in international literature refers to “to the spread of bad conditions of work such as employment insecurity, Irregular hours, intermittent employment, low wages and an absence of standard employment benefits. In Australia , it has a slightly narrower but more solid meaning . Because the labour markets in Australia contain a prominent form of employment, that has been given a label of “casual”, casualisation in the Australian literature usually refers to a process whereby more and more of the workforce is employed in these “casual” jobs. The meaning of casual might vary but generally “casual jobs are commonly understood as jobs that attract an hourly rate of pay but very few of the other rights and benefits ,such as the right to notice, the right to severance pay, and most forms of paid leave (annual leave, public holidays, sick leave ,etc) that are normally associated with Permanent (or “continuing “) jobs for employees”¹

In Zambia, under the provisions of the Employment Act Cap 268 of the Laws of Zambia, a casual employee may be employed up to a maximum period of 6 months upon which the concerned employee is supposed to be confirmed to serve on permanent and pensionable conditions of service.

Notwithstanding the provisions of the law it is not uncommon to find employers the majority of whom are new investors opting to employ on short term employment referred to as “contracts “which usually are for a period of less than or just about 3 months in a bid to avoid confirming the employee if they complete the six months period. The

¹ The rise and rise of casual work in Australia: Who benefits, Who loses? Paper for seminar 20 June, Sydney University, Robyn May, Lain Campbell & John Burgess (RMIT University and Newcastle University) Pg 1

contracts will therefore be put in such a way that they are one or two days short of the three months . Like a period ranging from a day to about 2 months, and 28 or 29 days. These contracts are renewed many times over by the employers and always want to treat them as new contracts simply because they do not want to become liable to pay terminal benefits to employees who are declared redundant or retired from regular employment. These employers perpetually engage their employees as casuals to avoid paying certain statutory obligations like NAPSA and Workers compensation.

METHODS THAT ARE EMPLOYED IN DETERMINING WAGES

With the coming of liberalization ,Transnational/Multinational Corporations are now a common phenomena

in Zambia covering various sectors of the economy like trading ,construction, mining and agriculture. These Transnationals/ Multinationals / no doubt have provided employment in most sectors of the economy . However “the system of determining wages in a liberalized economy also poses a danger in that the level of payment is left to be agreed upon by between the employer and the employee”² and in this case the employee is usually the weaker party, more so, that, the unemployment rate in Zambia is so high and usually casuals do semi skilled jobs. In cases where the casuals may be skilled ,Negotiations or a say in the determination of wages may still be absent as the wages are usually pre determined by the employer on “Take it or Leave it” basis. Considering the economic hardship and the high poverty levels in Zambia, one is “forced” to accept the job with the pay as a means of living.

² Mweemba Humprey M Transnational Corporations in Zambia and Workers Wages - A case Study on Shoprite University of Zambia 2004 Pg i

REALITY OF ECONOMIC LIBERALISATION

The reality of economic liberalization is that though there has been an increase in employment in Zambia, this increment has been more in the informal sector than the formal sector. With the coming of liberalization, the formal employment shrank with retrenchments, forced redundancies or lay-offs. The statistics from the Zambia Privatization Agency status report as at 28 February 2006 show that 261 companies had been privatized and 20 companies are still under preparation. Most companies that were privatized or bought by Zambians retained almost all the entire workforce while the so called Investors or Transnationals /Multinationals retrenched more than half the workforce and in certain cases all the workers . An illustration of this is shown below:

Privatised	Investor	Year Privatised	Initial Staff	Staff retained
AFE Limited	Zambian	1993	145	145
Dairy Produce Board (Kabwe)	Zambians	1996	25	18
Auto –Care Ltd	Zambian	1993	144	143
Chilanga Cement	CDC/ Zambian	1993	847	847
Dairy Produce Board (Ndola)	Zambian	1996	12	12
Intercontinental Hotel (L/stone)	S. African	1998	75	0
Intercontinental Hotel (Lusaka)	Ugandans	1998	396	242
N. H.S (Cairo Road)	S. African	1995	707	0
N H S Kitwe	S African	1995	65	0
N H S Ndola	S African	1996	58	0
ZCCM –Nchanga	IFC,CDC,ZIC	2000	7175	6322

ZCCM –Nkana	FQM & Glencore	2000	8107	6943
ZCCM- Chibuluma	Consortium	1997	1062	1062

Source: Zambia Privatization Agency Status Report as at 28 February 2006

The South African Investors particularly Shoprite which bought off almost all the National Home Stores (NHS) and The Sun Hotels which bought Intercontinental Hotel Livingstone popularly known as Musi-o-Tunya Hotel did not retain any of the Zambian staff . The staff were laid off under forced redundancies. However for the mining industry, the separation was voluntary in most cases.

EFFECT OF CASUALISATION ON THE ECONOMY

The effect of casualisation on the economy is that it deprives the government of revenue which should have accrued in statutory contributions like NAPSA and WCFCB but are not, and thus does not build the economy. Instead, the economy goes down. Further the purchasing power of the casual employee is reduced in that they cannot benefit from this money as terminal benefits when out of employment. In general; casualisation of labour in the narrower and broader sense at international level is equated or seen as “symptoms of an earlier raw phase of capitalist development ,which has been superceded by the evolution of Co-operative employment relations and industrial citizenship. A return of casual work and casualisation is therefore viewed with great concern.”³ Casualisation therefore is seen as bad not only because it draws more workers into the net of casual

³The rise and rise of casual work in Australia: Who benefits, Who loses? Paper for seminar 20 June, Sydney University, Robyn May, Lain Campbell & John Burgess (RMIT University and Newcastle University) Pg 1

work, but also because it exerts downward pressure on wages and conditions even of those employees that continue to be viewed as 'permanent'. Both cases are often identified at workplace level with processes such as outsourcing and labour hire, which threaten the direct or indirect replacement of permanent workers by casual workers⁴. In both cases the bad consequences for individual employees readily extend out the bad effects on families and communities⁵.

In Zambia, the Ministry of Labour and Social Security found that the mining industry particularly Kansanshi engaged in outsourcing and labour hire by introducing what were called Employment Brokers. These are different from the Employment Agencies which are provided for under section 56 of the Employment Act Cap 268 of the laws of Zambia. The Employment Agencies are supposed to be licensed and under section 57 of the Employment Act, the Labour Commissioner may refuse license. Employment Brokers are different in that the employment agencies act on behalf of the employers and as soon as they get a suitable person, that person is recruited and handed over to the company. The agency in return receive their fee from the employer and thus like all agencies the relationship falls away after the third party takes up the job. In the case of employment Brokers however the rationale is that the Broker recruits, the employee works for the mines but instead of being an employee of the company which requires their services (the mines) the employees will continue being paid their salaries by the Broker, thus creating a problem as to who is the employer and which conditions should be applicable to them. The Minister of Labour and Social Security Mutale Nalumango when she banned the use of Brokers questioned what law the Brokers were using in handling the payroll "and

⁴ Hall, 2000,2004

⁵ Pocock 2003

during a meeting with labour Brokers ,Nalumango questioned them which labour laws they were to handle Kanshanshi Mine Plc employees' payroll. You are not supposed to handle Kansanshi Mine Plc workers payroll . It is like you are doing the human resource work for the mine and this is a very serious offence actually. What law are you using to handle peoples' salaries?" she asked.⁶ draws the money from the employer but determines what should be paid to the employee. In this way the Mining firms will not have to meet statutory contributions and pay other expenses which go with the conditions of service as these people will be more or less on hire and thus are more of casuals. The Minister of Labour and Social Security banned the use of Employment Brokers citing among other things that the use of Employment Brokers was illegal as it was not provided for in the Employment Act. " Nalumango said she had with immediate effect cancelled the issuance and renewal of licences for labour brokers until investigations were completed in the way they have been operating".⁷ However one should take recognizance of the fact the mines in Zambia were sold very cheaply "the investors of the mines on the Copperbelt have been given 20 years tax rebates." ⁸ and signed Development Contracts which, includes exemption from paying customs and duty on the equipment and machinery they import. The rationale behind giving these rebates is to allow the investors to recoup their initial investment. It is ironical however that the government which depends on taxes can grant tax relief to these companies for such long time and yet the companies have been reaping huge profits as the price of copper on the London Metal Market has been increasing. An extract from the internet on the

