THE INDUSTRIAL RELATIONS COURT IN ZAMBIA FROM 1971 TO 2017: A STUDY OF THE EVOLUTION OF AN INSTITUTION OF INDUSTRIAL RELATIONS

By

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DECLARATION

I, Steven Nyundo, do hereby declare that this dissertation entitled “The Industrial Relations Court in Zambia from 1971 to 2017: A study of the evolution of an institution of industrial relations”, represents my own independent research and that it has not previously been submitted for a degree at this or any other university.

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APPROVAL

This dissertation of Steven Nyundo has been approved in fulfilment of the requirements for the award of the Degree of Master of Laws by Research by the University of Zambia.

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ABSTRACT

Labour courts fulfil important functions for the justice system of a country. In the post Second World War, scholars and jurists advanced different reasons why industrial relations matters should be removed from being heard by the ordinary courts of law and be transferred to specialized institutions, such as, labour courts and industrial tribunals. Similarly, in Zambia the Industrial Relations Court (IRC), now a division of the High Court following the Constitution Amendment of 2016, was established in 1971 as an institution to resolve industrial relations matters or cases in a simpler, speedier, cheaper and informal manner. This study is about the evolution of the IRC as an institution of industrial relations in Zambia. Emphasis is on the composition and jurisdiction of the IRC which has evolved overtime.

In this study, mixed methods research approach was used. Doctrinal legal research method was applied and secondary data was collected from journal articles and books on industrial relations. In addition, primary data was collected from stakeholders, such as trade unions, employers' organisations and government institutions using interviews and questionnaires. Content analysis was used to analyse the primary data (qualitative). This study has established that the tripartite composition of the Court in Zambia was consistent from its inception in 1971 to 2016. However, under the Constitution of Zambia (Amendment) Act of 2016 the composition of the Court is unipartite. With regard to jurisdiction, like many countries of the world, the IRC in Zambia generally addresses matters within the scope of worker- employer relations. Further, it has been observed that the Court has had positive impact on industrial relations matters. For example, the Court can intervene and enforce decisions on management which appear reluctant to attend to employees' reasonable demands. In addition, the Court cannot be restrained from going behind reasons advanced for termination of employment in order to redress any real injustices discovered.

On the basis of the findings of this study, it is recommended that the tripartite composition of the Court be reinstated; the judges of the IRC as a division of the High Court be exempted from the requirement to sit robed when hearing cases; that legislation be enacted to prescribe the jurisdiction, powers and sittings of the IRC in conformity with the provisions of Article 120(3)(b) of the Constitution of Zambia (Amendment) Act, 2016. In line with the practice in other countries the Zambian government may consider establishing an Employment Appeal Court (EAC) with exclusive jurisdiction to hear appeals from the IRC on questions of law or mixed law and fact.

Key words: Industrial relations, institution, evolution, tripartite, unipartite

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ABBREVIATIONS

EAT	Employment Appeal Tribunal
ILO	International Labour Organisation
IRC	Industrial Relations Court
MWS	Mine Workers Society
NIRC	National Industrial Relations Court
UNIP	United National Independence Party
UNZAWU	University of Zambia and Allied Workers Union
ZCCM	Zambia Consolidated Copper Mines
ZESCO	Zambia Electricity Supply Corporation
ZMU	Zambia Mineworkers Union

CHAPTER ONE

INTRODUCTION

1.1 Introduction

The relationship between an employer and employee is not one which stands still but one which has changed gradually over the years. Historically, the practice by many employers to regard their employees as their property, which can be inferred from the way the employees were treated, prompted pressure groups and governments to fight for the rights of the workers[1]. Overtime, this led to the establishment of the International Labour Organisation (ILO) in 1919 whose purpose was and is to protect the rights of both the employers and employees, thereby leading to mutual understanding of both parties[2].

Today, employers appreciate the rights of their employees and the role of labour laws. In many countries of the world, specialised institutions in the form of Industrial Tribunals or Labour Courts have been established to resolve disputes arising between employers and employees quickly and cheaply. In Zambia, the specialised institution dealing with labour relations matters is the Industrial Relations Court (IRC) now a division of the High Court following the Constitution (Amendment) Act No.2 of 2016. The IRC of Zambia was established by the Industrial Relations Act, 1971. The rationale for establishing the Court influenced the composition and jurisdiction of the Court, which has evolved over the years. This study is about the evolution of the IRC as an institution of industrial relations in Zambia. This introductory chapter presents the background to the study which leads to the statement of the problem on which the objectives and research questions are based.

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[1] Conradie, M, *The constitutional right to fair labour practices: a consideration of the influence and continued importance of the historical regulation of (un)fair labour practices pre-1977*. **(**Fundamina, Pretoria, v. 22, no. 2, 2016), 163-204.

[2] Sengenberger, W, *The International Labour Organisation; Goals, Functions and Political Impact*. (Germany: International labour Organisation, 2013), 13.

1.2 Background

The master -worker relationship and the labour market under the colonial government in Northern Rhodesia (now Zambia) was different from present day[3]. In theory, the colonial government was supposed to look after interests of the African workers in Northern Rhodesia. T. F. Standford, Secretary for Native Affairs explained to the Foster Commission of 1940 that under the terms of the Master and Servants Proclamation[4], which in 1929 was replaced by the Employment of Natives Ordinance[5], District Commissioners (DCs) were supposed to inspect mining compounds, to visit mines at least once a month and to submit reports to the government, copies of which were supposed to be sent to the mine managements, who were expected to take action on the reports. He further pointed out that DCs were entitled to represent African workers in any disputes that arose between employers and African workers[6]. However, because they had other duties to perform, the DCs had little time to look after the welfare of the African mine workers, and therefore the latter relied on mine compound managers for help[7]. The Northern Rhodesia Government officials supervised African workers living in other locations outside the mining areas, but had little to do with African employees in the mine compounds who were under the control of the compound Managers[8].

Both the Mining companies and the Government officials tried to introduce some form of indirect rule in the conduct of African affairs in towns, apparently on the assumption that the more important ties among Blacks in urban areas were still those of tribal society and that chiefs or their nominees could still effectively exercise political control over their subjects who were then wage earners[9]. Benjamin Spearpoint, the compound manager at Roan, introduced a system of Tribal Elders in 1931 to act as a medium of

[3] Kalula, E. and C. Chungu, *The quest for descent work and social protection, Some electric reflection on development and emerging trend in Africa* (University of Cape Town, 2017), 15.
[4] No. 37 of 1908.
[5] No. 56 of 1929, now repealed.
[6] Foster Commission: Evidence, ZP 12/1
[7] Mebeelo, H.S. *African Proletarians and Colonial Capitalism. The Origins, Growth and Struggles of the Zambian Labour Movement to 1964* (Kenneth Kaunda Foundation, 1986), .37.
[8] Mebeelo, *African Proletarians*, 37.
[9] Ibid., 37.

communication between African workers and the mine management[10]. The Elders, who were elected by various tribes, sat as a council to give advice to the mine management and the workers on matters of common interest; the Council of Elders were also involved in resolving customary law disputes between African mine workers[11] . By the time the system known as Tribal Representatives was abolished in 1953 at the instance of the African Mine Workers Union, it had grown so useful to the mine management that it was adopted even by managements outside the Copperbelt, like that of the Rhodesia Broken Hill Development Company[12] and that of the Zambezi Saw Mills of Livingstone[13].

In order to improve lines of communication between African workers and their employers, the colonial government established a Labour Department in 1940 and later full-time Labour Officers were appointed to 'hear complaints and make their own investigations and to act as conciliators'[14] . And of some significance to African workers was the appointment of local superintendents, welfare officers and African personnel managers, who were employees of municipalities, management boards and industrial undertakings which maintained their own locations[15]. In spite of the introduction of all these administrative apparatuses, communication between workers and managements remained unsatisfactory[16].

It is also important to note that African elites in Northern Rhodesia managed to join forces with the rest of the workers and peasants in the country not only to protest against

[10] Berger, E.L, *Labour, Race and Colonial Rule: The Copperbelt from 1924 to Independence* (Oxford: Clarendon Press, 1974), 82.
[11]Berger, E.L, *Labour, Race and Colonial Rule: The Copperbelt from 1924 to Independence* (Oxford: Clarendon Press, 1974), 82.
[12]Labour Commissioner to General Manager, Rhodesia Broken Hill Development Company; 17 November, 1945, SEC/LAB/146.
[13] Labour Commissioner to Chief Secretary, 18 February, 1943, SEC/LAB/142.
[14]Berger. E.L, *Labour, Race and Colonial Rule: The Copperbelt from 1924 to Independence*, (Oxford: Clarendon Press, 1974), 79.
[15]Confidential Memorandum on Native Policy in Northern Rhodesia, 1950, AZ 4/3.
[16] Mebeelo, H.S, *African Proletarians and Colonial Capitalism. The Origins, Growth and Struggles of the Zambian Labour Movement to 1964* (Kenneth Kaunda Foundation, 1986), 38.

colonial injustices but also in the quest for a permanent solution to the injustices by waging the struggle for independence [17].

It is believed that the first type of organisations ever to be formed by the new African elites in Northern Rhodesia were the Native Welfare Associations. These Associations, the first of which was formed in 1923 at Mwenzo Mission in the Northern Province under the strong influence from the main Free Church of Scotland Station at Livingstonia[18], had several objectives. These Associations discussed political, social and economic problems, both of a local and national nature, often also giving the appearance of being social or recreational clubs. The Native Welfare Associations were media of expression on labour grievances.

Probably, much better organised than the Native Welfare Associations was the Native Civil Servants Association, which was founded on 9th June, 1927, in Livingstone and whose aims, according to its first Chairman, Lawson B. Chipolle, were that 'there should be a better promotion of interest of all Government Native Employees and that sympathy and understanding between the Authorities and Native Employees would be promoted...[19]' The Association was probably the first African organisation in the country with the semblance of a trade union.

At Independence in 1964, the United National Independence Party (UNIP) led government inherited little written law to guide and regulate industrial relations. This was so because the colonial government had the policy of abstention on the part of the law and the reluctance to apply legal sanctions were specifically noticeable in connection with the statutory machinery for the prevention and settlement of disputes[20]

[17] Mebeelo, *African Proletarians*, 44.
[18] Ibid., 44.
[19] Minutes of the First Annual General Meeting of the Native Civil Service Association, 7 September, 1928, ZA1/9/34/1.
[20] Kahn-Freund, O, *Labour Law, in Law and Opinion in England in the 20th Century*, ed., (Morris Ginsberg, University of California Press, 1959), 215-244.

.The legislation that existed such as the Employment of Natives Ordinance[21], the Employment of Women, Young Persons and Children Ordinance[22], the Minimum Wages, Wages Councils and Conditions of Employment Ordinance[23] and the Industrial Conciliation Ordinance[24], enacted by the Northern Rhodesia Legislative Council did not sufficiently address the complaints raised by African workers regarding industrial relations matters[25] . Therefore, there was need for the new government to come up with appropriate legislation to address the challenges in the labour market. This led to the enactment of the Industrial Relations Act in 1971. This Act also established the Industrial Relations Court to resolve industrial disputes cheaply, quickly and informally than the ordinary courts.

1.3 Statement of the Problem

Prior to Zambia attaining independence in 1964, labour relations matters between employers and employees were expressed through various ways such as the Council of Elders, the Department of Labour, Native Welfare Associations and Trade Unions. There was no special court to deal with labour grievances. After independence the new UNIP Government established a special court, namely the Industrial Relations Court in 1971 to deal with labour relations matters more expeditiously and cheaply than the ordinary courts. Despite the fact that the IRC has been in existence on Zambia's statute books since 1971 and in operation since 1975, there has been no systematic study of the operation and contribution of the IRC to Zambia's industrial relations system. Therefore, this study is about the evolution of the IRC now a Division of the High Court of Zambia as provided for under the Constitution of Zambia (Amendment) Act No.2 of 2016.

[21]Chapter 171 of the Laws of Northern Rhodesia, now repealed.
[22]Chapter 191 of the Laws of Northern Rhodesia, now repealed
[23]Chapter 190 of the Laws of Northern Rhodesia, now repealed.
[24] Chapter 26 of the Laws of Northern Rhodesia, now repealed
[25] Berger, E.L, *Labour, Race and Colonial Rule: The Copperbelt from 1924 to Independence*, (Oxford: Clarendon Press, 1974), 74.

1.4 Objective of the Study

The objective of the study is to examine and assess the evolution of the institution of the IRC in Zambia from 1971 to 2017.

1.5 Specific Objectives of the Study

1. To review the rationale for establishing the IRC in Zambia in 1971.
2. To analyse the changes in the composition and jurisdiction of the IRC in Zambia from 1971 to 2017.
3. To determine the factors that have characterised the evolution of the IRC in Zambia from 1971 to 2017.
4. To assess the impact of the evolution of the IRC in Zambia on its operations and performance from 1975 to 2017.

1.6 Research Questions

1. What reasons were advanced for the establishment of the Industrial Relations Court in Zambia?
2. How has the Industrial Relations Court in Zambia evolved since its inception in 1971 to 2017?
3. What factors have characterised the evolution of the IRC in Zambia from 1971 to 2017?
4. What has been the impact of the evolution on the operations and performance of the IRC in Zambia from1971 to 2017?

1.7 Significance of the Study

This study is a pioneering academic contribution to understanding the evolution of the IRC in Zambia since its inception in 1971. It traces the institution from the early

beginnings and provides a summary of the changes in the composition and jurisdiction of the Court over the years until the enactment of the Constitution of Zambia (Amendment) Act No. 2 of 2016. It is hoped that this study will provide a good reference for future research on the subject of the IRC in Zambia. In addition, this study is intended to inspire law makers, legal practitioners, trade unions and employers' organisations to take keen interest and uphold the special features of this specialised court so that its operations are enhanced.

1.8 Literature Review

The idea of establishing institutions specifically to deal with labour matters has a long history. In the post Second World War period, scholars and jurists have given various reasons why employment questions may be removed from being heard by ordinary courts of law, and transfer them to specialised institutions. Comparing the reasons advanced for the establishment of the IRC in Zambia with those of other countries may be illuminating.

For example, in Britain, after World War II, there was a great increase in administrative, social and financial legislation generally conferring rights on individuals as tenants, consumers or users of welfare services. This was accompanied by the development of tribunals other than the ordinary courts[26]. These tribunals were seen as a way of providing effective rather than merely formal access to justice[27]. In addition, the tribunals were also believed to be able to pay attention to the social policy intentions underlying legislation in a way the ordinary courts had failed to do[28]. In the employment sector too, the development of a positive framework of employment rights made the use of alternatives to the ordinary courts appear necessary and the industrial tribunals were seen to be the answer.

[26]Dickens, L, and D. Cockburn, *Dispute Settlement Institutions and the Courts, Labour Law in Britain*, (Oxford and New York, Basil Blackwell, 1986), 555

[27] Whelan, C.J, *Informalising Judicial Procedures, Informal Institutions,* ed. Henry S (New York, Martinis Press 1981), 169.

[28] Bell, K, *Tribunals in Social Sciences,* (London, Routledge and Kegan Paul, 1969), 7.

Creighton[29] explains that there was an increasing tendency in Britain in the 1970s to remove employment questions from the jurisdiction of the ordinary courts and to transfer them to specialised bodies like the Industrial Tribunals, the Employment Appeal Tribunal (E.A.T) and the ill-fated National Industrial Relations Court (NIRC). He says this trend could be explained by reference to a number of factors such as: the view that ordinary courts were not best equipped to deal with the complexities of the industrial relations systems; the fact that lawyers by instinct and training did not understand the problems and aspirations of the working class; and unawareness that the legal process was inclined to lead to the undesirable degree of polarised public opinion. Therefore, it was expected that tribunals, with their tripartite membership and informal procedures, could bring to bear a level of expertise and flexibility otherwise unavailable in the ordinary courts of law.

Similar to Britain, Pelkonen and Tittinen[30] explain that in Finland, the establishment of the Finnish Labour Court in 1947 was influenced firstly by the fact that ordinary courts of law were regarded as being too slow. Secondly, ordinary courts of law were considered not to have the special expertise required in the settling of disputes arising out of collective agreements, which were thought to be difficult to solve and likely to have far reaching consequences. Thirdly, it was envisaged that a separate labour court of exceptional composition of the members would be able to gain confidence of the labour organisations more easily than the ordinary courts.

In Norway, similar to other countries, collective agreements developed independently of legislation, leaving open questions as to their status and effects under the general law of contracts[31] .However, in 1902 the central organisations of workers and employees concluded a general agreement on resolution of industrial disputes, based on the principle of negotiation and private attribution, which was applied in most ensuing

[29] Creighton, W.B, *Studies in Labour and Social Law, Vol.3*, (Working Women and the Law,1979), 3
[30] Pelkonen, J. and K. Tiitinen, *The Labour Court of Finland, Proceedings of the meeting organized by the International Institute for Labour Studies*, (Geneva, International Institute for Labour Studies ,1986),14.
[31] Evju, S, *The Labour Court of Norway. Proceedings of the meeting organized by the International Institute of Labour Studies*, (Geneva, International Institute for Labour Studies 1986), 44.

collective agreements[32]. Furthermore, in 1915, the Labour Disputes Act was passed and the fundamental ideas under this Act were to promote and strengthen collective agreements for regulating wages and working conditions and to create machinery for the peaceful resolution of industrial disputes[33]. The 1915 Act formalised the distinction between disputes of interest and disputes of right embodied in the 1902 Act. Evju[34] points out that for disputes of interest; a system of mediation was introduced, living open recourse to industrial action if mediation failed. He stressed that for disputes of right the Labour Court was established as a special institution to deal with matters relating to collective agreements. In short, the basic considerations behind the creation of this special court in Norway were two: Firstly, for disputes concerning collective agreements, a machinery capable of rendering solutions more quickly than the ordinary court system was needed; secondly, that the court should possess expert knowledge of labour law and practice of industrial relations and collective agreements in general.

