IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT NDOLA
(Industrial Relations Division)

IRC/SL/06/2020

BETWEEN:

NAMAALA MWAZEMBE COMPLAINANT

AND

RURAL ELECTRIFICATION AUTHORITY RESPONDENT

Before the Hon. Mr. Justice Davies C. Mumba in Open Court on the 4th day of September, 2020.

For the Complainants: Mr. M. Mwachilenga, Messrs James and Doris Legal Practitioners.
For the Respondent: Mr. J. Ilunga, Messrs Ilunga and Company and Mrs. L. Daka, In-house Counsel.

JUDGMENT

Cases referred to:

1. Zambezi Portland Cement Limited v Kevin Jivo Kalidas, Appeal No. 29 of 2019.
2. Sarah Aliza Vekhnik v Casa Dei Bambini Montessori Zambia Limited, Appeal No. 129 of 2017.
3. Spectra Oil Zambia Limited v Oliver Chinyama, Appeal No. 18 of 2018.
4. Victoria Chileshe Sakala v Spectra Oil Corporation Limited, Appeal No. 02 of 2016.
5. Chilanga Cement Plc v Kasote Singogo (2009) Z.R. 122 (S.C).
6. Joseph Chintomfwa v Ndola Lime Company Limited (1999) Z.R. 172.
7. Jacob Nyoni v Attorney-General, S.C.Z. Judgment No. 11 of 2001.
8. Dennis Chansa v Barclays Bank Zambia PLC, Appeal No.111/2011.
9. Zambia Airways Corporation Limited v Gershom Mubanga (1992) Z.R. 2.

10. First Quantum Mining and Operations Limited v Obby Yendamoh, S.C.Z. /8/307/2015.
11. Anderson Kambela Mazoka, Lt. General Christon Sifapi Tembo, Godfrey Kenneth Miyanda v Levy Patrick Mwanawasa, the Electoral Commission of Zambia, and the Attorney General (2005) Z.R. 138.
12. Indo-Zambia Bank Limited v Mushaukwa Muhanga (2009) Z.R. 266 (S.C).
13. Eston Banda and Edward Dalitso Zulu v The Attorney General, Appeal No. 42 of 2016.
14. Josephat Lupemba v First Quantum Mining and Operations Limited, Comp/IRD/17/2016 (Unreported).
15. Barclays Bank (Z) PLC v Western Lyuni and Suzyo Nyambe, SCZ Appeal No. 07 of 2012.

Legislation referred to:

1. The Employment Act, Chapter 268 of the Laws of Zambia.
2. The Employment Code Act No. 3 of 2019.

By notice of complaint supported by an affidavit filed into Court on 3rd March, 2020, the complainant commenced this action against the respondent seeking the following reliefs:

1. A declaration that the complainant's employment with the respondent was unlawfully and/or wrongfully terminated.
2. 36 months' salary as damages for unlawful and/or wrongful termination and loss of employment.
3. Specific performance of clause 11 of the contract of employment.
4. Payment of all gratuities, allowances and accrued benefits for the whole contract period.
5. Interest on all sums found due.
6. Any other relief the Court may deem fit.

Costs of and incidental to this action.

During the trial, the complainant informed the Court that he had abandoned the reliefs he was seeking under items 3 and 4 above.

The complainant, through his affidavit and at trial, testified that he was employed by the respondent on 30th November, 2014 as an Assistant Legal officer, on a fixed term contract for a period of six months which was renewable on satisfactory performance. He stated that the contract was renewed for another 6 months; and later on he was given a one year contract, 'NM1' as Human Resources-Operations on 1st November, 2019 which was supposed to run up to 30th November, 2020. He testified that on 6th February, 2020, he reported for work normally and was assigned some tasks by the acting Human Resource and Administration officer, RW1, who happened to be his supervisor at the time. On the same day in the afternoon, RW1 went for a management procurement meeting but returned within a short time and called the complainant to his office. RW1 handed him a letter, 'NM3' informing him that his contract of employment had been terminated forthwith. He stated that according to the letter, his contract of employment was supposed to come to an end on 6th January, 2020 and that the letter did not state any reason for the termination of his contract. He also stated that his contract of employment did not have an express provision which allowed the respondent to terminate the contract in the manner it did. That, however, clause 11 made a provision for the respondent to

terminate the contract in the event of breach of the conditions of service or the disciplinary code. He stated that he never breached his conditions of service or the disciplinary code and that he was never the subject of any disciplinary process during the time he was with the respondent.