⁶ Chris, Mulaliki Nalumango cancels issuance of certificates to labour brokers The Post Tuesday 28 March 2006 Pg 6

⁷ Ibid Pg 6

⁸ Mweemba Humprey M. Transnational Corporations in Zambia and Workers' Wages A case Study on Shoprite (Obligatory Essay) UNZA 2004

prices of copper at the London Metal Exchange as at 8 November 2006 showed that the price of copper rose from US\$3420.00 per tonne on 13 July 2005 reaching its highest price of US\$8,800.00 in May 2006, then there was a drop to between US\$8000 and US\$7000.00 in June and July 2006, thereafter the price stabilized coming to US\$7,300.00 as at 5 November 2006. Despite the huge profits, these Mining companies and other transnational companies are making, there is a tendency to continue engaging workers on a casual basis. The new National Labour Policy has proposed to deal with this problem by ensuring that any employee who has served for more than six months with a particular company automatically becomes a permanent employee.⁹

WHY CASUALISATION

Views on why individual employers champion casual work and many vigorously introduce casuals in their work place, sometimes constructing the entire workforce out of casuals vary. However the common factor is that “such employers clearly see powerful benefits in the use of casuals, usually defined in terms of increased flexibility and lower cost”.¹⁰ On the other hand, a contrary view is held that a taste for casuals may be based more on ideology other than economic calculation, in that it may suit short-term interests of cost saving, but it depresses innovation and dynamic productivity and may therefore may not be so beneficial to the individual employer in the long run. However in the case of Zambia where there is “cheap labour” this system is very rampant especially in the case of Shoprite Stores which has been using casual worker’s in the name of “students” even when they have worked as cashiers for as long as three years.¹¹

⁹ National Labour Policy Page 47c

¹⁰ Benson 2000, Baultjen, 2001

¹¹ Mweemba Humprey M. Transnational Corporations in Zambia and Workers’ Wages A case Study on Shoprite (Obligatory Essay) UNZA 2004

CHAPTER 1

HISTORICAL DEVELOPMENT OF LABOUR IN ZAMBIA

1.0 Introduction

This chapter deals with a brief historical development of Wage Labour in Zambia the period covering 1890 to 1923 when the country was administered by the British South African Company (BSA.Co.) through Cecil Rhodes who was acting on behalf of the British Government as well the period between 1924 to 1964 when the British Colonial government was handed over power by Cecil Rhodes who found it expensive to run the territory as his company was a commercial entity and thus profit oriented. This period between 1890 to 1964 is known as the colonial period of Zambia and this will help us understand the “migrant labour” which was introduced by the BSA Co. and later continued under the colonial government , but later on took a more permanent form as families of the “migrant workers” were allowed to join the male worker on the mines.

1.1 Factors that Led to the Introduction of Wages

The BSA Co. came to Zambia in 1890 under a Charter of the British colonial government. Its main objective was to prospect minerals up north after the discovery and acquisition of some mines in South Africa and Southern

Rhodesia. The mineral resources in Northern Rhodesia were considered poor compared to those in Southern Rhodesia and South Africa, but Rhodesia wanted to encourage the settlement of white farmers in the territory as an alternative source of revenue. "It was envisaged that Northern Rhodesia would develop into a white colony in the same way as in Kenya, where European settlement was adopted as an official colonial policy as early as 1902. Nonetheless between 1904 and 1911 a total of 159 farmers had been established between Kalomo and Broken Hill (Kabwe) in the north."¹² Yet as Ian Henderson ably argued "Northern Rhodesia's original *raison detre* was as a labour reserve for the developing of white areas of Southern Rhodesia and South Africa at least up to the mid 1920's"¹³ In short Northern Rhodesia was supposed to be a reservoir for providing labour to the white community.

In order to cover the Company's administrative cost, Hut and Poll tax were introduced and as a result of such action "native tax receipts moved ahead

¹² Bizeck Jube Phiri A Political History of Zambia from The Colonial Period to the 3rd Republic. Africa World Press Eritrea Pg 11

¹³ Ibid Pg 11

steadily from £6400.00 in 1902 to £26,000.00 in 1905 to £54000.00 in 1908 and to £72,000.00 in 1914.¹⁴ These taxes were resisted by Africans but the company involved chiefs in the collection and thus managed to collect the tax on a regular basis though there was a lot of coercion. The payment of taxes in kind was abolished in 1905 so that the wage labour become virtually the sole means by which Africans could meet their tax obligations. However the BSA Co. continued to make losses in Northern Rhodesia with annual deficits running to £50,000.00 “¹⁵ In order to reduce the range of alternatives to wage labour available to Africans, the restrictions upon African agriculture were increased. Tax was deliberately raised by 1909 from 5S to 10S in the Copperbelt area as a way of forcing Africans into wage labour in the mines and elsewhere. Africans near the mines preferred to sell grain to raise tax but this was abolished in 1905.¹⁶ The imposition of payment of tax in cash and the restrictions upon Africans in the Agriculture sector led to the mines being the biggest employer and thus the Africans provided the cheap labour.¹⁷

¹⁴ Bizeck Jube Phiri A Political History of Zambia from The Colonial Period to the 3rd Republic. Africa World Press Eritrea Pg 13

¹⁵ James Fry Employment and income Distribution in the African Economy Croom Helm London Pg 13

¹⁶ Phillip Daniel Africanization, Nationalism, and inequality Mining Labour and the Copperbelt in Zambian Development. Cambridge University Press London 1979 Pg 30

¹⁷ Ibid pg 31

1.2 British Colonial Rule

The BSA Co. faced financial problems during much of its administration of the territory and on 1 April 1924, it relinquished its rule to the Colonial Government. The colonial office appointed Herbert Stanley as the governor. Herbert shared the vision of having white dominion from Cape to Kenya and thus encouraged white settlement in Northern Rhodesia “by reserving huge blocks of land for European use thus displacing the Africans from their land . This development soon culminated into direct conflict between the whites and Africans.”¹⁸

1.3 Early Labour Supply

In earlier years, a variety of administrative and fiscal measures had been implemented by the colonial authorities, mainly to encourage a supply of raw labour (labour was migrant) drawn from Luapula and Northern Provinces and to a lesser extent Barotseland as well as foreign countries like Zaire, Angola ,Malawi, Tanzania and South Africa. The Copperbelt itself was sparsely populated by cattle owning Lamba tribes whose population density by 1926 was 2.2 persons per square mile, thus could not provide

¹⁸ Bizeck Jube Phiri A Political History of Zambia from The Colonial Period to the 3rd Republic. Africa World Press Eritrea Pg 11

adequate labour to the mines¹⁹. In 1932, there was an economic depression and this impacted negatively on the mines whose labour requirements fell to one fifth of the 1930 construction boom²⁰. Despite the depression and the slash in the wages of African workers, there was an increase in migrant labour to the mines due to “the pressure of taxation, increasing demand for European style goods and relative stagnation of growth of other employment opportunities”²¹