Another example that can be cited on labour courts and industrial tribunals is that of the Swiss confederation, a general state made up of twenty- six federal states, that is, cantons or semi-cantons, referred to as cantons[35]. According to Berenstein[36], in the Swiss confederation, labour contracts and collective agreements are governed by the Code of Contracts of 1911, as revised in 1971. Under section 64 of the Federal Constitution, the organisation, the procedure and the administration of justice were placed under provincial or regional legislation. However, half the cantons have labour courts, whereas, in the others only the ordinary civil courts are competent to settle disputes arising between employers and workers.

[32] Evju, S, *The Labour Court of Norway. Proceedings of the meeting organized by the International Institute of Labour Studies*, (Geneva, International Institute for Labour Studies 1986), 44.
[33]Evju, S, *The Labour Court of Norway*, 44.
[34]Ibid., 44
[35] Berenstein, A, *Labour Courts in Switzerland, Proceedings of the meeting organized by the International Institute for Labour Studies,* (Geneva, International Institute for Labour Studies 1986), 57
[36] Berenstein, *Labour Courts in Switzerland,* 57.

Berenstein asserts that the reasons advanced for the establishment of labour courts in Switzerland, particularly, when the first conciliation courts were set up in Geneva in 1882, were:

a. The aspiration by workers to be judged in labour disputes by persons who are nearer to them than professional judges; by their peers, before whom they can express themselves more freely and who understand their problem better;

b. The need to obtain justice more rapidly, by passing the lawyers, and to take advantage of the free nature of this type of procedure;

c. The conviction that men of their own trade are better fitted than professional judges to appreciate the quality of work and to follow the customs of the occupation, and in this way, it becomes unnecessary to call in experts.

On the other hand, the rationale for establishing labour courts in France was different from those advanced in other countries. Veillieux[37] explains that in France, the settlement of individual labour disputes was entrusted in the first instance to a specialised individual disputes board known as the Conseil de prud'hommes. He also stated that, the reasons for the establishment of the individual disputes board were firstly, the desire to allow plaintiffs to bring their cases before judges who were particularly sensitive to labour problems by virtue of their own occupational activity or of the nature and subject matter of the disputes brought before them. Secondly, from the strictly political point of view the boards reflected the desire to democratise legal proceedings, both by the manner of the appointment of judges and the requirement that they belonged by occupation to one of the various sectors of the economy.

Generally, the reasons advanced for establishing labour courts and industrial tribunals in European countries, for example, the UK and Finland correspond to those in Africa. For instance, Obilande[38] pointed out that the National Industrial Court in Nigeria was set up by section 14 of the Trade Disputes Decree of 1976 for the purpose of dealing with trade

[37] Veillieux, P, *The organization of Labour Courts in France, Proceedings of the meeting organized by the International Institute for Labour Studies*, (Geneva, International Institute for Labour Studies 1986), 19.
[38] Obilande, A.O, *The Nigerian Legal System*, (Sweet and Maxwell, 1979) 220

disputes and collective agreements. Likewise, Likindi[39] presented the same reasons in the case of Uganda and pointed out that the industrial courts or labour tribunals were very important instruments of social justice and useful agent for the equitable distribution of wealth.

Tambala[40] provided a concise summary of the number of reasons why individuals as well as organisations would prefer special tribunals to ordinary courts of law both in Africa and other parts of the world. First, modern governments gave rise to many disputes which could not be resolved by applying objective legal principles or standards. The resolution of most disputes ultimately depended on what was desirable in the public interest as a matter of social policy. Second, that usually, ordinary courts showed reluctance to adapt to the individualistic approach of the common law to modern conceptions of social justice. Judges often interpreted social legislation too narrowly.

According to Tambala, the factors that favoured the creation of tribunals and general acceptance included:

a. The desire for a procedure which avoided the formality of ordinary courts;
b. The need, in implementing a new social policy, for speedy, cheap and decentralised determination of many individual cases; and
c. The need for expert and specialised knowledge on the part of the tribunal which a court with a wide general jurisdiction might not have.

Additionally, granted that there appears to be a general consensus on the rationale for the establishment of labour courts and industrial tribunals across countries including Zambia; Sumaili[41] laments that Zambia has not produced its own expertise in the area of labour studies. The nearest the country has come to producing a labour expert is through

[39] Likindi, E.Y, *International Labour Organization, Labor Management Relations*, Series: No. 37 of 1970, pp. 3-4
[40]Tambala, D. G, *The Role, Function and Jurisdiction of the Quasi-Judicial Tribunals*, (Paper presented to the workshop for various stakeholders in the Labour Market on 28th July, 2006, Lilongwe, Malawi).
[41] Sumaili, F.K.M, *Labour in Zambia since 1964: Zambia at Fifty Years*, (South Africa, Patridge Publishing, 2016) 281-282

the human resource management programmes. Human resource practitioners are inclined to personnel work, which mainly involves recruitment, training, supervision, compensation and less of industrial relations. Human resource management programmes hardly cover the Zambian labour laws, social security, health and safety issues, collective bargaining and dispute resolution issues, productivity and ILO International Labour Standards, which are fundamental in industrial relations matters.

From the cited work, it is acknowledged that industrial relations matters require a specialised court to handle them. These specialised institutions such as the labour courts and industrial tribunals have specific features of their composition. Tambala[42], notes that a prominent feature of tribunals is the selection and composition of their membership. Usually, membership is provided for in the statute creating the tribunal. According to Tambala, the power to constitute a tribunal may be delegated to a Minister by an Act of Parliament. The Act, will give power to the relevant Minister or to the Lord Chancellor or the Chief Justice to appoint the members and to prescribe procedural rules. In many cases, the relevant legislation provides for a "balanced tribunal", consisting of an independent Chairman, usually legally qualified, and two members representing opposite interests. Generally, in many countries, membership of the Industrial Relations Court is constituted in this manner.

Furthermore, Tambala[43] explains that the IRC in Malawi is governed by the Labour Relations Act, 1996. It is a twelve-member Court. Its Chairperson and Deputy Chairperson are appointed by the Chief Justice on the recommendation of the Judicial Service Commission. Five members, representing employees (employees' panel) and five members representing employers (employers' panel) are appointed by the Minister responsible for labour matters. The term for every member of the Court is a period of three years, which is renewable. In terms of the quorum, the IRC in Malawi is constituted when the Chairperson or Deputy Chairperson sits with one member

[42] Tambala, D.G, *The Role, Function and Jurisdiction of the Quasi-Judicial Tribunals, Access to labour justice* (LexisNexis, 2007), 67.
[43] Tambala, *The Role, Function and Jurisdiction of the Quasi-Judicial Tribunals*, 75.

representing employees' panel and another member representing the employers' panel. Each member of the Court must fully participate in making decisions on matters of fact or law affecting the labour dispute under consideration by the IRC.

The specification on the composition of labour courts and industrial tribunals is not only peculiar to Malawi and Zambia but also to other jurisdictions. Dickens and Cockburn[44] confirm that in Britain, an important feature of the industrial tribunals, distinguishing them from ordinary courts, is their tripartite composition. A legally qualified person (a barrister or solicitor of at least seven years' standing) sits with two lay members experienced in industry or commerce, drawn from two panels, composed of people nominated by employer organisations and employee organisations.

Furthermore, the full time and part time Chairpersons of the industrial tribunals in England and Wales are appointed by the Lord Chancellor and some lay members of the industrial tribunals are appointed by the Queen on the joint recommendation of the Lord Chancellor and Secretary of the State for Employment. Dickens and Cockburn clarify that the role of the lay members of the industrial tribunals is to assist the legally qualified members of the tribunals to take into consideration specific problems of the labour market in reaching a judicial decision[45]. This is done so as to help do away with legalism and to make tribunal decisions more acceptable to those affected by them. As such, the lay members of the industrial tribunals are formerly equal judges with the legal member and are expected to exercise impartiality in decision making.

In the same way, Cosgrave[46] gives the example of the composition of the labour court in Ireland which was established by the Industrial Relations Act, 1946. In Ireland, the court consists of a Chairman, three Deputy Chairmen and eight ordinary members, all of whom are appointed by the Minister for Labour. The eight ordinary members are

[44] Dickens, L, and D. Cockburn, *Dispute Settlement Institutions and the Court, Labour Law in Britain*, (Oxford and New York, Basil Blackwell, 1986) 555-556.
[45] Dickens, L, and D. Cockburn, *Dispute Settlement Institutions and the Court*, 555-556.
[46] Cosgrave, M.P, *The labour Court in Ireland, Proceedings of the meeting organized by the Industrial Institute for labour Studies*, (Geneva, Industrial Institute for labour Studies ,1986), 30

nominated for appointment by organisations representative of workers' and employers' trade unions. In addition, they are required not to hold any office or employment which would prevent them from being at all times available for the work of the court and the Chairman is full time. Likewise, when considering any matter, the court may consist of the Chairman and all the ordinary members or a Chairman (who maybe one of the Deputy Chairmen) and two ordinary members (one workers' and employers' representative).

Generally, in most countries of the world, the tripartite composition of the labour courts and industrial tribunals distinguishes them from the composition of the ordinary courts. This is so because industrial relations matters need input from both lay members, who have specific knowledge of the conditions in the labour market as well as the legally qualified persons, who are trained and have experience in law. Therefore, this special feature gives confidence to the employers and employees in accepting and respecting the decisions of the Court. Apart from this feature, it is clear that members of the labour court are not randomly selected but special consideration is taken into account and consultation of key stake holders in this process is crucial. Another notable feature on the composition is the number of the members of the court. While the composition of the court varies from one country to another, the general practice is that an even number is arrived at.

The jurisdiction of labour courts and industrial tribunals is yet another important aspect of these specialised institutions. This is because it is important to understand and respect the authority and prerogative given to these specialised institutions in relation to other courts. For example, the Industrial Court of Kenya[47] has original and appellate jurisdiction to hear and determine all disputes relating to, or arising out of employment between an employer and employee, an employer and a trade union, trade unions, employer organisations among others. The Court has power to make the following orders within its jurisdiction: interim preservation orders including injunctions in cases

[47] Tubey, R., K.J.Rotich and M. Budotich, "An overview of Industrial Relations in Kenya*": Research on Humanities and Social Sciences* 5 (2015):229

of emergency; prohibition; specific performance; declaration of rights; compensation; damages; reinstatement or any other appropriate relief as the Court may deem fit. The Court orders are enforceable in accordance with the rules made under the Act.

Kalula[48] notes that in almost all countries in Southern Africa, industrial courts, operating as administrative tribunals, are in existence, with the exception of Namibia. In Namibia magistrate courts double up as district labour courts but that they have been rather timid. He asserts that most of the labour courts in Southern Africa have not been adventurous. That is to say, the labour courts have limited themselves or have been limited by legislation to dispute resolution functions and to matters relating to the contract of employment. Some courts have also proven reluctant to apply international human rights law, even where it is open for them to do. However, he has observed that in Lesotho and Zambia labour courts apply international labour standards such as the right to form trade unions and the right to equal pay for equal work in deciding industrial relations matters.

A survey of the literature reviewed shows that studies of labour courts as institutions in industrial relations have been done within the historical context of evolution in their jurisdictions. This is probably right in the sense that the relations between workers and employers, and mediating institutions can only be better explained in the context of political, economic and social relations of a given jurisdiction. It is therefore, in order that this study focuses on the evolution of the IRC as an institution of industrial relations in Zambia.

1.9 Research Methodology

This study adopted a systematic approach and relied on qualitative data. Doctrinal or theoretical legal research was also relied on. This is the research which asks what the

[48] Kalula, E, Beyond Borrowing and Bending Labour Market Regulation and the future of the Labour Law in Southern Africa. In Barnard, C, Deakin, S and Morris, G (eds.) *The Future of Labour law*, (Hart Publishing, 2004),

law is in a particular area[49]. Therefore, the study involved an analytical study of relevant laws such as the Industrial Relations Act, the Industrial and Labour Relations Act and its amendments, the Constitution of Zambia (Amendment) Act of 2016, relevant cases and authoritative materials. In addition, secondary data in the form of journal articles, ILO Conventions and some works of scholars and jurists on the subject was reviewed.

In order to capture the aspirations of the employees and employers and their organisations, structured interviews using a questionnaire and in-depth interviews (refer to appendix) with key informants were carried out in Lusaka. The respondents (n=18) were purposively selected on the basis of their experience and knowledge in labour matters acquired through their engagement with workers' and employers' organisations or having served in the Judiciary or the Ministry of Labour and Social Security. Table 1 shows the list of respondents that were involved in this study. Job position and number of years served were the key inclusion criteria used to identify the respondents. Some of the respondents included the Secretary Generals of Trade Unions, lay members of the IRC, former Labour Commissioners, Judges of the IRC and the Chief Justice of the republic of Zambia. Content analysis was used to analyse the qualitative data that was collected from these respondents.

Table 1: List of Respondents

ORGANISATIONS/ INSTITUTIONS REPRESENTED	**NO. OF RESPONDENTS**
Zambia Congress of Trade Unions (ZCTU)	2
Zambia Union of Financial and Allied Workers (ZUFIAW)	1
Zambia Federation of Employers	2
Zambia Institute of Human Resources	1
Ministry of Labour and Social Security	1
Judiciary	6
Labour Consultants	3
Labour Commissioners	2
Total Number of Respondents	**18**

[49] McConvile, M and W.H. Chui, *Research Methods of Law*, (Edinburgh University Press, 2007), 2.

1.10 Outline of the Chapters

This dissertation consists of five chapters. Chapter One is the introduction to the dissertation and Chapter Two presents the origins and rationale for the establishment of the Industrial Relations Court in Zambia. The composition and jurisdiction of the Court under sections 96 and 98 of the Industrial Relations Act, 1971 is presented in Chapter Three. Chapter Three also discusses the composition and jurisdiction of the Court under the Industrial Relations Act, 1990, and the Industrial and Labour Relations Act, 1993. Furthermore, it also discusses the composition and jurisdiction of the Court now a division of the High Court under the Constitution of Zambia (Amendment) Act, 2016. Chapter Four assesses the impact of the IRC on Zambia's industrial relations system.

Lastly, chapter Five serves as the conclusion of the dissertation and outlines some recommendations for efficient and cheaper delivery of justice in industrial relations matters in Zambia.

1.11 Summary

This chapter served as the overall introduction to this dissertation. The background to the study and a summary of the literature review has provided the setting of the study. The motivation of the study is explained by the statement of the problem and the justification, which are linked to the set research objectives and questions. This chapter has also presented a map or outline of the rest of the chapters contained in this dissertation.

The next chapter discusses how labour disputes were resolved in Northern Rhodesia (now Zambia) and the reasons advanced by the Zambian government for the establishment of the IRC in 1971.

CHAPTER TWO

THE INDUSTRIAL RELATIONS COURT OF ZAMBIA-ORIGINS AND RATIONALE

2.1 Introduction

This Chapter discusses how labour or trade disputes were resolved in Northern Rhodesia (now Zambia). It also discusses the policy on wages and prices of the United National Independence Party (UNIP) led government prior to the establishment of the Industrial Relations Court in Zambia in 1971. Furthermore, it discusses the reasons advanced by the Zambian government for the establishment of the IRC in Zambia.

2.2 Settlement of Industrial Disputes Under the Employment of Natives Ordinance 1929

According to Mtopa[1], although the British colonial administrators began to settle in Zambia after 1880, the law they 'brought' with them was the law of master and servant as it existed in England before 1867. This could be seen in the early proclamations and regulations dating back to 1884[2]. The courts applied criminal law in master and servant cases, for example, the language in the case **R. v Andreya Kalawa and Others**[3] illustrated this approach.

The introductory note to the report stated that, 'all the three Africans were charged and convicted under Section 64 of the Employment of Natives Ordinance, Cap.171, with failing to fulfil a contract of service. The accused were fined varying amounts'. Further the report stated that in giving the facts of the case, Woodman J. said, 'The particulars of the offence were that the accused being farm labourers each neglected to complete his task of selthing a section of standing wheat. There were seven accused, they all admitted

[1] Mtopa,A.M, *Labour Laws of Zambia*, (Lusaka: Kenneth Kaunda Foundation, 1989),7- 8.
[2] Native Labour Regulations, King's Regulations, British Central Africa Protectorate,1894-1900 p.24
[3] (1948) 4 N.R.L. 218

that they had failed to complete their tasks because the task was too big. The magistrate treated this as a plea of guilty.' All the words in italics are found mostly in criminal trials. Failure by a servant to complete an allotted piece of work cannot in normal modern circumstances be a basis of criminal liability. If anything, such a failure would result in a breach of duty – a civil liability. The judges were of course interpreting the law as presented to them by the legislature. The all-embracing employment of Natives Ordinance[4] provided that:

> *when an employee or servant shall neglect or refuse to fulfil any contract of service, or whenever any question, difference, or dispute shall arise as to the rights or liability of either party, or touching any misconduct, neglect, or treatment of either party, or injury to the person or property of either party, under any contract of service the party feeling aggrieved may make any complaint to any European Member of the Police or Magistrate or Justice of the Peace who may thereupon issue or cause to be issued a summons to the party complained against.*

The effect of this provision[5] was to make every 'party complained against' a potential criminal. In Northern Rhodesia, an employer having any complaint against an employee or apprentice, for instance, for failure to report for duty, could either warn such an employee or order that he appeared before a subordinate court. If the servant failed as requested, the court issued a warrant for his apprehension in order to investigate the complaint. 'In case of conviction upon such a complaint the subordinate court…may adjudge that in addition to the sentence or punishment inflicted, he pays to the employer such reasonable costs and expenses not being more than those allowed in criminal cases to which the servant may have been put in consequence of such failure of appearance'[6] . Mtopa, further observed that the last portion of the section quoted above seemed to suggest that the court did or should not treat the investigation as a criminal trial and yet the earlier portion of the section which dealt with issue to warrant for apprehension suggested or made the whole matter appear as if it were a criminal issue. However, the truth was that the whole matter was regarded as being criminal. Such a view was

[4]No. 56 of 1929, Section 64 Chapter 171 of the Laws of Northern Rhodesia, now repealed.
[5] No. 56 of 1929, Section 64 Chapter 171 of the Laws of Northern Rhodesia, now repealed.
[6]No. 56 of 1929, Section 66 Chapter 171 of the Laws of Northern Rhodesia, now repealed.

revealed in Section 66 of the Employment of Natives Ordinance which also provided that an employer if he wished could avoid the above method and instead proceed against the servant in the same subordinate court 'on a charge of having committed an offence against the provisions of this Ordinance'. In such a case failure to report for work for instance, was an offence per se under the Ordinance. A servant who was likely to abscond could be arrested and detained in custody unless he found security to appear and answer a complaint and to abide by the decision of the court.[7]

It may also be argued that section 71 (A) (3) of the Employment of Natives Ordinance dealt only with procedure and not substantive law. There is however, sufficient evidence to show that the courts in particular regarded labour disputes as criminal prosecutions. The party complained against could be either the employer or the employee- was treated as a 'prisoner' to be fined or imprisoned. In **R. v. Mbambi Maliche**[8] the 'accused' Maliche absented himself from work without reasonable excuse. He was committed to prison for that offence under Section 75 (4) of the Ordinance. After serving a 30-day prison sentence, he was released but he did not return to his employers. He was arrested a second time for failure to report for duty. Section 75 (4) provided that 'if he shall without lawful cause break his contract by departing from his employer's service with intent not to return thereto' the servant shall be guilty of an offence. 'Provided that the servant shall be deemed to have so broken his contract if he shall absent himself from his employer's service without cause for a period of ten consecutive days'. Maliche had spent more than ten consecutive days without reporting for duty. On his second arrest and charge, the court had to decide whether by the second desertion the accused had committed an offence. To answer this question, the court turned to section 75 of the Ordinance which provided that 'no fine or period of imprisonment undergone under this Ordinance by a servant shall have effect of cancelling the contract of service unless the court shall so determine.' The Court of Appeal held that when the accused was released from prison the original and only contract of service between himself and his employer subsisted and by failing to return to his employment without lawful excuse he had

[7] No. 56 of 1929, Section 69Chapter 171 of the Laws of Northern Rhodesia, now repealed.
[8] (1944) 3 N.R.L.p. 27

committed an offence under Section 75. He was therefore sent back to prison for this second offence.

