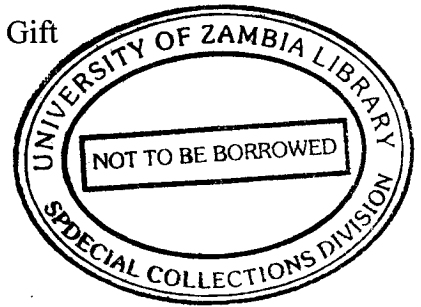


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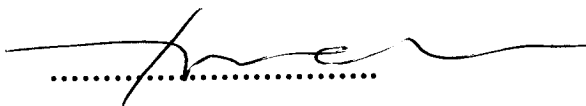
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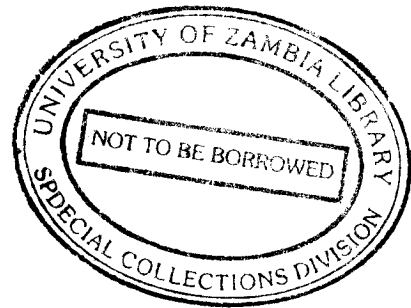

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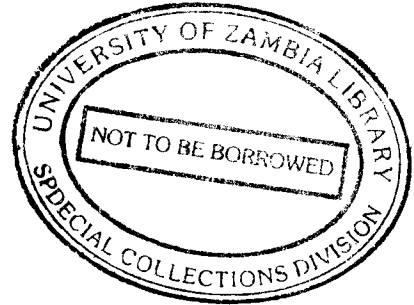
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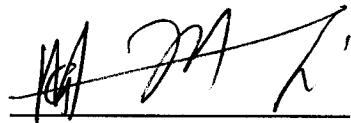
DECLARATION

I, Mileji Gift, solemnly declare that this work represents my own ideas and is not a production of any other work produced or submitted by any person to the University of Zambia or any other Institution and that I have not in any respect used any person's work without acknowledging the same.

I therefore bear the absolute responsibility for the contents, errors, defects, and any omissions therein.

30-11-05

DATE



A handwritten signature in black ink, appearing to read 'Mileji Gift', written over a horizontal line.

SIGNATURE

DEDICATION

To my parents, John Kayombo Mileji and Irene Likanda Mileji.

Dad you have always believed in me even in times I thought I was unable to perform, thanks. **Mum**, you are the best **Mother** in the world. I am scared to mention all the things you have done to me because I won't be able to pay back in my lifetime. God richly bless you.

My clan. Agatha, Raphael, Joseph, Clement, Pauline, Audrey, Pious, Innocent, Faith, John, Frank, Martz and Comfort. Thanks for being by my side and encouraging me to reach greater heights.

ACKNOWLEDGEMENTS

I would not have accomplished a task of this magnitude without the counsel and discourse with a number of eminent people more knowledgeable on the subject than myself, whose valuable contributions have had an impact on my perception of the subject in its entirety.

Firstly, I wish to thank my Supervisor and Mentor **Mr. Fredrick Mudenda** whose advise and directions were always adequate, always to the point. It has been a wonderful experience.

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My gratitude also goes to the people, who made my stay in the Law School a reality, **Exnobert, Gamaliel, Frank, Clavel 'Oga', Makanta (Maj), Fabian, Mando, Mateo, Richie, The Shimwanas (Ben, Katongo, Chola)**. For the girls, **Eta, Maya, Mutinta, Maggie, Gala, Jennipher**, you made my 'jobing' interesting. You are so many, may I say all the LL.B IV 2005. (By not mentioning your name does not make you less important, I thank you all for the scorning and the jokes)

The **Musoka family**, thanks for your support during my stay on campus. God
bless you.

Precious and Bester in the Law School, I will be unfair to forget you,
thanks for the printing.

TABLE OF STATUTES

1. Employment Act Chapter 268 of the Laws of Zambia
2. Halsbury's statutes 4th Ed. Vol. 13 (1991). London. Butterworths
3. Section 8 of Chapter 276. Minimum Wages and Conditions Act; revocation of S.I # 171
Section 9 of Chapter 276. Minimum Wages and Conditions Act; revocation of S.I # 171

TABLES OF CASES

1. Hamlyn & Co. V. Wood & Co. (1891) 2 QB 488, C.A at 491
2. Nokes V. Doncaster Amalgated Collieries, Ltd. (1940) A.C 1014 at P. 1026
3. Stevenson, Jordan and Harrison, Ltd V. MacDonald and Evans (1952) T, L.R 101.
4. Yewens V. Noakes (1880). 6 QBD 530
5. Performing Right Society Ltd V. Mitchell and Booker (1929) 1 K.B 762
6. Agholor V Cheesebrough Ponds (Zambia) Limited (1976) Z.R 1 (H.C)
7. Contract Haulage Limited V Mumbuwa Kamayoyo (1982) Z.R (S.C)
8. Kabwe V. BP (Zambia) Limited (1995-97) Z.R 281
9. Herwitt Chola and 115 Others V. Dunlop Zambia Limited. SCZ. Appeal no. 108 of 2001 (unreported)
10. Sam Amos Mumbo V. Zambia Fisheries and Fish Marketing Corporation Limited. (1980) ZR.135. (HC)
11. Zambia Privatisation Agency V. Matala (1995-1997) ZR 157
12. Bupe and Another V. Zambia National Commercial Bank Limited. Appeal # 27 of 2000 (unreported)
13. Zambia Consolidated Copper Mines V. Matala. SCZ judgement # 9 of 1996 (Unreported)
14. Zambian Airways Corporation Limited V. Mubanga SCZ Judgement #. 5 of 1992
15. Zambia National Broadcasting Corporation Limited V. Tembo and Another (1995-97) ZR 68
16. Chitonfwa V. Ndola Lime Co. limited. SCZ. Number 28 of 1999. (unreported)

17. Nyoni V. Attorney General. SCZ number 11 of 2001 (unreported)
18. Attorney General V. Mpundu. (1984) ZR. 6
19. Miyanda V. Attorney General, (1985) ZR 185
20. Prisca Kalenga Reference case # 034/01/04 Solwezi LRF Advice Centre
21. Medows limited V. Banda SCZ Appeal # 23 of 1999
22. Barclays Bank Zambia Limited V. Chola and Another (1995-97) ZR 212
23. Barclays Bank Zambia Limited V. Chola and Another. (1995-97) ZR 212
24. Mashabela V. National Breweries Limited SCZ Appeal # 23 of 1999.
25. Zambia Revenue Authority V. Chilumba and Another. SCZ appeal # 83 of 2000.
(Unreported)
26. National Airports Corporation Limited V. Zimba and Another SCZ judgment #
34 of 2000. (Unreported)
27. University council of Vidyodaya of Ceylon V. Silva (1985) 1WLR 77
28. Kafue District Council V. Chipulu. (1995-97) ZR 190

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CHAPTER ONE

1.0 INTRODUCTION

Both parties to the contract of employment generally cause the increase in disputes between employer and employee. Firstly, many written or oral contracts of employment are poorly done that both parties to the contract do not appreciate the legal repercussions, which could arise from their terms of the contract. It is this failure to appreciate the terms of the contract, which leads to breach by either party. This chapter will look at what should be included in a contract of employment and how it should be drawn to avoid misunderstanding between an employer and employee.

1.1 Nature of the Contract of Employment

A contract of employment or service is an individual contract between the employer and employee that regulates their relationship. It is submitted that legally the contract of service is the most important document from which the rights and duties of the employer and employee are derived.¹ Therefore, whatever the circumstances under which a person is employed, they will invariably constitute a contract, which can either be oral or written. It is argued, however, that from the practical point of view of clarifying what has been agreed upon should a dispute later arise, it is preferable and advisable to reduce a contract of employment into writing.² It is always best, hence, to draw a contract of employment rather than to do this verbally, as this will prevent any disputes arising from what was said or not said when the employee was taken on. Also, written contracts should be worded clearly to avoid ambiguity or misinterpretation.

¹ Mwenda, W.S Employment Law in Zambia: Cases and Materials. Unza Press. Lusaka.P.7

² *ibid.*

Any contract of employment whether written or oral will consist of at least three separate elements.³ These are;

- (a) any express terms which may be agreed upon between the employer and the employee.
- (b) terms which are implied by common law such as the implied duties of good faith and confidentiality which every employee owes to his employer; the implied undertaking by an employee holding himself out as being skilled, that he will exercise reasonable skill or competence and in most cases the employer will be the sole judge of the employer's competence, the implied term that the employer will pay reasonable remuneration for services rendered, the implied right by either party to terminate the contract of employment on notice.
- (c) terms that are imposed by statute.

The contract of employment does, however, become of greater significance than heretofore, because the operations of the Acts are excluded by a contract, which contains terms, which are more favourable⁴.

Many employers will therefore prefer to have a written contract of employment, which satisfies these requirements stated above.

The formation of the contract of employment depends on the general law of contract with regard to offer and acceptance of the offer either by words or conduct. When the contract

³ *ibid*

⁴ *ibid.*

of employment purports to be concluded by letter it is necessary to see that the answer is really an absolute and unqualified acceptance of the offer of employment made.⁵

It is not necessary; although it is usually wise, to set out every term in the contract.

Where the terms are not concise in the contract of employment, the courts may imply terms, which are reasonably necessary to give effect to the contract. Lord Esher, M.R, defines the rule as follows,⁶

“...A large number of cases have been cited, in some of which the court implied a stipulation, and in others refused to do so. In my opinion, it is useless to cite such cases, so as far as they merely show that in particular case an implication was or was not made. The only use of citing such cases is where they lay down the rules as to such implications, upon which the court will act in dealing with the particular case before it. I have for a long time understood that rule to be that the court has no right to imply in a written contract any such stipulations, unless, on considering the terms of the contract in a reasonable and business manner, an implication necessarily arises that the parties must have intended that the suggested stipulation should exist. It is not enough to say that it would be reasonable thing to make such an implication. It must be necessary implication in the sense that I have mentioned.”