1.4 Exploitative Wage Rates

At the time of the change of administration in 1924, the economy was still divided as it had been the previous 20 years, into a modern wage sector ,in which “Europeans received around 100 times the subsistence wages paid to Africans”²². “In 1925 large quantities of copper sulfide ores were discovered near Ndola and the rise in copper prices in the 1920’s made investment in the copper mines of Northern Rhodesia economically feasible. Large mining companies were attracted to Zambia’s Copperbelt . This in turn attracted a large African labour force, first for short periods ,but later many settling almost permanently in compounds that were developed in the mining townships. The labour force jumped from 9100 in April 1928 to

¹⁹ Phillip Daniel Africanization, Nationalism, and inequality Mining Labour and the Copperbelt in Zambian Development. Cambridge University Press London 1979 Pg 31

²⁰ Ibid Pg 31

²¹ Ibid Pg 31

²² Ibid Pg 32

31,940 by September 1930. The mining companies after 1932 increased the workload expected of each miner and realized that apart from improving the physical condition of the workers by better food and living conditions as well as training Africans to take on semi skilled tasks, longer contracts were also introduced from the previous 6 month contract. This exercise was first embarked upon in the Katanga mines of Zaire and was found to increase productivity. Katanga mines in 1927 offered a minimum 3 year contract and the whole family was transported instead of just the male worker. The result of this showed an increased output in production per man than when workers were serving 6 months contracts “²³. Austin Robinson records that the volume of ore extracted per man shift at a major Katangese mine had risen by 50 per cent” In Zambia however there was a negative correlation between labour turnover and the proportion of workers accompanied by their families in town Roan Antelope mine. Between 1927 and 1930 when 20 to 22% of the labour force were accompanied by their families, the monthly turnover decreased from 24.1 in 1927 to 3.2 % in 1935²⁴ as shown in the table below.

²³ James Fry Employment and income Distribution in the African Economy Croom Helm London Pg 14

²⁴ Ibid Pg 16

Table 1: Labour Turnover at Roan Antelope Mine 1927-1935

Year	Average African Workforce	% of workers married & accompanied by their families	Monthly Turnover Rate (%)
1927	1093	20	24.1
1928	2005	20	22.3
1929	2999	21	17.2
1930	3961	22	16.7
1931	4729	26.6	11.3
1932	2317	37.3	10.4
1933	3075	43.4	7.5
1934	4627	50.0	7.4
1935	4513	52	3.2

Source: F. Spearpoint *The African Native and the Rhodesia Copper Mines*
 Supplement to Journal of the Royal African Society page 53.

Perhaps the negative correlation could be attributed to the way the Africans were treated. Because of cultural differences and the superiority complex of the white labour force, "Africans were generally treated with disrespect. Gann for example thought it understandable that white foremen considered a severe discipline, backed sometimes by corporal punishment a suitable remedy, undoubtedly this perception by whites, irrespective of their origin, made mining unpopular among Africans."²⁵ It is therefore almost impossible to expect high productivity from a frustrated worker. However the scenario at Roan Antelope was not wholesale as there was generally stability in production in most mines when the male workers were joined by their families.

The exploitative wage system continued to prevail, for example, during the depression period of 1932, wages for Africans were slashed while those for the whites were not. In 1937, after the depression and copper prices picked up, there was a cash bonus instituted for Europeans based on the price of copper. African earnings was 34 to 1 compared to 28 to 1 in 1933.²⁶

Africans realized that these exploitative tendencies would continue if they did not fight for their rights. In 1948, the Africans eventually solidified and

²⁵Bizeck Jube Phiri A Political History of Zambia from The Colonial Period to the 3rd Republic. Africa World Press Eritrea Pg 13

²⁶ Phillip Daniel Africanization, Nationalism, and inequality Mining Labour and the Copperbelt in Zambian Development. Cambridge University Press London 1979 Pg 31

formed a union under the leadership of Lawrence Katilungu following the Dalgleshi Report of 1948 which advocated for African advancement- the promotion of Africans to advance on skills and thus move to positions conventionally occupied by Europeans²⁷.

1.5 International Labour Conventions during the Colonial Period

Under the provisions of Article 421 of the Treaty of Versailles, the Colonial Government was under international obligation to apply International Labour Conventions which would be applicable to local conditions.²⁸ In Northern Rhodesia, the following were the conventions which were applied:

1. No. 4 Night Work (Women) Ordinance 10 1933 revised by convention No. 41 of 1934 which prohibited the working of women in the night or engage them in night shifts.
2. No. 5 Minimum Age (Industry) Ordinance 10 of 1933.
3. No. 6 Night Work (Young Persons) Ordinance No. 10 of 1933 which also prohibited working of young persons at night or night shifts.
4. No. 11 Rights of Association and combination of Agricultural Workers. No legislation discriminating against Agricultural Workers in matters of association Convention regarded as applying to all colonial dependants Ordinance 16 of 1930.

²⁷ Ibid Pg 32

²⁸ Major G St. J Orde Brown Labour Conditions in Northern Rhodesia Crown Press London Copyright 1938 Britain

5. No. 18 Workmens' Compensation for Occupational Diseases .Revised Convention NO. 42 of 1934.
6. No. 26 Minimum Wage Fixing Machinery Ordinance No. 27 of 1932.
7. No.29 Forced Labour (Forced Labour specifically prohibited by section 234 of the penal code.
8. No. 45 Underground Work Ordinance 18 of 1936 (Women) which prohibited women from working underground.

1.6 Conclusion

Despite the fact that legislation was in place to regulate the rights of the employer and employee, it is clear that the African Worker continued to be exploited as can be seen from the wage differentials of 28 to 1 and 34 to 1 in the 1930s between Europeans and Africans. The justification for this difference was usually attributed to Africans not being skilled but even in cases where Africans were skilled , color bar was used and thus an African could not compete with a European even if they were skilled. The best jobs and best pay was reserved for the whites and not blacks. It was not until 1948 after the formation of the first African Trade Union led by Mr. Katilungu that Africans begun to fight for their rights on the premise of "equal pay for equal work " which was not accepted and this led to a number of strikes and for the first time the Africans realized that

they had the power to paralyse the company as they provided the biggest workforce. The legislation adopted by the Colonial Government naturally favoured the whites, after the strikes, it became inevitable to recognise the rights and interests of the Africans.

In any industry , it is important to recognise the plurality of rights and interests of employers on one hand and employees on the other. There is always an inherent conflict between the expectations of the employer and the employee. “While Employers seek to maximize profit at the lowest cost, employees seek to earn an income which will afford them a reasonable standard of living. Therefore the quality of industrial relations in an organization affects the economic, political and sociological environment of a nation”²⁹. Thus the need for any government to adopt laws and regulations which safeguard the interests of both parties to ensure industrial harmony. The International Labour Organisation (ILO) has been championing this cause since 1919 through the Peace Treaty of Versailles by setting international labour Standards which regulate employment, conditions and conduct of labour relations. The whole purpose of setting these labour standards is to provide safeguards against exploitative treatment in national states. It is therefore important to note

²⁹ Kombe Andrew Kampamba Economic Liberalisation and Employees Rights in Zambia (Obligatory Essay) UNZA 2004 pg 7

that regardless of whether one is engaged as a casual worker or a permanent employee, there is need to pay someone a Living Wage “ as ILO puts it. A living wage should be supplemented by the following:

1. “It should be sufficient to purchase the minimum theoretical needs of a typical family and this is based on some kind of formula”.
2. “It should be sufficient to pay for a satisfactory basic budget, as revealed by a survey of actual family expenditure”. In Zambia the guide is the Food Basket which is what a family of six are able to spend in a month on basic needs.
3. “It should be comparable with a living wage already established in similar circumstances”³⁰.

