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**IN THE COURT OF APPEAL FOR ZAMBIA**
**HOLDEN AT LUSAKA**

APPEAL NO. 129/2017

*(Civil Jurisdiction)*

**BETWEEN:**


SARAH ALIZA VEKHNIK APPELLANT

AND

CASA DEI BAMBINI MONTESSORI
ZAMBIA LIMITED RESPONDENT

*Coram: Makungu, Kondolo SC and Majula JJA*
*On 24th April, 2018 and 21st August 2018.*

*For the Appellant:* *Mr. C. Ngaba of Messrs. Corpus Legal Practitioners.*
*For the Respondent:* *Ms. I. Nambula of Messrs. Sharpe & Howard Legal Practitioners.*

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# JUDGMENT

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MAJULA JA, delivered the Judgment of the Court.

**Cases referred to:**

1. *Zebed Mwiche and Others vs Lumwana Mining Company Limited Appeal No.107 of 2014.*
2. *Bwalya vs The Attorney-General, Appeal No. 62 of the 2012.*
3. *Contract Haulage Limited vs Mumbuwa Kamayoyo (1982) ZR 13.*
4. *The Attorney-General vs Richard Jackson Phiri (1988-89) ZR 121.*

5. *Anderson Kambela Mazoka & Others vs Levy Patrick Mwanawasa & Others (2005) ZR 138 (SC).*
6. *James vs Wattham Holy cross UDC (1973) KR 398 and AJ Dunning & Sans (Shopfitters) Limited vs Jacob (1973) ICR 448.*
7. *Zambia National Provident Fund vs Yekweniya Mbiniwa Chirwa (1986) ZR 70 (SC).*
8. *Redrilza Limited vs Abuid NKazi and Others SCZ Judgment No.7 of 2011.*
9. *Mususu Kalenga Building Limited and Another vs Richman Money Lenders Enterprises (1999) ZR 27.*
10. *Shilling Bob Zinka vs The Attorney-General, (SCZ Judgment No.10 of 1991)*
11. *Zambia China Mulungushi Textile (Joint Venture) Limited vs Gabriel Mwami (2004) ZR 244 (SC).*
12. *Aldair Limited vs Taylor (1978), 1CR 445 CA*
13. *Roston Mubili Mwansa vs NFC Africa Mining Plc ACZ Appeal No.12 of 2008.*
14. *Caroline Tomaidah Daka vs Zambia National Commercial Bank Limited Plc (2012).*

**Authorities referred to.**

1. *The Industrial and Labour Relations Act, Cap 269*
2. *The Immigration and Deportation Act No.18 of 2010*
3. *Halsbury's Laws of England, 4th edition, 2000.*

On 9th November, 2016, the appellant filed a Notice of Complaint which was followed by a statement of agreed facts and issues for determination by the court below. The agreed facts were couched as follows:

a) *That the appellant was employed by the respondent in May, 2015 on a two-year written contract.;*
b) *That the appellant was ordinarily resident in Zimbabwe when she was employed by the respondent;*
c) *That the appellant's monthly salary was US$ 2,000.00;*

*d) That the appellant's employment was terminated on 15th October, 2016.*

The issues that where then framed for the court's determination were stated as follows:

*1) Whether termination of the appellant's employment contract was unlawful/wrongful in the circumstances;*
*2) Whether the appellant is entitled to full repatriation back to Zimbabwe, that is, payment of all the costs of transporting the appellant, her family and all other belongings including the appellant's motor vehicle;*
*3) Whether the appellant is entitled to payment for leave days in the circumstances.*

On 27th February, 2017, the appellant informed the court that she would be leaving the country on account of her application for a work permit being rejected by the Department of Immigration, whereupon the lower court ordered that trial be dispensed with and the complaint be determined on the basis of written submissions and affidavit evidence already before the court.