The complainant added that the termination of his contract had affected him in so many ways. That he had failed to find any employment as the respondent did not provide reasons for the termination. That he had felt stigmatised at the hands of one potential employer who actually contacted the respondent after telling them during an interview that his contract was terminated without a reason. He also stated that he had suffered undue distress, mental stress and trauma; and had also faced financial difficulties as he was unable to meet most of his financial needs. That the loss of employment had also adversely affected his family and his career as he had enrolled for a master's degree program while working for the respondent which he discontinued because he was unable to meet the tuition fees. He informed the Court that he was seeking a declaration that his contract of employment with the respondent was unlawfully and wrongfully terminated. That he was also claiming 36 months' salary as damages for unlawful dismissal. That he had been facing difficulty to find employment with the outbreak of the COVID-19 pandemic as most employers were not employing and were actually cutting down on their staff.

During cross-examination, when referred to the notice of termination, 'NM3', the complainant stated that the letter indicated that the contract was terminated forthwith. He admitted that he got his salary for January but he could not tell if the date 6th February, was just a typographical error. He also admitted that he received payment in lieu of notice for the month of February and that he was also paid gratuity. The complainant confirmed that he was paid gratuity despite having worked only for two months under the last contract. That he was entitled to gratuity in accordance with the Constitution. He confirmed that he was claiming damages equivalent to 36 months' salary despite the fact that his contract would have expired after one year.

The evidence of the respondent was adduced by Chriscent Sialyainda (RW1), Acting Manager for Human Resources and Administration, through the affidavit in opposition to the notice of complaint and at trial. He testified that the complainant was one of the employees of the respondent and his contract of employment was terminated on 6th February, 2020, through a letter which was issued to him dated 6th January, 2020.

The witness testified that the termination of the complainant's contract of employment was done in line with section 53 of the Employment Code Act, as read together with his contract of employment. That the Employment Code Act provided the

employer with the procedure on how to terminate a contract which was intended to be terminated. That the complainant was serving under a one year contract from November 2019 to November 2020, but the said contract was silent on termination of employment by way of notice on the part of the employer, hence the invocking of section 53 of the Employment Code Act to terminate the complainant's contract.

Regarding the complainant's claim for damages equivalent to 36 months' salary, RW1 stated that the complainant was serving under a one year contract so it was not in order for him to seek damages equivalent to 36 months' salary. That the complainant was entitled to gratuity, the salary and payment for accrued leave days which were paid to him by the respondent.

During cross-examination, the witness stated that the complainant's contract was terminated because the respondent deemed it fit for his contract to be terminated. He confirmed that there was no reason given for the termination of the contract. That the complainant worked for the respondent for four years before his contract was terminated, having been employed in 2016. He, however, said that he was not sure of the actual date the complainant was employed. He stated that the respondent relied on section 53 of the Employment Code Act when it terminated the complainant's contract. The witness confirmed that on 6th February, 2020, he gave the complainant some tasks to do in the

morning; and that he had been seeing the complainant work from 6th January, 2020 because he had not been served with the notice of termination. He admitted that the termination was done abruptly. He confirmed that clause 11 of the complainant's contract was the clause that made provision for termination of the contract. When asked if the manner in which the respondent terminated the contract was provided for in the contract, the witness stated that the Employment Code Act was incorporated in the contract. That the Employment Code Act was taken into consideration because there was no provision in the contract.

Counsel for both parties filed skeleton arguments in support of their respective cases.