On the foregoing, it is clear that the ordinary courts in Northern Rhodesia now Zambia, regarded any breach of contract between a master and servant or employer and employee as a criminal offence and not a civil liability.

2.3 Wages and Prices Policy in Zambia Prior to the Establishment of the Industrial Relations Court In 1971

The Northern Rhodesia Legislative Council enacted legislation such as the Minimum Wages, Wages Councils and Conditions of Employment Ordinance[9] and the Industrial Conciliation Ordinance[10] for purposes of setting the conditions of employment, mainly for the African workers[11]. However, at independence in October, 1964, the labour policies of the colonial government left the new African rulers with a difficult choice. Both urban workers and civil servants envisioned to see long cherished demands for higher wages fulfilled at last. These workers took their standards from the white man for whom they had worked[12].

In contrast to these 'haves' were the 'have nots'. These were the thousands of unemployed men and women who had moved to urban areas and rural dwellers, four fifths of the population who lived in the remote areas beyond the line of rail. It was generally believed that if the latter were to have the fruits of independence, money ought to be diverted from the towns to the rural areas in a massive programme of rural aid, and urban wages kept low to encourage the expansion of job opportunities. The new government found itself unable to deal with this problem in its first years of power. It

[9] Chapter 190 of the Laws of Northern Rhodesia, now repealed
[10] Chapter 26 of the Laws of Northern Rhodesia, now
[11] Kalula, E. and C. Chungu, *The quest for decent work and social protection: Some Electric Developments and Emerging trends in Africa*, (University of Cape Town, 2017), 15.
[12] Berger, E.L, *Labour, Race and Colonial Rule, the Copperbelt from 1924 to Independence*, (Oxford: Clarendon Press, 1974), 218.

tried to promote rural development, increase the level of urban employment, and have a high wage policy, without stating its priorities[13].

The United National Independence Party (UNIP) led government did not take a Wages policy as a matter of urgency and priority. The new government paid more attention to other aspects of government and the mechanics of the changeover to African rule. Under the circumstances, the government naturally supported higher wages in reaction to the dual wage system which had held black workers' wages down and was so closely connected with colonialism. Urban workers regarded higher wages to be a justifiable reward of self-government, and political leaders agreed with them because of the great political support that they received from them during the struggle for independence[14]. An early warning of the problems which might arise because of higher wages was given to the new government in the United Nations Report published in 1964 on the prospects of the Zambian economy. It revealed that substantial wage increases would narrow the options of economic planning open to the government. The Report advised:

> *There is no question of the country being able to afford to pay everyone the £22 a month claimed by some union officials as a basic living wage; desirable though this would be in itself, this would wreck the economy and lead eventually to far lower living standards. There is really a choice for Zambia: in the next five years it can have big increases in wages or big increases in employment, not both. The dilemma is in fact even more serious than this. For if wage increases were substantial the Government would be forced to slow down the programme of development; it would be compelled, for example, to postpone the day when all Zambian children would have at least some schooling*[15] .

As the Report pointed out, substantial wage increases were not in themselves harmful to the country, and they would bring prosperity to certain classes of the nation, but they represented an allocation of money which could otherwise be used for basic development needs[16].

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[13] Berger, *Labour, Race ad Colonial Rule, 218.*
[14] Ibid., *218*
[15] Report of the UN ECA/FAO Economic Survey Mission on the Economic Development of Zambia, Ndola, 1964, pp32-33
[16] Berger, E.L, *Labour, Race and Colonial Rule, the Copper belt from 1924 to Independence*, (Oxford: Clarendon Press, 1974), 219

At this time the new government was undecided on a wages policy because of the strange happenings on the Copperbelt. Mine workers had expected that independence would bring an end to many complaints, including their long fight for higher pay. Unemployment was high, and the unemployed also had a claim to social justice. Both discontented employees and the men out of work posed a political threat[17]. Black mine workers were a demanding section of the urban population and their expectations were not fulfilled by the changes that took place in the mining industry at independence. On the eve of independence, the mining industry decided to base their plans for Zambianisation of the jobs mostly done by skilled white miners on a dual wage scale of separate rates for Africans and Europeans, abandoning the principle of equal pay for equal work which had been conceded in 1960[18].

This decision on Zambianisation was not accepted by the African workers[19]. A similar complaint in the civil service had been handled in a different way. The Hadow Commission appointed in October, 1963, had recommended that a common basic salary scale should be adopted for all civil servants. Expatriates would be given additional allowances as part of their contract terms. The mining companies rejected this solution partly because they feared that to place local and expatriate salaries on the same basic scale would invite pressure for all round increases when circumstances only justified a rise for one or other sections of labour force[20]. The mine officials seemed to be of the view that the retention of a dual wage scale gave them more flexibility to deal with the expatriates' representatives, who were capable of causing more trouble than the African Unions.

In 1963 Northern Rhodesia, as Zambia was then known, was part of the Federation of Rhodesia and Nyasaland which was established in 1953. The Federation was a union of three countries, namely Northern Rhodesia, Southern Rhodesia and Nyasaland. However, the Federation was dissolved at the end of 1963. The transition from

[17] Berger, *Labour, Race and Colonial Rule*, 219.
[18] Berger, *Labour, Race and Colonial Rule*, 220
[19] Ibid., 220
[20] Brown Commission Report, pp. 15-16

Federation to African rule made new arrangements with the Mine Workers' Union necessary[21]. The traditional barriers to African advancement, that is to say, the 'closed shop' principle, job demarcation, and the wage rate for the job all had to be abolished[22]. Negotiations began in June 1963, and in February, 1964, agreement was reached on these points in return for the transfer of all expatriate members of the Mine Workers' Union to staff status, with greatly increased benefits. The union for expatriates changed its name to Mine Workers' Society[23].

A second round of talks which opened in August, 1964, dismantled the guarantees of employment given in the past to European workers as a basic part of the various advancement settlements. Agreement was reached on this in October 1964 in return of compensation for displacement[24]. The representatives of the African Mine Workers' Union accepted these job opportunities and the local wage scales in return for a general wage increase[25]

In early 1965 the Zambia Mineworkers' Union (ZMU) entered into negotiations with the mining companies over new wage rates for senior jobs represented by the Union. During the negotiations the Union asked for a revision of the 1964 agreement on the local wage scales and demanded a substantial wage rise which appeared to be related to European pay rates[26]. The Union was actually having second thoughts about the separate wage scale it had consented to in the previous year. The Union's leaders hurriedly signed an agreement for wage rises averaging 8 to 9% to strengthen their union positions in the elections[27]. However, within a short time of their re-election they found out that the settlement was unacceptable to their members. This led to work stoppages on the mines. By 4th April, 1966, the whole industry was affected, with 23,000 men out

[21] Berger, E.L, *Labour, Race ad Colonial Rule, the Copper belt from 1924 to Independence*, (Oxford: Clarendon Press, 1974), 220
[22] Berger, *Labour, Race and Colonial Rule*, 220
[23] Ibid., 221
[24] Ibid., 221
[25] Ibid., 222
[26] Ibid., 222
[27] Ibid., 222

of the black labour force of 42,000 on strike[28]. A Commission of Inquiry under the chairmanship of Roland Brown, Attorney-General of Tanzania, was appointed by President Kaunda the following day.

The Brown Commission found that the mining companies' decision to revert to separate wage scales at independence in 1964 had been a serious psychological error. It went on to state that independence was expected to bring rewards, not regression, and the common wage scale had been an important symbol of progress for African workers, although a few of them had reached its higher levels. The Commission recommended the adoption of the Hadow principle of a common wage scale plus expatriate allowances. As a basis for the new unified wage scale it suggested raising all local wage rates by about 22%, an arbitrary amount chosen after examination of the African and expatriate rates for shift bosses; which were £110 and £181.16s.0d respectively[29]. The companies awarded the wage increases, but because of problems in grading expatriate allowances to compensate for reduced wages the unified wage scale was not incorporated into expatriate contracts until January 1970, when it was applied to new employees, but not existing ones[30]. Although the increase for senior Zambian workers was quite substantial, shift bosses earning £110 per month received an additional £23.18s.8d, the majority of the workers were on much lower scales. For those near the mines' minimum monthly wage rate of £22.7s.6d, the 22% increase involved a less dramatic sum.[31]

However, it has to be noted that the effect of the Brown Commission's Report was not confined to the mining industry, in which the £22.7s.6d minimum wage compared favourably with the country's statutory minimum wage of £10.8s.0d[32]. The mine workers' success set an example for others, and within eight months about 125,000

[28] Ibid., 222
[29]Berger, E.L, *Labour, Race and Colonial Rule, the Copperbelt from 1924 to Independence*, (Oxford: Clarendon Press, 1974), 223.
[30]Berger, *Labour, Race and Colonial Rule*, 223
[31]Brown Commission Report, pp. 45-46.
[32]Brown Commission Report, p.33.

workers in various industries had secured wage increases. In many cases the wage increases for the lowest paid workers were 22% or more above previous wage rates.[33]

The Brown Commission emphasised that it did not dispute the earlier recommendation in the United Nations Report on wage restraint, but that it had to weigh this against the need to restore industrial peace in the country's most important industry[34]. The Report pointed out that there was now an urgent need for the government to guide the movement of wages in the mining industry and the rest of the country with official wages, incomes and prices policy[35].

The new government supported the mine workers' demands for greatly increased new wages at the Brown Commission's hearings. In fact, Aaron Milner, a Minister of State and Deputy National Chairman of the United National Independence Party, gave evidence on the Party's behalf that the minimum monthly wage in the mining industry should be £35 instead of £22.7s.6d. He was sure that the government could cope with economic difficulties which might arise from the increase, including inflationary pressures and a ripple effect on the wages in other industries[36].

At this time the possibility of another round of high general wage increases arose. In 1969 the African skilled mine workers demanded big wage rises to close the gap between themselves and the expatriate employees. The Zambian Mine Workers Union wanted to narrow the gap between the low paid workers and skilled workers. The railway-men's union demanded 30% increase for lower grades, justifying it by a comparison with the mine workers' pay; and lowly paid civil servants also prepared a wage claim[37].

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[33] Knight, J. B, Wages and Zambia's Economic Development. In Elliot, C. (ed.) *Constrains on Zambia's Economic Development* (Nairobi, 1971),101-102

[34]Berger, E.L, *Labour, Race and Colonial Rule, the Copperbelt from 1924 to Independence*, (Oxford: Clarendon Press, 1974), 224.

[35]Berger, E.L, *Labour, Race and Colonial Rule, the Copperbelt from 1924 to Independence*, (Oxford: Clarendon Press, 1974), 224.

[36] Copper Industry Service Bureau, Evidence to the Brown Commission, Aaron Milner, 14th June, 1966.

[37] Berger, E.L, *Labour, Race and Colonial Rule*, 225

This demand for the high wage increases at last forced the new government to give urgent attention to a wages policy. In a speech to UNIP's National Council on 11th August, 1969, President Kenneth David Kaunda made a surprise announcement that the state would take a 51% shareholding in the copper mines with a tough line on wage incomes, including a temporary wage freeze and a ban on strikes as a bargaining weapon. The wage freeze was justified by the need to curb inflation, halt price increases in the rural areas, and create more jobs in towns[38].

A few months after these measures were announced the UNIP led government received the Turner Report it had requested from the International Labour Office on incomes, prices and wages in Zambia[39]. The Report, prepared by Professor H. A. Turner of Cambridge University emphasised the President's feelings about the growing rift between the urban and rural society. Between 1963 and 1968, when the price index for lower incomes rose by 46%, average money wages increased by 143%; but the total increase in the incomes of peasant farmers between 1964 and 1968 was possibly as little as 3%[40] . Professor Turner calculated that the average earnings of a peasant farmer in subsistence production and cash were worth about Kwacha 145 in 1968, compared with Kwacha 1,300 for an African mine worker and Kwacha 640 for an African wage earner outside the mines[41] .

The Turner Report's conclusions on the productivity of the urban labour force in the immediate post-independence period were also disturbing. It was found that labour efficiency had fallen by about 20% in 1965-6, and had not yet recovered to former levels. The reason for the fall in labour efficiency seemed to be basically that the colonial system of labour discipline had broken down and nothing had yet developed in its place[42]. Furthermore, the report found a dangerous pattern of rising wages, falling output; souring labour costs and declining levels of employment. The economy had

[38] Berger, *Labour, Race and Colonial Rule*, 225.
[39] Ibid., 225
[40]Turner, H. A, *Report to the Government of Zambia on Incomes, Wages and Prices in Zambia: Policy and Machinery*, (Geneva: International Labour Office, 1969),10-11
[41] Turner Report, p. 11. One Kwacha, the currency unit adopted in January, 1968 was worth 11s.8d.
[42] Turner Report, p.18 See also Bates, Unions, pp. 58-61.

with-stood these strains because of the continued prosperity of the copper industry, which had enjoyed exceptionally high prices for part of the post – Independence period; but this prosperity rested on volatile world market trends[43].

In the post-independence era conflicts between urban workers and civil servants and their employers over wage settlements were complicated. As a result of these social and economic problems the country experienced many work stoppages. In order to redress these problems, the new government prepared an outline of a new interim policy on prices and wages to satisfy the immediate needs prior to the commencement of the Second National Development Plan in 1972[44].

2.4 Reasons Advanced by the Zambian Government for Establishment of the Industrial Relations Court in 1971

As earlier stated, during the first years of being in power, the UNIP led government witnessed many strikes and other forms of industrial disputes. As a result of this development, in April, 1967, the Minister of Labour called a conference in Livingstone which was attended by representatives of the employers, trade unions and the government. Its purpose was to attempt to deal at national level with the problems of workers' output, discipline and industrial relations in the light of the National Development Programme[45]. At the conference, two Codes were produced relating to discipline and productivity respectively. In addition, both employers and workers formerly pledged themselves to support the Four-Year National Development Plan[46].

The new government was concerned with these work stoppages and the many industrial disputes. To this effect, it sought ways and means to find lasting solutions to these problems. On 12th December, 1969, President Kenneth David Kaunda announced

[43] The danger was brought home by a sharp drop in copper prices in 1970.
[44] Berger, E.L, *Labour, Race and Colonial Rule, the Copperbelt from 1924 to Independence,* (Oxford: Clarendon 1974), 226.
[45] The Minster of Labour Address at the opening of the Labour Conference, Livingstone, 7 April, 1967.
[46] Zambia Ministry of Labour, Annual Report of the Department of Labour for the year 1967, Government Printer, p.6, para.56

details of the new approach to productivity, prices, wages and industrial relations at the Second National Convention in Kitwe[47]. He said wages would be controlled through a new industrial court, to which industrial disputes could be referred by the Minister of Labour. He also stated that the wage agreements would have to be registered with the Ministry of Labour and would require the approval of the new industrial court before taking effect. He further stated that the wage agreements could be referred to this Court for revision. He went on to say that the Court's awards, which would be binding on all the parties concerned, would be kept within guidelines which the government would set with the assistance of a new Productivity, Wages and Prices Council.

Furthermore, in an effort to find ways of improving industrial relations in the country, the government did, among other things, organise two seminars, one for managers of Private Companies, Parastatal Companies and Statutory Bodies held in Lusaka from 5th to 7th March, 1970[48], and the other for trade union leaders held in Mufulira from 20th to 22nd March, 1970[49].

Although the government had come up with the official Wages, Incomes and Prices, the ordinary courts appeared not to be competent enough to deal with employer and employee disputes. This may have inspired the employers' and workers' organisations to influence the government to come up with a specialised labour court to deal with such matters quickly, cheaply and informally than the ordinary courts.

2.4.1 Proposed Legislation to Establish an Industrial Court

Subsequent to the two seminars held in Lusaka and Mufulira in 1970, the following were the developments. On 10th April, 1970, the Minister of Labour wrote to the Republican President on the subject **Participatory Democracy in the Industry[50] ,** saying:

[47] "The Sick Society," *Times of Zambia*, December 13, 1969, p. 1.
[48] "New Look Act, Works Councils and Industrial Court proposed", *Times of Zambia*, March 6, 1970, p. 1
[49] "Workers Call for Power", *Times of Zambia*, March 23, 1970, p. 1.
[50] Confidential letter on Participatory Democracy in Industry, 10th April, 1970, 72/1/18

2... *Your Excellency is already in possession of Employers' and Workers' recommendations, and I now wish to record my Ministry's views on the various papers which were studied by the employers and workers. All clauses not commented upon have been agreed to in principle. My Ministry is in agreement with the employers that the Industrial Court should deal with industrial disputes only, and that a different body should be formed to deal with problems of prices and incomes. This is the reason why it is suggested to rename it "The Industrial Relations Tribunal."*

(i) My Ministry has no objection to the President of the Court being a Judge of the High Court.