³⁰ Mweemba Humprey M Transnational Corporations in Zambia and Workers Wages - A case Study on Shoprite University of Zambia 2004 Pg iv

CHAPTER 2

LIBERALISATION OF THE ECONOMY AND THE IMPACT ON THE ZAMBIAN WORKER.

2.0 Introduction

From colonial days , Zambia's economy revolved around the copper mining industry "which up to today accounts for 80% of the foreign earnings and still accounts for the largest workforce in the nation".³¹ The Colonial Government granted independence to Northern Rhodesia on 24 October 1964 and immediately changed its name to Zambia. Zambia was under multi-partism , the United National Independence Party (UNIP) being the ruling party and African National Congress (ANC) being coalition party. The ruling party adopted a socialist policy which in an effort to empower Zambians through what was called "Zambianisation" resulted in the nationalization of major private enterprises. The reason behind the nationalization of private companies was for the government to have controlling shares in these companies and thus have a say or control in their corporate affairs as opposed to them remaining private companies as there could be no state interference. " The state therefore played a leading role in the establishment and management of enterprises. However the narrow or

³¹ Kombe Andrew Kampamba Economic Liberalisation and Employees Rights in Zambia (Obligatory Essay) UNZA 2004 pg 14

lack of separation of roles between the state and the ruling party contributed significantly to the mismanagement of State Owned Enterprises (SOEs) and eventually led to the downfall of these enterprises towards the end of the 1980s. Problems set in when political appointees , instead of experts were given jobs as reward for political loyalty”³²

2.1 Decline of the Economy

The Zambian economy declined drastically in the mid 70s following the rise in petroleum products and the fall in copper prices on the world market. This affected Zambia as a traditional exporter of copper and Zambia’s “GDP fell in 1974 from US\$780.00 to US\$ 620.”³³ The government realized the precarious situation it was in, being heavily dependent on copper. In an attempt to salvage the economy and maintain the same level of standard of living in the country, the government tried a number of remedies ,which included external borrowing and economic adjustment programmes. These were embarked upon in 1980. However, the economy continued to nose dive and “the economic decline resulted in an annual fall per capita of almost 5 % between 1974 and 1990”.³⁴

2.2 Continued Poor Performance of the Economy

³² Kombe Andrew Kampamba Economic Liberalisation and Employees Rights in Zambia (Obligatory Essay) UNZA 2004 pg 15

³³ Shinkwe ,Adrian. The Study on Gender and Labour Market Liberalisation in Africa Pg 1.

³⁴ Ibid Pg 2

The continued poor performance of the economy coupled with dictatorial tendencies of the UNIP Government, under a one party state which was imposed in 1972 in the name of fostering unity brought a lot of discontentment among the people of Zambia. The discontentment, together with the collapse of the Soviet Union in Russia culminated in the change for a return to Multi -Partism in Zambia. The reason why the Zambian people wanted change was that the one party regime had become so powerful in its dictatorial tendencies such that no one could challenge it as the "Party was Supreme". The wind of change came with the repeal of the constitution Article 4 of the 1973 which abolished the one party system and introduced plural politics. The day was won by Fredrick Chiluba, a Trade Unionist whose Movement for Multiparty Democracy had a landslide victory in 1991 and formed the government. The Chiluba Government attributed the collapse of the economy to heavy dependency on copper and mismanagement of SOEs and in 1992, embarked on economic reforms aimed at diversifying the economy. These included Agriculture and Tourism promotion, market liberalization, economic stabilization, cash budget, privatization of SOEs and Public Service Reform none of which yielded the desired results. "The economic reforms introduced in 1992 saw the GDP

growing by 2.4% in 1999 and 4% for 2000.”³⁵ In addition to these reforms, the government embarked on a number of social and economic reform programmes under the IMF/World Bank Structural Adjustment Programme (SAP). Broadly speaking SAP implies “a set of reform measures inspired by the IMF and the World Bank adopted by a country with the aim of removing distortions in an economy, which distortions prevent the market from allocating resources efficiently. The ultimate aim is to restore balance of payment viability and long term sustainability.”³⁶ Thus these reform measures were vigorously embraced as a means of redeeming the country from its economic doldrums which is perceived to be caused by deviating economies from the laissez faire standards. Therefore one of the means of redemption is to liberalise the economy from a controlled to a free enterprise or an open market economy. Thus before the IMF/World Bank lends money to any third world country in this case Zambia, it has to ensure that the country adheres to the prescribed conditions and does this by sending monitors to that particular country.

2.3 Effects of Liberalisation on the Economy

Liberalisation entailed opening up the local market and allowing foreign private investment. The liberalization had a negative impact on employment

³⁵ Kombe Andrew Kampamba Economic Liberalisation and Employees Rights in Zambia (Obligatory Essay) UNZA 2004 pg 15

³⁶ Ibid Pg 17

and living standards as the privatization resulted in job losses through retrenchments and liquidation of companies. Some of the major companies that were liquidated and had a workforce of over 1000 employees were Zambia Airways which had 1300 employees as at 4 December 1994³⁷ United Bus Company of Zambia and Lima Bank had close to 2000 employees. In the manufacturing industry for example, the veil of protection was removed and this resulted into cheap goods flooding the Zambian market. These goods were heavily subsidized from their country of origin. In Zambia however, the government had removed import restriction and reduction of tariffs on competing goods, This resulted in the manufacturing industry suddenly facing a crisis and most of them closed down as they could not compete with the cheaper imported finished products. The policy left a trail of destruction on the manufacturing industry. "A logical objective of liberalizing the economy should be the strengthening of protective labour legislation to promote high productivity and not the removal of protection for the sake of luring foreign investors".³⁸ Thus one gets the impression that government was more concerned about investors and cheap labour than the welfare of the workers.

³⁷ Liquidator Price WaterhouseCoopers (Mr. I Patel)

³⁸ Ibid Pg 20.

The negative impact of liberalization could further be seen in the way employment contracts were executed. Under the Employment Act Cap 268, 28 (1) and (2), contracts of service exceeding six months are supposed to be evidenced in writing and the employee shall indicate their consent by signing the same or affixing the impression of the thumb or finger. However in the Zambian scenario, there seem to be a crisis in the field of labour practice. *“Many employers have the liberty to employ but without giving the employees written contracts of employment or to have such contracts evidenced in writing. Many employers are also at liberty to terminate such contracts at will without any consequences. The real reason is that the employee is unaware of the terms under which he or she is working and is afraid to ask the employer about them”.*³⁹ Such an employee may also be too poor to seek legal services when their contract is terminated. We therefore see a situation where most Zambians were at the mercy of these investors and in cases of seeking redress, these are bound to fail as one has to prove that indeed the contract was there, and in this case the onus to prove will be on the employee. The employee being the weaker party has little chance of winning their case. The precarious position of the employee is further made worse by the inadequacy and unrealistic law on Minimum wages which until

³⁹ Darlington A Banda A Guide to Employment Law in Zambia Friedrich Ebert Stiftung Lusaka Office June 1999 Pg 10

two months ago was pegged at K95,000.00 but has now been raised to K268,000,00 according to the new Statutory Instruments No. 56 and 57 of the Shop Workers Order and General Order 2006. The two Statutory Instruments (SI) are supposed to be reviewed every two years but were launched two years later and the reaction from the union was that the two instruments had been overtaken by events. In a press release, Hotel Catering and Allied Workers Union of Zambia (HCAWUZ) General Secretary Dainess Chawinga stated that they were happy that government had replaced it with the statutory instrument number 57 which had improved their minimum wages and conditions of employment. "We, however feel it has come late as it has been overtaken by events,"⁴⁰ However on the part of some investors, the reaction to SI 57 was that they will restructure their workforce and lay off some workers. "Some Foreign Investors in Livingstone have indicated plans to restructure their workforce following the government's decision to adjust the minimum wage to around K256,000.00 from the previous K95,000.00. Some of the investors who refused to be named said the move to effect an upward adjustment on the minimum wage, was done without the Private sector's consent. They said those in the agricultural business engaged a huge number of unskilled labour and