The learned Counsel for the complainant began by referring this Court to section 52, subsections 1, 2 and 5 of the Employment Code Act No.3 of 2019 which provide as follows:

> **"(1) A contract of employment terminates in the manner stated in the contract of employment or in any other manner in which a contract of employment is deemed to terminate under this Act or any other law, except that where an employer terminates the contract, the employer shall give reasons to the employee for the termination of the employee's contract of employment; and**
> **(2) An employer shall not terminate a contract of employment of an employee without a valid reason for the termination connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking.**
> **(5) An employer shall bear the burden of proof that the termination of a contract of employment was fair and for a valid reason."**

The learned Counsel argued that as can be seen from the above provisions of the law, any termination that is at the instance of the employer must be accompanied by reasons for the termination. That the provisions of the law further require that the reason for the termination must be valid and connected to the capacity, conduct of the employee or connected with the operational requirements of the undertaking.

Learned Counsel also argued that by virtue of subsection 5 above, the respondent bears the burden in these proceedings to prove that the complainant was given a valid reason for the termination. That from the affidavit evidence on the record, it was clear that the respondent had blatantly failed to fulfill its duty. He argued that even though the said Employment Code Act No.3 of 2019 is relatively a new Act, the provisions of section 52, subsections (1) and (2) are not new to our jurisprudence. That a replica of the said provisions was provided for under section 36 of the Employment Act, Cap. 268, as Amended by Act No. 15 of 2015, which had a lot of interpretation that has provided valuable judicial precedent. That precedent as established showed that any termination that was not supported by a valid reason for the termination was unlawful and entitled a complainant to damages for unlawful termination.

Learned Counsel referred this Court to the holding in the case of Zambezi Portland Cement Limited v Kalidas,[1] where it was held that:

> **"After considering the evidence and submissions of the parties, the learned Judge found that Section 36 (1) (c) of the Employment Act as Amended by Act No.15 of 2015 placed an obligation on an employer to furnish an employee with valid reasons for the termination of the employees contract of employment and the said provision is couched in mandatory terms...**
>
> **The learned Judge was of the view that in the instant case the Appellant relied on the termination clause but did not give a reason for terminating the Respondent's employment. He found that the failure to give reasons for the termination amounted to unlawful termination and violated section 36 (a) (c) of the Employment Act."**

He also referred this Court to the case of **Sarah Aliza Vekhnik v Casa Dei Bambini Montessori Zambia Limited,**[2] where it was established as follows:

> **"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."**

He further referred this Court to the case of **Spectra Oil Zambia Limited v Chinyama**[3], where the Court of Appeal held that:

> **"The court held that the appellant contravened section 36 (c) (i) and 36 (c). It is our well-considered view that the interpretation of the above provisions need to be laid to rest. Section 36(c) (i) and 36 (c) provide 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 provisions of this Act or otherwise except that where the termination is at the initiative of the employer, the employer shall give reasons to the employee for the termination of that employee's employment; and

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

Our understanding of the above provisions is that there is an obligation placed on employers to give valid reasons to an employee when effecting a termination of the employment at the former's behest. The reasons given must be connected to the employee's capacity, conduct or based on the operational undertaking of the employer. Therefore, it follows that if there is a failure by the employer to give valid reasons in accordance with the aforecited provisions of section 36 of the Act, the termination is rendered void.

Prior to the amendment of the Employment Act, an employer could have a notice clause in their employment contract and they could terminate an employee without specifying or citing any reason for the termination. With the coming into force of Act No. 15 of 2015, an employer cannot hide behind the notice clause and invoke it without giving any valid reason. The net effect of the foregoing is that to the extent that employment contracts have provisions for termination by notice without giving reasons, they are in contravention or in conflict with the provisions of section 36(1) and unlawful.