Like any other contract, unless the contract of employment is under seal there must be consideration, i.e. there must be obligations, which bind both parties. The normal consideration in employment contracts will be payment of remuneration by the employer

⁵ *ibid.* P. 12

⁶ *Hamlyn & Co. V. Wood & Co.* (1891) 2 QB 488, C.A at 491

and the provision of services by the employee. Whether consideration is adequate or not is immaterial provide that the **quid pro quo** exists.⁷ The Employment Act Chapter 268 of the laws of Zambia (herein after referred to as the Employment Act), however, provides that in all contracts of services the wages of an employee be paid in the currency of the Republic or allowances in kind where such payment is customary or agreed to by the employee and be paid directly to the employee.⁸

The relationship of employer and employee or master and servant as it is also referred to, is according to the common law, a voluntary relationship into which parties may enter on terms laid down by themselves within limitations imposed only by the general law of contract. A man agrees expressly or by implication to be a servant or an apprentice and there is no other way in which the relationship can arise. The faintest doubt cast upon the voluntary character of the relationship would be sufficient to secure the active aid of the courts. Lord Atkin said “*my lords...I had fancied that ingrained in the personal status of a citizen under our laws was the right of choice constituted the main difference between a servant and a serf.*”⁹

Thus, the relation is a voluntary relation, and we have to discover first what the law means by the term “servant,” secondly what are the general rules governing the formation of the relationship and finally, the nature and manner of performance of duties imposed by the relationship.

⁷ op.cit. P.12

⁸ Section 44(1) & (3) of the Employment Act Chapter 268 of the Laws of Zambia.

⁹ Nokes V. Doncaster Amalgated Collieries, Ltd. (1940) A.C 1014 at P. 1026 as per Cooper, w. Mansfield and John C. Wood (1966) 5th Ed. Outlines of Industrial Law. London. Butterworths. P. 1

*“a servant is a person subject to the command of his master as to the manner in which he shall do his work.”*¹⁰

A contract of employment or service is distinguishable from a contract for services, the latter being in essence the relationship between an ‘employer’ and ‘independent contractor.’ The distinction between the two contracts may be difficult to determine, though the legal results vary greatly, and the judges have frequently said that precise definition is impossible.¹¹

*“... it seems, however, reasonably clear that the final test, if there be a final test, and certainly the test to be generally applied lies in the nature and degree of detailed control over the person alleged to be a servant.”*¹²

The uncertainty of the tests, and particularly those other than control, can copiously illustrated. In **Stevenson, Jordan and Harrison, Ltd V. MacDonald and Evans**, lord Denning found that employment as part of a business was a feature which ran through contracts of services whilst under a contract for services the work *“although done for business, is not integrated into it, but is only an accessory to it.”*¹³

From the above, it can be inferred that where a man works as part of a business he will almost invariably be a servant. On the other hand it is also clear that a contract of service

¹⁰ Yewens V. Noakes (1880).6 QBD 530 per Bramwell, L.J at P. 532

¹¹ cooper, w. Mansfield and John C. Wood (1966) 5th Ed. Outlines of Industrial Law. London. Butterworths. P. 3

¹² Performing Right Society Ltd V. Mitchell and Booker (1929) 1 K.B 762 at P. 767

¹³ (1952) T,L.R 101. per Lord Denning. L.J at P. 111 as stated in cooper, w. Mansfield and John C. Wood (1966) 5th Ed. Outlines of Industrial Law. London. Butterworths

may arise in respect of a single isolated transaction in which cannot be said to be integrated into the business provided always that the necessary element of control is present.

1.2 Historical Background of Employment Contracts

After society began to develop and more especially after the industrial revolution, production increased and the importance of contracts of employment became a living concept. The concept of employment is, therefore, a phenomenon of the 18th and 19th centuries. Previously, there existed no form of contractual employment, there were, however, slaves and serfs as in earlier societies like the feudal era¹⁴.

When production increased some producers became very prosperous while others were absorbed as the employees. It caused a gap between the master and man, that is to say, workman and class distinction became very sharp. With the advent of Industrial Revolution this distinction of master and workman (servant) became clear with its division of labour. Individuals were replaced by squads, companies and battalions of workers¹⁵. The system of entrepreneur developed.

When the tussle and conflict between the master and workman grew, it was thought to be prudent to have certain rules and regulations, which might be acceptable to both parties.

¹⁴ Obligatory Essay by Bwalya, Kelvin Fube (1984-85) Freedom of Contract: A reality or Fiction p. 29

¹⁵ Kumar, H.L (1996) employers Rights Under Labour Laws. Universal law publishing CO. PVT.Ltd. New Delhi. P. 4

From thence the animal rule of 'might is right' was gradually replaced by the rule of the game and right and responsibilities of both the parties were fixed.¹⁶

The historical development of employers and employees in relation to socio-economic changes can be traced back to many centuries. It can reasonably be divided into three successive periods. These are;

- (a) the Medieval period
- (b) the period of Industrial revolution.
- (c) the modern period of mass production.¹⁷

(a). The Medieval Period

The medieval period was technologically an era of water wheels, bullock carts and handicrafts, and sociologically the feudal age of the land baron, and agriculture was a predominate activity. There was virtually no specialisation and each family was almost self sufficient in the production of food, clothing and other necessities of life.¹⁸

A man's status in the society was rightly fixed; early in the medieval period he was either a peasant or landlord, and later he might be a merchant or craftsman. In this age man discovered a real status and function in his own self-sufficiency.

As the agriculture productivity increased, men were gradually utilised by feudal lords for specialized tasks and also by traveling merchants. Some of the traveling merchants won

¹⁶ ibid

¹⁷ ibid

¹⁸ ibid

their freedom eventually comprised a relatively rich middle class between the peasants and landlords.

More peasants gradually freed themselves from feudal bondage; some deviated toward employment with merchant in the larger towns, and some started small crafts of their own. Thus, the earliest industrial enterprise in the form of handicrafts were quite small having single craftsman with one or two apprentices. It can thus, be argued that, the economic activities were built up of self-employed crafts and flourishing trade. The craftsman was his own master and worked in his own community.

(b). Industrial Revolution

The industrial revolution brought with it scientific progress, a sudden leap forward in technology and the beginning of capitalistic society. It also brought with it an increase in personal freedom and allowed the individual an opportunity to move up and down in the social scale according to his capability, good fortune, and perhaps ruthlessness.¹⁹ The significant feature of this era was the change in the role of the individual. In the feudal era, men lacked freedom and individuality, but with the Industrial Revolution they became free to succeed or to fail, as a result of their efforts. The old social groups were dissolved, the bonds between individuals within groups were broken, and the paternalism and security of feudal system were destroyed. Man become psychologically and economically insecure and the universal credo become the ‘survival of the fittest.’²⁰

¹⁹ibid

²⁰ ibid

Large scale manufacturing, of course, required large supplies of labour and capital. Thus, wealth created a class of owner managers who dominated the scene, described as a ruthless unscrupulous breed of men, lacking compassion, feeling no social obligation and regarding the poor not unfortunate but as lazy and immoral.²¹ At the same time workers started banding together into unions for improving their working conditions and wages through collective bargaining.

Though the 'Industrial Revolution' produced abundant economic fruits, the owners of the means of production, it is argued, treated man as an economic machine and taught the worker that work was a necessary evil rather than a source of pride in accomplishment.²² The psychological needs of pride in one's work a sense of accomplishment and social usefulness, social responsibility, self-respect, and status in community were forgotten to satisfy, thus, this aspect of motivation and rural improvement were totally neglected. Therefore, the workers' welfare was not a matter of concern to the employers.

(c). Modern period of mass production.

Mass production becomes not only a mechanical means of efficient production, but also a social way of life. Under mass production, the employer is chiefly concerned with handling people, not machines, as they were perceived in the industrial revolution era.²³ The inescapable fact is that the employer has to possess the social skills of a high degree,

²¹ *ibid*

²² *ibid*

²³ *ibid.*

thus, knowing how to get along with people. From here starts skill of having good relation with workers.

Two important points worth noting about modern period are:

(i) In large-scale production firms' workers behave more as social creatures than as individuals.

(ii) Workers have achieved power to bargain effectively for the material rewards of their work. In the industrial union they have found not only a collective power but also a social organisation to knit them together, to provide a degree of status and security and comradeship.²⁴

In this era, the roles, rights and responsibilities of the employer and employees are clearly defined, either by contract between them or by statute.

In fact, when one goes for the production on large scale then he cannot be expected to work alone, hence, there is a need of employment. If there is employment then there must be the law of employment. Employment, as a matter of fact, is a sort of contract between the employer and employee. Employment also envisages certain social responsibilities like a living wage, good working conditions ensuring a decent standard of life and full enjoyment of leisure and social cultural opportunities.²⁵ It outlaws forced labour and makes it an offence punishable under law. The primary function of law of employment is regulating the social power of capital and labour and ensuring that the ground rules are duly observed. The source of this employment law is the contract itself and statutes.

²⁴ *ibid.*

²⁵ *ibid.*

1.3 Formalities of a Valid Contract of Employment

Like any other contract, the parties to the contract of employment must have the capacity to enter into such a contract. Generally, any person of sane mind who is over the age of fifteen years has the capacity to enter into a contract of employment. The Employment Act defines a 'young person' to mean a person who has not attained the age of fifteen years.²⁶ Hence, for the purposes of employment, the minimum age for this is fifteen years²⁷ and it is an offence for any person to employ a person under the age of fifteen. It is argued that a contract of employment with a person (employee) under the age of fifteen is invalid.