⁴⁰ The Post -Home News Monday 31 July 2006 Pg 11

therefore the only way to evade the impact of the increased minimum wage was to trim down the labour force”⁴¹. The Managing Director of United Air Charter Mr Ignatius Lideque condemned those criticizing the Minimum wage by saying “ the increment on the minimum wage was long overdue and commended the government for the decision. He said tour operators and other foreign investors were making a lot of money and should not complain about the K256,000.00 minimum wage because that was still too small. “Zambian workers have for a long time been paid very little money because of the legislation on labour laws, and now that the minimum wage has been increased , we are happy because at least those that were paid very little money will be getting something though it is still too little Lideque said. He said it was inhuman for some investors to call for a reduction in the already skimpy minimum wage when they should be advocating for more money for their employees” The thing is this minimum wage is legislated It is not okay to hear some saying they are going to incur losses because of the increment said Lideque. Chief Mukuni of the Toka Leya people attributed the exploitation of Zambian workers to our labour laws “It is our labour laws in Zambia that stipulate how much each person should be paid, so we should not blame foreign investors ,we should blame ourselves for all

⁴¹ The Post Business News Tuesday 18 July 20006 Pg iii

the exploitative salaries our people get “ he said. ⁴² Chief Mukuni is a local investor who runs Royal Mukuni Lodge among his other businesses. The HCAWUZ through their Secretary General alluded the exploitative wages to the labour laws, and said it was not surprising that some investors have cried foul with the introduction of the new Minimum Wage and Conditions of Employment as they had reaped so much when the revoked instrument was still in force. She further stated “we have problems with these employers when initiating collective bargaining in their companies because they make the statutory instrument the basis of salary and conditions of service negotiations. It saddens this union that our labour laws are helping these employers perpetuate cheap labour in a country with abundant human resource especially in the hospitality industry. The industry had witnessed the worst labour conditions of their time particularly in Livingstone, Mfuwe and lower Zambezi where workers were subjected to three months contracts and thereafter retained as trainees.” ⁴³

2.4 Conclusion

The effect of liberalization in Zambia has impacted negatively on the worker in that it resulted in job losses through liquidation and retrenchments. A new trend that was witnessed apart from mass lay offs is the preference to give

⁴² Ibid

⁴³ The Post -Home News Monday 31 July 2006 Pg 1

employees short contracts which perpetrates the job insecurity and thus does not lead to a stable labour market. All this was being done in an effort to maximize profit and currently even bigger companies like the mining Industry who are making huge profits as the copper prices are high, have joined the trend. The practice has made distortions in the Zambian labour market which has led to exploitative tendencies has been mainly perpetrated by the state itself in that since 1991 the state has failed to put in place an equitable or sufficiently protective legislation and has stood aloof from the patently unfair labour practices by the so called investors under the guise of liberalization and there is little that can be done either by the employee or the employer as whatever may be happening “is perceived to have the tacit sanction of the law”⁴⁴

A logical objective of liberalizing the economy as earlier stated should be the strengthening of protective labour legislation to promote high productivity and not remove the protection. By having a weak labour legislation, the state has contributed to the employer to freely exploit and abuse the worker. This in turn has promoted instability and a distorted labour market which has not been addressed from 1992 until June 2006, but as earlier alluded to even the introduction of the Minimum Wage has been

⁴⁴ Darlington A Banda A Guide to Employment Law in Zambia Friedrich Ebert Stiftung Lusaka Office June 1999 Pg 15

overtaken by events. Further these investors may not comply to the new legislation and this might result in further job losses as they are currently crying foul over the new minimum wage. In a country like Zambia where there is so much unemployment, these companies will still continue paying slave wages using tactics like “Trainee” in the hospitality industry or “student” in shops like Shoprite even though these employees have been with them for a period of more than six months.

CHAPTER 3

To Examine The Mechanisms Put In Place To Safeguard The Rights And Privileges Of Workers As Regards The Zambian Labour Laws.

3.0 Introduction

Under the provisions of Article 421 of the Treaty of Versailles, every country is under international obligation to apply international labour conventions which would be applicable to local conditions⁴⁵ through the adoption of protective and promotional instruments known as conventions. The aim is to ensure the improvement and supervision of world labour conditions and the conventions are adopted only after they have been voted by a two thirds majority, then they are ratified within a period of 12-18 months. “Zambia as at 31 December 1999 had ratified 42 of the ILO conventions ,40 of which are in force, the Minimum Age (Industry) No. 5 ,being the only ratified convention not yet in force.”⁴⁶ This makes Zambia to rank highest in the sub- region if one has to compare with Botswana which has ratified 2, Namibia 5, South Africa 14, and Zimbabwe 9.⁴⁷ Zambia’s record therefore as regards the ILO standards is quite impressive.

⁴⁵ Kombe Andrew Kampamba Economic Liberalisation and Employees Rights in Zambia (Obligatory Essay) UNZA 2004 pg 5

⁴⁶ Ibid Pg 4

⁴⁷ Ibid

Some of the conventions Zambia has ratified include the Principal Human Rights Conventions relating to freedom of association and collective bargaining, forced labour, equal pay and non-discrimination in employment and occupation. Others relate to Workers Compensation Conventions (Nos 12,17,18 and 19), a number of employment Conventions Nos 29,45,50,64,65,86,89,97,103,105,111,122,124,135,136, 138,148,149,150,151 and 158) and certain Wage Conventions (Nos 26,95,100 and 137) ⁴⁸

In the area of basic human rights, the following ILO Conventions have been ratified: Forced Labour Convention No.29, Freedom of Association and Protection of the Right to Organise No. 87, Right to Organise and Collective Bargaining Convention No. 98, Equal Remuneration Convention No. 100, Abolition of Forced Labour No 105, Discrimination (Employment and Occupation) No. 111 and the Minimum Age No. 138.

In short one can say employment in Zambia is guided by labour laws which are in form of statutes as well as the constitution.

⁴⁸ Professor C Anyangwe Application of International Labour Organisations Standards in Zambia Presentation 1997 Lusaka.(

3.1 The Constitution of Zambia

Zambia before attaining its independence was guided by the Foreign Jurisdiction Act 1880 and upon getting its independence, the British Government passed the Independence of Zambia Act 1964. The 1964 constitution retained the fundamental rights contained in Part 111 some of which were:

1. Protection of fundamental rights and freedoms
2. Protection from slavery and forced labour
3. Protection of freedom of assembly and association
4. Protection from discrimination on grounds of race, sex, etc

3.2 The Employment Act, Cap 268

The Act was enacted in 1965 to provide the legal framework for employment relationships in Zambia. It makes provision for the engagement of persons on contracts of service and to provide the form of and enforcement of contracts of service. The Act was amended in 1997 to suit the liberalized economy and notable among the statutory obligations withdrawn from the employee was mandatory housing, Medical and transport unless these are bargained or negotiated for in the collective agreement.