On the basis aforesaid, on 18th July, 2017, the court below delivered a judgment as follows:

*a) The claim for damages for unfair and/or wrongful dismissal is dismissed;*

b) *The appellant be paid three months' salary in lieu of notice as stated in the letter of termination with three one-way tickets or monetary equivalent to Bulawayo as repatriation costs;*
c) *The appellant be paid the 91 accrued leave days in full from the date of employment to date of termination;*
d) *Interest be paid at the Bank of Zambia lending rate on the amounts payable on leave days only;*
e) *Each party to meet their own costs.*

Disenchanted with the decision of the court below, the appellant lodged her appeal to this Court on 14th August, 2017, fronting 3 ground of appeal as follows:

1) *That the court below erred in law when it made a finding that the appellant had not been wrongfully and/or unlawfully dismissed when she was dismissed on grounds which are not contained in the appellant's contract of employment and which were in any case unsubstantiated;*
2) *That the court below erred in law when it made a finding that where an employer gives reasons for terminating an employee's employment as required under section 36 of the employment Act Chapter 268 of the Laws of Zambia, the court cannot look into whether the dismissal was actuated by malice or bad faith; and*
3) *That the court erred in law and fact when it made a finding that the provisions of section 28(8) of the Immigration and Deportation Act No. 18 of 2008 did not operate to compel the*

*respondent to meet the full costs of repatriating the appellant, her family and all her property back to Zimbabwe.*

On 16th October, 2017 the appellant filed heads of argument. Set out below are the appellant's arguments, the respondent's arguments in response to the appellant's appeal followed by heads of argument in support of cross-appeal.

At the hearing of the appeal, counsel relied on the arguments filed herein. On behalf of the appellant, it was contended in respect of ground one that the learned trial court erred in law when it made the finding on page 19 of the record of appeal to the effect that the appellant had not been wrongfully and unlawfully dismissed contrary to the terms of the appellant's contract of employment.

Counsel submitted that it is trite that courts do not sit as appellate bodies against disciplinary decisions of the employer. That the court's role is to investigate whether the employer had the appropriate disciplinary power it purported to execute and whether the power, if present, was properly exercised. For this proposition, our attention was drawn to the case of ***Zebed Mwiche and Others vs Lumwana Mining Company Limited.***[1]

Learned Counsel, Mr. Ngaba further observed that according to the termination letter appearing on page 76 of the record of appeal, the appellant was dismissed for allegedly being unable to fulfil her role as Head Teacher to the standard expected from her

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[1] *Zebed Mwiche and Others vs Lumwana Mining Company Limited Appeal No.107 of 2014.*

and on account that she had been issued with two warning letters in accordance with the disciplinary policies.

Counsel referred us to a provision of the appellants contract of employment which appears on page 49 of the record of appeal and reads as follows:

> *"The employer shall be entitled to summarily terminate this Agreement in accordance with the Employer's Disciplinary policies and procedures as amended from time to time at its sole discretion, such termination being made either in the first instance of following three written warnings, subject to the severity of the offence and as provided for therein."*

It was Counsel's contention that by the above provision, the respondent ought to have demonstrated that the termination of the appellant's employment was in accordance with its disciplinary polices and procedure.

To buttress the point further, Mr. Ngaba cited the case of ***Zebed Mwiche and Others vs Lumwana Mining Company Limited***[1] where the Supreme Court held that a dismissal for reasons not set out in a disciplinary code is unlawful.

Mr. Ngaba, contended that the respondent failed in the court below to prove which offences in the disciplinary code the appellant had committed.

Learned Counsel then moved to point out that the disciplinary policies of the respondent required that the appellant should have

been accorded an opportunity to exculpate herself before she was punished for incompetence or misconduct in line with the rules of natural justice. He stressed that the appellant in this case was not given an opportunity to be heard before the warning letters were issued to her.

The case of ***Bwalya vs The Attorney-General,***[2] was cited as authority for the proposition that natural justice and procedural fairness demands that those whose interests may be affected by an act or decision should be given an opportunity to be heard.

Further the case of ***Contract Haulage Limited vs Mumbuwa Kamayoyo***[3] was cited for the principle that failure to give an employee an opportunity to answer charges against him is contrary to natural justice.

It was further contended that the appellant's termination of employment on account of not giving her an opportunity to be heard was wrongful. We were accordingly urged to allow this ground of appeal.

Under ground two the appellant faulted the High Court for finding that where an employer has given reasons for terminating an employee's employment as required under section 36 of the Employment Act, Chapter 268, the court cannot consider whether the dismissal was actuated by malice or bad faith.

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[2] *Bwalya vs The Attorney-General, Appeal No. 62 of the 2012*
[3] *Contract Haulage Limited vs Mumbuwa Kamayoyo (1982) ZR. 13*

Mr. Ngaba, strongly argued that the ***Zebed Mwiche***[1] case aforecited established the principle that the court retains jurisdiction to investigate if the employer has the requisite power to dismiss an employee and if so, whether the power was properly exercised. That the court must examine whether the offence for which an employee is dismissed is in fact dismissible, under the terms of the employee's contract.