There are, however, exceptions to the general rule on minimum contractual age.²⁸

Therefore, the person under the age of fifteen may be employed, firstly, in the case where he is receiving full-time education at a school recognized as such under the Education Act,²⁹ if he is employed during vacations. Secondly, in the case of a person under the age of fifteen years who has failed to secure admission to a suitable school or whose enrolment has been cancelled or terminated by school authorities, or for good cause, by a parent. However, in both instances such child will only be employed if the labour commission or any labour officer approves the terms, conditions and nature of his employment.³⁰

²⁶ Section 3 of the Employment Act Chapter 268 of the laws of Zambia.

²⁷ This is in accordance with Convention 138, minimum Age Convention 1973, ratified by Zambia on 9th February 1976. as per W.S Mwenda. Employment Law in Zambia; Cases and Materials P. 2

²⁸ Mwenda, W.S Employment Law in Zambia; Cases and Materials p.2

²⁹ section 12(3) (a) of the Employment Act. Chapter 268 of the Laws of Zambia

³⁰ section 12(3) (b) of the Employment Act. Chapter 268 of the Laws of Zambia

Any contract of service entered into with an employee or casual employee under the age of sixteen years is deemed to be a daily contract, notwithstanding any agreement whether oral or in writing to the contrary. In all such cases the employer is under obligation to cause the contract to be attested by the proper officer.³¹ It is argued, however, that it is practically impossible in situations where both parties 'benefit' from child labour, for such practices to be brought to the attention of the labour commissioner.³²

The contract of employment can either be oral or in writing. The law requires that whether oral or in writing, it needs to have certain formalities, for it to be considered as a valid contract. It is only where these formalities in the contract are met that, the employer and employee can have minimum problems in the execution of their duties and responsibilities towards each other.

Every employer is required to prepare and maintain at his expense, a record of contract for every employee under an **oral contract of service**, thus, oral contracts of employment should be evidenced in writing.³³ The record which is a prescribed form, must contain the following details: the name, sex and nationality of the employee, the date of engagement and capacity in which the employee is employed; the type of contract, the rate of wages and any additional payment in kind, and the intervals of payment of wages.³⁴

³¹ section 12 (2) of the Employment Act Chapter 268 of the Laws of Zambia .

³² Mwenda, W.S Employment Law in Zambia; Cases and Materials. Unza Press. Lusaka p.3

³³ section 24 of the Employment Act.

³⁴ *ibid.*

The law requires that the employee is given a copy of record at the time of engagement and any employer who fails to comply with this requirement commits an offence for which he is subject to penalties. In the absence of the record and in the event of a dispute concerning the terms and conditions of employment, the courts will rely on the employee's version of the events or statements unless the employer proves the contrary.³⁵

With regard to **written contracts** of employment³⁶, the employment Act places a duty on the employer to draw up a contract of employment and to present it for attestation to the proper officer. The proper officer must attest to the fact that such contract was read over and explained to the employee in the presence of such officer and was entered into by the employee voluntarily and with full understanding of its meaning. However, an exception to this requirement is in situations where the parties to the contract that has not been attested are literate and entered into the contract in good faith and such a contract is enforceable as if it had been attested.³⁷

The contract of employment to be attested must have the following requirements; names of the employer and employee, the name of the business undertaking, the place of engagement, the employee's place of origin, the date of commencement and duration of the contract, the place where is to be performed, the wages to be paid and the intervals at which they are to be paid, and the nature of employment, including working hours.³⁸

³⁵ section 24 (5) of the Employment Act Chapter 268 of the Laws of Zambia

³⁶ Section 28 of the Employment Act outlines contracts which need to be in writing

³⁷ Proviso to section 29 of the Employment Act. Chapter 268 of the Laws of Zambia

³⁸ Section 30 of the Employment Act. Chapter 268 of the Laws of Zambia

The proper officer must be satisfied that the terms of the contract are not in conflict with the provisions of any written law and the employee has undergone medical examination and has been certified fit for the job. The proper officer must also be satisfied that the employee has fully understood and freely consents to the contract and that the consent has not been obtained by coercion or undue influence or as a result of misrepresentation or mistake.³⁹

The consequence of failure to have a written contract attested within forty days of its making is that the employer is excluded from having any claim of the contract. An employee who is a party to a contract that has not been attested either due to the employer's failure to represent it for attestation or refusal to attest the same by the proper officer, is entitled to be paid the fair value of any services rendered. The proper officer or court is empowered to make an assessment of what could constitute a fair value.⁴⁰

From the foregoing, it can be inferred that it is always best to draw up a contract of employment rather than to do this verbally; as this will prevent any disputes arising from what was said or not said when the employee was taken on. Also, written contracts should be worded clearly to avoid ambiguity or misinterpretation.

Since it is not certain that every employer and employee will enter into a contract of employment, which has favourable terms to either party, the law in Zambia has set minimum standards for the protection of employees. That law is the Minimum Wages

³⁹ Ibid.

⁴⁰ Banda, D.A (1999) A Guide to Employment in Zambia. Lusaka. Friedrich Ebert Stiftung. P. 21

and conditions of Employment Act Chapter 276 of the Laws of Zambia, to protect employees who are not adequately covered by any effective mechanism of regulating wages and other terms and conditions of employment.⁴¹

⁴¹ op.cit.

CHAPTER TWO

2.0 Introduction

It is stated that to terminate the services of an employee is the biggest right wielded by the employer and this is the highest punishment which could be meted out to any employee.⁴² The employer, however, has not been given absolute right to hire and fire an employee according to their whims and fancies. This Chapter will analyse how this right to dismiss an employee is limited with special regard to Zambia and will also analyse the circumstances in which an employee can receive this 'punishment.'

2.1 When an employer can exercise their right to terminate a contract of employment.

Where the relationship between an employer and employee exists, both of them enjoy certain rights. The employee has the right to get wages from the facilities as provided by the law, there at the same place the employer has the right to take action against the erring employee who indulges in misconduct.

There are four recognized forms of relationship between employer and an employee

- (i) Employer's right to select an employee
- (ii) Employer's right to pay wages or other remuneration
- (iii) Employer's right to control the method to doing the work, and
- (iv) Employer's right of suspension or dismissal or transfer of the employee.⁴³

⁴² Kumar, H.L Employers Rights Under Labour Laws. Universal law publishing Co. PVT. Ltd. New Delhi. P. 10

⁴³ Ibid.

The fundamental principle of employee and employer relations is that an employer should have the right to select an employee as well as to terminate his services. Thus, the power to select, power to terminate and capacity to pay remuneration are three important indicia of employment.

Like any other contract, a contract of employment invariably has to come to an end at one time or the other. Thus, it has been rightly argued that, 'every well-drafted contract of employment must have a clause stipulating how and when such a contract may be terminated by either party. This is in recognition of the fundamental consideration that contracts of employment should never be converted into contracts of slavery,⁴⁴

To terminate the services of an employee is the biggest right wielded by the employer and this is the highest punishment, which could be meted out to any employee. It is not as if the employers have been given absolute right to hire and fire an employee according to their whims and fancies.⁴⁵ Thus, any civilised legal system recognises certain laws, which govern the relations between the employer and the employee.

Under the common law, an employer has the right to terminate a contract of employment for any reason or none and without applying the rules of natural justice.⁴⁶ The Employment Act Chapter 268 of the laws of Zambia (herein after referred to as the Employment Act) requires that employees be treated fairly in accordance with the

⁴⁴ Banda, D.A (1999) A Guide to Employment in Zambia. Lusaka. Friedrich Elbert Stiftung.

⁴⁵ Op.cit

⁴⁶ University council of Vidyodaya of Ceylon V. Silva (1985) 1WLR 77. as per Mwenda W.S Employment Law in Zambia. Cases and Material Unza Press. Lusaka p.34

principles of natural justice and procedural fairness balanced against the right of employers to dismiss an employee for legitimate reasons.⁴⁷

As a general principle employees have a right to terminate their employment with an employer and employers have the right terminate the employment of employees. These rights, however, come with responsibilities. The main responsibility in most cases is to provide notice of intention terminate. The length of such notices is normally dependant on the duration of the employment with the employer. Under section 20 of the Employment Act, either party to any oral contract may terminate the employment on the expiration of notice given to the other party of his intention to do so, and where the notice expires during the currency of a contract period, the contract is there upon terminated.⁴⁸ Where an employer fails to give adequate notice, the employee may sue the employer and the remedy will be pay for the period of notice that should have been given.⁴⁹ Employees too, have a responsibility to provide notice.