3.3 The Industrial and Labour Relations Act

The Act replaced the Trade Union and Trade Disputes Ordinance Act of 1965. It was amended in 1971 and repealed and replaced in 1990. In 1993, it was again repealed and replaced. The Act provides a legislation framework for the establishment, organization and management of trade unions, employers associations and central workers as well as employers, organisations. The law supports collective bargaining by providing safeguards to protect the rights of workers to bargain collectively. This is done by making it mandatory that "every employer employing twenty five or a lesser number as prescribed by the Minister, registers himself with the Commissioner".⁴⁹ The purpose of collective bargaining is to "show that the employer has recognised the trade union as a representative of, and bargaining agent for the eligible employees represented by the trade union so recognised for the purposes of regulating relations between the employer or employers' organization and the trade union."⁵⁰ However casual workers do not fall in this category where conditions of service are arrived at through collective bargaining. The conditions for casual workers are determined through The Minimum Wages and Conditions of Employment (General) Order

⁴⁹ Section 63

⁵⁰ W S Mwenda Employment Law in Zambia Cases and Materials UNZA Press Lusaka Zambia 2004 Pg 97

2006 and The Minimum and Conditions of Employment (Shop Keepers) Order 2006.

3.4 The Minimum and Conditions of Employment Acts

The Minimum and Conditions of Employment Acts are set by the Minister of Labour in consultation with Trade Unions, Zambia Federation of Employers as well as other Stakeholders from the Public and private sectors. The aim of this instrument is to give a worker a minimum wage that will help them meet the basic needs of life.

It is important that a worker is paid a decent wage as every human being has rights inherent in them from the time they are born. These rights include food, shelter, clothing, etc. The Act excludes certain categories of employees from the list in section 2 (1) of both Acts. These are

- (a) employees of the Government of the Republic of Zambia;
- (b) employees of a district, Municipal and City Councils ;
- (c) employees engaged in domestic service;
- (d) in any occupation where wages and conditions of employment are regulated through the process of collective bargaining conducted under the Industrial and Labour relationships are governed by specific employment contracts which shall be attested by a proper ; and

- (e) an employee in management positions whose definition under the Industrial and Labour Relations Act entails any agent, representative, foreman, or manager of such person, firm, corporation, company, public authority or body of persons who is placed in authority over such person employed .

Before the repeal of Minimum Wages and Conditions of Employment (General) Order and the Minimum Wages and Conditions of Employment (Shop Workers) Order, 2002, a casual was not eligible for allowances guaranteed to contract workers for example allowances for lunch, housing holiday annual leave. Further a casual worker was not entitled to retirement benefits. This therefore made the casual worker very vulnerable and could be discharged “anytime , without warning, without penalty”⁵¹.

3.5 Repeal of the Minimum Wages and Conditions of Employment Acts

In June 2006, the two Minimum Wages and Conditions of Employment Acts of 2002 were repealed under statutory instrument No.56 and 57, but it was not until July 2006 that they came into effect. The Minimum Wages and Conditions of Service 9 (General) Order put workers into four categories, the higher the category the higher the pay. For example category 1 has a

⁵¹ Fr. Peter Henriot What's this fuss about 'casualisation' of labour The Post Tuesday 21 November 2006
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minimum monthly salary of K268,000.00 in the case of a cleaner, a general worker, an office orderly ;or a watchman or Guard while category IV where one is engaged as a qualified clerk, the amount is stepped up to K715,000.00 per month.

What is to be noted about Statutory Instrument No 56 and 57 of 2006 is that there was a general improvement to the conditions of service than what prevailed under Statutory Instrument Nos 1 and 2 of 2002 . In these two instruments, other than the minimum wage which was K95,000 in 2002,other allowances like lunch, holiday allowance of one month Salary when an employee proceeds on Annual Leave, funeral assistance, transport allowance for an employee whose station is beyond a three kilometre radius, Subsistence allowance , tool allowance for those providing their own tools .Housing Allowance and upset allowance where an employee is transferred to another town. These are all contained in section 14 of the of the General Order Act.

3.6 Reaction from the Investors

When the two Statutory Instruments No. 56 and 57 were introduced,there were mixed reactions from the Investors ,most of them were not happy with the new minimum wages and the allowances that were introduced. The Post in its Business News column of Tuesday 18 July 2006, Page 11 carried a

story by Joan Chirwa headlined L/Stone Investors to retrench workforce “some foreign investors in Livingstone have indicated plans to restructure their workforce following the Government’s decision to adjust the minimum wage to around K256,000.00 from the previous K95,000.00. But United Air Charter (UAC) Managing Director Ignatius Lideque has criticised those complaining over the revised minimum wage saying they were being unfair to the Zambian people.” The investors accused the government of not having consulted them as a private sector and further stated that the only way to evade the impact of the increased minimum wage was to trim down the labour force. “what will happen is that we will lay off some workers. We cant have this huge number of people working for us and having a huge wage bill when our returns are not changing”. Mr Lideque however continued to criticize his fellow investors and stated that “Tour Operators and other foreign investors in the country were making a lot of money and should not complain about the K256,000.00 minimum wage because that was still too small. Zambian workers have for a long time been paid very little money because of the legislation on Labour Laws. We are happy because at least those that were paid very little money will be getting something though it is still too little” Chief Mukuni of the Toka Leya people of Livingstone and Kazungula also blamed the labour laws for the

exploitation that Zambian workers were subjected to “It is our laws in Zambia that stipulate how much each person should be paid ,so we should not blame the foreign investors, we should blame ourselves for all the exploitative salaries our people get” Chief Mukuni who has a number of businesses in the tourism industry further said that “it was a duty of each investor to allocate reasonable wages to their employees.”

3.7 Reaction of the Union

The Secretary General to Hotel Catering and Allied Workers Union of Zambia (HCAWUZ) as well as the Secretary General to Zambia Unified Financial and Allied Workers (ZUFIAW)commended the government for revoking Statutory Instrument No. 2 but felt that it had come rather late as it had been overtaken by events. In reaction to the investors who were complaining about the new minimum wage ,the Secretary General of HCAWUZ was appalled by some Livingstone employers who had threatened to effect redundancies as one way of coping with Statutory no 57 Of 2006. She said “it was not surprising that they had cried foul this time around because they reaped so much when the revoked instrument was still in effect.” She further stated that “⁵² it was sad that employers now only think of maximizing their profits and not consider issues of income,

⁵² Fridah Zinyama Hotel, Catering workers welcome new conditions of employment The Post Monday 31 July 2006 Pg 11.

economic and social securities of their employees. It saddens this Union that our labour laws are helping these employers to perpetuate cheap labour in a country with abundant human resource especially in the hospitality industry . She said the industry had witnessed the worst labour conditions of their time particularly in Livingstone town, Mfuwe and Lower Zambezi where workers were subjected to three months contracts and thereafter retained as trainees.”⁵³ .

3.8 Conclusion

Casualisation has become serious economical, political and social issues . They are also a serious ethical and moral issue. The President of Zambia Levy Patrick Mwanawasa when he visited the Copperbelt in October 2006 “chastised some of the mining companies on the Copperbelt for excessive hiring of casual workers” ⁵⁴The reason for this continued casualisation of labour is that despite the review in the Minimum Wages and Conditions of Employment Acts Statutory Instruments No 56 and 57, loopholes still exist in our labour laws allowing employers to hire casual employees to fill permanent positions. The loopholes are taken advantage of by many employers to minimize investment in their employees. Though the Ministry of Labour and Social Security has called upon stake holders like Employers,

⁵³ Ibid

⁵⁴ Fr. Peter Henriot Whats this fuss about ‘casualisation ‘ of labour The Post Tuesday 21 November 2006
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Employees, Trade Unions, Business Associations and the Civil Society to discuss this issue and to advise the Ministry on the steps to take to address this growing problem of casualisation, it is still prominent in the mines, in the industrial sector, the retail sector, the hotel industry, construction, the church as well as agriculture.

CHAPTER 4

The Extent Of Casualisation Of Labour And The Economic Implications This Has Caused On Workers Rights.