Turning to the case before us, there is undisputed evidence that at termination the appellant relied on the notice clause and did not furnish the respondent with any valid reasons for the termination. It was only when the appellant was dragged to court that they put together a variety of offences which the respondent had allegedly committed. The Judge rightly so in our view dismissed these claims as they had come after the fact. The appellants' witness as well as the respondent were all in agreement that no reasons had been given in the letter of

> **termination. This therefore is in clear violation of the provisions of section 36 of the Employment Act.**
>
> **For reasons articulated above, we find that the Judge in the Court below was on firm ground when he found that the appellants had contravened section 36 of the Act."**

Learned Counsel further referred this Court to the Supreme Court decision in the case of **Victoria Chileshe Sakala v Spectra Oil Corporation Limited**[4], where it was held as follows:

> **"That position notwithstanding, we are alive to the fact that since the coming into effect of the Employment (Amendment) Act No. 15 of 2015, which amends section 36 of the Employment Act, Cap 268, an employer is now required to give a valid reason for termination of an employment contract. "**

It was learned Counsel's contention that the letter of termination, 'NM3' as produced in the complainant's affidavit in support of the notice of complaint was clear that no reason was given for the termination of the complainant's employment with the respondent. He contended that the employment of the complainant was terminated unlawfully as it was contrary to section 52 (1) and (2) of the Employment Code Act No.3 of 2019 cited above.

Learned Counsel further argued that this Court will further note from the complainant's contract exhibited as 'NM2' that the termination by the respondent of the complainant's employment in the manner it did was not in any way supported by the provisions of clause 11 of the contract, which provided for termination of the contract. That the termination was unlawful for being in contravention of the Employment Code Act and Wrongful

for not being in accordance with the provisions of clause 11 of the contract.

In relation to the quantum of damages, learned Counsel referred this Court to the cases of **Chilanga Cement Plc v Kasote Singogo**[5], **Joseph Chintomfwa v Ndola Lime Company Limited**[6] and **Jacob Nyoni v Attorney-General**[7] for the position that, in awarding damages, it is the circumstances of each case that are relied upon. That currently, the Courts have awarded up to 36 months' salary as damages for loss of employment. Learned Counsel also referred this Court to the case of **Dennis Chansa v Barclays Bank Zambia PLC**[8], where the Supreme Court upheld an award of 36 months' salary as damages for loss of employment and held that:

> **"The Court in Zambia Airways Corporation Limited v Gershom** Mubanga[9] **awarded 12 months' salaries as damages in lieu of reinstatement in 1992. Seven years later in Chitomfwa v Ndola Lime Company Limited**[6]**, we awarded 24 months. The lower Court seven years later in the appeal before us awarded 36 months' salaries as damages. The rationale is as the global economies deteriorate, the chances of finding employment even by graduates are dimmer. There should be a progressive upward increase in damages, as it is bound to take longer to find a job in the current domestic and global economic environment."**

Learned Counsel further referred this Court to the case of **First Quantum Mining and Operations Limited v Obby Yendamoh**[10], where the Supreme Court upheld an award for 36 months' salary.

It was learned Counsel's argument that the complainant was unemployed and the fact that no reason had been given for the

termination of his employment raised suspicion in the mind of reasonable prospective employers, thereby making his chances of finding alternative employment slimmer. That the evidence on record further showed the abruptness with which the employment of the complainant was terminated by way of an expired notice of termination in that even though the letter of termination was dated 6th January, 2020, it was only given to the complainant on 6th February, 2020. Further, that the complainant had been in a long continuous service with the respondent from 2014 to 2020 when his contract was terminated in a very abrupt manner. It was also learned Counsel's contention that in the current Covid-19 pandemic period, the economic conditions have become even worse as goods and services had become much more expensive; and it was a practice now by most employers to downsize on the number of employees at a workplace. That very few companies were employing new employees in a bid to maintain proper social distance even at the place of work and as such, it was practically impossible to find new employment.

He argued that this was a good and proper case for this Court to award 36 months' salary or such a higher sum as the Court may deem fit.