Without notice, either party to an oral contract may terminate the contract of employment. The employer may do so by making a payment to the other party of a sum equal to all wages and other benefits that would have been due to the employee if he had continued to work until the end of contract period.⁵⁰ In any other case, a contract may be terminated by payment to the other benefits that would have been due to the employee at

⁴⁷ Section 26 A of the Employment Act Chapter 268 of the Laws of Zambia,

⁴⁸ Mwenda W.S Employment Law in Zambia. Cases and Material. Unza Press. Lusaka p.34

⁴⁹ <http://www.wageline.gld.gov.aulconditionsemployment/termination.html>

⁵⁰ Op.cit

the termination of the employment had notice to terminate the same been given on the date of payment.⁵¹

Unlike oral contracts of Employment, the Employment Act provides that, a written contract of employment is terminated by the expiry of term for which it is expressed to be made, by the death of the employee before such expiry or any other manner in which a contract of service may be lawfully terminated or deemed to be terminated whether under the provisions of the act or otherwise.⁵² Thus, a fixed term contract is a contract of employment that has a beginning and an end date of completion. It is recommended that an employer should notify the employee of the impending expiry date of the contract. It is then up to the employee and employer to renew their arrangement and negotiate a new contract of employment. It is also recommended that such arrangements be in writing, including any provisions that may allow the contract to be terminated earlier by either party.⁵³

A contract of employment may come to an end through termination of the contract, dismissal, resignation, redundancy, retrenchment, retirement, frustration of the contract or indeed the death of the employee.⁵⁴

(i) Dismissal

The word ‘dismissal’ conjures a picture of wrong doing on the part of the dismissed because of its disciplinary connotations.⁵⁵ Being punitive, the law has provided that a

⁵¹ Section 21(a) and (b) of the Employment Act Chapter 268 of the Laws of Zambia

⁵² Section 36 of the Employment Act Chapter 268 of the Laws of Zambia

⁵³ <http://www.gov.ab.calhrel employmentstandards/about/termination.asp>

⁵⁴ Mwenda W.S Employment Law in Zambia. Cases and Materials. Unza Press. Lusaka p. 35

reason or disciplinary cause must always support a dismissal, and the employee given the right to exculpate himself. An employer who does not follow this procedure exposes himself to challenge in the courts of law for wrongful dismissal.

(a) Summary Dismissal

When a decision is taken by the employer to dismiss the employee instantly ‘on the spot,’ this may be known as summary or ‘instant’ dismissal. In **Agholor V Cheesebrough Ponds (Zambia) Limited**⁵⁶ stated “ *it is well settled that the employee who holds himself out as being skilled to do a certain type of work impliedly undertakes that he will exercise reasonable skill or competence in that work. He can be dismissed summarily if he fails to display such skill or competence.*”

Thus, it is trite law that a master can terminate a contract of employment at any time, even with immediate effect, and for any reason.

It was stated in the case of **Contract Haulage Limited V Mumbuwa Kamayoyo**,⁵⁷ that if an employer terminates the contract of employment outside the provision of the contract, then he is in breach thereof and is liable in for damages for breach of contract.

It is argued that a master may terminate the contract of employment with or without sufficient notice.⁵⁸ When he terminates without notice, then the employer is in breach of contract. Where, however, the master ‘dismisses’ a servant, he terminates the contract summarily without notice, on the grounds of misconduct, negligence or incompetence. If

⁵⁵ *ibid.*

⁵⁶ (1976) Z.R 1 (H.C)

such grounds are justified, the servant forfeits the right to any notice whatsoever and to a number of other benefits.⁵⁹

Reasons viewed as misconduct in certain circumstances include, intoxication at work, conduct causing serious risk to; person's health or safety, or profitability of the employers business, willful or deliberate behaviour inconsistent with the employment contract, or refusal to carry out lawful and reasonable instruction. With regard to incompetence and negligence, the employer should always take into account whether an employee clearly understands what is expected regarding the way in which the job is carried out and the quality and quantity of standards required by the employer. It is also important that employees clearly understand the consequences of the business of making a mistake.

*Dismissal might be justified where it can be reasonably proved that an employee was negligent that an employee was willfully negligent or was shown to be incompetent due to misrepresentation of prior experience.*⁶⁰

The law provides that where an employer dismisses an employee summarily and without due notice, such employer must within four days of the dismissal, deliver to a labour officer in the district in which the employee was working, a written report of the circumstances leading to and the reasons for such dismissal.⁶¹ The labour officer then enters into a register, maintained for the purpose, details of the report delivered to him.

⁵⁷ (1982) Z.R (S.C)

⁵⁸ Mwenda W.S Employment Law in Zambia. Cases and Materials. Unza Press. Lusaka P.43

⁵⁹ Ibid

⁶⁰ Agholor V Cheesebrough Ponds Zambia Limited

⁶¹ section 25 of the employment Act Chapter 268 of the Laws of Zambia

(b) Wrongful Dismissal

In looking at termination of employment by dismissal, there are two legal aspects, which must be considered. First whether the termination has been contractually lawful, that is, without the breach of any term in the contract of employment and, secondly, whether the termination contravenes any legislation, that is to say, was termination lawful according to **statute**. If there is a contractual breach of termination, whether by the employer or by the employee, for instance, failure to give the required notice will be a breach of contract and is referred to as wrongful Dismissal and the offended party may sue for damages. The remedy for wrongful dismissal, therefore is an award of damages calculated on the basis of what the employer would have received had the necessary notice been given.⁶²

If a dismissal occurs in contradiction of a statutory right the dismissal may be **unfair**. An unfair dismissal occurs when the reason for the dismissal is not among the statutory reasons, for instance, where one is dismissed on the ground of sex, race, religion, political opinion or affiliation, tribal or status, marital status of the employee.⁶³

Thus, unlike wrongful dismissal, unfair dismissal is a creation of statute. Its roots can be traced to 1971 in England where it came into being with the objective of promoting fair labour practices, by preventing employers from terminating contracts of employment on specified grounds and providing the hitherto unavailable remedy of reinstatement where an employee was able to prove that he had been unfairly dismissed.⁶⁴ Under unfair

⁶² Mwenda. W.S Employment Law in Zambia. Cases and Materials. Unza Press. Lusaka p.48

⁶³ Section 108 (1) Industrial and Labour Relations Act.

⁶⁴ *ibid.*

dismissal, the courts will look at the reasons for the dismissal to determine whether the dismissal was justified or not.

(c) Constructive Dismissal

The term ‘constructive dismissal’ is generally understood as being a resignation from employment caused by words and actions by the employer that have led the employee to believe they have no choice other than to resign. Examples of a constructive dismissal might include⁶⁵

- (i) the employer failing to provide safe working conditions or
- (ii) the employer making substantial changes to the employment contract without the agreement of the employee.

A resignation as result of such matters might be viewed as a dismissal and therefore subject to all conditions relating to dismissal procedures and remedies for unfair dismissal.

Resignation

Resignation may be defined as the voluntary termination of the contract of employment by an employee by either giving the required notice or payment of money to the employee in lieu of notice.⁶⁶ An employee may resign from his employment by voluntarily notifying their employer that they intend to terminate their employment. The

⁶⁵ <http://www.gov.ab.ca/hre/employmentstandards/about/termination.asp>

⁶⁶ op.cit

amount of notice an employee must give when resigning from employment is governed by their award or agreement and may differ from the notice of dismissal periods in the Employment Act. For those employees not covered by any award or agreement, the amount of notice for resignation should be a period agreed with their employer.⁶⁷ Resignation effectively terminates the contract of employment and if the termination is done in breach of the terms of the contract, the employer may sue the employee for damages for breach of contract.⁶⁸

Redundancy:

Redundancy takes place when an employer decides that the employee's services are no longer needed.⁶⁹ The contract of service of an employee shall be deemed to have been terminated by reason of redundancy if the termination is wholly or in part due to the employer ceasing or intending to cease to carry on the business by virtue of which the employee was engaged or the employer ceasing or intending to cease to carry on the business by virtue of which the employee was engaged.⁷⁰ Thus, when the services of a worker are not required or are no longer necessary, the employee is said to have become redundant. The law therefore, requires once an employee has been declared redundant, he or she should not be replaced.⁷¹ The declaration of an employee as being redundant is seen as a declaration to the whole world that the employer no longer requires such services of a particular employee. Therefore, an employee can bring a court action

⁶⁷ *ibid.* p.35

⁶⁸ *ibid.* 74

⁶⁹ *ibid.* 77

⁷⁰ Section 26B of Chapter 268 of the laws of Zambia.

⁷¹ *ibid.*

against an employer if it is later established that, after being declared redundant, the employer replaced him with somebody else to do the same work, which he was doing.

In the case of **Kabwe V. BP (Zambia) Limited**,⁷² it was stated that, 'if the contract of employment is varied without the consent of the employee, then the employee is deemed to have declared redundant on the date of such variation and must get a redundancy payment.

Retrenchment

Retrenchment takes place when a company that is going through financial difficulties decides to reduce its workforce as a cost saving measure.⁷³ Its trite law that where an employer has no longer the financial capacity to maintain his workforce, then he can retrench to such a number as he can afford to maintain. Unlike when workers are retrenched, they can be replaced when the financial position of the employer improves.

It is argued, however, that in practice, retrenchment and redundancy are taken to mean one and the same thing as it was illustrated in the case of **Herwitt Chola and 115 Others V. Dunlop Zambia Limited**.⁷⁴ The reduction, in labour force in that case was referred to as redundancies, when evidence indicated that the reduction in the workforce was necessitated by the financial difficulties that the company had to close down.

⁷² (1995-97) Z.R 281

⁷³ Mwenda W.S Employment Law in Zambia. Cases and Materials Unza Press. Lusaka p.77

⁷⁴ SCZ. Appeal no. 108 of 2001 (unreported)

Thus, an inference can be drawn that law seems to take redundancy and retrenchment to mean one and the same thing. This is evidenced by the procedure to be followed on redundancy as provided for in **section 26B** of the Employment Act and no such provision is provided for in retrenchment. In both cases, therefore, it can be safe for the employer to follow the provisions of section 26(B) of the Employment Act.

Retirement

A contract of employment can terminate through retirement. Retirement age in Zambia is fifty-five (55) years for both female and male workers.⁷⁵ However, where the conditions of service permit, an employee can go on early retirement.⁷⁶ An employee, who has served an employer for not less than ten years and has attained the age of fifty-five years, is entitled to three months basic pay for each completed year of service.⁷⁷

Frustration of Contract

The contract of employment, like any other contract can be frustrated when a supervening event makes performance of the contract impossible.⁷⁸ The employer's business could be destroyed by floods, fire or an act of God making it impossible for work to be performed and impossible for an employment relationship to continue.