(ii) My Ministry feels that the assessors should be independent members of the public, but who would represent the interests of the employers and employees but will, themselves, have no interest in the matter under dispute.

Later the Industrial Relations Bill, 1971 was presented to the National Assembly by the then Minister of Labour and Social Services, Mr Wilson Chakulya[51]. The Bill closely followed the guidelines laid down by President Kenneth David Kaunda at the Second National Convention at Kitwe in 1969. The Bill that was presented to the National Assembly was designed to ensure that industrial relations matters in Zambia were conducted in such a way as to promote economic and social development of the country. It therefore provided for the promotion and maintenance of industrial peace in every sector of the economy, negotiation of collective agreements and avoidance of industrial relations breakdown by providing procedures for settlement of disputes. In the event of a deadlock, it provided for conciliation or compulsory reference of disputes to the Industrial Relations Court as the final arbiter and custodian of public interest[52].

It is, however, interesting to note that the Industrial Relations Bill, 1971 was met with resistance from the private sector. The capitalists did not appreciate the necessity of sharing power with workers. One Member of Parliament, Mr Hugh Robert Emrys Mitchely, QC, for Gwembe North argued against the Bill. He opposed the appointment of the Chairman and Deputy Chairman by the President. He said this would make their loyalty suspect. He suggested that they be appointed by the Judicial Service Commission

[51] Parliamentary Debates of the 3rd Session of the Second National Assembly (Hansard) 23rd November-3rdDecember, 1971 Vol. XXVII, pp.228-238

[52]Parliamentary Debates of the 3rd Session of the Second National Assembly, 228-238

to ensure neutrality[53]. The Minister opposed this argument by saying that even if the judges of the High Court were presidential appointees, they were independent and neutral.

Members of the National Assembly also opposed the creation of two arbitration bodies, that is, the Industrial Relations Court and the Arbitration Tribunal as envisaged in the Bill. They argued that having set up the Industrial Relations Court it was unnecessary to have conciliation procedures which would in any event transfer certain matters to the Court. The Government said the process of conciliation was there so that workers could get involved in the discussion of problems. It was also said that the Court would deal with matters where conciliation had failed and cited examples of Kenya and the United Kingdom which had both the Industrial Relations Court and Arbitration Tribunal.[54]

After parliamentary debates, the Industrial Relations Act[55] was enacted. The Act introduced various innovations of far reaching effect and radical changes to improve industrial relations in the country. Beele[56], explains that one innovation of the Act was the establishment of the IRC with wide jurisdictional powers to inquire into and adjudicate upon any matter affecting the rights, obligations and privileges of employees, employers, and their representative organisations. According to him, the IRC was intended to be the custodian of the Industrial Relations Act. Its purpose in disposing matters before it was to ensure substantial justice between the parties. In this respect, technical or procedural faults do not become obstacles in the furtherance of substantial justice. In fact, it is provided that the court shall not be bound by the rules of evidence.

The other innovative creature of the Act was the establishment of the works councils under Part vii of its provision as a medium through which workers would participate in

[53]Ibid., 243-253
[54] Parliamentary Debates of the 3rd Session of the Second National Assembly (Hansard) 23rd November-3rdDecember, 1971 Vol. XXVII, pp.228-238
[55] Act No. 36 of 1971, now repealed.
[56]Beele, E.M, *Towards Effective Worker Participation in Zambia, A thesis submitted in fulfilment of the requirements for the degree of Master of Laws* (University of Wisconsin-Madison, 1983),121-122.

the management of industrial undertakings. The purpose of including the provisions relating to works councils was in response to the demands for the formalisation of the works committees as permanent features of the country's industrial relations as well as being a compliment to the political notion of participatory democracy[57].

The IRC was established under section 96 of the Industrial Relations Act[58]. The Act became Chapter 517 of the Laws of Zambia. The Court became operational in 1975. The first case to be heard by the Court was **Marshall Mulizwa v. Council of the University of Zambia and UNZAWU[59]**. Arguments in the matter were heard on 25th September 1975. The main issue for determination by the Court was whether the provisions of the Act applied to the Council of the University of Zambia which was and still is a public authority. The issue arose because of the provisions of section 2(2) of the Act which stated that:

> *The provisions of the Act shall apply to any public or local authority only to such extent and in such manner and from such date or dates as the President may, by statutory instrument, prescribe for the purpose.*

The President had not yet issued a statutory instrument extending the application of the Act to a public authority and the Court held that it had no jurisdiction to entertain Marshall Mulizwa's application. It was not until early 1976 when the President signed Statutory Instrument No. 2 of 1976 that the provisions of the whole Act were made to apply to public and local authorities.

At its inception in 1971, the Court was envisioned as an extension of the dispute resolution procedure, which included mediation. Mediation is a process in which the disputing parties use a third party to assist them in reaching a settlement of dispute[60]. Conciliation is an amicable resolution of a dispute by the parties themselves[61]. Arbitration on the other hand is a form of dispute resolution in which a neutral third

[57] Beele, *Towards Effective Worker Participation in Zambia*, 243-253.
[58] Act No. 36 of 1971, now repealed.
[59] Application No. 1 of 1975.
[60] Garner, B. A, *Black's Law Dictionary*, 8th Ed, Thomson Reuters (USA, 2004),3113
[61] Garner, *Black's Law Dictionary*, 873.

party renders a decision after both parties speak for themselves at a hearing[62] while Adjudication is a court process in which a judge renders a formal judgment or a decision[63]. When the IRC was established, it fell under the Ministry of Labour and Social Security. The rationale for attaching the Court to the Ministry of Labour and Social Security as opposed to it being part of the ordinary judicature stems from various objective considerations[64].

Firstly, the Court was perceived as an institution of specialisation and expertise to deal with matters relating to labour, that is, matters arising from employment relationships between an employer and an employee or matters between organisations of employers and employees. Secondly, the core function that the Court was expected to perform was part of the system of labour administration and particularly labour dispute settlement. This system which commenced with mediation by labour officers and other industrial relations practitioners ended with arbitration or adjudication[65]. Thirdly, the Court was established under an Act of Parliament[66] falling under the statutory functions of the Ministry of Labour and Social Security.

With the enactment of the Judicature Administration Act[67], the IRC was transferred from the Ministry of Labour and Social Security and made part of the Judicature. According to Nyirenda[68], one of the reasons for the transfer of the Industrial Relations Court to the Judicature was for the Judicial Service Commission to have authority on the appointment of the lay members of the Court who are remunerated by the Judiciary. The Court, however, has continued to exist on the basis of the Industrial and Labour Relations Act[69]. Currently, Article 133(2) of the Constitution of Zambia (Amendment)

[62] Ibid., 321.
[63] Ibid., 127
[64] Interview with E. J. Nyirenda, Labour Commissioner from 1990-2001, on 10th October, 2011, at Lusaka
[65] Interview with E. J. Nyirenda, on 10th October, 2011, at Lusaka.
[66] Act No.36 of 1971, now repealed
[67] Act No. 42 of 1994.
[68] Interview with E. J. Nyirenda, Labour Commissioner from 1990-2001, on 10th October, 2011, at Lusaka.
[69] Act No. 27 of 1993.

Act[70] has established the IRC as a Division of the High Court. It is considered that this development is contrary to the rationale for establishing specialised institutions whose composition, in many countries, is tripartite and are expected to provide simpler, speedier, cheaper and more accessible justice than do the ordinary courts.

Similar views are made by other scholars. Machura[71] says that in a typical constellation, a professional judge collaborates with lay judges, and each group is knowledgeable in its respective areas. Even if a professional judge specialises in a certain area of law, his/her knowledge of business practice is not as extensive as those who work in business. For this reason, many countries employ lay judges who contribute area-specific knowledge and who have actual experience in the field of specialisation. Furthermore, a labour dispute is a product of a clash of interest between employers and workers. Due to the staggering effects of labour disputes, many countries have advocated expeditious means for resolution of labour disputes before they go out of hand. In order to give room for quick resolution of labour and industrial disputes and matters related thereto, it is mandatory for the management and labour union to include in their collective agreement the means for the settlement of any dispute that may arise in the course of their relationship[72].

In general, scholars and jurists in many countries have identified various reasons for setting up industrial tribunals and labour courts in order to achieve desirable goals. The most prominent and consistent ones being: provision of simpler, speedier, cheaper and more accessible justice within the scope of industrial relations matters. Similarly, the establishment of the IRC in Zambia in 1971 was inspired by specific needs as follows [73]: the wish for simple procedure which avoids the formality of ordinary courts of law; the need to implement the government's prices and income policy; the need to implement a new social policy; the need for expert and specialized knowledge which a court with a

[70]Act No. 2 of 2016

[71] Machura. S, Civil Justice "Lay Judges in the EU Countries" *International Institute for the Sociology of Law, Onati Social-Legal Series* (online), 6(2) (2016) ,235-254.

[72] Sunday,F, "Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis", *Journal of Law, Policy and Globalisation*, Vol. 28, (2014).

[73] Interview with S. Sachika, Secretary to the Cabinet from 1990-1992, on 30th August, 2017, at Lusaka.

broad general jurisdiction might not have; and the wish for speedy, cheap and decentralized determination of several individual cases within the scope of industrial relations.

2.5 Summary

This chapter has shown that originally during colonial rule conflicts arising between masters and servants were regarded as criminal offences and were resolved by any European member of the police or magistrate or Justice of the Peace. This chapter has also shown that initially the Zambian government did not take a Wages policy as a matter of urgency and priority. This was so because the government naturally supported the demand for high wages by African workers in reaction to the dual wage system which had held African workers' wages down and was closely associated with colonialism. The chapter has demonstrated that later there were many work stoppages of short duration in the mining and various industries. Many of these trade disputes recorded involved demands for increased wages and improved conditions of service by African workers. The chapter has also revealed that an early warning of the problems which might arise because of higher wages was given to the Zambian government in the United Nations Report of 1964 on the prospects of the Zambian economy.

This chapter has further demonstrated that because of work stoppages on the mines in 1966, the Zambian government appointed the Brown Commission to inquire into the causes of those strikes by African mine workers. The Brown Commission recommended that the Zambian government should come up with an official wage, incomes and profits policy in order to guide the movement of wages in the mining industry and the rest of the country. Subsequently, the Zambian government prepared an outline of a new interim policy on prices and wages to meet immediate needs prior to the establishment of the Second National Development Plan in 1972.

Lastly, the chapter has demonstrated that the main reasons for establishing the IRC in Zambia were to implement the government's prices and income policy and provide the legal framework for settlement of industrial disputes between employers and employees. The next chapter discusses the composition and jurisdiction of the IRC in Zambia.

CHAPTER THREE

THE COMPOSITION AND JURISDICTION OF THE INDUSTRIAL RELATIONS COURT IN ZAMBIA

3.1 Introduction

This chapter examines the composition and jurisdiction of the IRC in Zambia as established by the Industrial Relations Act, 1971, the Industrial Relations Act, 1990, and the Industrial and Labour Relations Act, 1993. It also considers whether or not the composition of the IRC in Zambia from its inception in 1971 to 2017 has been in accordance with the aspirations of the advocates for a specialised institution dealing with industrial relations matters.

3.2 The Composition and Jurisdiction of the Industrial Relations Court under The Industrial Relations Act, 1971

In terms of section 96 (2) (a) (b) and (c) of the Industrial Relations Act[1] , the Court consisted of the Chairman or the Deputy Chairman and two other members or such greater number as the President would prescribe by Statutory Instrument. The Chairman or the Deputy Chairman of the Court was required to be a person who was qualified to be appointed as a judge of the High Court. The Chairman, the Deputy Chairman and other members of the Court were appointed by the President. However, this Act did not specifically prescribe the qualifications that a person should hold in order for him/her to be appointed as a member of the Court, other than the Chairman or Deputy Chairman. As such, the President was free to appoint lawyers and others with different educational qualifications and backgrounds as members of the Court. In the case of **Tabb Lubinda**

[1] Act No.36 of 1971, now repealed

v. National Import and Export Corporation Limited[2], for example, the quorum of the IRC was Madam Justice Chibesakunda, Chairman, Mr. Hamir and Professor Mvunga as members. This was a quorum of all lawyers.

Ideally, the other two members, other than the Chairman or Deputy Chairman, of the IRC were supposed to represent employers' and employees' interests. As such, by appointing a practicing lawyer as a member, other than the Chairman or Deputy Chairman, of the IRC, it was doubtful whether such a person was representing the employers' or employees' interests. Further, in normal circumstances, the other two members of the IRC were supposed to contribute area specific knowledge and have actual experience and specialisation in industrial relations matters[3]. For instance, a legally trained professional judge may know the letter of the law but in a dispute among farmers on the use of rented land, expert lay members from the farming community are able to contribute from first-hand experience in farming. This being the case, it was very uncertain whether the other two members of the IRC met these qualifications as well. Perhaps the problem could have been attributed to the method of choosing the lay members of the IRC. In the process of nominating lay members of the Court, special consideration was to be taken and key stakeholders (employers' and workers' organisations) were to be consulted[4].

At times the Court sat with assessors who advised it on the interests of the workers and employers. The assessors, that is, trade unionists or employers' representatives were nominated by the Minister of Labour and Social Security on the recommendations of the Zambia Congress of Trade Unions and the Zambia Federation of Employers to sit in the Court with the Chairman or the Deputy Chairman. Section 96 (7) of the Act gave power to the Minister to nominate an even number of persons not exceeding fourteen, half the number of such persons nominated to be the representatives of the employers and the other half being the representatives of the employees to sit with the Court. The Chairman

[2] Complaint No. 3 of 1982
[3] Personal information having worked at the IRC from 2003-2013.
[4] Personal information having worked at the IRC from 2003-2013

or the Deputy Chairman of the Court would then call upon two of such persons, that is, one representing the employers and the other representing the employees, to sit as assessors with the Court. Unfortunately, the assessors were rarely called upon to sit with the Court. As a result of this trend, employers' and employees' organisations perceived this to be against the reasons for setting up a specialised institution to deal in labour relations matters.[5]

In terms of section 96 (8) of the Act, the Court was not bound to conform to the opinion of the assessors and under subsection (9) of the Act, the determination of any matter before the Court was supposed to be according to the opinion of the majority of the members of the Court considering or hearing the matter. It must be noted that at the inception of the Industrial Relations Court in Zambia, its members, that is to say, the Chairman, the Deputy Chairman and the other members were part time. Furthermore, in terms of section 97 (1) and (2) of the Industrial Relations Act[6], the Public Service Commission appointed the Registrar, Assistant Registrar, Deputy Assistant Registrar and other officers of the Court.

Evidently, the IRC from its inception in 1971 adopted a tripartite composition as advocated for by the supporters of setting up a specialised institution. This was because the supporters envisaged that workers preferred to be judged in labour disputes by persons who were nearer to them, such as their peers, before whom they could express themselves more freely and who understood their problems better than professional judges. This was in line with one of the reasons advanced for establishing the Court, that is, the desire for procedure which avoids the formality of ordinary courts[7].

Under the Industrial Relations Act, 1971, the Court's jurisdiction was specified in section 98. Jurisdiction is a fundamental and bedrock of any judicial proceedings. The

[5] Interview with A.H. Mudenda, Deputy Secretary General of the Zambia Congress of Trade Unions from1994-2010, 0n 20th August, 2017, at Lusaka.
[6] Act No.36 of 1971, now repealed
[7] Interview with S. Sachika, Secretary to the Cabinet from 1990-1992, on 30th August, 2017, at Lu. saka

Black's Law dictionary defines 'jurisdiction' as "government's general power to exercise authority over all persons and things within its territory". Within the context of judicial proceedings, 'jurisdiction' has been defined to mean 'a court's power to decide a case or issue a decree'. It follows that before a court of law entertains any matter brought before it for adjudication, it must ensure that it possesses the jurisdiction to preside over the matter, failing which the proceedings no matter how well conducted amount to nullity[8]

The IRC was established by section 96 of the Industrial Relations Act of 1971. However, this Act[9] did not apply to the Zambia Defence Force, the Zambia Police Force and the Zambia Prison Service[10] (now Zambia Correctional Service). This was perceived to be contrary to the idea of establishing a specialised court to deal with labour disputes. Nonetheless, workers employed in the service of armed forces fall within the scope of the Freedom of Association and Protection of the Right to Organise Convention, 1948[11] and the Right to Organise and Collective Bargaining Convention, 1949[12] . In some countries such workers are permitted complete freedom of Association and Collective Bargaining, whereas in other countries they are not[13]. Therefore, the exclusion of workers employed in the service of Armed Forces in Zambia from the Industrial Relations Act, 1971, cannot be construed to have bad effect on their rights or status in any way as their conditions of service can hardly be exactly the same as those of the ordinary workers.

The Court had jurisdiction under section 98(a) (b) (c) of the Act to examine and approve collective agreements, to hear and determine collective disputes and to inquire into and make decisions and awards in any matters relating to industrial relations. The Court was also empowered to perform any duties which were prescribed under the Act or any other

[8] Sunday, F, "Policy and Globalisation," *Journal of Law* (2014): Vol,28, 2224-3240
[9] Act No.36 of 1971, now repealed
[10] Section 2(1) of Act No.36 of 1971.
[11] No.87
[12] No.98
[13] A worker's Education manual, *Collective Bargaining*, *2*nd (revised) Edition (1986), 68

written law[14]. Furthermore, the Court had jurisdiction to commit and punish for contempt, any person who disobeyed or unlawfully refused to be bound by its order made against him[15]. Section 98 (g) of the Act[16] conferred jurisdiction on the Court generally to inquire into and adjudicate upon matters only if groups of employees and or employers were affected. It should be noted that originally the Court had no jurisdiction to hear wrongful dismissal cases, that is, cases involving breach of conditions of contract of employment. When such cases were lodged into Court the parties were referred to the High Court[17].