Learned Counsel for the complainant also prayed for costs. He argued that they were well aware about the restrictions in this division of the High Court in awarding costs, but that this was a

good and proper case for this Court to award costs in favour of the complainant. That the respondent had been utterly unreasonable and flagrantly disregarded the clear provisions of the law thereby bringing about a litigation that was totally unnecessary and even went to the extent of raising a frivolous and vexatious answer to the claim. That the litigation in this matter was totally unnecessary and was a full result of the respondent's unreasonable conduct; thus the respondent ought to be condemned to costs.

Learned Counsel referred this Court to Rule 44 of the Industrial Relations Court Rules, Chapter 269 of the Laws of Zambia, which provides as follows:

> **"44. (1) Where it appears to the Court that any person has been guilty of unreasonable delay, or of taking improper, vexations or unnecessary steps in any proceedings, or of other unreasonable conduct, the Court may make an order for costs or expenses against him."**

Learned Counsel also referred this Court to the case of ***Kalidas,***[1] where the Court of Appeal recently established that:

> **"As we have stated above, the appellant was employed in 2017, way after the amendment to the Employment Act, Cap 268 was effected. In our view, section 36 (1) (c) and (3) of the Employment Act is very clear and unequivocal that it is a legal requirement that every employer who terminates the employment of an employee, must furnish the employee with valid reasons. The aforesaid provisions are clear as day and it is, therefore, not enough for the appellant to merely give notice.**
>
> **It appears to us that the appellant was well aware of the amendment to the law and flagrantly disregarded the provisions of the Employment Act and proceeded to effect**

> **termination without furnishing the respondent with valid reasons, even after the respondent enquired on the reasons for his termination and as a result the respondent's employment came to an abrupt end after serving just 5 months of the two year fixed term contract."**

It was Counsel's contention that the law having been in effect since 2015, the respondent ought to have known and made sure that they are in compliance with it. That noticing the wrong after they were served with the complaint, the respondent ought to have in the least taken measures to mitigate the costs of litigation. That in the circumstances, it would only be fair that the respondent bears the costs of this litigation as it was wholly responsible for it and it has the deeper pocket.

On behalf of the respondent, the learned Counsel for the respondent began by citing section 53(1) and (2) (c) of the Employment Code Act No. 3 of 2019, which provides as follows:

> **"(1) An employee whose contract of employment is intended to be terminated is entitled to a period of notice, or compensation in lieu of notice, unless the employee is guilty of misconduct of the nature that it would be unreasonable to require the employer to continue the employment relation.**
>
> **(2) (c) An employer shall, where the contract of employment does not provide for a period of notice, give thirty days for a contract of employment of more than three months, except that notice to terminate a contract of employment of more than six months shall be in writing."**

Learned Counsel argued that the complainant was employed on a one-year contract of employment and thus the termination by notice or payment in lieu thereof was in tandem with the foregoing

provisions of the Employment Code Act, as the contract of employment did not provide for notice period vis-à-vis termination by the respondent. He argued that in the premise, the termination of the complainant's employment was lawful.

Following the holding in the case of **Anderson Kambela Mazoka, Lt. General Christon Sifapi Tembo, Godfrey Kenneth Miyanda v Levy Patrick Mwanawasa, The Electoral Commission of Zambia, and the Attorney General**[11] and the case of **Indo Zambia Bank Limited v Mushaukwa Muhanga,**[12] learned Counsel argued that the words in section 53(2)(c) of the Employment Code Act in their natural meaning give an employer the right to terminate the contract of employment under the circumstances as in the case in casu, by way of notice, albeit thirty days or payment in lieu thereof. That there was no ambiguity, whatsoever, in the meaning of the wording in the provisions of the Employment Code Act aforementioned in order for the Court to resort to other cannons of interpretation other than the literal rule. He urged this Court to dismiss the complaint as it lacked merit.

I have considered the oral and the affidavit evidence on record as well as the written skeleton arguments filed by both parties.

