IN THE HIGH COURT FOR ZAMBIA **COMP/IRCLK/416/2021**
INDUSTRIAL RELATIONS DIVISION
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

ESAU LUNGU **COMPLAINANT**

AND

HOME CHOICE **RESPONDENT**

CORAM: Hon Lady Justice Dr. W. S. Mwenda at Lusaka this 10th day of March, 2022.

For the Complainant: *In person*
For the Respondent: *N/A*

JUDGMENT

Cases referred to:

1. *Khalid Mohamed v. The Attorney-General (1982) Z.R.49 (SC).*
2. *B.J. Poultry Farm Limited v. Nutri Feeds Zambia Limited, SCZ Appeal No.166 of 2015.*
3. *Kitwe City Council v. William Ng'uni, SCZ Judgment No. 12 of 2005.*
4. *Care International Zambia Limited v. Misheck Tembo, SCZ Selected Judgment No. 56 of 2018.*
5. *Supabets Sports Betting v. Batuke Kalimukwa, SCZ Selected Judgment No. 27 of 2019.*
6. *Swarp Spinning Millis Plc. V. Sebastian Chileshe and Others (2002) Z.R. 23 (S.C.).*
7. *Charles Ng'onga v. Alfred H. Knight (Z) Limited, SCZ Selected Judgment No. 26 of 2019.*
8. *Choonga v. Zesco Recreation Club, Itezhi-tezhi, SCZ Appeal No. 168 of 2013.*

Legislation referred to:

1. *The Industrial Relations Court Rules, Chapter 269 of the Laws of Zambia.*
2. *The Minimum Wages and Conditions of Employment Act, Chapter 276 of the Laws of Zambia.*

3. *The Minimum Wages and Conditions of Employment (General) (Amendment) Order, 2018 as read with the Minimum Wages and General Conditions of Employment (General) Order, 2011.*
4. *Section 22 (1), (2), (3) and (7) of the Employment Code Act, No. 3 of 2019.*
5. *Sections 50, 51, 52 and 72 of the Employment Code Act NO. 3 of 2019.*

Authoritative text referred to:

1. *Mwenda W.S. and Chungu C., A Comprehensive Guide to Employment Law in Zambia, (University of Zambia Press, 2021).*

1. INTRODUCTION

1.1 This matter was commenced by way of Notice of Complaint accompanied by an Affidavit, both dated 3rd August, 2021, wherein the Complainant seeks the following reliefs:

(a) Salary for the month of July, 2021;

(b) Gratuity;

(c) Damages for breach of contract;

(d) Leave days;

(e) Unfair and unlawful dismissal; and

(f) Costs and any other benefits that the Court may deem fit.

1.2 The record shows that on 16th August, 2021, this Court made an order that the Respondent proceed to file its Answer to the Complaint. However, no Answer was filed by the Respondent.

1.3 The record also shows that when the matter came up for Status Conference on 25th January, 2022, only the

Complainant was in attendance, although he indicated that he had served the Respondent with the Complaint, and therefore, the Respondent was aware of the hearing. However, there being no Affidavit of Service filed by the Complainant to prove that he had, indeed, served the Respondent with the Notice of Hearing, the Court adjourned the matter to 31st January, 2022, to allow the Complainant to serve the process on the Respondent and adduce evidence of the same, so that if the Respondent still did not show up, the Court could proceed with hearing the matter in the absence of the Respondent.

1.4 The Complainant duly filed an Affidavit of Service on 26th January, 2022, in which he exhibited the proof of service of the earlier Notice of Hearing for 25th January, 2022, which was accordingly received and acknowledge by the Respondent. The Affidavit also exhibited proof of attempted service of the Notice of Hearing for 31st January, 2022. The Notice of Hearing was received by the Assistant Manager of the Respondent but he refused to acknowledge receipt of the document.