Beele[18] has observed that the Industrial Relations Act of 1971 also gave jurisdiction to the IRC to hear disputes between Works Councils and their management. He has also observed that in the period 1976 to 1986 the Works Councils were party to the proceedings challenging management decisions in few cases. The first one was **Works Council RCM Ltd Luanshya Division v. Management (Luanshya Division RCM Ltd)[19].** The Works Council there petitioned for a declaration that the transfer of a Mr. Hugh Campbell Arthur from Chibuluma Division of RCM be of no effect because the transfer did not have the approval of the Works Council as required by Section 72 (2) (b) of the Industrial Relations Act of 1971. Management, however, had complied with section 71 by informing the Works Council of the appointment of Mr Arthur as Manager in charge of Engineering at the Respondent's Luanshya Division. On the facts, the Court held that prior approval was not necessary because the rights of the Works Council under section 72 were restricted to decisions affecting eligible employees. The Council had no rights in the deployment of Managerial personnel beyond mere rights of information.

[14] Section 98 (e) of Act No. 36 of 1971
[15] Section 98 (f) of Act No. 36 of 1971.
[16] No.36 of 1971, now repealed.
[17] Complaint No. 6 of 1983.
[18] Beele, E.M, "The State, Law and Workers Participation Policies in Zambia,1969-1989" (Ph.D. Thesis, University of Warwick,1991), 58.
[19] Case No. IRC/Appl.5 of 1976, Lusaka

The second case was **Kafue Textiles Works Council v. Kafue Textile Zambia Ltd**[20]. An Industrial Relations Officer was dismissed without approval of the Works Council as required by Section 75 of the Industrial Relations Act of 1971. On the application of the Works Council, it was held that the dismissal, even for an officer still on probation, was a contravention of the law and consequently the Respondents were found guilty and fined.

One of the reasons advanced by the government of Zambia in establishing the IRC was for it to play an active and effective role in re-modelling the approach to worker-management relations[21]. Therefore, section 98(g) of the Industrial Relations Act of 1971 that restrained the IRC from adjudicating upon matters affecting the rights, obligations and privileges of an individual employee (which included unlawful dismissal cases) defeated the role that the Court was envisaged to play in changing the approach to worker-employee relations. Further, the act of referring the unlawful dismissal cases to the High Court for adjudication was contrary to the argument that ordinary courts of law were not best equipped to deal with the complexities of the industrial relations systems, that the industrial tribunals with their tripartite membership and informal procedures, could bring to bear a level of expertise and flexibility which is not available in civil courts; and that the industrial tribunals should be able to handle labour disputes more quickly and cheaply, than the ordinary courts.

It is also worth noting that section 101(3) of the Industrial Relations Act, 1971 deprived the right of the aggrieved litigant to appeal against the decision of the IRC to the highest court in the land. These provisions of the Industrial Relations Act, 1971 were criticised in academic and legal circles. One such critic, Mushota[22], a prominent lawyer said section 98 and 101(3) of the Industrial Relations Act, 1971 were an attempt by the

[20] [1979-81] ZICR 111

[21] Parliamentary debates of the 3rd Session of the second National Assembly (Hansard), 23rd November to 3rd December, 1971, Vol. 27 XXVII p. 228-238.

[22] Mushota, K.R.K, "The sources of labour law and the jurisdictional limitations of the Zambian Industrial Relations Court," *The Comparative and International Law Journal of Southern Africa* (1981) Vol. 14, No. 3.

Executive and Legislature to curtail the jurisdictional powers of the Judiciary established under the Republican Constitution.

3.3 The Composition and Jurisdiction of the Industrial Relations Court under the Industrial Relations Act, 1990

According to section 64 (1) and (2) (a) (b) and (c) of the Industrial Relations Act, 1990[23], which repealed and replaced the Industrial Relations Act, 1971, the Court consisted of the Chairman, the Deputy Chairman, and not more than seven members appointed by the Minister of Labour and Social Security. Under this Act, a person qualified for appointment as Chairman of the Court if he/she was the holder or had held high judicial office. A person qualified for appointment as Deputy Chairman if he/she was a legal practitioner with experience for a continuous period of not less than seven years. Furthermore, the Chairman and Deputy Chairman were appointed by the President on the recommendation of the Judicial Service Commission[24]. A person qualified for appointment as a member of the Court, other than the Chairman and Deputy Chairman, if he/she had experience in the field of industrial relations[25]. Under the circumstances, retired labour officers, human resource practitioners, trade unionists and senior government officials were considered for such appointments[26].

In terms of section 64 (5) of the 1990 Act[27] , the other members of the Court held office for a period of five years on such terms and conditions as the Minister of Labour and Social Security determined and were eligible for re-appointment. Under this Act, the Registrar and Deputy Registrar of the Court were appointed by the Judicial Service Commission[28], whereas the other officers of the Court were appointed by the Public Service Commission[29]. The Minister of Labour and Social Security also had power

[23] Act No.36 of 1990, now repealed.
[24] Section 64(4) of Act No. 36 of 1990
[25] Section 64(4) of Act No. 36 of 1990
[26] Interview with E.J. Nyirenda, Labour Commissioner from 1990-2001, on 10th October, 2011, at Lusaka.
[27] Act No. 36 of 1990, now repealed.
[28] Section 65 (1) of Act No. 36 of 1990
[29] Section 65 (2) of Act No. 36 of 1990.

under this Act to nominate an even number of assessors, not exceeding fourteen, of whom one half were representatives of employers and the other half of employees to sit with the Court.

Thus, under the 1990 Act, the composition of the Court remained tripartite. Unlike the Act of 1971, the appointing authority for lay members was transferred from the President of Zambia to the Minister of Labour. Furthermore, the Act specified the criteria for appointing lay members of the Court. This was in conformity with the rationale of providing special knowledge in labour market and employment issues by lay members. However, it is doubtful whether these lay members adequately represented the interests of both employees' and employers' organisations. This is because, the lay members were only required to possess experience in the field of industrial relations. Furthermore, the assessors who were nominated by the workers' and employers' organisations to represent their interests in Court were rarely called upon to sit with the Court and were subsequently done away with in 1997[30].

With regard to the jurisdiction of the IRC, the 1990 Act broadened the category of workers who could not bring labour disputes to the Court to include workers in the Judicial Service and Zambia Security Intelligence Service[31]. Section 68 of this Act[32] specified the jurisdiction of the Court. Under this Act the Court was empowered to interpret the terms of awards, recognition and collective agreements. It was also empowered to inquire into and make decisions in collective disputes and any other matters under the Act. Further, the Court had jurisdiction generally to inquire into and adjudicate upon any matter affecting the collective rights, obligations and privileges of employees, employers and their organisations.

Under the Industrial Relations Act, 1971 and 1990, the IRC was not allowed to entertain any complaint or application from an aggrieved party unless the latter presented the

[30] Act No. 30 of 1997.
[31] Section 2(1) of Act No.36 of 1990.
[32] Act No.36 of 1990, now repealed.

complaint or application within thirty days of the event that gave rise to such complaint or application[33]. This was in accord with the aspirations of the supporters for specialised institutions which were supposed to deal with labour relations matters quickly. In relation to other industrial relations matters, the said Acts did not provide the timeframe in which to file a complaint or application in the Court. Under the circumstances, litigants relied on the Law Reform (Limitation of Actions) Act[34] in filing their applications or complaints in the IRC within six years of the occurrence of the event which gave rise to the complaint or application[35]. This situation could be considered to be inconsistent with the purpose of setting up a specialised court that is, adjudicating matters or cases within a reasonable period of time.

The Industrial Relations Act of 1990 enhanced the freedoms of workers as compared to the Industrial Relations Act of 1971, this is so because section 98(g) of the Industrial Relations Act of 1971 clothed the Court with jurisdiction generally to enquire into and adjudicate upon matters or cases only if groups of employees or employers were affected, whereas section 68(3) of the Industrial Relations Act of 1990 gave jurisdiction to the Court to hear and determine any dispute between an employer and an employee notwithstanding that such dispute was not connected with a collective agreement or other trade union matter. This reversed earlier decisions of the IRC and could therefore be characterised as a marked evolution in the history of the Court.

The provisions of the Industrial Relations Act of 1990 also widened the jurisdiction of the IRC. The main aim of the Court was to do substantial justice between the parties before it and was not bound by the rules of evidence in civil or criminal proceedings[36]. This provision of the Act, was in accord with the advocates for setting up a specialised court which was not required to adhere strictly to the rules of evidence. This assisted illiterate litigants to prosecute their cases without being restricted by legal technicalities.

[33] Section 114(1)(2) of Act No. 36 of 1971 and Section 129(1)(2) of Act No. 36 0f 1990
[34] Chapter 72 of the Laws of Zambia
[35] Interview with E. J. Nyirenda, Labour Commissioner from 1990 to 2001 on 4th May 2017, at Lusaka.
[36] Section 68(4) of Act No. 36 of 1990

Furthermore, the Court's jurisdiction was enhanced by making its decisions or judgments binding upon the parties to the proceedings and any other parties affected by such decision[37]. In essence, the judgment or decisions of the Court included workers who were not parties to the proceedings provided they fell within the category of the worker(s) who brought the matter to Court. This was within the aspirations of the supporters for establishing such a specialised institution.

The Industrial Relations Act, 1990, provided for in section 77(1) for any person aggrieved by an award, declaration, decision or judgement of the Court to appeal to the Supreme Court of Zambia on any point of law or any point of mixed law and fact, but not on a point of fact only. This was also another marked evolution.

3.4 The Composition and Jurisdiction of the Industrial Relations Court Under the Industrial and Labour Relations Act, 1993

The Industrial and Labour Relations Act, 1993, repealed and replaced the Industrial Relations Act, 1990. Under this Act[38], the composition of the Court is outlined in section 86 of the Act. In accordance with this Act, the number of Deputy Chairmen of the Court is unlimited, whereas the number of the members of the Court, other than the Chairman and the Deputy Chairmen, is limited to ten[39]. This is so because the Court consists of five legally qualified persons. The Court, when hearing any matter, shall be duly constituted if it consists of three members or such an uneven number as the Chairman may direct[40]. This Act[41] also states that a person shall not be qualified for appointment as Chairman or Deputy Chairman, unless he or she qualifies to be appointed as High Court Judge. It is important to note that the Industrial Relations Acts of 1971 and 1990 did not provide for the tenure and security of office for the Chairman and Deputy Chairman of the Court. However, the Industrial and Labour Relations Act of 1993 provides for the tenure and security of office for the Chairman and Deputy Chairmen of

[37] Section 68 (6) of Act No.36 of 1990
[38] Act No.27 of 1993.
[39] Section 86 (1) (b) and (c) of Act No.27 of 1993.
[40] Section 89(2) of Act No. 27 of 1993.
[41] Act No. 27 of 1993

the Court as well as their removal from office for inability to perform their functions. Section 86 (5) of the Act states:

> *86 (5) The Chairman and Deputy Chairmen shall have the same tenure and security of office as a judge of the High Court prescribed in the Constitution in the Article relating to tenure of office of judges of the Supreme and High Court and shall be subject to removal from office for inability to perform the functions of his office under that Article*.

This Act of 1993 also empowers the Judicial Service Commission to appoint the Registrar, the Deputy Registrars, Assistant Registrars and other officers of the Court, as may be necessary[42]. Under this Act, the Minister of Labour and Social Security was also empowered to nominate an even number of assessors, not exceeding fourteen, to sit with the Court[43]. Under this Act, the composition of the Court continues to be tripartite as envisaged by the supporters for the establishment of this specialised court. However, the power to appoint the lay members of the Court was subsequently transferred from the Minister of Labour to the Judicial Service Commission[44]. This was done for the purpose of harmonising the responsibilities to appoint and remunerate the lay members of the Court which were previously under the Minister of Labour and Judiciary, respectively. Nonetheless, this development did not affect the role that lay members of the Court continue to play[45].

The jurisdiction of the Court is spelt out in sections 85 and 108 of the Act[46]. However, this Act does not apply to judges, magistrates, registrars of the court, local court justices, the Zambia Defence Force, the Zambia Police Force, the Zambia Prison Service (now the Zambia Correctional Service) and the Zambia Security Intelligence Service[47]. For example, in the case of the **Attorney-General v. Pardon Chibwe[48]** , the Supreme Court of Zambia considered section 2(1) of the Industrial and Labour Relations Act, 1993.

[42] Section 87(1) and (2) of Act No. 27 of 1993.
[43] Section 88(1) (2) and (3) of Act No. 27 of 1993.
[44] Section 86(1)(c) as amended by Act No. 8 of 2008.
[45] Interview with E J Nyirenda, Labour Commissioner from 1990 to 2001 on 4th May 2017, at Lusaka.
[46] Act No. 27 of 1993
[47] Section 2(1) of Act No,27 of 1993
[48] SCZ Appeal No.176/2005.

The brief facts in this case were that the complainant was employed as a casual daily employee with the Zambia Air Force on 11th November, 1995. His services were terminated on 5th December, 2000. Sometime in September 2002, he applied before the Registrar of the IRC, by way of summons, for leave to file a complaint out of time. The Registrar refused the application on the ground that it was statute barred in terms of section 85(3) of the Industrial and Labour Relations Act of 1993.

The complainant appealed to the Deputy Chairman, who made the following Ruling:

> **"Having heard the two parties, we feel the complainant also had to file his complaint as there is no time limit to do so. Costs in the cause".**

The Respondent dissatisfied with this Ruling, appealed to this Court. The Respondent filed a memorandum of appeal containing two grounds, namely:

i) That the Deputy Chairman erred in law and in fact, when he held that there is no time limit in which to file a complaint; and

ii) That the Deputy Chairman erred in law and fact, when he allowed the complainant to file a complaint out of time without taking into consideration that the Zambia Air Force was an institution under the Defence Force.

The Respondent filed written heads of argument, supplemented by short oral submissions, based on the two grounds of appeal. The complainant, too, filed his heads of argument and made brief oral submissions.

On ground one, the gist of the written heads of argument is that the Ruling appealed against is contained in the form of court proceedings as opposed to a formal Ruling. It was submitted that notwithstanding the format of the Ruling, the Ruling was contrary to the provisions of Section 85(3) of the Industrial and labour Relations Act, CAP 269 of the Laws of Zambia. It was pointed out that the Complainant was dismissed in December 2000, but only commenced his action in September 2002, a period of one year nine months, contrary to the provisions of the law; and that no evidence was adduced to show that the Complainant had ever taken any positive steps to address his grievances. It was submitted that notwithstanding failure to take steps the action was statute barred at the time he commenced the proceedings.

On ground two, it was pointed out that the action was titled **Pardon Chibwe vs. Zambia Air Force**; but that in terms of Section 2(1) of the Industrial and Labour Relations Act, the Act does not apply to the Zambia Defence Force of which the Zambia Air Force is part.

In response, the Complainant argued, on ground one that the Deputy Chairman did not err as the Court was informed that the delay was not caused by the Complainant's fault but by sickness. The Complainant criticized the record of appeal that it lacked other documents, among them, the dismissal letter, the letter from Lloyd Siame and leave forms. He contended that the forms would have shown that his former employers made a mistake in dismissing him without notice and without according him an opportunity to explain. He submitted that the delay was caused by his attempts to seek assistance because he was a patient.

On ground two, he submitted that the Industrial and Labour Relations Act, does not apply to Zambia Air Force soldiers and other officers but that it applies to civilian employees.

On account of the views we take of this appeal, we do not intend to discuss the augments in detail. Suffice it to state the law is very clear in relation to when an action should be commenced in the Industrial Relations Court. Section 85(3) of the Industrial and Labour Relations Act, CAP 269 of the Laws of Zambia provides:

> **"The Court shall not consider a complaint or application unless it is presented to it within thirty days of the occurrence of the event which gave rise to the complaint or application:**
>
> **Provided that:**
>
> **Upon application by the complainant or applicant, the Court may extend the thirty-day period for further period of three months after the date on which the complainant or applicant as exhausted the administrative channels available to that person."**

The Appellant was dismissed on 5th December 2000. He applied for leave to file complaint out of time sometime in September 2002. He was definitely out of time. On record, there was no convincing reason given for the delay. In his Ruling granting leave, the Deputy Chairman never addressed his mind to section 85(3) of the Act.

On ground one, this appeal must be allowed.

On ground two, Section 2(1) of the Act is also clear. The Act does not apply to the Zambia Defence Force of which Zambia Air Force is part.

This ground is also allowed.

In the result the appeal is allowed. The Ruling of the Deputy Chairman granting leave to the Complainant to file complaint out of time is set aside as the whole action is statute barred.

The IRC initially had original jurisdiction in all industrial relations matters under section 85(1) of the Act[49]. Under this Act, the IRC has jurisdiction in matters based on discrimination in employment. The Act under Section 108(2) proscribes the termination of the services of any employee or imposition of any other penalty or disadvantage by an employer on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or status of the employee. If any employee has reasonable cause to believe that his/her services have been terminated or that he/she has suffered any other penalty or disadvantage by an employer on any of the said grounds she/he may within thirty days of the occurrence which gives rise to such belief, lay a complaint before the Court. The same applies to any prospective employee who has reasonable cause to believe that he/she has been discriminated against on the same grounds. If the Court finds in favour of the complainant, it may award damages or compensation for loss of employment or make an order for re-employment or re-instatement in accordance with the gravity of the circumstances of the case[50].

[49] Act No.27 of 1993

[50] Section 108 (3) (a) and (b) of Act No. 27 of 1993

The concept of political affiliation under section 108 of the Act[51] was adequately considered by the Supreme Court of Zambia in the case of **Zambia National Broadcasting Corporation Limited v. Tembo, Mulenga and Phiri[52].** The facts in this case were that the three respondents were employees of the appellant. The first respondent was employed as Regional Controller for the Northern region, the second respondent was employed as Director of Engineering, who acted as Director-General whenever the Director-General was absent, and the third respondent was employed as Head of Programmes and Operations. Towards the end of November, 1991, the respondents received letters from the appellant informing them that their contracts of service were terminated and that they were being given three months' salary in lieu of notice. The respondents filed a complaint with the IRC claiming that they had been discriminated against on the ground of their political affiliation.