It is common cause that the complainant had been employed by the respondent under several renewable contracts, the last contract being 'NM1' and 'NM2' (essentially one and the same

documents) which was offered to him on 2nd December, 2019 in the capacity of Human Resources Operations. The contract was for a fixed period of one year and it was to run upto 30th November, 2020. On 6th February, 2020, the complainant was handed a notice of termination of his employment, 'NM3' dated 6th January, 2020 and he was paid one months' salary, as payment in lieu of notice.

The said notice of termination read as follows:

> **"6th January, 2020.**
>
> **Mr. N. Mwazembe,**
>
> **Rural Electrification Authority,**
>
> **Plot No. 5033 Longo Longo Road,**
>
> **Lusaka.**
>
> **Dear Sir,**
>
> **RE: NOTICE OF TERMINATION OF CONTRACT OF EMPLOYMENT**
>
> **Reference is made to the above captioned matter.**
>
> **I would like to notify you that the employer has decided to terminate your contract forthwith.**
>
> **You are entitled to one month's notice, but in this case, the employer will pay in lieu of notice. This means that you will be paid one month's salary as opposed to working during the notice period.**
>
> **I am grateful for all the services that you have rendered to the Rural Electrification Authority (REA).**
>
> **I wish you well in your future endevours.**
>
> **Yours faithfully,**
>
> **RURAL ELECTRIFICATION AUTHORITY**
>
> **Signed**

Clement Silavwe

CHIEF EXECUTIVE OFFICER"

From the evidence in this case, the issue for determination is: whether the termination of the complainant's employment by the respondent was contrary to the provisions of the Employment Code Act No. 3 of 2019, and clause 11 of his contract of employment thereby making the termination unlawful and wrongful.

On behalf of the complainant, Counsel in his submissions, has contended that the termination of the complainant's employment by the respondent was unlawful because it was done contrary to section 52, subsections (1), (2) and (5) of the Employment Code Act No. 3 of 2019 as the respondent did not give any reason for the termination of his employment. The complainant has also contended that the termination of his employment was wrongful because it was done contrary to clause 11 of his contract of employment.

On the other hand, the respondent has argued that the termination of the complainant's employment by notice or payment in lieu thereof was in tandem with the provisions of the Employment Code Act, in particular section 53. That the complainant's contract of employment did not provide for notice period vis-à-vis termination by the respondent, therefore, under the premises, the

termination of the complainant's employment in accordance with section 53 (2) (c) was lawful. That the words in section 53(2)(c) of the Employment Code Act in their natural meaning give an employer the right to terminate a contract of employment under the circumstances as in this matter, by way of 30 days' notice or payment in lieu thereof.

I have looked at section 52 (1) of the Employment Code Act No.3 of 2019 and clause 11 of the complainant's contract of employment.

Section 52 (1) of the said Employment Code Act provides that:

> **"A contract of employment terminates in the manner stated in the contract of employment or in any other manner in which a contract of employment is deemed to terminate under this Act or any other law, except that where an employer terminates the contract, the employer shall give reasons to the employee for the termination of the employee's contract of employment;..."**

The above statutory provision makes it mandatory for every employer to furnish an employee with reasons for the termination of his or her contract of employment irrespective of the mode of termination.

In the present case, it is not in dispute that the respondent did not furnish the complainant with any reason for the termination of his employment. The failure by the respondent to give a reason for the termination of the complainant's employment was a clear violation of section 52 of the Employment Code Act No. 3 of 2019.

Therefore, the termination of the complainant's employment by the respondent was unlawful.

The complainant's Counsel contended that the termination of the complainant's employment was not done in accordance with the provisions of clause 11 of his contract. I have noted that the said clause 11 does not provide for termination of employment by way of notice on the part of the respondent. The clause only provides for three circumstances under which the contract could be terminated, namely, by way of resignation on the part of complainant; and discharge and summary dismissal on the part of the respondent.