4.0 Introduction

The primary law guiding conditions of employment in Zambia is the Employment Act (Cap 268), which outlines the various types of legal contracts and the obligation of both employees and employers under these contracts. The Employment Act in the preliminary outlines three categories of employees, the temporary employee, the permanent employee and the casual employee. A “temporary employee” is a worker on a contract with a duration of less than six months (legally called an oral contract), a “permanent employee” is a worker with a duration longer than six months (legally called a written contract) and a “casual employee” is a worker who is paid at the end of each day.” The wages, allowances, terminal benefits and other etc, legally guaranteed to each type of employee are very different ,with the permanent employee guaranteed the best conditions of service and the casual employee the worst”⁵⁵

Prior to privatization, which no doubt was rushed into, the prevailing policy of the Government which was the major employer was to hire an employee

⁵⁵ JCTR Policy Brief by Chris Petruskis -Employee Vulnerability in Zambia: A Policy Guide To Casualisation, Minimum Wage And The Dignity Of Work Pg 4

first for a six –month probationary period (temporary employee) and thereafter they would be confirmed as permanent and pensionable employees. The employee could retire after an unbroken service of 25 years or when they reached the retirement age of 55 years. However the scenario with the coming of liberalization is different. “ Nowadays , each individual employer has its own policy on hiring labour , and an employee might be hired on a part –time or full –time basis , on a 1 – year , 5 –year or open ended contract, on a contract stipulating a salary or an hourly wage , on a formal or informal basis, etc. in other words, at the very heart of the Zambian Labour Laws is an out – of –date Employment Act that recognizes most of the present employees as either working for the government or the Parastatal company.”⁵⁶ A case study of various casual employees interviewed in several organisations both local and multi –national reveals the variance of how an employer is able to interpret the outdated Employment Act to minimize investment in labour.

4.1 Cleaning Industry – Case Study Nemchem International Limited

Maria Goma aged 40 years is employed as a cleaner on a two year contract. Her salary is K200,000.00 per month and she has been serving the company for 6 years with no gratuity , no leave days and the contact has been renewed

⁵⁶ Ibid Pg 4

on three occasions under similar contracts. Maria has a family of four including a husband who is not in gainful employment and she has to look after her family with the meager resources she earns. She claims her employer cannot put her on a permanent basis as she cannot be guaranteed of cleaning services contracts. This is however a company which has been in existence for more than ten years in Zambia but is of South African Origin. They have perpetuated casualisation in this way as can be seen from another of their employee Collins Junza. Collins is 24 years old and has been with the company for 4 years on the same salary as Maria . An exception is Angel Mayungo who works as a cleaning Supervisor and her salary is K345,000.00 and yet she has worked for the company for eight years! This therefore entails that no matter how long these employees have worked for the company , they are treated as casuals and even if they worked for 10-20 years, they can never get any benefits like leave and terminal benefits for the years they have worked.

4.2 Manufacturing industry- Case Study-Trade Kings Limited

This is a Zambian Company owned by Zambians of Asian origin and this is a company which has almost three quarters of the labour force in the factory as casuals. The company manufactures detergents, sweets and “maheu “ a food drink . An interview with Samson Mulelema, 26 years , Nicholas

Siame, 27 Years old and Maybin Daka 28, who are all employed as General Workers revealed that between 2004 and 2005, the company was paying K5,000.00 per day to each general worker for the day shift and K6000.00 per day for the night shift. In 2006, the amount was adjusted to K7,000.00 per day for day shift and K8,000.00 for the night. Samson Mulelema has been with the company for two years, while Nicholas Siame has worked for the company for three years and Maybin Daka has worked for one year and six months. These amounts translates into K175,000.00 per month assuming one works for 30 days at K7,000.00 per day and K200,000.00 for the Night shift. What is obtaining on the ground is that the workers are paid for the hours they put in and if they are absent on any particular day due to illness or bereavement, they would not be paid for the number of days they are away and they risk being replaced should they stay away for at least three days even for legal reasons! This case study is in clear defiance of the Minimum Wages and Conditions of Employment Act (General Order) 2006 which stipulates the minimum wage of a general Worker at K268,800.00 in category 1 at an hourly rate of K1,400.00.

4.3 Utility Provider- Case Study-Zesco Limited

Zesco Limited is one of the few remaining parastatal companies which survived privatization in the third and fourth republic. Due to its nature of

work, that is sole supplier of electricity in Zambia, casual workers are often engaged on certain contracts for the duration of the project or others just when they need them like laying of cables and poles and sometimes in some emergency works like the Kafue gorge when it suddenly flooded in 2006 and the plant had to be shut down to avoid further damage to the turbines. In this situations casual workers were employed to clear the water and the debris that came with the flood and their being engaged as casuals is justified as it is for a specific purpose. Sadly however with the coming of liberalization, even Zesco has engaged in casualisation of labour with some workers having worked as casuals for almost 12 years. An interview with Danny Mwandwe revealed that Danny, 39 years old, was first contracted as a casual worker for four years as a linesman on ABB/Zesco Project from 1991 to 1994. He was later hired by Zesco Limited in 1996 to date on a three months contract as a linesman and has been working in the same capacity as a casual worker for more than ten years on a three- six months contract renewable whenever it suits the Employer. Overall Danny has worked for this company for close to 15 years and what benefits does he get? He is paid K1,200,000.00 per month which in his opinion is good money , but this leaves Danny vulnerable because had he been a permanent employee, he would have been entitled to a service bonus after clocking ten years with the

company in addition to his terminal benefits. Danny if dismissed today will only get paid for the number of days he has worked in that month. Simon Kanyama, 41, has also worked for Zesco for almost ten years. He was employed as a casual in 1997 and also alludes to the fact that his contracts keep being renewed time after time. The story of Mwenya Shata ,30 years old was a sad one as he was employed as a casual in the Power Cut Department in 2005. His initial salary was K700,000.00 per month. The money was later cut down to K500,000.00 on a “Take It or Leave it” basis as the company claimed they were down-Sizing on the casuals after three months. The amount was again further cut to K430,000.00 Until he was later laid off. Mr Shata had worked for Zesco Limited for one year and three months.

4.4 Service Company- Case Study-Armcor Security Limited

This is an International security company with branches in almost all the provinces in Zambia . Armcor is one of the largest security firms in Zambia. This is a company which charges an average of K1,000,000.00 per Guard . For instance at Zambia National Tender Board where the author works, as Administration Manager ,an advance payment of K4,476,000.00 is paid to Armcor for providing 4 guards on a 24 hour basis, two in the day shift and two in the night. However when it comes to re-numerating their workers,

the conditions seem to be poor. In an interview with Cythia Mulonda 28 years who is employed as a guard, she told the author that her salary after working for the firm for four years was K492,000.00 but the net came to K320,000.00. Cynthia is a single mother of two children and keeps two of her sisters. She says she hardly survives on this meagre salary and has to survive through a co-operating club known as "chilimba" where they form a group of five and each member contributes K100,000.00 towards each other and when it her turn to get the money (in the fifth month) that is when she meets school fees and other things that she cannot afford from her salary.

Moffat Tembo aged 32 years and married with two children is employed as a Superitendent. His salary is K495,000.00 (gross) and has been working for Armcor Limited for seven years. He also struggles in meeting school fees and rentals . His rentals are K140,000.00 per month. Samson Mulelema ,27 years old has worked for Armcor Security for one year and four months. He is single but complains that the salary of K350,000.00 cannot get him through the month. He also complained that even though Armcor allows its employees to go on annual leave, they do not pay holiday or leave pay. If one goes on leave, they actually lose out as they will not be paid what they call "Performance Allowance" where an employ is assessed on a daily basis to see whether they are carrying out their duty well and "Attendance

Allowance “ where they gain points for being punctual and being at the station. When Samson decides to go on leave, he will only get K190,000.00 instead of K350,000.00. He and other colleagues also mentioned the fact that if a guard is absent in a particular month, a deduction will be made from his salary.