The complainants were heard by the IRC, and by its judgment delivered on 6th November 1991, the Court found that, because they had been accused of bias in news coverage by prominent members of the Movement for Multi-Party Democracy (MMD) (the then ruling Government Party), it had been proved that the services of the respondents were terminated because of their political affiliation to the United National Independence Party (UNIP) which was in power before November 1991. Further, the Court made an order that the respondents were entitled, in terms of section 108 of the Industrial and Labour Relations Act of 1993, to be re-instated in their employment. Although it was not a ground of complaint, the Industrial Relations Court also found that Mr. E. Chayi who signed the letters of termination of employment as Director-General, had not been properly appointed because the Board of Directors, the only body having power to appoint a Director-General, was not in existence at the relevant time, having been dissolved by the Minister. The Court found, therefore, that the appointment was null and void and that this aggravated the circumstances so that orders for re-instatement should be made. It is against these orders that the appellant appealed to the Supreme

[51] Act No. 27 of 1993.
[52] (1995-1997) ZR 68 (SC).

Court of Zambia. After considering the arguments of the parties on appeal, the Supreme Court of Zambia, among other things, stated:

> *It is clear in this case, as found by the Industrial Relations Court, that the respondents were dismissed because the appellant thought they had been partial in favour of UNIP because of their political affiliation to that party. The appeal on the ground that they were not dismissed because of their political affiliation therefore fails.*

However, the first ground of appeal, namely, the appeal against the order of re-instatement and damages succeeded for the reason that the Supreme Court was of the view that it would have been unfair to dismiss employees who were occupying the respondents' positions in order to make way for re-instatement of the respondents. Further, the Supreme Court was of the view that this was an appropriate case for an order of compensation. The Court accordingly set aside the lower Court's order of re-instatement. In its place the Court made an order that each respondent be paid one year's salary.

The Court also has jurisdiction to hear and determine any dispute between an employee and employer notwithstanding that such dispute is not connected to a collective agreement or other trade union matter[53] as earlier stated. This provision of the Act was considered in the case of **Zambia Consolidated Copper Mines Limited v. Matale[54]** , where the Supreme Court of Zambia said:

> *The general jurisdiction of the Industrial Relations Court and the expansive extent of it is manifest in section 85 under the various subsections which cumulatively, confer a sufficient jurisdiction unrestrained by technicalities under which real justice can be dispensed. Subsection (4) of section 85, for example, confers jurisdiction to hear any dispute between employers and employees even if not connected with group rights or grievances*.

This decision of the Supreme Court of Zambia confirmed the unrestrained jurisdiction of the IRC. Unlike the High Court, Court of Appeal, Supreme Court and the Constitutional

[53] Section 85 (4) of Act No. 27 of 1993
[54] (1995-1997) ZR 68 (SC).

Court, the IRC is not bound by the strict rules of evidence in civil and criminal proceedings as earlier stated, but the main function of the Court is to do substantial justice between the parties before it[55] . Section 85(5) of the Act was sufficiently discussed by the Supreme Court of Zambia in the case of **Roston Mubili Mwansa v. NFC Africa Mining Plc[56]** . The brief facts in this matter were that the appellant was an employee of the respondent on a fixed but renewable term of contract which expired on the 8th February, 2003. He only worked for one year. Consequently, the appellant was paid his terminal benefits. As an employee, the appellant worked underground as a skipman. In the course of his employment, he fell sick and was diagnosed with TB. He was declared unfit before the contract of employment was terminated. From the notice of complaint filed with the IRC, the appellant claimed damages for unfair termination of employment and an order that he be put on a medical discharge.

The trial Court considered the evidence adduced by the witnesses in its totality and the only submission of counsel for the respondent. On the evidence adduced, the Court found that the evidence given by the appellant did not support what he had claimed in his notice of complaint. The Court further found that as the appellant was on a fixed one-year contract of employment, he could not be put on medical discharge, pointing out that his illness frustrated the renewal of the contract. The complaint was dismissed. He appealed against the dismissal to the Supreme Court of Zambia. There were four grounds of appeal. Ground one which is materially relevant to the issue of this matter stated:

> *By holding that the complainant led no evidence on the relief pleaded in the complaint and further that the complainant led no evidence on his conditions of service but other matters, the Court below fell into serious error in view of the principle of substantial justice enjoined under section 85(5) and the position that the Industrial Relations Court is not bound by rules of evidence. The Court below could have invoked the provisions of section 92 to call witnesses or ask for production of documents that would have assisted in resolving the issues in dispute*

Having duly considered the arguments of the parties on appeal, the Court, *inter alia*, said:

[55]Section 85(5) of Act No. 27 of 1993.
[56] SCZ Appeal No. 12 of 2007.

> *There is a very unfortunate assumption by some parties appearing before the Industrial Relations Court that since the Court is not bound by rules of evidence in civil and criminal proceedings and that its main object is to do substantial justice between parties before it, the Court must be seen to be assisting parties on its own motion. The assumption, as we have said, is unfortunate and misguided. The statutory provision that the Industrial Relations Court is not bound by rules of evidence means that the court exercises flexibility and not rigidity in the adjudication process. For example, the rule of evidence that only original documentary evidence may be admitted in evidence is not adhered to with rigidity as duplicates or photocopies are allowed. Again, the phrase that the Court shall "do substantial justice between the parties before it" does not mean that the Industrial Relations Court should lose its impartiality and take sides when determining a complaint or application. It simply means that the Court must determine the complaint fairly and impartially by taking into account all the evidence adduced by parties, the law and the surrounding circumstances of each case.*

This determination gives guidance to the IRC on the exercise of flexibility and not rigidity in deciding cases before it. Further, the Court has the exclusive mandate to resolve any ambiguity in any recognition or collective agreement brought to its attention by any of the parties concerned[57] .

3.5 1997 Amendments to the Industrial and Labour Relations Act, 1993

In 1997 substantial amendments were made to the Industrial and Labour Relations Act of 1993. Machungwa[58] in his forward to "Understanding the Industrial and Labour Relations Act, Cap 269" highlights some of the reasons advanced for these amendments such as the substantial amendments to the Republican Constitution in 1996 and Zambia's ratification of the ILO conventions in 1996[59] . The Conventions are No. 87 which deals with "Freedoms of Association and the Protection of the Right to Organise" and No. 98 which deals with the "Right to Organise and Collective Bargaining". Therefore, it was appropriate for the government to revise Zambia's Labour Laws to

[57] Section 85(7) of Act No.27 of 1993.
[58] Mwaba, T. K, *Understanding the Industrial and Labour Relations Act,Cap 269, A Practitioner's Guide,* (Lusaka*:* M&M Management and Labour Consultants Limited,1998)
[59] International Labour Organisation, 2017, Ratifications of ILO Conventions: Ratifications for Zambia, https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103264, accessed on 18/08/19.

bring them in line with the requirements of the two conventions and realities of the times. This led, among other things, to the enhancement of the jurisdiction of the Court.

Following the amendments made to the Industrial and Labour Relations Act, 1993, in 1997, the IRC was clothed with original and exclusive jurisdiction to adjudicate upon any industrial relations matters and any proceedings under the Industrial and Labour Relations Act[60]. This Act, also empowered the IRC not to consider a complaint or application unless it was presented to it within thirty days of the occurrence of the event which gave rise to the complaint or application[61]. This development made it clear for aggrieved parties in industrial relations matters not to rely on the prescribed time limit in the Law Reform (Limitation of Actions) Act [62] in filing their complaints or applications in the IRC. Therefore, the prescribed time limit in which to lodge complaints or applications in the IRC can be regarded to be in accord with the rationale for establishing industrial tribunals and labour courts, that is, to hear and determine industrial relations matters within a reasonable time of the happening of the event which gives rise to the matter or case.

Currently, section 85(3) of the Act[63] states clearly that the Court shall not entertain any complaint or application from an aggrieved party unless the latter presents the complaint or application to the Court within ninety days of exhausting the administrative channels available to him or where there are no such administrative channels, within ninety days of the occurrence of the event that gave rise to such complaint or application. However, under the proviso to section 85 (3) of the Act, the Court, on the application by the complainant or applicant, may exercise its discretion to extend the period in which a complaint or application may be lodged into Court after the ninety days have elapsed. Therefore, the current prescribed time limit in which to lodge complaints or applications in the IRC can be regarded to be contrary to the rationale for establishing a specialised court whose mandate is to deal with industrial relations matters or cases expeditiously.

[60] Act No. 27 of 1993 as amended by Act No. 30 of 1997.
[61] Section 85(3) of Act No. 27 of 1993 as amended by Act No. 30 of 1997.
[62] Chapter 72 of the Laws of Zambia.
[63] Act No. 27 of 1993 as amended by Act No. 8 of 2008

In 1997 the IRC was empowered to grant such redress as it considered just and equitable to any successful litigant. Now, the Court may also award the complainant or applicant damages or compensation for loss of employment; make an order for reinstatement, re-employment or re-engagement; deem the complainant or applicant as retired, retrenched or redundant; or make any order or award as it may consider fit in the circumstances[64]. For instance, in the case of **Zesco Limited v. Rhodnie Paul Sisala [65],** the Supreme Court of Zambia considered the principle of award of damages for wrongful termination of employment. According to the facts that were common to both the appellant and the respondent in this case, the respondent was employed by the appellant as its Managing Director. The respondent was employed on a contract which was renewable at its expiry but the respondent's employment was abruptly terminated without any prior notice. The respondent filed a Notice of Complaint under section 85(2) and (4) of the Industrial and Labour Relations Act seeking the following relief: -

1. *A declaration that the purported termination of the contract by the appellant was wrongful, unlawful and unfair and was therefore of no effect; and*
2. *Reinstatement; and/or*
3. *Any other relief including but not limited to an order for damages and perquisites for such period (and in the circumstance) as the court shall see fit; and*
4. *The costs of this complaint.*

   The appellant filed an amended answer in which it stated that: -

   1. *The respondent's employment with the appellant was terminated on 7th May, 2009.*
   2. *The termination of the respondent's employment with the appellant was in accordance with clause 7(ii) of the Employment Contract signed between the parties on 29th May, 2008 and the respondent has been paid in accordance thereof.*
   3. *That in any event, and without prejudice to paragraph 2 above, the appellant, in the alternative, was entitled, at Common Law, to terminate the respondent's employment by paying respondent three (3) months' salary in lieu of notice, together with other benefits and gratuity, as has been done.*

[64] Section 85A of Act No.27 of 1993 as amended by Act No.30 of
[65] Appeal No.130 of 2010.

The parties opted not to call witnesses and that the matter would proceed on the interpretation of Clauses 7 and 8 of the contract and that they would file written submissions on the same. The parties accordingly filed written submissions. The Industrial Relations Court having considered the affidavit evidence and the written submissions found that the respondent had established his case on a balance of probabilities that the termination of his contract of employment with the appellant was wrongful and proceeded to award the respondent salary arrears of six (6) months including allowances as damages for the wrongful termination less the notice money paid to the respondent. The appellant appealed against the award of damages for wrongful termination of employment to the Supreme Court of Zambia. The appellant advanced one ground of appeal, namely: -

1. *The Court below erred in law and fact when they granted damages for wrongful termination of the respondent's contract of employment, above the normal measure of damages.*

After considering the arguments of the parties on appeal, the Supreme Court, *inter alia*, said:

> *Considering that the respondent was the Managing Director of the appellant and his employment was terminated abruptly; the termination can be said to have been inflicted in a traumatic fashion which caused the respondent undue distress or mental suffering. The Court below cannot, therefore, be faulted for departing from the normal measure of damages and awarding the damages it did. In our view the respondent deserved more compensation than what was awarded by the Court below. In the circumstances, we would set aside the award of six (6) months' salary. In its place we would increase it to nine months' salary including any allowances the respondent was entitled to as compensation for wrongful termination less the notice payment.*

The Supreme Court awarded damages for wrongful termination of the respondent's contract of employment above the normal measure of damages because the appellant terminated the respondent's contract of employment abruptly and without informing him that he would be paid three (3) months' salary in lieu of notice. However, the respondent was paid three (3) months' salary in lieu of notice as an afterthought.

In addition, it is worth-noting that the Industrial and Labour Relations Act of 1993 confers jurisdiction on the IRC to commit and punish for contempt, any person who disobeys or unlawfully refuses to comply or be bound by its order made against him[66] .

Furthermore, the Industrial and Labour Relations Act, 1993, increased the number of Deputy Chairmen of the Court from one under the Industrial Relations Act of 1990 to unlimited number. This Act also increased the number of lay members of the Court from seven under the Industrial Relations Act, 1990, to ten. Similarly, the jurisdiction of the Court was enhanced under the Industrial and Labour Relations Act, 1993 as amended by subsequent Acts of parliament. These amendments to the Industrial and Labour Relations Act, 1993, empowered the Court to hear and determine industrial relations matters or cases in accordance with the prevailing economic and social changes in the country. Further, an increase in the number of Deputy Chairmen and lay members of the Court has resulted in disposing of many cases or matters equitably and quickly[67] .

3.6 The Composition and Jurisdiction of the Industrial Relations Court under the Constitution of Zambia Act Of 2016

Despite what has been said about the composition and jurisdiction of the IRC under the Industrial and Labour Relations Act, 1993, the enactment of the Constitution of Zambia (Amendment) Act, 2016, has brought changes in the composition and jurisdiction of the IRC. The relevant provisions of the Constitution of Zambia (Amendment) Act, 2016, are as follows:

Article 120(1) and (3) of the Constitution of Zambia (Amendment) Act, 2016[68] , states:

120. *(1) The Judiciary shall consist of the superior courts and the following courts:*

(a) Subordinate courts;

(b) Small claims courts;

(c) Local courts; and

(d) Courts, as prescribed.

(3) The following matters shall be prescribed:

(a) Processes and procedures of the court;

[66] Section 85(2) of Act No. 27 of 1993 as amended by Act No.30 of 1997.
[67] Personal information having worked at the IRC from 2003-2013
[68] Act. No. 2 of 2016

(b) Jurisdiction, powers and sittings, of the Industrial Relations Court, Commercial Court, Family Court, Children's Court and other specialised courts;

Article 133(1) (2) (4) of the Constitution of Zambia (Amendment) Act, 2016, also provides:

133. (1) There is established the High Court which consists of _

(a) The Chief Justice, as an ex-officio judge; and

(b) Such number of judges as prescribed.

(2) There are established, as divisions of the High Court, the Industrial Relations Court, Commercial Court, Family Court and Children's Court.

(4) The composition of courts specified in clauses (2) and (3) shall be prescribed.

Furthermore, Article 135 of the Constitution of Zambia (Amendment) Act, 2016, provides that the High Court shall be constituted by one judge or such other number of judges as the Chief Justice may determine. Following the enactment of the Constitution of Zambia (Amendment) Act, 2016, the Chief Justice of the Republic of Zambia issued an Administrative Directive[69] to the Judge in Charge of the Industrial Relations Court on 23rd March 2016 stating that:

> *Following the designation of the Industrial Relations Court as a Division of the High Court, all Judges of the Industrial Relations Court would now be required to sit robed and hear new cases as single judges of the High Court. For those matters which are continuing and were being heard by Deputy Chairpersons sitting with members of the Court, they should continue to be heard under the old dispensation.*

However, the said Administrative Directive is silent on those matters which were being heard by the former Chairman of the Court. This is so because the designation or position of the Chairman of the Court appears to have been abolished and there is now a Judge in Charge of the Court. It is assumed that the matters which are continuing and were being heard by the former Chairman sitting with the members of the Court, will continue to be heard under the old dispensation.

Briefly, what the Chief Justice's Administrative Directive means is that the composition of the IRC is provided for under Articles 133 and 135 of the Constitution of Zambia

[69] CJ/1/8

(Amendment) Act of 2016 and the written law, that is to say, section 86(1) (b) (c) of the Industrial and Labour Relations Act of 1993[70] . Thus, the composition of the Court under the Constitution of Zambia (Amendment) Act, of 2016, is unipartite, that is to say, a single judge sitting alone, while under the Industrial and Labour Relations Act of 1993 it is tripartite, that is, the professional judge sitting with two members. In addition, it is worth noting that the envisaged composition of the IRC under clause (4) of Article 133 of the Constitution of Zambia (Amendment) Act, of 2016, has not yet been prescribed by any written law in compliance with the provisions of the amended Constitution of Zambia. Under the circumstances, there is a great deal of uncertainty about the composition of the IRC in Zambia as provided for in the amended Constitution of Zambia Act of 2016 and the Industrial and Labour Relations Act of 1993. Indeed, the Constitutional Court of Zambia in the case of **Zambia National Commercial Bank Plc v. Martin Musonda and 58 Others**[71] stated, *inter alia*, that:

i) In its literal interpretation, Article 133(2) of the Constitution as Amended merely makes the Industrial Relations Court a division of the High Court and has not affected wholesale, the provision of the Industrial and Labour Relations Act and its Rules to the extent that they do not conflict with any provision of the Constitution as Amended.

ii) In common parlance, division refers to a separation. The term divides and does not create one entity. By virtue of separation, the Industrial Relations Court Division maintains its distinct character which is the raison d'etre for its existence which enables its specialisation in this particular area of law to be discharged more efficiently and effectively than would otherwise be the case.

iii) A statutory instrument issued under any written law remains in force unless it has been repealed by another statutory instrument issued or made under the provisions of such repealing written law.

iv) The commencement of actions in the Industrial Relations Court Division of the High Court is still governed by the Industrial Relations Court Rules until legislation is enacted to provide for the processes, procedures, jurisdiction,

[70] Act. No. 27 of 1993
[71] 2017/CCZ/R004.

powers and sittings of the Industrial Relations Court Division in accordance with Article 120(3)(a) and (b) of the Constitution as Amended.

Therefore, in prescribing the composition of the IRC in Zambia in terms of clause (4) of Article 133 of the Constitution of Zambia (Amendment) Act of 2016, the rationale for setting up such a specialised institution ought to be taken into consideration. It is a commonly used argument by scholars and jurists that in the field of labour law the expectation is that the labour court and industrial tribunals, with their tri-partite membership and informal procedures, could provide a level of expertise and flexibility which does not exist in the ordinary courts of law. What this means is that in labour courts and industrial tribunals, expert members, that is, professional judges and lay members sit in a judicial capacity, whereas in ordinary courts of law, expertise is drawn on through expert witnesses. Hence, the argument that the composition of the IRC in Zambia should remain tri-partite is favoured.