Having read the provisions of clause 11 vis-a-vis section 53 of the Employment Code Act, I do not agree with the complainant's Counsel's position that the respondent breached clause 11 in terminating the complainant's employment in so far as it relates to the notice period. It is clear to me that section 53 provides for a requirement for an employer to give notice of a specified period before the termination of an employee's contract at the employer's instance. In addition, the said section is intended to fill up the gap in a contract of employment which has not provided for a notice period where the employer intends to terminate the contract, except where an employee is guilty of a misconduct of a nature that it would be unreasonable to require the employer to continue the employment relationship. Therefore, I am satisfied that the respondent properly invoked the provisions of section 53 of the

Employment Code Act in so far as it relates to the requisite notice in terminating the complainant's contract of employment. That notwithstanding, the respondent was still required to give the complainant a valid reason for the termination of his contract of employment as enacted by section 52(1) of the Employment Code Act No. 3 of 2019.

Having found that the complainant's employment was unlawfully terminated, I now turn to the issue of the appropriate quantum of damages, regard being had to all the circumstances of the case.

In the case of Eston Banda and Edward Dalitso Zulu v The Attorney General,[13] the Supreme Court guided that the general measure of damages where there is nothing extra ordinary is an amount equivalent to the notice period provided in the contract or in the absence of such provision, a reasonable period.

From the above authority, it is settled that the normal measure of damages that applies is the contractual length of notice or the notional reasonable notice where the contract is silent. However, the normal measure is departed from where the circumstances and the justice of the case so demand.

In discussing the factors that warrant departure from the common law measure of damages in the case of Josephat Lupemba v First Quantum Mining and Operations Limited[14], the Court of Appeal

made reference to two leading cases of *Kasote Singogo*[5], and Barclays Bank (Z) PLC v Western Lyuni and Suzyo Nyambe[15], decided by the Supreme Court. The Court of Appeal observed at page J5 of the judgment that:

> **"We note that in the two cases, the Supreme Court guided on the factors to be taken into consideration to award damages beyond the common law practice of notice period. Some of the considerations are future job prospects, inconvenience, stress and abruptness of termination. In so guiding, the emphasis was that the trial Court should consider all the circumstances of each case and where it considers that a particular case is deserving, it should go beyond the common law measure of damages."**

In the present case, it was submitted on behalf of the complainant, that the complainant was still unemployed and that the fact that no reason had been given for the termination of his employment raised suspicion in the mind of reasonable prospective employers thereby making his chances of finding alternative employment slimmer. Further, that the complainant's employment was terminated abruptly and that due to the Covid-19 pandemic, economic conditions had become even worse and it had become a practice by most employers to downsize on the number of employees at a workplace and very few companies were employing new employees. That as such, it was practically impossible for the complainant to find new employment. It was argued that this was a good and proper case for this Court to award 36 months' salary or such a higher sum as the Court may deem fit.

I have duly considered all the circumstances of this case.

I agree with Counsel for the complainant that jobs are now very scarce in Zambia, and as it proved to be, even at the time of hearing of this case, the plaintiff was still unemployed. As was held in the *Dennis Chansa*[8] case cited above, as the global economies deteriorate, the chances of finding employment even by graduates are now dimmer. Therefore, it is bound to take longer to find a job in the current domestic and global economic environment. Further, the termination of the complainant's employment was done so abruptly. As a result, the complainant suffered a great deal of inconvenience and stress. In the circumstances of this case, the complainant deserves an award of damages more than the normal measure of common law damages.

Accordingly, I award the complainant damages equivalent to 36 months of his last basic salary plus allowances, with interest at the average short term deposit rate from the date of writ to the date of judgment; and thereafter, at the current lending rate as determined by the Bank of Zambia until full settlement of the judgment debt.

According to the complainant's contract of employment, 'NM1,' the complainant was in receipt of an 'all-inclusive' annual salary of K221,301.00. That amount multiplied by 36 months gives a total of K663,903.00, which is the damages I award to the complainant, plus interest, as stated above.

Multiplied by 3

Costs are for the complainant, to be taxed in default of agreement.

Delivered this 4th day of September, 2020.

.....
Davies C. Mumba
HIGH COURT JUDGE