A contract of employment can 'frustrate itself' and come to an end if an employee's illness or injury prevents them from working for a considerable time or where time is of

⁷⁵ Section 8 of Chapter 276. Minimum Wages and Conditions Act; revocation of S.I # 171

⁷⁶ Section 9 of Chapter 276. Minimum Wages and Conditions Act; revocation of S.I # 171

⁷⁷ Op.cit

⁷⁸ Mwenda W.S Employment Law in Zambia. Cases and Materials Unza Press. Lusaka p.35

essence regarding the performance of duties under the employment contract. It is argued that an employment contract could also be frustrated (terminated) by death of an employee or employer who is the sole member of the business.⁷⁹ In **Sam Amos Mumbo V. Zambia Fisheries and Fish Marketing Corporation Limited**,⁸⁰ the plaintiff claimed that the conditions of employment he had been offered were altered and some of them not fulfilled at all. The defendant company pleaded frustration contending that the plaintiff's condition of service were altered as a result of the Mwanakatwe Salaries Commission followed by a government white paper, which directed that all salaries of permanent employees were to be within government recommendations. The court held that a subsequent change in the law or in the legal position affecting a contract is a well-recognised head of frustration.

2.2 How an employer may exercise his right to terminate the contract of employment.

In the absence of any agreement to the contrary, an oral contract shall be deemed to be a contract for the period by reference to which wages are calculated.⁸¹ Either party to an **Oral Contract** may terminate the employment on the expiration of notice given to the other party of his intention to do so, and where the notice expires during the currency of a contract period; the contract shall be thereupon terminated.⁸² In the absence of any

⁷⁹ *ibid*

⁸⁰ (1980) ZR 135(HC)

⁸¹ Section. 18 of the Employment Act Chapter 268 of the Laws of Zambia

⁸² Section. 20(1) of the Employment Act Chapter 268 of the Laws of Zambia

agreement providing for a period of notice of longer duration, the length of such notice shall be⁸³

- (i) Twenty-four hours where the contract is for a period of less than a week;
- (ii) Fourteen days where the contract is a daily contract under which, by agreement or custom, wages are payable not at the end of the day, but at intervals not exceeding one month;
- (iii) Thirty days where the contract is for a period of one week or more.

The Employment Act states that notice to terminate employment may either be verbal or written and may be given at any time and the day on, which the notice is given shall be included in the period of notice.

Where there is no provision for termination, reasonable notice should be given. Factors that should be taken into account in determining reasonableness include, specialised knowledge, possibility or ease of finding an alternative job, the length of service and seniority of an employee.

A **Written Contract** of Employment shall be terminated,⁸⁴

- (I) By the expiry of the term for which it is expressed to be made; or
- (II) By the death of the employee before such expiry; or
- (III) In any other manner in which a contract of employment may be lawfully terminated or deemed to be terminated.

⁸³ Section. 20(2) of the Employment Act Chapter 268 of the Laws of Zambia

⁸⁴ Section. 36(1) of the Employment Act Chapter 268 of the Laws of Zambia

Where owing to sickness or accident an employee is unable to fulfill a written a contract of employment, the contract may be terminated on the report of a registered Medical Practitioner.⁸⁵

⁸⁵ Section. 36(2) of the Employment Act Chapter 268 of the Laws of Zambia

CHAPTER THREE

3.0 INTRODUCTION

This Chapter will look at the principle used to award damages in loss of employment cases in Zambia. It starts by defining damages and looks at the Rationale behind the award of damages and concludes by analyzing the said principle of award of damages.

Damages are the pecuniary compensation given by the process of law to a person in respect of injury arising from the infringement of a legal right, or failure to fulfill a legal a duty, whether such act or default be breach of contract or a tort.⁸⁶ Damages are also defined as compensation fore loss suffered by a person following a tort or breach of contract or breach of some statutory duty.⁸⁷

3.1 The Rationale Behind The Award Of Damages; With Special Regard to loss of Employment Cases

With regards to loss of employment cases, damages include all of the financial and emotional loses a person suffers as the result of all employment dispute. The rationale behind the award of damages is generally to put the individual back into the same place he would have been had he not lost the job.⁸⁸

⁸⁶ Halsbury's statutes 4th Ed. Vol. 13 (1991). London. Butterworths. P.575.

⁸⁷ Osborn's Concise Law Dictionary. 8th Ed. (1993). Edited by Rutherford, Leslie & Sheila Bone. Universal Law Pub. Co. Pvt. Ltd. New Delhi

⁸⁸ Law Quarterly Review Vol. 97 Baker, P.V. (Editor). London. Sweet and Maxwell P. 448

The House of Lords is seen to have recognized on numerous occasions that in all actions, whether in contract or tort, one overriding principle governs the measurement of damages.

In the words of Lord Blackburn:

“...where any injury is to be compensated by damages, in setting the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.”⁸⁹

Thus, with the exception of exemplary damages, then, the function all heads of damage is to compensate the plaintiff on the principle of restitution integrum.⁹⁰

3.2 When is the Employer or Employee entitled to Damages?

As stated in chapter 2, the law provides for means and ways of how the contract of employment can come to an end. Like any other contract, when either party to the contract of employment is in breach, the innocent party is entitled to sue for damages. For instance, Chapter 2 indicates that the employer can end the contract of employment by giving the required notice or payment in lieu of notice to the employee. When the employer is in breach of this established procedure, thus leading to wrongful or unfair dismissal, the employee would be entitled to damages⁹¹. Wrongful dismissal, for

⁸⁹ Street, Harry (1962) **Principles of the Law of damages**. London. Street & Maxwell. P.2

⁹⁰ Ibid.

⁹¹ Ibid.

example, gives rise to a right to claim for loss of earnings over a necessary limited period.⁹²

McGregor admits that where the employee is in breach little authority exists on the measure of damages to be given to the employer.⁹³ He attributes this to a number of reasons. Firstly, one is more likely to find that if any one is suing, it is the employee claiming his wages since it is he who stands to lose by his own breach, and the employer can often benefit by the employee forfeiting his right to his wages. Secondly, the employer, rather than suing for damages, is likely to dismiss the employee summarily with or without forfeiture of wages. Thirdly, in the case of an employee's breach of contract in restraint of trade, the employee is more likely to claim an injunction to be able to sue for liquidated damages.⁹⁴

An inference can thus be drawn that no standard has been established which governs the principle of award of damages to the employer when there is breach by the employee.

3.3 What Principle Governs the Measurement of Damages?

With regards to employment cases, at common law the measure of damages is the period of notice required to terminate employment. The general rule is that the length of notice depends on the intention of the parties as revealed in their contract.⁹⁵ The normal measure of damages at common law is the amount the employee would have earned under the

⁹² McGregor, Harvey (1988) 15th Ed. McGregor on Damages. London. Sweet & Maxwell. Limited. P.721

⁹³ Ibid. p. 729

⁹⁴ Ibid.

⁹⁵ Mudenda, Fredrick. LAZ Journal Vol.- "The Award of Damages in Employment Cases in Zambia; a General Overview." P. 59

contract for the duration until the employer could lawfully terminate the contract.⁹⁶ Mudenda postulates that the Zambian Supreme Court has generally followed this principle.⁹⁷ It is stated, however, that where parties have not revealed in their contract the provision for termination of employment, a reasonable notice must be given.⁹⁸ It can be seen that this principle was followed in the case, **Zambia Privatisation Agency V. Matale**⁹⁹ where the respondent had been employed by the appellant as its first Director on a contract of three years. Before the expiry of the 3 years, after a period of less than two years, he was given notice that his services were terminated with immediate effect. He was paid three months salary in lieu of notice and was given an additional three months salary ex gratia. The contract of employment made no provision for prior termination and in fact no written contract existed. The court stated inter alia that the correct measure of damages should have been a reasonable period of notice as opposed to payment of the balance of unserved period of the contract of employment.

On the measure of damages, the Supreme Court pointed out that the normal measure of damages at common law is ousted by the requirement to do substantial justice.¹⁰⁰ In **Bupe and Another V. Zambia National Commercial Bank Limited**.¹⁰¹

“The Industrial Relations Court is mandated to dispense substantial Justice and their assessment of the damages required to meet the Justice of any given case is not to be lightly interfered with – whether

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ ibid

⁹⁹ (1995-1997) ZR 157

¹⁰⁰ ZCCM V. Mutale (SCZ) number 9 of 1996

¹⁰¹ Appeal number 27 of 2000 (unreported)

Upwards or downwards – unless it clearly appears that they fell into serious error of law or of mixed law and fact.”

It is thus trite law in Zambia, from the above, that the principle, which governs the measurement of damages in employment cases, is premised on the need to do substantial justice like it was stated in the case of **Zambia Consolidated Copper Mines V. Matale**¹⁰².

Looking at the rationale behind the award of damages in loss of employment cases, Zambian courts have devised principles used to govern the measurement of damages. It can be seen that the first principle was established in the **Zambian Airways Corporation Limited V. Mubanga**¹⁰³ case.

In this case the respondent had been wrongly dismissed by his employers (appellant). The High Court ordered his reinstatement and to be paid full salary and arrears from the date of the purported dismissal. The employer appealed against this decision and the Supreme Court, held that the respondent should have mitigated his loss by obtaining alternative employment within a reasonable time. In this case, the reasonable time to find alternative employment was stated as **Twelve Months**.