Learned Counsel for the appellant further posited that according to **Section 85(5)** of the **Industrial and Labour Relations Act**, the main object of the Industrial Relations Division of the High Court is to do substantial justice. Counsel vehemently argued that the court below had a duty not only to examine if a reason was given for the termination but also whether there were facts established to justify the disciplinary measures that were taken by the respondent.

With the intention of persuading us on this point, Counsel called in aid the case of ***The Attorney-General vs Richard Jackson Phiri***[4] where the Supreme Court held inter-alia that there should be a substratum of facts to support disciplinary measures taken by an employer even when correct procedures have been followed. We were therefore urged to reverse the decision of the court below.

In respect of ground three, it was contended that the learned trial Judge erred in law and in fact when it made a finding that the

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[4] *The Attorney-General vs Richard Jackson Phiri (1988-89) ZR 121*

provisions of section 28(8) of the Immigration and Deportation Act No.18 of 2010 did not operate to compel the respondent to meet the full costs of repatriating the appellant, her family and all her property back to Zimbabwe.

It was the appellant's further submission that section 28(8) of the Immigration Act places an obligation on the employer to bear the full costs of repatriating a foreign employee upon termination of their employment, whether by way of summary dismissal or otherwise. According to Counsel, failure to comply with this requirement is an offence under **Section 28(8)** of the **Immigration and Deportation Act**.

Counsel stated that the provisions of **Section 28(8)** are clear and unambiguous and that the learned High Court Judge should not have therefore departed from the literal interpretation thereof as per judgment of the Supreme Court in the case of ***Anderson Kambela Mazoka & Others vs Levy Patrick Mwanawasa & Others***[5]. It was on this basis that we were beseeched to allow the appeal and quash the judgment.

In the written heads of argument, the learned Counsel for the respondent Ms. Nambula gainsaid the submissions by the learned Counsel for the appellant. On ground one, she submitted that wrongful termination entails the dismissal of an employee in breach of the terms of the contract of employment. To this effect, Counsel pointed out that the appellant was dismissed in line with the

[5] *Anderson Kambela Mazoka & Others vs Levy Patrick Mwanawasa & Others (2005) ZR 138 (SC)*

contract of employment after being issued with three warning letters. Counsel referred us to a quotation from Halsbury's Laws of England 4th edition, paragraph 412 at page 380 which reads as follows:

> *" ....although a series of warnings normally relates to one particular ground of unsatisfactory behaviour, the existence of warnings on other grounds could be taken into account when deciding whether to dismiss, if reasonable to do so in the circumstances. As the existence of warnings is not the overall test of fairness, there may be cases where it is fair to dismiss without warning, these include cases where...the employee is grossly incompetent or obviously unsuitable or .. the employee is in a senior position knowing clearly what is required of him".*

Ms. Nambula went on to note that in the first warning letter dated 10th March, 2016 the appellant was quizzed for her failure to change a child's wet clothing and also invited to request for any assistance she would require.

Counsel further noted that in the 2nd warning letter dated 6th October, 2016 the appellant was warned for her failure to prepare lesson plans, keep records and work as a team. According to Counsel this was gross incompetence by a trained Montessori teacher which called for a dismissal without warning.

The cases of ***James vs Wattham Holy cross UDC (1973) KR 398 and A J Dunning & Sans (Shopfitters) Limited vs Jacob*** [6] was cited as authority. It was thus contended that the respondent was justified in summarily dismissing the appellant after the third and final warning on grounds of incompetence and negligence.

The learned Counsel went on to state that unlawful termination, pertains to termination in a manner contrary to the provisions of the law. Counsel spiritedly argued that the appellant in this case was dismissed after three warning letters in accordance with **Section 36(i)** of the **Employment Act, Chapter 268**.

Ms. Nambula also sought refuge in the case of ***Zambia National Provident Fund vs Yekweniya Mbiniwa Chirwa***[7] in which the Supreme Court held that where an employee commits an offence for which dismissal is the appropriate punishment, when no injustice is done even if the employer does not follow laid down procedure prior to dismissal. Counsel accordingly prayed that ground one be dismissed.