This being so, the Chief Justice's Administrative Directive that all judges of the IRC would now be required to sit robed and hear new cases as single judges of the High Court is in sharp contrast with the rationale for setting up the IRC in Zambia, which was originally envisaged to be constituted by a professional judge and two members representing the employers' and employees' interests. Therefore, any suggestion that a single judge of the IRC will be at liberty to sit with assessors in accordance with section 5 of the High Court Act[72] defeats the initial spirit of establishing a specialised court. This is so because the supporters for the setting up of the IRC in Zambia expected the members of the Court to retire together and all decide both fact and law, whereas, assessors do not retire together with the judge nor do they sit together with the judge in deciding on fact and the law. In addition, a judge is not bound to conform to the opinion of assessors in determining a matter or case. Such decisions can be regarded to be undemocratic.

[72] Chapter 27 of the Laws of Zambia.

Furthermore, it should be noted that some members of the judiciary, employers' and employees' organisations in Zambia have expressed different views on the establishment of the IRC as a Division of the High Court in terms of Article 133(1)(2) of the Constitution of Zambia (Amendment) Act of 2016. Some members of the judiciary are of the view that following the designation of the IRC as a Division of the High Court, the judges should sit robed and hear cases as single judges of the High Court. Others opine that the composition of the IRC should continue being tripartite[73]. The workers' and employers' representatives prefer the retention of the tripartite composition of the IRC in Zambia[74] .

In addition, the workers' and employees' representatives are of the view that since the IRC is now a Division of the High Court, the Court may not be able to grant such redress as it considers just and equitable to any successful litigant such as re-employment or re-engagement; deem the complainant or applicant as retired; retrenched and redundant as provided for under the Industrial and Labour Relations Act[75]. Furthermore, trade unions and employers' organisations are of the view that the IRC as a Division of the High Court will be limited to grant remedies under the common law such as award of compensation and damages.

It is also worth noting that judges of the High Court are appointed by the President under Article 140(e) of the Constitution of Zambia (Amendment) Act[76]on the recommendation of the Judicial Service Commission and subject to ratification by the National Assembly. According to the Superior Courts (Number of Judges) Act[77]there shall be sixty judges of the High Court. Since the IRC is now a Division of the High Court in terms of Article 133 (1) and (2) of the Constitution of Zambia (Amendment) Act of 2016, the Chief Justice of Zambia will decide the number of High Court Judges to work at the IRC.

[73] Interview with some members of the Judiciary on 18th June, 2017, at Lusaka
[74] Interviews with the Secretary General of the Zambia Congress of Trade Unions and the Chairman of the Employers' Organization on 20th October, 2017, at Lusaka.
[75] Section 85A of Act No. 27 as amended by Act 30 of 1997.
[76] Act No.2 of 2016.
[77] Act No.9 of 2016

However, in deciding who should be appointed as a judge of the IRC now a Division of the High Court, some factors must be considered, that is, he or she must have expertise in labour market and employment issues. This is so because these qualifications or requirements reflect some of the views of the supporters for the establishment of such a specialised court. It is doubtful whether most of the judges of the IRC in Zambia meet some of these qualifications.

Currently, the Court is established under clauses (1) and (2) of Article 133 of the Constitution of Zambia (Amendment) Act of 2016. The jurisdiction of the Court is outlined in sections 85 and 108 of the Industrial and Labour Relations Act of 1993 and clause (3)(b) of Article 120 of the Constitution of Zambia (Amendment) Act of 2016. However, the jurisdiction, powers and sittings of the IRC have not yet been prescribed by any written law to comply with the provisions of Article 120 and clause (3)(b) of the Constitution of Zambia (Amendment) Act of 2016. This being the case, the Court has continued to rely exclusively on its jurisdiction as spelt out in sections 85 and 108 of the Industrial and Labour Relations Act, 1993. The Constitutional case of **Zambia National Commercial Bank Plc v. Martin Musonda and 58 others**[78] has accepted this very pragmatic position. It is hoped that when the new changes come to legislation affecting the Industrial and Labour Relations Act, 1993, due regard will be had to the original ideas of establishing industrial tribunals and labour courts.

3.7 Summary

This chapter has outlined the composition and jurisdiction of the IRC now a division of the High Court in Zambia from its inception in 1971 up to the enactment of the Constitution of Zambia (Amendment) Act of 2016. Lay participation and tripartism was an important feature of the composition of the Court from 1971 to 2016. Under the Constitution of Zambia (Amendment) Act, 2016, the composition of the Court, which is now a Division of the High Court is unipartite. This change is substantially against the spirit of the original law on which the labour court was founded.

[78] 2017/CZ/R004

This chapter has demonstrated that the Court's jurisdiction has greatly increased from its inception in 1971 to the current position. It has also demonstrated that the Court has the authority to adjudicate upon any dispute arising between an employee and employer even if such dispute is not connected to a collective agreement or other trade union matter. Further, this chapter has illustrated that the Court has statutory jurisdiction to entertain complaints based on discrimination in employment in terms of section 108 of the Industrial and Labour Relations Act of 1993. Finally, this chapter has shown that the Court is empowered to grant such redress as it considers just and equitable to any successful litigant.

The next chapter assesses the impact of the IRC on Zambia's industrial relations system.

CHAPTER FOUR

ASSESSMENT OF THE IMPACT OF THE INDUSTRIAL RELATIONS COURT ON ZAMBIA'S INDUSTRIAL RELATIONS SYSTEM

4.1 Introduction

This chapter assesses the impact of the Industrial Relations Court on Zambia's industrial relations system. In so doing, the chapter will clarify the concept of Industrial Relations and the role of the Court in the system of industrial relations.

4.2 Origins of Industrial Relations

Industrial Relations or labour market relations originated in Great Britain and the United States of America about 100 years ago[1]. The 1880s in Great Britain was an era of economic depression and political unrest. Despite mass unemployment, the labour market was disturbed by big strikes, which were protests against poverty, low wages and bad working conditions[2]. The newly created large unions for unskilled workers challenged the trade union movement which had been in existence since the industrial revolution in the eighteenth century. The old union movement was based exclusively on craft unionism[3] (union of workers in a particular craft or trade). The working class concerns for labour rights in Great Britain in the 19th century influenced the government to appoint the Royal Commission on Labour in 1891. The Royal Commission was requested to tackle questions affecting the relations between employer and employed, the combination of employer and employed and the conditions of labour. The terms of

[1] Elvander, N, *Industrial Relations- A short history of ideas and learning* (Sweden, Stockholm: National Institute for Working Life, 2002),1
[2] Hyman, R, *The Political Economy of Industrial Relations-Theory and Practice in a Cold Climate* (UK, London: Macmillan Press Ltd, 1989), 5.
[3] Elvander, N, *Industrial Relations- A short history of ideas and learning* (Sweden, Stockholm: National Institute for Working Life, 2002), 1.

reference of the Royal Commission could be served as a fairly good definition of industrial relations[4] .

The term Industrial Relations entered the American language in 1912 when Congress approved the creation of the Commission on Industrial Relations[5] . The Commission was formed because of the public outcry over the death of twenty people in the dynamite bombing of the L.A. Times building in 1910 by leaders of the Structural Iron Workers Union. The Commission was asked to determine the conditions responsible for conflict between employers and employees and possible remedies for such conflict[6]. Initially, the term industrial relations was a short hand for "the relations between labour and capital in industry"[7] .

In Britain and America, the term industrial relations was and is concerned with questions affecting the relations between employer and employed, the conditions of labour and the methods of settlement of labour disputes. Similarly, in this study, the term industrial relations relates to the questions affecting the relations between employers and employees, employers' and workers' organisations and the methods of settlement of labour disputes.

4.3 The Role of the Industrial Relations Court

The role of the Industrial Tribunals and Labour Courts world over is to promote industrial harmony, and regulate the relations between employers and their employees, trade unions and employers' organisations and resolving disputes arising from these relations. In Zambia, the IRC goes about mediating the boundaries of rights and obligations of employers and employees in accordance with equity, good conscience and

[4]Hyman, R, *The Political Economy of Industrial Relations-Theory and Practice in a Cold Climate* (UK, London: Macmillan Press Ltd,1989), 4.
[5] Kaufman, B. E, *The Origins and Evolution of the Field of Industrial Relations in the United States* (USA: ILR Press.,1993),3.
[6] Kaufman, B. E, *The Origins and Evolution of the Field of Industrial Relations in the United States* (USA: ILR Press,1993),3.
[7] Kaufman, *The Origins and Evolution of the Field of Industrial Relations in the United States*,3

the substantive merits of the dispute. Therefore, the primary objective of the specialised courts is to attain social justice by upholding fair work practices. In addition, the IRC, more than any other court has a role in applying international law to the domestic labour market. It is the institution that the International Labour Organisation depends upon to implement the International Labour Standards. As such, the IRC has a role to promote and protect international labour standards.

4.4 The Impact of The Industrial Relations Court Decisions on Zambia's Industrial Relations System

The IRC in Zambia, among other industrial relations matters, has taken serious interest in complaints of workers against managerial power. Beele[8] states that the position of the IRC in matters affecting decisions of the management can be observed at two levels, there are those industrial relations cases in which decisions are overtly influenced by political intervention in management decisions, the others are the more normal exercise of management prerogatives which may still cause injury to individual employees and therefore open to legal challenge on grounds of fairness. He also says the Court's willingness to derogate from strict enforcement of management's prerogatives has depended, to some extent on the balance of forces behind a given managerial decision complained of. There have been cases under direct influence of political power. For instance, in **Tresphous Kuseya v. Zambia Engineering and Contracting Company Ltd**[9], the IRC was confronted with a dismissal of an employee induced by direct appeals to management by the Provincial and District Party hierarchy of Lusaka. In that case the applicant had marked 'NO' against the Eagle (symbol of the ruling United National Independence Party) on a sample ballot paper displayed on the board on company premises in the run up to Presidential Elections of 1978. A Party Committee Member who saw Kuseya do this reported to the Party Regional Office, who interpreted the action complained of as 'campaigning against the President openly'. Through a number

[8] Beele, E. M, "The State, Law and Workers' Participation Policies in Zambia, 1969-1989" (Ph.D. thesis, University of Warwick, 1991), 295.
[9](1979 -81) ZICR 187.

of memoranda, the management of the company came under political pressure to dismiss the applicant from his job with the company. One of these read:

> *I am totally astonished by the lack of firm action taken by the management of ZECCO against Mr. Tresphous Kuseya who boldly campaigned against the President. The lack of intervention in the matter to me is an expression of the management's support for Tresphous's ill actions. In addition to firing him let him also be handed over to the police who will deal with him accordingly as provided for in the electoral laws of the country*[10] .

The applicant was dismissed on these threats. The Court refused to accept these grounds and ruled that marking 'NO' against the eagle did not disclose any offence against the employer and therefore ordered reinstatement of the employee with arrears of salary.

The other cases are those without evidence of clear political influence. For example, in **Ethel Sepiso Nyambe v. Zambia State Insurance Corporation**[11] **and Monica Mbao v. Workmen's Compensation Fund Board**[12] , the husbands of the two applicants had been transferred by their different employers. The applicants asked their respective employers to find vacancies within their organisations in the towns where the husbands had moved to. In each case the employer said attempts were made to help but there were no openings. The Court, nonetheless, ordered on both occasions that the employer should transfer the applicant to join the husband. The argument advanced was:

Wives in any community have a marital obligation to live with their husbands wherever the husband is. To allow otherwise, would be tantamount to sanctioning disertion by wives.[13]

Another case which may illustrate the willingness of the IRC to take on management decisions is **Mukuka and Others v. Zambia National Provident Fund**[14]. The facts of the case were that the applicants were employed as accountants in the Fund. Later, a comprehensive job evaluation exercise was ordered into the Fund. One of its recommendations was to move the pay scale of accountants' one notch up from pay scale grade 8 to 7. This was in order to attract and retain accountants in the Fund. At its

[10] District Governor, Sammuel Wamuwi, In Kuseya, p. 189.
[11] (1981 -83) ZICR 171.
[12] (1981-83) ZICR 135.
[13] In Ethel Sepiso Nyambe, p. 173.
[14] (1981-83) ZICR 17.

first sitting after receiving the report, the Board of Directors of the Fund accepted the Report of the Job Evaluation team, including the recommendation on the pay scale of accountants. Subsequently, the Board looked again at the recommendation on accountants and decided that only professionally qualified accountants should be allowed to move to scale 7 which provided better pay. This was decided on the policy grounds of encouraging the 'unqualified' accountants also to strive for professional attainment and recognition.

The applicants, who were not qualified, contested the new distinction put on the Report by the Board of Directors. They applied to the IRC under section 98(g), which gave the Zambian labour court jurisdiction:

> *Generally, to enquire into and adjudicate upon any matter affecting the rights, obligations and privileges of employees, employers and representative organisations thereof.*

On the facts, the Court ordered that the Fund should re-grade the applicants from pay scale 8 to 7 as recommended by the Job Evaluation Report and pay arrears of salary from the date the Board first decided to adopt the report. The ratio deci-dendi (the reason of making the decision) of the decision turned on the first Board decision to accept the report and recommendations without discrimination, which was held functus officio (whose duty or authority has come to an end) against the Board in respect of serving employees at the time the board first considered and accepted the report.

This decision was viewed by Fund managers as imposing an unacceptable limit on their rights to decide. Since under section 101(3) of the Industrial Relations Act of 1971 decisions of the Court were final and binding, the Fund lawyers sought to circumvent the absence of appeal procedures with a request for a writ of Certiorari (a directive to a lower court to deliver its record in a case to a higher court for review) directed against the IRC in the High court, [vide **Zambia National Provident Fund Board v. Attorney General and Others]**[15]. The High Court declined to order the writ prayed for on grounds of want of jurisdiction, but it is interesting to note that its critical comments on the powers and status of the IRC in the Zambian judicature added weight to suggestions

[15] (1983) ZLR 140

to change the law so that decisions of the IRC could be appealed against to the Supreme Court of Zambia[16].

Evidently, the IRC in Zambia has demonstrated its readiness to intervene and impose decisions on the management. In addition, the Court has demonstrated capability and willingness to follow up its orders in order to ensure compliance from the management. For instance, **in National Union of Building, Engineering and General Workers (Mrs. Hlabangana) v. Hoechst (Zambia) Ltd[17]** , the Court had ruled initially that the applicant's member had been discriminated against on account of her Zimbabwean nationality contrary to section 114(2) of the Industrial Relations Act of 1971.Reinstatement and arrears of salary were then ordered. The respondent company paid Mrs Hlabangana her arrears of salary and subsequent monthly payment but refused to give her a job to do in the hope perhaps that she would eventually despair and disappear. Instead, she returned to the Industrial Relations Court. The Court's decision was framed in the following words:

> *The Court in the circumstances has decided that effective from Monday 30th November, 1981, Mrs. Hlabangana should be physically reinstated in her former job (secretary) at the offices of the Hoechst (Zambia) Limited. For every passing day that Hoechst (Zambia) Limited does not comply with this order, the Court's order is that Hoechst will be fined K1000 every passing day[18] .*

A rather different punishment was meted in **Maynard Roy Chabala v. Zambia Clay Industries Ltd[19]**. In this case the respondents General Manager was sent to one-week jail term after the company was found to have disobeyed orders of the Court to reinstate their unlawfully dismissed works councillor employee. An option of 30 days in jail for the Chief Executive was opened should the company still fail to reinstate the same applicant.

[16]The 1988 Draft Act accepted a provision for appeals to the Supreme Court of Zambia, later enacted as Section 77 of the Industrial Relations Act, 1990. Times of Zambia, April 15, 1991.
[17] (1971-89) ZICR 102.
[18]At p. 102
[19] (1979-81) ZICR 107.

These were the kind of decisions of the IRC which not only bothered the legal fraternity but also spread fear into the managerial power structure of the Zambian state economy[20]. This was a marked change in the operations of the IRC in Zambia.

Nonetheless, data or information collected during this study from institutional records and interviews with trade unions, employers' organisations and government institutions, show that the Court has been accepted by both employees and employers through their respective associations as a forum for resolving industrial disputes.

At inception, the Court was mandated to approve Recognition and Collective Agreements. The first Recognition and Collective Agreements were approved in 1974 as indicated in Table 2. The last Collective Agreements were approved by the Court in 1986 and thereafter, the power to approve the same was transferred to the Prices and Incomes Commission in accordance with the Industrial Relations Act, 1990[21].

[20] Beele, E. M, "The State, Law and Workers' Participation Policies in Zambia, 1969-1989" (Ph.D. thesis, University of Warwick, 1991), 302.
[21] Section 87 of Act No. 36 of 1990

Table 2: Statistics for approved Recognition and Collective Agreements between 1974 and 1984[22]

Year	Recognition and Collective Agreements
1974	36
1975	76
1976	55
1977	28
1978	40
1979	50
1980	106
1981	115
1982	68
1983	59
1984	47

The Court has had impact on matters of industrial relations based on the Court's operations from 1975 to 2017.

The workload at the Court increased noticeably following the dismantling of the large parastatal sector in the early 1990s as shown in Table 3. Unfortunately, the search for the Court's statistics for the period 1987 and 1989 yielded no results as the data was misplaced. These gaps in the Court's statistics appear to be almost consistent as there is missing data for the years 1995-1999, 2001-2004, 2006-2009, 2011, 2012 and 2014. Clearly, record keeping at the IRC as an institution has been a challenge.

[22] Industrial Relations Court Records, 1974 to 1984

Table 3: Statistics for file complaints/Applications at Lusaka IRC between (1975 and 2017)[23]

Year	Number of Complaints or Applications
1975	1
1976	15
1977	7
1978	4
1979	126
1980	118
1981	157
1982	123
1983	94
1984	115
1985	164
1986	227
1990	170
1991	210
1992	306
1993	367
1994	400
2000	156
2005	461
2010	355
2013	486
2015	482
2016	611
2017 (up to March 2017)	200

Although the Court records of the statistics have not been consistent over the years, on the basis of the available data, it can reasonably be stated that the Court has performed fairly well with respect to disposing of cases on an annual basis as indicated in Table 4. On average, the Court is able to dispose of 60% of the cases brought before it within a

[23] Industrial Relations Court Records, 1975 to 2017.

reasonable period of time which can be said to be in line with the need to deal with matters or cases quickly. This is as envisaged by the advocates for establishing a specialised court to deal with labour matters.