4.5 Conclusion

From the cases cited above it is plain to see that casualisation of labour is on the increase and the economic implication this has caused to the workers' rights is that through Statutory Instruments No. 56 and 57 of 2006, for the first time it seems that a casual employee is protected under certain provisions of the Minimum Wages and Conditions of Employment Act . In the past, casual employees were excluded from the definition of “employee” contained in the Statutory Instruments and therefore “legally guaranteed nothing more than their hourly wage. This wage could have been as low as 1 Ngwee per day! Under the new Statutory Instruments, it now appears that a casual employee is at least guaranteed an hourly wage equivalent to the minimum wages spelt out in the wage tables”⁵⁷. What was noted however among all the workers interviewed was that they were not aware of

⁵⁷ Ibid PG 7

the two Statutory Instruments No. 56 and 57 which stipulates the minimum wage the employer should pay them per month.

CHAPTER 5

CONCLUSION AND RECOMMENDATION

5.0 Introduction

The objective of this research has been to examine the adequacy of the various labour laws pertaining to casual workers whether they are adequate to protect the casual worker following the liberalization of the economy in 1991. Having examined the extent of casualisation in Zambia, it is recommended that if we have to boast about respect for the Zambian worker, the law has to be strengthened to cater for this vulnerable group who for a long time has continued to be exploited. It is the authors contention that though there are specific laws relating to labour and employment in Zambia, the investor has taken advantage of poverty and high unemployment has perpetrated the problem of casualisation in that even though these jobs may not be “seasonal” or to meet the need at a particular time, the employer is able to give short terms of contract for periods of six or less and where the contracts are longer than six months, there is no payment of such benefits such as gratuity. This trend has been on the up-swing as the employer knows that they can always find cheap labour and by doing this ,the employer is avoiding paying certain service benefits and other rights like right to notice,

the right to severance pay and most forms of paid leave (annual leave, public holidays, sick leave, etc) that are associated with permanent jobs .

5.1 Conclusion

There is no doubt that with the coming of liberalization in Zambia, the investors in various sectors of the economy like trading, manufacturing,⁵⁸ construction, mining and agriculture has created employment to most Zambians. However with statistics showing only 20% of the entire population of 10 million people in Zambia living above the poverty datum line,⁵⁹ it is easy for the investor to take advantage of the weak labour laws to exploit the worker. Even with the improvements made in the two Statutory Instruments No. 56 and 57 on Minimum Wage and Conditions of Employment, the worker is still a weaker party in comparison to the employer. It is therefore not surprising that the Post on 18 July 2006 just after the launch of the two Statutory Instruments No 56 and 57 threatened to retrench the work force. “What will happen is that we will lay off some workers”⁶⁰ However another investor, Mr. Lideque condemned his fellow investors who threatened to lay off workers and stated that the K256,000.00 minimum wage was still too small. “Zambian workers have for a long time

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⁵⁹ Peter Chileshe Workers RIGHTS AS Human Rights : A Critical Analysis of the Protection of Workers Right to a fair Wage in Zambia and the Effects of Non- Protection of this Right Obligatory Essay UNZA 2003 Pg 47

⁶⁰ The Post

been paid very little money because of the legislation of labour laws.”⁶¹ From the research findings it is plain to see that most workers are at the mercy of their employers because they have taken advantage of the weak labour laws. Further the Ministry of Labour and Social security which is responsible for compliance in labour matters seem to be handicapped in terms of personnel and finances as it poorly funded and only embarked on a programme of recruiting labour Inspectors only after the Republican President Mr. Levy Mwanawasa visited Kansanshi Mine in Solwezi in October 2006 and chastised some of the mining companies on the Copperbelt for excessive hiring of casual workers ⁶²However the ministry was aware of this problem well before March 2006 when Mutale Nalumango who was the Minister of Labour and Social Security cancelled issuance of certificates to labour Brokers⁶³. In short therefore, there is no political will on the part of the Government to enforce adherence to labour laws as the ministry which is mandated with this awesome responsibility is poorly funded. In reaction to this, the Times of Zambia reported that “Mr Mwaanga who is Chief Government spokesperson also dismissed allegations that

⁶¹ The Post 18 July 2006

⁶² Fr. Peter Henriot Whats this fuss about casualisation of labour ? The Post 21 November 2006a

⁶³ Chris Mulalika Nalumango canels issuance of certificates to Labour Brokers The Post 28 March 2006 Pg

Government was doing nothing about amending the bad labour laws, necessitating the tabling of private members motion in parliament”⁶⁴

5.2 Recommendations

5.2.1 Equal Protection of the Law

There is need to ensure that all workers in Zambia enjoy adequate and equal protection of the labour legal regime. The Minimum Wages and Conditions of Employment Act should not exclude some specific industries from paying minimum wages to their workers such as motor trade and petroleum industries , also print newspapers and those who sell produce on behalf of the farmers .

5.2.2 Payment of a Living Wage

Further the Act should be amended to reflect the cost of living in the country. According to the JCTR Basic Needs Basket for September2006, a family of six living in Lusaka needs K1,450,250,00 per month to afford essential food and non –food items. The central Statistics office which uses its own Basic Needs put the figure at K667,906,00 for the same month of September2006.⁶⁵

⁶⁴ Times Reporter State Acts to stop infringement of labour laws Times of Zambia 19 January 2007 Pg 1

⁶⁵ JCTR Policy Brief Third Quarter 2006 Pg 10

5.2.3 Harmonisation of Statutory Instruments No. 56 and 57

For the first time, it now appears that a casual employee is protected under certain provisions of the Minimum Wages and Conditions of Employment Act in that they qualify for a minimum monthly wage, SI 57 for the general worker is only implicitly implied. There is need therefore to have this expressly stated as it can be used as loophole.

There is need to harmonise the hierarchy of wages which under SI 56 contains eight grades and SI 57 has four categories each category/grade with their own minimum wage. This brings about complications and may actually be encouraging widespread payment of illegal wages and benefits.

”Why and how were employees separated into 12 different categories of workers, each guaranteed a different minimum wage? Do the skills and training of a Picture Framer warrant a monthly minimum wage that is over K230,000.00 more than that of a handyman?”

5.3.4 Investment Laws to Target Specific Sectors of the Economy

The investment laws should be tailored to target only certain sectors of the economy which need foreign Direct Investment where the growth is required as opposed to the current system where an investor is free to invest in any category of the economic sector as was the case in the 1986 Investment Act which stipulated a specified amount whether in cash, machinery, buildings

or otherwise terms S 20 (a). The Act also stipulated the training of Zambian Nationals to the fullest extent possible with a view to the replacement of foreign personnel as soon as may be practicable S20 (b). Zambia could qualify this period to five years to curb the perpetual casualisation as Zambia do have qualified personnel who can be trained to take over from the foreign personnel thus contributing to job creation. The Act also gave more incentives to the rural areas and use of local raw materials as well as promoting small scale industries as these were the least developed S 24 (a) (b) (c) and (d). What we see now about the liberalization policy is that Zambia Bottlers instead of manufacturing canned fanta from their plant in Malambo road, they simply import from their sister company in Botswana and you buy a fanta which has 3 pula written on top of the can yet we are in Zambia where we use Kwacha. This is common to other companies like Dunlop who brings in tyres from Zimbabwe, Lever Brothers who import a lot of finished products from Lever Brothers Zimbabwe or South Africa. The list is endless, what this does to the economy is that more employment is created where these products are imported and because these companies take advantage of the weak investment laws and find it cheaper to import than manufacture yet they were given permits as manufacturers who should contribute to job creation in Zambia.

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