The principle of taking a period of Twelve Months for compensation purposes within which an employee could reasonably be expected to have obtained other employment

¹⁰² SCZ judgement # 9 of 1996 (Unreported)

¹⁰³ SCZ Judgement #. 5 of 1992

became known as the **Mubanga Principle**, named after the case from whence it was first pronounced.¹⁰⁴ It can be seen from this case that like other jurisdictions, for instance, the American legal system,¹⁰⁵ the dismissed employer has a duty to mitigate his loss by finding alternative employment within a reasonable time. Mitigation of loss of employment has since been seen to be used as one of the principles to assess damages even in subsequent cases in Zambia. For instance, in the case of **Zambia National Broadcasting Corporation Limited V. Tembo and Another**¹⁰⁶, the Supreme Court in reference to the Mubanga case stated that there was no evidence that the respondents had mitigated their loss of employment to justify the arrears of salary award in the High Court.

From the above principle, an inference can be drawn that the Supreme Court had done away with the principle of governing the measurement of damages in loss of employment with regards to notice required for one's employment to be terminated. Mudenda further postulates that the Supreme Court found it fit to do away with the common law measure of damages because the period of compensation for loss of employment would be inadequate for the dismissed employee to mitigate his loss by finding alternative employment.¹⁰⁷

¹⁰⁴ Mudenda, Fredrick LAZ Journal Vol.- "The Award of Damages in Employment Cases in Zambia; a General Overview." P. 61

¹⁰⁵ www.deweypub.com.toc/compdamtoc.pdf

¹⁰⁶ (1995-97) ZR 68

¹⁰⁷ Mudenda, Fredrick LAZ Journal Vol.- "The Award of Damages in Employment Cases in Zambia; a General Overview." P. 62

As job opportunities seemed to be less possible for dismissed employees to mitigate their loss, the Supreme Court saw it possible to extend what was referred to as a reasonable time to mitigate loss in the **Mubanga** case to Twenty Four Months in **Chitofwa V. Ndola Lime Co. limited.**¹⁰⁸

*The Chitofwa decision can be seen to have been followed by the Supreme Court in other decisions, for instance, in **Nyoni V. Attorney General,**¹⁰⁹ where the court stated inter alia, “depending on the circumstances of each case, we have been awarding damages ranging from notice required under terms of contract to, as to date two years salary.”*

One can infer from this statement that the courts’ approach to award damages is not static to one principle of measure of damages, but it depends on circumstances of each case. This, however, does not entail that its award of damages is arbitrary, because the court has stated the range or measure, which governs the principle of award of damages in the Nguni case above.

There are many circumstances that lead to award of damages in employment cases in Zambia. For instance, in case of unilateral variation of basic or basic conditions of employment by the employer without the consent of the employee, the measure of damages is a redundancy package or payment if the conditions do provide for such payment.¹¹⁰ If the conditions do not provide for a redundancy payment but early

¹⁰⁸ SCZ. Number 28 of 1999. (unreported)

¹⁰⁹ SCZ number 11 of 2001 (unreported)

¹¹⁰ Kabwe V. B.P Zambia Limited (1995-1997) ZR 218.

retirement, then an employee would be entitled to an early retirement package as a measure of damages.¹¹¹

The court may in an action for breach of employment contract apart from awarding the usual or 'normal' damages also award damages for mental torture and inconvenience.¹¹² Mudenda stated that the Supreme Court was for the first time faced with the issue of award of damages for mental distress in employment cases, in **Attorney General V. Mpundu**.¹¹³ This principle of measure was followed in the case of **Miyanda V. Attorney General**,¹¹⁴ where the Supreme Court awarded the Appellant among other damages for distress, hardship and inconvenience. The Court noted that in its considered opinion a contract of employment provides peace of mind and freedom from distress.¹¹⁵ It is argued, however, that damages for mental torture, distress or inconvenience should not be awarded unless the distress, hardship or inconvenience as the case may be, results from some act or omission on the part of the defendant, which does occasion suffering which goes beyond the normal consequences of a wrongful breach.¹¹⁶

The Supreme Court has also observed that where parties have agreed upon the payment of a sum by the defaulting party to the other in the event of a breach of contract, the question whether such sum is recoverable by the injured party will depend on whether the

¹¹¹ Ibid.

¹¹² Mudenda, Fredrick LAZ Journal Vol.- "The Award of Damages in Employment Cases in Zambia; a General Overview." P. 70

¹¹³ (1984) ZR. 6

¹¹⁴ (1985) ZR 185

¹¹⁵ Kafue District Council V. Chipulu. (1995-97) ZR 190

¹¹⁶ Mudenda, Fredrick LAZ Journal Vol.- "The Award of Damages in Employment Cases in Zambia; a General Overview." P. 73

sum agreed upon is liquidated damages or punitive.¹¹⁷ Courts rarely award punitive damages. Punitive damages are damages awarded in cases of malicious wrong doing to punish or deter the wrongdoer or deter others from behaving similarly. In employment cases, punitive damages are designed to punish the employer and make it an example for others, where it can be shown that the employer intentionally discriminated with malice or reckless indifference.¹¹⁸ On the other hand liquidated damages are a type of damages, where the penalty amount for a proven violation of a law or a contract provision is designated in advance.¹¹⁹

¹¹⁷ National Airports Corporation Ltd. V. Zimba and Another. SCZ number 34 of 2000 (unreported)

¹¹⁸ <http://www.mwe.com/fusedaction/publication.nldetalobject>

¹¹⁹ Ibid.

CHAPTER FOUR

4.0 INTRODUCTION.

This Chapter gives a critical analysis of valid formalities of a contract of employment in Zambia and looks at how specific contracts have contributed to solve or create disputes between an employer and an employee. It further analyses how the employers have exercised their right to terminate the services of their employees, with special regard to Solwezi district. This Chapter also analyses critically the principle used to award damages and whether it has been consistently applied in award of damages in employment cases in Zambia. It concludes by putting across recommendations on how the contract of employment, the exercise of the right to terminate the contract of employment and the consistent application of the principle used to award damages can reduce tension in employment cases in Zambia.

4.1 Formalities of a Valid Contract of Employment in Zambia

Any contract of employment whether written or oral will consist of at least three (3) separate elements.¹²⁰ These are;

- (a) Any express terms, which may be agreed upon between the employer and the employee.

¹²⁰ Mwenda, W.S Employment Law in Zambia; Cases & Material. P.7

(b) Terms which are implied by common law such as the implied duties of good faith and confidentiality, which every employee owes his employer.

(c) Terms that are imposed by statute

Many employers will prefer, therefore to have a written contract of employment, which satisfies these requirements.

One of the elements of a valid contract of employment is the 'capacity' of the employee. Thus, the minimum age of employment is 15 years.¹²¹ A person below 15 years would only be employed if he were receiving fulltime education at a recognised school under the Education Act, if he is employed during school vacations or if he has failed to secure admission to any suitable school or whose environment has been cancelled or terminated by the school authorities or for good cause by a parent.¹²²

¹²¹ section 12 (1) of the Employment Act Chapter 268 of the Laws of Zambia

¹²² *ibid* section 12(3)(a) &(b) of the Employment Act Chapter 268 of the Laws of Zambia

Such a child will only be employed if the labour commission or any labour officer approves the terms, conditions and nature of his employment.¹²³

Section 12(2)¹²⁴ states that,

“Where any contract of service is entered into between an employer and an employer or a casual employee who has not attained the age of sixteen year-

(a) the contract shall be deemed to be a daily contract notwithstanding any agreement, whether oral or in writing to the contrary; and

(b) the employer shall cause the contract to be attested by the proper officer.”

Mwenda, postulates that, it is practically impossible in situations were both parties ‘benefit’ from child labour, for such practices to be brought to the attention of the labour commissioner.¹²⁵ The Labour Inspector of Solwezi district Mr. Anthony Mpashi, who has not attested any such contracts in the last five years, confirmed this proposition. He, however, argues that practically one can find people below the age of 16 years

¹²³ *ibid.* section 12(5)(b) of the Employment Act Chapter 268 of the Laws of Zambia

¹²⁴ Employment Act Chapter 268 of the Laws of Zambia

¹²⁵ Mwenda, W.S Employment Law in Zambia; Cases & Material. P.3

employed in shops and as farm workers.¹²⁶ Such an example of a worker who was employed though below the age of 16 years was a case of **Prisca Kalenga** handled by the Legal Resources Foundation (LRF) Solwezi Advice Centre.¹²⁷ In this matter, Prisca Kalenga was below the age of 16 though she was employed as a shop attendant and the labour officer did not approve her contract of employment.

The other indicia to have a valid formality of a contract of employment, is for the employer to keep a record of contract for every employee employed by him under an oral contract of service.¹²⁸ Therefore, an employer is required by law to keep records of the oral contracts of employment of his employees. In the matter of Prisca Kalenga discussed above, the employer did not have the records of her employee when he was called to settle the matter at Legal Resources Foundation. Thus, lack of keeping the employee's records by the employer can be seen to be one of the sources of disputes in the contract of service.

¹²⁶ Interview with the Labour Inspector in Solwezi on 19th August, 2005.

¹²⁷ Reference case # 034/01/04 Solwezi LRF Advice Centre as per Interview with Owen Simeza

¹²⁸ section 24(1) of the Employment Act Chapter 268 of the Laws of Zambia

The law requires that the employee is given a copy of record at the time of engagement and any employer who fails to comply with this requirement commits an offence for which he is subject to penalties.¹²⁹

The **Labour Inspector of Solwezi**, Mr. Anthony Mpashi argues that about 75 per cent of the employers in Solwezi have complied with this requirement. For instance, Lamamuda Limited and New Era Flexible Learning Institute Limited¹³⁰ can be seen to have complied with this requirement.