In respect of ground two, Counsel for the respondent submitted that while the Industrial Relations Court is empowered to delve into the reasons for termination of employment, it must exercise this power judiciously and only in specific cases i.e. where it is apparent that the employer is invoking the termination clause out of malice. In support of this we were referred for proposition to

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[6] *James vs Wattham Holy cross UDC (1973) KR 398 and AJ Dunning & Sans (Shopfitters) Limited vs Jacob (1973) ICR 448*

[7] *Zambia National Provident Fund vs Yekweniya Mbiniwa Chirwa (1986) ZR 70 (SC)*

the case of ***Redrilza Limited vs Abuid NKazi and Other***.[8]

Counsel contended that in *casu* there was no malice on the part of the respondent. Instead repeated offers for support and assistance were made to the appellant.

Finally, it is the position of the respondent that there is sufficient evidence before court justifying the dismissal of the appellant. Therefore there is no need for the court to delve behind the given reasons.

As for ground three, Counsel for the respondent submitted that the court below was on firm ground when it made a finding that the provisions of section 28(8) of the Immigration and Deportation Act did not operate to compel the respondent to meet the full costs of repatriating the appellant, her family and all her property to Zimbabwe. That is because the appellant was offered three months' salary and three one-way tickets to Bulawayo from where the appellant was engaged, which she rejected and demanded to be repatriated with her vehicle and other assets she acquired during her stay in Zambia.

The respondent's cross appeal was based on two grounds couched as follows:

1. *The Court below erred both in law and in fact when it ordered that the appellant be paid repatriation even after*

[8] *Redrilza Limited vs Abuid NKazi and Other SCZ Judgment No.7 of 2011*

*the appellant rejected the initial offer for repatriation and instead secured full-time employment in Zambia.*

2. *The Court below erred both in law and fact when it awarded the appellant 91 leave days together with interest thereon, despite the appellant having only served in the employ of the respondent for 17 months and having, in that time, taken 91 days off work during the period the school was closed for holidays.*

In support of ground one, Counsel spiritedly argued that according to the letter of summary dismissal dated 15th October, 2016, shown at page 76 of the record of appeal, the respondent was willing to pay for the appellant and her two dependents air tickets to Zimbabwe but the appellant rejected this offer and secured permanent employment elsewhere within Zambia thereby waiving her right to repatriation.

Counsel called in aid the maxims that; "He who comes to equity must come with clean hands" and "He who seeks equity must do equity." She contended that to repatriate the appellant at this late stage would be inequitable and an unjust enrichment to the appellant.

In support of ground two, learned Counsel for the respondent submitted that the court below erred when it awarded the appellant 91 leave days together with interest despite the appellant having served for only 17 months during which she took 91 days off work

during the holiday. In this regard, Counsel referred us to paragraph 8 of the affidavit in support of answer which is shown at page 108 of the record of appeal. She pointed out that the appellant was also permitted to leave work every day at 13.00 hours to enable her attend to her young child.

In light of her submissions, she prayed that the appeal be dismissed with costs and that the cross appeal be allowed.

In the appellant's heads of argument in reply, learned Counsel for the appellant began by highlighting certain parts of the respondent's heads of argument which he submitted were evidence from the bar which should be expunged from the record. He pointed out that although both parties acknowledged that the appellant has sought alternative employment, there is no document which indicates that the employment is "permanent" and with a "competing school" as suggested in paragraph 4.1 of the respondent's heads of argument in support of its cross appeal.

Counsel further observed that the suggestion in paragraph 4.2 to the effect that the appellant has no intention of ever returning to Zimbabwe, is not only evidence from the bar, but an issue which was never raised in the court below. He stated that this practice was frowned upon by the Supreme Court in the case of ***Mususu Kalenga Building Limited and Another vs Richman Money***

***Lenders Enterprises,***[9] Counsel prayed that the highlighted portions be expunged from the record.

The responses from the appellant in relation to the cross appeal were essentially a repetition of the arguments earlier submitted in the appellant's heads. The appellant, however, conceded that the learned trial Judge erred when it awarded 91 leave days instead of 34 days for the 17 months served. Counsel argued that **Section 15(1)** of the Employment Act and clause 7.3.1 of the appellant's employment contract entitled her to two leave days per month. He noted that the respondent's argument that the appellant took 91 days school holidays is not supported by either the contract or the evidence on record.

We have paid due consideration to the evidence on record and the submissions by the parties. The parties as indicated earlier, did file a statement of agreed facts.