Table 4: Statistics of Cases Filed into Court against those Disposed of (2015-March 2017)[24]

Year	No. of Cases Filed in Court	No. of Cases Disposed of	Rate
2015	482	441	91%
2016	611	494	81%
2017 (up to March 2017)	200	137	69%

In addition, the introduction of the Court Driven Mediation in 2002 has assisted in reducing the workload of the Court allowing it to dispose of disputes without delay. According to available statistics at the IRC at Lusaka, from September, 2002 to March 2017, on average 55% of the total number of cases referred to mediation are mediated and settled. While an average of 24% of cases referred to mediation are mediated and not settled and referred back to the Court for hearing. Table 5 presents the statistics on cases referred to mediation at the IRC in Lusaka for the period 2015-2017.

[24] Industrial Relations Court Records, Lusaka, 2017.

Table 5: Court Statistics on mediation (2015-2017)[25]

Cases	**Year**		
	2015	2016	2017
Total No. of Cases Referred to Mediation	82	61	39
No. of Cases Mediated and Settled	**52** (63%)	**32** (52%)	**20** (51%)
No. of Cases Partially Settled	0	7	1
No. of Cases Mediated and not Settled	23 (28%)	15 (25%)	7 (18%)
No. of Cases not Mediated	3 (0.04%)	2 (3.30%)	3 (8%)
No. of Ongoing Cases	4	5	8

Clearly, the establishment of the IRC was well received by the government, employers' and employees' Organisations. However, the employers' and employees' organisations have expressed grave misgivings about the performance of the Court in Zambia[26]. They argue that despite the provisions of the Industrial and Labour Relations Act, 1993 and the Industrial Relations Court Rules being in place, the Court has progressively adopted the procedures and systems obtaining in the ordinary courts of law.

Before the enactment of the Consitution of Zambia (Amendement) Act, 2016 proceedings were informal in the IRC. The Chairman, the Deputy Chairmen and the members of the Court did not wear gowns when hearing and determining cases in Court. The same applied to legal practitioners who were represening parties. This had the effect of creating an informal environment during litigation without insitigating fear amongst litigants. Under the Consitition of Zambia (Amendement) Act, of 2016 a single judge sits robed when hearing a case in court, the same applies to lawyers who are representing parties. These will make significant changes to the IRC in its evolution.

The advocates for the establishment of a specialised Court contend that the IRC in Zambia was intended to be fast-track and user friendly. Unfortunately, these objectives have not been fully achieved because over the years, the Court has adopted procedures

[25] Industrial Relations Court Records, Lusaka, 2017.
[26] Interview with A. H. Mudenda, Deputy Secretary General of Zambia Congress of Trade Unions from 1994-2010, on 20th August 2017, at Lusaka.

and systems of the ordinary courts. For instance, the filing of Bundles of documents, Notices to produce documents and payment of court fees are requirements which were not there at the inception of the Court[27].

According to Kanjimana[28], the preparation, analysis and presentation of material by illiterate or unrepresented litigants contribute to the delay in the disposal of cases in the IRC. This is so because these litigants have problems in the preparation of statements of claim and are usually undecided whether to sue the company which they worked for or the Managing Director or the General Manager of the company. Further, most of them do not know whether their complaints are based on unlawful dismissal, i.e., being in breach of conditions of employment or unfair dismissal, i.e., no valid reason for dismissal or being in breach of procedure before dismissal. In addition, during the trial of the matters or cases, most illiterate and or indigent litigants do not appreciate the importance of documentary evidence, they only refer to such documents filed into Court when reminded by the Court to do so.

Another concern that has been raised by trade unions and employers' organisations is that the presence of lawyers in the Court has contributed to the delay in disposing of cases. They contend that lawyers seek adjournments of the cases even on flimsy grounds and that at times raise preliminary issues such as that the applicant or complainant has sued a wrong party. As a result, trade unions have progressively tended to shun the Court[29] . This is so because they seem to have been intimidated by the involvement of lawyers, except in instances where they can afford legal representation. They also point out that the legal practitioners appearing before the Court adhere to the elaborate practice and procedure used in the ordinary courts of law which lay persons do not understand. The workers' and employers' representatives also assert that the transfer of the IRC from the Ministry of Labour and Social Security to the Judiciary, has resulted in

[27] Interview with A.J. Chirwa, Labour Consultant, on 10th June, 2010, at Lusaka.
[28] Interview with A.N. Kanjimana, lay member of the Industrial Relations Court from 2009 to 2015, on 10th August, 2012 at Lusaka.
[29] Interview with A.H. Mudenda, Deputy Secretary General of Zambia Congress of Trade Unions from 1994-2010, on 20th August, 2017 at Lusaka.

the loss of interest by the International Labour Organization (ILO) in the operations of the Court in Zambia.

4.5 Summary

Industrial relations or labour market relations emerged in Great Britain in the 1880s and the United States of America in 1912. Kaufman stated that initially the term industrial relations was a short hand for "the relations between labour and capital in industry". The purpose of the industrial tribunals and labour courts in many countries of the world is to promote industrial harmony, and control the relations between employers and their employees, trade unions and employers' organisations and settling disputes arising from these relations.

In Zambia, the IRC now a Division of the High Court has had positive impact on industrial relations matters. For instance, it can reverse management decisions which are influenced by politicians involving themselves in industrial relations matters. The Court has power to intervene and enforce decisions on management which seem to be reluctant to attend to employees' reasonable requests. The Court has ability to follow up its orders to ensure compliance from the employer who is unwilling to comply with its order(s). Also, it has been observed that the Court is empowered to grant such redress as it considers just and equitable to successful litigants. Further, there is nothing in the Industrial and Labour Relations Act of 1993 to stop the Court from going behind reasons given for termination in order to redress any real injustices discovered.

In addition, the IRC in Zambia is not bound by the rules of evidence in civil or criminal proceedings, but its main purpose is to do substantial justice between the parties before it. A judgment of the Court is not only binding between the parties but affects all in the category of the litigants. In order to dispose of matters expeditiously, the Court is required to deliver its decision within sixty days of hearing the case. As to the award of costs, it is now the practice of the Court not to award costs, unless a party has acted

vexatiously, frivolously or otherwise unreasonably in bringing or conducting proceedings.

The next chapter serves as the conclusion of this dissertation and outlines the recommendations for efficient and cheaper delivery of justice in industrial relations matters in Zambia.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This study was about the evolution of the IRC as a specialised institution of industrial relations in Zambia. Therefore, this chapter focuses on the overall conclusion of the study. Specifically, the changes in the composition and jurisdiction of the IRC now a division of the High Court, from its inception in 1971 to 2017. Lastly, the chapter makes recommendations on the basis of the findings of this study.

5.2 Conclusion

The grounds for establishing labour courts and industrial tribunals in European countries, like Norway, Ireland, Switzerland and United Kingdom (UK) are similar to those advanced in African countries such as Zambia, Kenya, Malawi and Nigeria. Generally, the various reasons advanced reflect the need for a specialized court to hear and determine cases or matters within the scope of industrial relations. This is because industrial relations matters are said to require expert and specialized knowledge on the part of an industrial tribunal which a court with a wide general jurisdiction might not have. In line with this, the setting up of the IRC in Zambia was influenced by the same need to provide simpler, speedier, cheaper and more accessible justice than do the ordinary courts.

Therefore, like other industrial tribunals and labour courts in other countries, the IRC in Zambia required a specific composition in order to meet the needs of a specialized court. Although the composition of the industrial tribunals and labour courts varies from one country to another, in most countries the courts are composed of one or more professional judges and a varying number of lay judges. This tripartite composition of industrial tribunals and labour courts distinguishes them from ordinary courts. In many countries, membership of the industrial tribunals and labour courts is provided for in the

statute creating the tribunal or labour court. Similarly, the Industrial Relations Act of 1971 which established the IRC in Zambia provided for the composition of the Court under section 96.

Generally, the tripartite composition of the IRC in Zambia was consistent from inception in 1971 to 2016, under the various Acts of parliament. This tripartite composition remains very important and is appreciated in industrial relations circles because it allows interests of both employers and employees to be taken into consideration when hearing and determining matters or cases. However, under the Constitution of Zambia (Amendment) Act of 2016, which establishes the IRC as a Division of the High Court for Zambia, the composition of the IRC is no longer tripartite but unipartite. Therefore, the current composition of the IRC under the Constitution of Zambia (Amendment) Act, 2016, does not conform to the general practice of labour courts where an uneven number of members of the court is accepted. Therefore, it can be argued that instead of supporting the rationale for having specialized institutions in industrial relations matters, this development has taken Zambia back to the post World War two period when scholars and jurists came up with different reasons why employment questions may be removed from being heard by ordinary courts, and transfer them to industrial tribunals which are specialized institutions.

Apart from a specific composition of the industrial tribunals and labour courts, the jurisdiction of such specialized tribunals and courts is fundamental as it allows the operations of the court to remain within the confines of the set objectives or reasons for establishment of labour courts. Therefore, in many countries of the world including Zambia, the jurisdiction of the industrial tribunals and labour courts is within the limits of the worker-employer relations and tends to be increased in order to respond to the prevailing needs of the labour market. For example, in Zambia, at inception the IRC under section 98(g) of the Industrial Relations Act, 1971, the Court was empowered to generally inquire into and adjudicate upon matters only if groups of employees and or employers were affected. Thus, originally the Court had no jurisdiction to hear and

determine complaints or applications affecting the rights, obligations and privileges of an individual employee or individual employer. However, section 68 of the Industrial Relations Act, 1990, enlarged the jurisdiction of the Court. The Court could now hear and determine disputes between an employer and employee not withstanding that such disputes were not connected with a collective agreement or other trade union matters.

However, the IRC from its inception in 1971 to 2017 did not and does not have jurisdiction to hear and determine complaints or applications involving employees of the Armed Forces, the Zambia Correctional Service, the Zambia Security Intelligence Service and employees of the Judiciary, namely; the Judges, Magistrates, Registrars of the court and Local Court Justices[1] .

Furthermore, the IRC in Zambia has recognised the importance for advancement of justice, fairness and equality in dealing with the workers' complaints arising from decisions of management.

Currently, the IRC is established under clauses (1) and (2) of Article 133 of the Constitution of Zambia (Amendment) Act of 2016. The Court's jurisdiction is provided for in clause 3(b) of Article 120 of the Constitution of Zambia (Amendment) Act, 2016. Nevertheless, the jurisdiction, powers and sittings of the Court have not been prescribed by any legislation to conform with the provisions of Article 120 clause (3)(b) of the Constitution of Zambia (Amendment) Act, 2016. The Constitution of Zambia (Amendment) Act of 2016 has established the IRC as a Division of the High Court thereby redefining the composition of the Court. The composition and jurisdiction of Industrial Tribunals and Labour Courts are key features of these specialised institutions which distinguish them from ordinary courts. These distinguishing features enable the Industrial Tribunals and Labour Courts to operate efficiently and effectively in line with the reasons advanced in support for their establishment.

[1] Section 2 of Act 27 of 1993.

The IRC in Zambia has had tension between the advocates for the composition of the Court being tripartite and those who think that it should be unipartite. The workers and employers and their representative organisations strongly believe that the Court's composition should continue being tripartite, whereas the Judiciary and Executive appear to support the idea of the Court's composition being unipartite. The latter's view is evidenced by the enactment of the Constitution of Zambia (Amendment) Act of 2016 which has established the IRC as a Division of the High Court for Zambia and whose composition is unipartite. This has defeated the rationale for establishing a labour Court which is supposed to be user friendly.

Lastly, the IRC was intended to be fast track and user friendly, but these objectives have not been fully achieved because of various reasons. For instance, the court has progressively adopted procedures and systems obtaining in ordinary courts. Trade unions and employers' organisations are of the view that the presence of the lawyers in the Court have contributed to the delay in disposing of cases or matters quickly.

5.3 Recommendations

The main objective of the IRC from its inception in 1971 to date has been to do substantial justice between the parties before it. This study has established that the IRC now a division of the High Court for Zambia, has had impact on industrial relations matters based on its performance from inception to date. The IRC has evolved over the years as an institution of industrial relations in Zambia. This evolution has had progressive and, in some cases, retrogressive impact on the operations and performance of the Court. For instance, the decisions of the Court include workers who are not parties to the proceedings provided they fall within the category of the worker(s) who filed a complaint or application into court. In some cases, the decisions of the Court have worried the legal practitioners and have caused fear into the managerial power structure of the country's state economy. Nevertheless, the employers' and employees' organisations appreciate the role played by the Court in resolving industrial relations matters in Zambia. Therefore, this study makes some recommendations that can be

considered for implementation in order to enhance the Court's operations and performance as it evolves in response to the political, social and economic trends of the country.

The suggested recommendations are based on the findings of this study and they are as follows:

1. Repeal of the Industrial and Labour Relations Act, 1993

The IRC being a division of the High Court, there is need for the Zambian government to repeal the Industrial and Labour Relations Act, 1993 and replace it with an Act to prescribe the jurisdiction, powers, and sittings of the Court to enable it perform its duties in conformity with the provisions of Article 120(3)(b) of the Constitution of Zambia (Amendment) Act, 2016.

2. Tripartite Composition of the Court be reinstated

Under the Constitution of Zambia (Amendment) Act of 2016, the composition of the Court has been changed from that of being tripartite to unipartite. This development defeats one of the fundamental reasons for establishing a specialized court to hear and determine industrial relations matters. This is because a professional judge is required to sit with lay members who possess expert knowledge and experience in labour relations matters. This is strengthened by the views of the workers' and employers' organisations as well as some judicial officers who are of the opinion that the tripartite composition of the IRC, now a division of the High Court, ought to be restored. Therefore, this study recommends that the tripartite composition of the Court be reinstated.

3. Informality

In spite of the IRC being a Division of the High Court where judges are required to sit robed when hearing cases, it is recommended that the judges of the IRC be exempted

from this requirement for the purpose of the Court being user friendly or informal as envisaged by the supporters for a specialized court to deal with industrial relations matters.

4. Employment Appeal Court

In line with the practice in other countries, the Zambian government may consider establishing an Employment Appeal Court (EAC) with exclusive jurisdiction to hear appeals from the IRC on questions of law or questions of mixed law and fact.

The Employment Appeal Court should be the final Court of appeal in labour matters. This is so because there is a precedence provided by the Constitutional Court. Article 128(3) of the Constitution of Zambia (Amendment) Act, 2016 states that a decision of the Constitutional Court is not appealable to the Supreme Court.

It is further recommended that the Employment Appeal Court should consist of the President, who should be a Court of Appeal Judge and an even number of lay members with special knowledge or experience in industrial relations matters. This would allow for the original objective of handling industrial relations matters in an expeditious manner to be upheld.

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APPENDICES

Appendix 1: 1NTERVIEW QUESTIONS

i) When were you appointed as Labour Commissioner/Trade Unionist/Lay Member of the Court?

ii) For how long did you serve as Labour Commissioner/Trade Unionist/Lay Member of the Court?

iii) What were your main responsibilities as Labour Commissioner/Trade Unionist/Lay Member of the Court?

iv) What methods did you use in resolving industrial disputes? Why? Which method did you prefer? Why?

v) Why was the Industrial Relations Court (IRC) established in Zambia?

vi) What is the role of the Industrial Relations Court in Zambia?

vii) Have there been any changes to the role of the Industrial Relations Court in Zambia? If YES, what are these changes? If NO, go to Q ix.

viii) What are your thoughts about these changes?

ix) What are your thoughts about the operations of the Industrial Relations Court over the years?

x) What suggestions would you make about the current and future operations of the Industrial Relations Court in Zambia?

NOTE

Questionnaire- respondents were purposively selected because they represented their members' views. The respondents included:

a) Secretary Generals of Employees' Organisations.
b) Chairman of the Employers' Organization.
c) Labour Commissioner in the Ministry of Labour and Social Security

Appendix 2: QUESTIONNAIRE

Dear Respondent,

You have been purposively selected to take part in this study of the 'The Industrial Relations Court in Zambia from 1971 to 2017: A study of the Evolution of an Institution of Industrial Relations". Your participation is greatly appreciated but voluntary. The findings of this study will not only contribute to knowledge on Industrial Relations in Zambia but also make recommendations that can be considered for implementation in order to enhance the Court's operations and performance.

1. What is the name of your institution/organization?

……

1. What is your position (job title/ designation) in the institution/organization?

a) Labour Commissioner
b) Secretary General
c) Director
d) Other

If other, please specify: ……

3. How long have you served in your current position (job title/designation)?

a) >3years
b) 4-6years
c) 6years +

4. Why was the Industrial Relations Court (IRC) established in Zambia?

……
……

5. What is the role of the Industrial Relations Court (IRC) in Zambia?

……
……

6. Have there been any changes to the role of the Industrial Relations (IRC) Court in Zambia?

a)YES b)NO

Briefly explain: ……

7. Who hear and determine disputes in the Industrial Relations Court (IRC) in Zambia?

Tick all that apply

a) Judges
b) Mediators
c) Lay members
d) Arbitrators
e) Assessors

Others:…… ……. …

8. In your opinion, who should hear and determine disputes in the Industrial Relations Court in Zambia?

……

……

Why? Briefly explain:

……

……

9. In your experience, are there instances where the Industrial Relations Court (IRC) has declined to hear and determine complaints?

a)Yes b)NO

Briefly explain:

……

……

10. Are industrial relations matters affected by the International Labor Standards?

a) YES b) NO

Why? Briefly explain:

……

……

11. Are you satisfied with the performance of the Industrial Relations Court in Zambia?

a) YES b) NO

Why? Briefly explain:

……

……

12. What suggestions and recommendations would you make about the current and future operations of the Industrial Relations Court (IRC) in Zambia?

……

……

THANK YOU