Section 29 of the Employment Act, Chapter 268 of the laws of Zambia indicates that written contracts of service shall not be enforceable unless it bears an attestation under the hand of a proper officer to the effect that such contract was read over and explained to the employee in the presence of such officer and was entered into by the employee voluntarily and with the full understanding of its meaning. Solwezi Labour Officer claims to have attested the following contracts of service since January 2005 to August 2005. **One (1) contract from Group 5 Zambia limited, 1 contract from Group 5 Zambia Civil limited, 8 contracts from Mukinge Hospital though 3 were sent back for redrafting**

¹²⁹ *ibid.*

¹³⁰ appendix i & ii

because the conditions for the employees were not favourable, 1 contract from **First Quantum Agreement Kansanshi Mining Plc** and 1 contract from **Wade Walker**.¹³¹

4.2 How employers exercise their right to terminate the services of their employees in Zambia.

It has been argued that every well-drafted contract of employment must have a clause stipulating how and when either party may terminate a contract. This is in recognition of the fundamental consideration that a contract of employment should never be converted in a contract of slavery.¹³² An example of such contracts includes those for **Lamamuda Limited and New Era Flexible Learning Institute Limited**,¹³³ on termination. These two contracts provide specific conditions on how an employee can be engaged and how the contact can be terminated.

Section 26A of the Employment Act, requires that rules of Natural Justice and procedural fairness should be balanced against the employer's

¹³¹ as per Interview with the Labour Inspector in Solwezi on 19th August, 2005

¹³² Banda, D.A (1999) A Guide to Employment in Zambia. Lusaka. Friendrich Elbert Stiftung.

¹³³ appendix i & ii

right to dismiss an employee for legitimate reasons. Either party, however, should provide notice to terminate the contract¹³⁴

The law states that an employer must deliver to a labour officer in the district in which the employee was working a report of the circumstances leading to and the reasons for such dismissal. For example the Labour Officer in Solwezi had the following report,

Name of Employer. was dismissed.	Reasons why employee
<u>2004</u>	
Group 5 Civil limited	Drunkenness
Diocese of Solwezi	Misconduct
Shoprite Checkers Solwezi	Shortages and theft
Conroux Zambia Limited	Theft of diesel
<u>2005</u>	
Copper Quest Guest House on duty	Drunkenness and Disorder
1 st Quantum	Misconduct 'absenteeism'

¹³⁴ section 20 of the Employment Act Chapter 268 of the Laws of Zambia

1st Quantum (10 employees)

consumption of

Breach of contract by

narcotic substances on duty.

1st Quantum (3 employees)

mine

Dangerous driving in the

From 2003 up to date, only 15 cases have been reported by the employers as per section 25(1) of the Employment Act Chapter 268 of the Laws of Zambia.

Where owing to sickness or accident an employee is unable to fulfil a written contract of employment, the contract may be terminated on the report of a registered medical practitioner. For example, in 2004 **Group 5 Civil Limited** dismissed an employee for coughing after receiving a medical report from a doctor at Solwezi General Hospital and **Group 5 project** terminated a contract of service for one of the employee after receiving a report from a medical practitioner that the employee had a dislocation ion the leg after an accident.

4.3 The Principle Used To Award Damages And The Consistence Of The Courts In The Assessment And Award Of Damages In Employment Cases In Zambia.

The Supreme Court in the case of **Nyoni V. Attorney General**¹³⁵ stated that,

“Depending on the circumstances of each case, we have been awarding damages ranging from notice required under terms of contract to, as to date, two years salary...”

¹³⁵ SCZ /11/2001(unreported)

In the same case, with reference to the appellant, the Supreme Court further said, “ *he would still be working or found some employment but taking judicial notice of scarcity of jobs these days he is unable to do so...we award the appellant two years salary calculated at the scale he was holding at the time of his premature retirement.* ”

In **Zambia Consolidated Copper Mines (ZCCM) V. Matala**,¹³⁶ on the measure of damages, the Supreme Court pointed out that normal measure of damages at common law is ousted by the requirement to do substantial justice. The requirement to do substantial justice was followed in subsequent cases, where the Supreme Court stated “*the Industrial Relations Court is mandated to dispense substantial justice and their assessment of the damages required to meet the justice of any given case is not to be highly interfered with whether upwards or downwards unless it clearly appears that they fell into serious error of the law or mixed law and fact.*”¹³⁷ Here the Supreme Court committed itself not to interfere with a case where the award of damages is seen to be given with a view to do substantial justice.

In **Medows limited V. Banda**,¹³⁸ an award of damages based on twenty months salary did not strike the Supreme Court as an Erroneous estimate. In this case Counsel for the appellant’s plea to use the **Mubanga** principle was rejected by the Supreme Court. This in itself confirms the court’s commitment not to interfere with the principle of doing substantial justice.

¹³⁶ SCZ judgement # 9 of 1996 (unreported)

¹³⁷ Bupe and Another V. Zambia National Commercial Bank Limited Appeal # 27 of 2000.

¹³⁸ SCZ Appeal # 23 of 1999

In **Barclays Bank Zambia Limited V. Chola and Another**,¹³⁹ the Industrial Relations Court awarded the respondent Compensation equal to Four and Three salary respectively. The respondent appealed on the ground that the awards were excessive and not to have been based on any criteria. The Supreme Court stated that compensation be based on the period of notice, which is a common law position or alternatively Mubanga principle.

In this case the court went back to the common law position, which can be seen to be inconsistent with the principle of doing substantial justice. The principle of doing substantial justice has helped the Court to make criteria on how to assess damages but not restricting itself to one criterion. One can argue that each case can have a different principle of assessment but within the framework of the set criteria of doing substantial justice.

The Supreme Court further pointed out that the Mubanga Principle and the principle of mitigation should guide even the Industrial Relations Court although, the Court is expected to be more liberal and generous in its awards.

Another unjustified inconsistent in the award of damages was seen in the case **Mashabela V. National Breweries Limited**,¹⁴⁰ were the Supreme Court stated, *“If the court below found that appellant’s employment was wrongly or unfairly terminated, the measure of damages is limited to the notice period as this was an*

¹³⁹ (1995-97) ZR 212

¹⁴⁰ SCZ appeal # 23 of 1999.

ordinary conduct of employment. The court below was in error when it awarded the appellant compensation of six months."

Mudenda postulated, *"The two-paged judgement in this case without authority cited, was wrong in principle. It cannot be defended on any rational basis considering the jurisprudence or case law that has arisen from appeals decided by the Supreme Court emanating from the court of Substantial Justice."*¹⁴¹

It is clear from the **Zambia Consolidated Copper Mines V. Matale** case and **Chola** case that substantial justice is inconsistent with tying the award to the period of notice under the contract of employment, like it was done in the case above. The court did not follow the principle it had enunciated in the plethora of cases and repeated in the Bupe case that the IRC is mandated to dispense substantial justice and that its assessment of damages required to meet the justice of any given case it not to be lightly interfered with whether upwards or downwards unless it is clear that it fell into serious error of law or of mixed law and fact.

Zambia Revenue Authority V. Chilumba and Another¹⁴² the Supreme Court re-emphasised the point that the normal measure of damages at common law in the IRC is ousted by the requirement to do substantial justice. This principle was not followed in the Mashabela case and there was no rational basis whatsoever in not doing so.¹⁴³

¹⁴¹ Mudenda, Fredrick. LAZ Journal Vol.- "The Award of Damages in Employment Cases in Zambia; a General Overview." p.69

¹⁴² SCZ appeal # 83 of 2000. (Unreported)

¹⁴³ Op. cit. p.70.

Though there are times when there are such unjustified inconsistencies in the award of damages in employment cases in Zambia, it is trite law that Zambia has set criteria on how to award these damages like it is discussed in the case of **Nyoni V. Attorney General**¹⁴⁴ above. This case gave the award of damages a range, from period of notice required under terms of the contract up to two years salary.

4.4 RECOMMENDATION AND CONCLUSION

4.4.1 CONCLUSION

The purpose of this study was to establish whether an employees in Zambia feels secure with regards their contract of employment, how their contract be terminated by the employer and whether the employee is confident that should there be breach of this contract, the award of damages would be certain and adequate.

Having discussed the formalities of a valid contract of employment and how the employer is supposed to exercise his right to terminate the contract of employment, an inference can be drawn that in a well-drafted contract of employment the employee is service. The question, which one would ask is why then is there tension even in these well-drafted contracts of employment, when it comes to the termination of this contract. Mr. Mooya, the Director of Lamamuda limited Company¹⁴⁵ had this to say;

“The contract of employment can be valid and clear, and stipulates when it can come to an end, but the employees choose not to understand the terms of the contract on the time of engagement, until the day they are fired”

¹⁴⁴ SCZ /11/2001(unreported)

¹⁴⁵ Appendix i

Thus, it can be seen that it is not always the exercise of the right to terminate the contract of employment, which is abused by the employer, but that some employees do not appreciate the conditions of their employment.

The courts have also devised a criterion on how to award damages in employment cases. By and large, it can be argued that this criterion has been consistently followed though in a few cases, like the **Mashabela** case discussed above, the courts have unjustifiably abandoned their earlier positions. It is through its consistent application in employment cases that the courts can participate and assist in the unnecessary appeals from parties to the contract of employment on how much one is to receive when the other party is in breach.