In a quest to make a determination on the two opposing positions, we consider that a convenient starting point would be consideration of the rules of natural justice.

In English Law, natural justice is a technical terminology for the rule against bias *(nemo judex in causa sua)* and the right to a fair hearing *(audi alteram partem),* put simply it is the *"duty to act fairly."* The right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights of legitimate

[9] *Mususu Kalenga Building Limited and Another vs Richman Money Lenders Enterprises (1999) ZR 27.*

expectation unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case.

In our jurisdiction, the Supreme Court articulated the principles of natural justice in the case of ***Shilling Bob Zinka vs The Attorney-General***,[10] in the following terms:

> *"Principles of natural justice – an English law legacy – are implicit in the concept of fair adjudication. These principles are substantive principles and are two-fold, namely, that no man shall be a Judge in his own cause, that is, an adjudicator shall be disinterested and unbiased (nemo judex in causa sua): and that no man shall be condemned unheard, that is parties shall be given adequate notice and opportunity to be heard (audi alteram partem).*

The requirement for the rules of natural justice to be complied with in order for a dismissal to be deemed fair was re-affirmed in ***Zambia China Mulungushi Textile (Joint Venture) Limited vs Gabriel Mwami:***[11]

> *"Tenets of good decision making import fairness in the way decisions are arrived at. It is certainly desirable that an employee who will be affected by an adverse decision is given an opportunity to be heard."*

Where the employer has acted in bad faith, the court can delve behind the reasons for the termination of employment. (See the case ***Redrilza Nkazi & Others*** [9]).

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[10] *Shilling Bob Zinka vs The Attorney-General, (SCZ Judgment No.0 of 1991)*
[11] *Zambia China Mulungushi Textile (Joint Venture) Limited vs Gabriel Mwami (2004) ZR 244 (SC)*

The authors of Halsbury's Laws of England 4th Ed, 2000 re-issue paragraph 412 at page 380 called in aid by the respondent, plainly state that where an employee is grossly incompetent or obviously unsuitable or where the employee is in a senior position, knowing clearly what is required of him and a series of warnings of unsatisfactory behavior have been issued, there may be cases where it is fair to dismiss without warning.

The respondent referred us to the case of ***Aldair Limited vs Taylor***[12] where Lord Denning said that:

> *"Whenever a man is dismissed for incapacity or incompetence, it is sufficient that the employer honestly believes on reasonable grounds that the man is incapable or incompetent."*

That being said, it behoves us to pose the question; did the respondent afford the appellant an opportunity to be heard?

The appellant was served with three warning letters, the third one resulted in termination of employment. The said letters contain no invitation for the appellant to give her side of the story or tender an explanation but she was found wanting on two grounds; firstly, negligence (failure to change a child's wet clothing and secondly, incompetence, i.e. alleged failure on her part to prepare lesson plans, keep records and work as a team.

The appellant was never called for a hearing neither was she called upon to tender an explanation. It is in this vein that we come

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[12] *Aldair Limited vs Taylor (1978), 1CR 445 CA*

to the inescapable conclusion that the appellant breached the rules of natural justice. It follows that in as much as the appellant had the power to terminate the appellant's employment, the power was not exercised fairly. In light of the foregoing, we find that the termination of the appellant's employment was wrongful in the circumstances.

We now turn to consider the second ground of appeal.

Section 36 of the Employment Act provides as follows:

*"36 (1) A written contract of service shall be terminated –*

*(a) By the expiry of the term for which it is expressed to be made; or*

*(b) By the death of the employee before such expiry; or*

*(c) In any other manner in which a contract of service may be lawfully terminated or deemed to be terminated whether under the provision of this Act or otherwise, except where the termination is at the initiative of the employee, the employer shall give reasons to the employee for the termination of that employee's contract.*

*(2) Where owing to sickness or accident an employee is unable to fulfill a written contract of service, the contract may be terminated on the report of a registered medical practitioner.*

> *(4) The contract of service of an employee shall not be terminated unless there is a valid reason for the termination connected with capacity, conduct of the employee or based on the operational requirement of the undertaking."*

Section 36 of the Act has placed a requirement on an employer to give reasons for terminating an employee's employment. Employers are no longer at liberty to invoke a termination clause and give notice without assigning reasons for the termination. What is of critical importance to note however is that the reason or reasons given must be substantiated.