4.4.2 RECOMMENDATION

- 1. The employers and the employees should ensure that before the commencement of a contract of employment oral or written, it should meet the formalities of a valid contract of employment as stated in the Employment Act Chapter 268.**

For instance, the employer should ensure that his employee is a person with the capacity to enter into such a contract. For the purposes of employment, the minimum age is fifteen years unless in the exceptions discussed in chapter one (1) and it is an offence for any person to employ a person under the age of fifteen years. With

regards to oral contracts, the employer is required to keep the record of the details of his employee. Thus, written or oral, the contract of employment should state expressly the conditions of employment for the employee like seen in the contract of employment in appendixes (i) and (ii) to avoid ambiguity.

- 2. Labour Inspectors must intensify their inspections at places of work to make sure employers and employees have met the formalities of a valid contract of employment as stated in the Zambian law discussed in Chapter one.**

The Labour Inspector of Solwezi District Mr. Anthony Mpashi confirmed this proposition as being an effective way of protecting an employee from the wrath and whims of the employer.

- 3. The contract of employment should state when and how either party to the contract could terminate it.**

The employer should not be left with the absolute right to hire and fire an employee according to his whims and fancies. The contract of employment, like in appendixes (i) and (ii) should state clearly when the employer can exercise his right to terminate the contract because it is the highest punishment, which could be meted out to any employee.

Thus, a well-drafted contract of employment must have a clause stipulating how and when either party may terminate such a contract. Therefore, like discussed in Chapter

Two, this can reduce tension between the employer and the employee and create a conducive working environment.

- 4. The award of damages in employment cases should be definite and consistent and should be readily available to stakeholders like employers and employees.**

The courts should be consistent in the application of the principle used to determine and measure damages. Unjustified upsets of this principle like it was seen in the **Mashabela V. National Breweries Limited**¹⁴⁶ case, would lead to the public losing confidence in the Courts. Where the court feels that the principle should not be followed, the reason should be justified and convincing.

- 5. The employer and the employee should agree on the damages to be given to either party in case of breach.**

This can only be possible where the court has set a definite criterion on how to determine such damages. Like indicated in the case of **National Airports Corporation Limited V. Zimba and Another**,¹⁴⁷ the award of damages agreed by the parties can only be upheld by the court if they are liquidated damages and not punitive damages.

¹⁴⁶ SCZ Appeal # 23 of 1999.

¹⁴⁷ SCZ judgment # 34 of 2000. (Unreported)

BIBLIOGRAPHY

- Law Quarterly Review Vol. 97 Baker, P.V. (Editor). London. Sweet and Maxwell
- Banda, D.A (1999) A Guide to Employment in Zambia. Lusaka. Friedrich Ebert Stiftung.
- Bwalya, Kelvin Fube Obligatory Essay (1984-85) Freedom of Contract: A reality or Fiction
- Cooper, w. Mansfield and John C. Wood (1966) 5th Ed. Outlines of Industrial Law. London. Butterworths.
- Kumar, H.L (1996) employers Rights Under Labour Laws. Universal law publishing CO. PVT.Ltd. New Delhi.
- McGregor, Harvey (1988) 15th Ed. McGregor on Damages. London. Sweet & Maxwell. Limited.
- Mudenda, Fredrick. LAZ Journal Vol.- “ The Award of Damages in Employment Cases in Zambia; a General Overview.”
- Mwenda, W.S Employment Law in Zambia; Cases and Materials. Unza Press. Lusaka
- Street, Harry (1962) Principles of the Law of damages. London. Street & Maxwell.
- Osborn’s Concise Law Dictionary. 8th Ed. (1993). Edited by Rutherford, Leslie & Sheila Bone. Universal Law Pub. Co. Pvt. Ltd. New Delhi
- <http://www.wageline.gld.gov.aulconditionsemployment/termination.html>
- <http://www.gov.ab.calhreemploymentstandards/abut/termination.asp>

LAMAMUDA LIMITED

PERSONAL AND CONFIDENTIAL

Dear Mr/Mrs/Ms.....

OFFER OF EMPLOYMENT

We are pleased to offer you

Employment as on a monthly contract with effect from

.....

1.0 SALARY

You will receive a gross salary of Kper month from which statutory taxes will be deducted.

1.1 You will be responsible for your own medical, housing, lunch and pay other related costs as these are included in your gross earnings.

2.0 You will be on a 12 hour shift. In the near future, the roster will be introduced for your days off.

2.1 You shall accrue 2.0 leave days per month.

2.2 Your probation will be three (03) months.

It is my pleasure to wish you success in your endeavour.

Yours sincerely

INDUSTRIAL RELATIONS OFFICER

NOTE: you might not work 12 hours upon being engaged.

CODE OF CONDUCT

1. Temporal / casual employee.
2. FQM (z) Ltd reserves the right to discontinue your services at any time.
3. FQM (z) Ltd reserves the right to give reasons for discontinuing your services.
4. Breach of safety rules and procedure could lead to discontinuation of your service.
5. Labour Brokers shall be informed prior to discontinuation of your services.
6. Labour Brokers shall in writing inform you of any discontinuation of services.
7. The Labour Department shall receive a copy of your letter of discontinuation.

I (FULL NAME).....

Acknowledge receipt of the letter of appointment and I undertake to abide by FQM (z) Ltd working conditions of services.

I also understand that FQM (Z) Ltd reserves the right to discontinue with my services when they are no longer required.

SIGNED : DATE :

WITNESS:..... DATE :

ACCEPTANCE OF APPOINTMENT

I (FULL NAME)-----

Acknowledge receipt of this letter and accept the appointment as -----

On terms and conditions set above.

Signed----- date -----

Witnessed ----- date -----

New Era Flexible Learning Institute Limited Agreement

Agreement is hereby made between New Era Flexible Learning Institute Limited and Mr/Mrs/Ms/Dr/Professor _____ to day _____ the _____ day of _____ in the year _____ that _____ is engaged as _____ in _____ (company subsidiary) for the period of _____ years /months /weeks /days with the effect from the date of signing this agreement.

Pursuant to this agreement the following are the conditions under which _____ is engaged in the company.

1. Her/His probational period will last not less than _____ months and not more than _____ months.
2. During the probational period, her/his remuneration will be K _____ per month /week /day, thereafter her/his remuneration will be K _____ per month/week/day.
3. Prior to the completion of the probational period, the company (NEFLI) or the _____ may give one day notice to terminate this contract.
4. After the probational period, NEFLI or the _____ shall only terminate the contract on giving three months notice or one month's Salary /wages in lieu of notice.

Entitlement: During the period of engagement the said _____ will be entitled to.

- _____ Days leave per month.
- Traveling on duty allowance at the rate of K _____ per night as subsistence allowance or K _____ per day as lunch allowance provided in the latter case the officer is out of her/his station for not less than eight hours.
 - Special Tasks allowance at the rate of K _____ per month (with permission from the management Board)
 - Housing allowance at the rate of _____ per month (with permission from the management Board).
 - Professional training arranged by the company provided the said employee shall be bonded to the company for not less than three years after the training.

6. **Types of leave entitlements:** During this period of engagement the said _____ will be eligible for the following types of leave.

- Compassionate leave granted by the Principal of the employee's serving Institution for less than a week.

- Local leave according to days earned but not exceeding 21 days granted by the Managing Director.
- **Vacation leave** – not less than thirty (30) days earned days and not more than 90 earned days granted by the management Board.
- **Sick leave**-on recommendation of medical practioners provided it will not exceed 5 days granted by a Clinical Officer or 10days granted by a Medical Doctor.
- **Continuous sick leave** granted under the authority of a recognized medical doctor shall be 90 days full salary/wages, next 90 days half salary/wages thereafter no salary.

7. **Job Description:** The said _____ agrees to perform the duties laid down in part 2 of the staff personal particulars from EF1/ 2005.

Termination of contract: This contract shall only be terminated under the following condition.

1. When the contract comes to an end
2. When there is restructuring in the institution the employee is engaged
3. When the employee misconducts her self /himself so as to bring the name of the company in disrepute.
4. When the company shows that corrective measures have failed to reform the employee.
5. When company property is lost through the employee's negligence in this case recovery or the employee should meet refunds.
6. Desire of the employee to serve somewhere else provided three months notice or a month's salary is surrendered in lieu of notice.

Signed: _____
(New Era Flexible Learning Institute)

Date: _____

Signed: _____
(NEFLI witness)

Date: _____

Signed: _____
(Employee)

Date: _____

Signed: _____
(Employee's witness)

Date: _____

BIBLIOGRAPHY

Law Quarterly Review Vol. 97 Baker, P.V. (Editor). London. Sweet and Maxwell

Banda, D.A (1999) A Guide to Employment in Zambia. Lusaka. Friedrich Ebert Stiftung.

Bwalya, Kelvin Fube Obligatory Essay (1984-85) Freedom of Contract: A reality or Fiction

Cooper, w. Mansfield and John C. Wood (1966) 5th Ed. Outlines of Industrial Law. London. Butterworths.

Kumar, H.L (1996) employers Rights Under Labour Laws. Universal law publishing CO. PVT.Ltd. New Delhi.

McGregor, Harvey (1988) 15th Ed. McGregor on Damages. London. Sweet & Maxwell. Limited.

Mudenda, Fredrick. LAZ Journal Vol.- "The Award of Damages in Employment Cases in Zambia; a General Overview."

Mwenda, W.S Employment Law in Zambia; Cases and Materials. Unza Press. Lusaka Street, Harry (1962) Principles of the Law of damages. London. Street & Maxwell.

Osborn's Concise Law Dictionary. 8th Ed. (1993). Edited by Rutherford, Leslie & Sheila Bone. Universal Law Pub. Co. Pvt. Ltd. New Delhi

<http://www.wageline.gld.gov.aulconditionsemployment/termination.html>

<http://www.gov.ab.calhreemploymentstandards/abut/termination.asp>