We recall that our duty as a court is to ensure that the rules of natural justice were complied with and to examine whether there was a sufficient substratum of facts to support the invocation of disciplinary procedures. In other words, we must be satisfied that there was no *mala fides* on the part of the employer. The basis of this is that the employee who is a weaker party is protected from being dismissed at the whims of the employer without any justifiable reason.

We are alive to the plethora of authorities which clearly state that courts are not required to sit as appellate tribunals against the decision of employers' internal tribunals and review what others have done. The duty of the court is to examine whether the employer possessed the necessary disciplinary powers and if the same powers were exercised in due form.

In the present case, we have examined the reasons given for the termination. On account of the circumstances surrounding this matter, we find the facts did not justify the disciplinary measures invoked by the respondent. This is in light of what we have stated in ground one that the rules of natural justice were not complied with. At the heart of the Labour Relations Act is the mandate to do substantial justice between the parties before it. In this regard we are alive to the cases of ***Amiran Limited vs Bones*** [19] and ***Roston Mubili Mwansa vs NFC Africa Mining Plc,*** [20] which articulate the main object of the aforecited Act as provided by **Section 85**. We therefore agree with Counsel for the appellant that the court below did have power to consider the circumstances leading to the appellants' dismissal.

Considering the 3rd ground of appeal Clause 10.2 of the contract of employment provides as follows:

> *"The employee shall not be entitled to such repatriation/removal/relocation if his employment is terminated within the probation period or as a result of any disciplinary action or as a result of a breach by the Employee of any of the provisions hereof."*

The Immigration and Deportation Act No.18 of 2010 Section 28(8) states thus:

> *"An employee shall, on termination of an employment contract or the resignation or dismissal of, a foreign employee who is the holder of an employment permit, issued under subsection (1), be fully responsible for the repatriation of the former employee and*

*other costs associated with the deportation of that former foreign employee if that former employee fails to leave Zambia when no longer in employment.* (emphasis ours).

The contract of employment does not entitle or obligate the employer to repatriate an employee when the employee's contract is terminated as a result of disciplinary action. This in effect means that ordinarily, the appellant having been terminated on account of disciplinary action would not by virtue of this clause be entitled to repatriation.

However, section 28(8) of the Immigration Act places an obligation on the respondent of repatriating the appellant. The net effect is that provisions in a contract which are in conflict with statute are void. Parties cannot contract outside a statute. Therefore, in accordance with the Immigration Act the appellant is entitled to reasonable repatriation expenses. We find therefore that ground three has merit. In the circumstances of this case, we order that the appellant be repatriated with her dependents, together with her personal effects inclusive of the motor vehicle.

The evidence reveals that the appellant has found alternative employment. The principle is that an innocent party must take responsible steps to mitigate against loss. In ***Caroline Tomaidah Daka vs Zambia National Commercial Bank Limited Plc***[13], it was *held that:*

[13] *Caroline Tomaidah Daka vs Zambia National Commercial Bank Limited Plc (2012).*

*"Thus if an employee is dismissed without notice, and obtains other employment, he must give credit for any earning from his new employment in respect of any payment for the period of notice he should have received. The burden is on the employer to show that the employee has failed to take reasonable steps to mitigate loss. This he may be able to do either by reference to a matter known to him, or by obtaining some form of discovery from the employee concerning attempts to seek alternative employment.*

*Damages for breach of contract at common law are always subject to the rule that the innocent party must take reasonable steps to mitigate against the loss, which in this context involves looking for other suitable employment. Any earning from such employment or from self-employment can be deducted from the loss suffered."*

In light of the foregoing, we find that damages for wrongful dismissal have been mitigated and order three (3) months pay.

Turning to leave days, 91 leave days were awarded together with interest despite the appellant only having served in the employ of the respondent for 17 months. At the hearing it was conceded by the appellant that she was only entitled to 34 leave days and we so order.

In sum, the appeal has succeeded and the respondent's cross appeal has partially succeeded. For avoidance of doubt we order the following:

1. Payment of damages in the sum of three months salary;
2. Reasonable repatriation expenses of the appellant, her dependents; personal property including the car;
3. Payment of 34 leave days.

The parties shall bear their own costs.

.....
C. MAKUNGU
**COURT OF APPEAL JUDGE**

.....
M.K. KONDOLO SC
**COURT OF APPEAL JUDGE**

.....
B.M. MAJULA
**COURT OF APPEAL JUDGE**