1.5 When the matter came up for hearing on 31st January, 2022, again, only the Complainant showed up, while the

Respondent did not turn up. Thus, the Court having satisfied itself that the Respondent was aware of the day's proceedings, proceeded to hear the Complaint in the absence of the Respondent.

2. COMPLAINANT'S CASE

2.1 The Complainant averred in the Affidavit in Support of Notice of Complaint that he was employed as a Warehouse Man on 18th February, 2017, on a one year renewable contract. On 29th July, 2021, the Respondent accused him of attempting to steal from the warehouse and took him to the Police. When the Police asked for evidence of what Mr. Lungu wanted to steal, the Respondent failed to produce any.

2.2 Mr. Lungu, further, asserted that he was released from Police custody and on 29th July, 2021, he was dismissed by the Respondent. When he asked about his benefits, the Respondent told him that there was nothing for him, thus, prompting him to commence these proceedings.

3. SUMMARY OF EVIDENCE

3.1 During trial, the Complainant testified that he started working for the Respondent in February of 2017, as a

Warehouse Man. That, at one time as he and his colleagues were offloading face masks from a container, in the presence of their boss, the boss thought that they wanted to get some masks.

3.2 He further testified that with the help of someone from Human Resource, the Respondent checked the closed-circuit television (CCTV) footage, in the presence of the Complainant, and still found nothing indicating that the Complainant was trying to steal the masks. Around 11:00 hours, the Complainant was taken to John Laing Police Station where he was detained until the following day when he was released on the instruction of the Respondent's Human Resource Officer, without being charged.

3.3 The Complainant testified that the following day he reported for work but was advised by his boss that he was dismissed and there was no work for him. The Complainant then asked for his salary and benefits and was told that there was nothing due to him because he owed the Respondent some money, but that since the Complainant had a baby, the Respondent would just give him some money for washing powder.

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the Complainant at trial. The Complainant is seeking the following reliefs:

(i) Salary for the month of July, 2021;

(ii) Gratuity;

(iii) Damages for breach of contract;

(iv) Leave days;

(v) Unfair and unlawful dismissal; and

(vi) Costs and any other benefits that the Court may deem fit.

4.2 As mentioned earlier, the Respondent did not file an answer or appear at the hearing. Regulation 11(2) of the Industrial Relations Court Rules, Chapter 269 of the Laws of Zambia stipulates as follows with regard to filing of an answer by a respondent:

> *"A respondent who desires to answer a complaint shall, within the time appointed under sub-rule (1), deliver to the Court the answer in, or substantially in accordance with, Form IRC 10 contained in part B of the Schedule, setting out his answer to the complaint."*

4.3 Regulation 11 (2) is very clear as to what a respondent who desires to answer the complaint should do, that is, file an answer within the specified time. Therefore, by not filing an answer to the complaint, the Respondent herein signified to

this Court that it had no desire to defend itself against the complaint which, thus, remained uncontested. Nevertheless, it is trite law that a plaintiff or complainant cannot automatically succeed whenever there is no defence or when a defence has failed as he has to prove his case since the mere failure of the defence does not entitle him to judgment, see *Khalid Mohamed v. The Attorney-General*[1] and *B.J. Poultry Farm Limited v. Nutri Feeds Zambia Limited*[2].

4.4 Therefore, the question for determination, in my view, is whether or not the Complainant has proved his claims against the Respondent on a balance of probabilities.

4.5 I have perused the Contract of Employment, exhibited as "EL1", and Clause 3 of the same states that the Complainant was employed as a General Worker. This has also been echoed in the Complainant's Pay Slip exhibited as "EL2". From this, there is no doubt that the Complainant herein was a protected employee envisioned by the Minimum Wages and Conditions of Employment (General) (Amendment) Order, 2018 as read with Minimum Wages and Conditions of Employment (General) Order, 2011.

4.6 Paragraph 2 (1) (d) of the General Order provides as follows:

> *"(1) This Order shall apply to employees as specified in the Schedule but shall not apply to employees*
> ...
> *(d) in any occupation where wages and conditions of employment are-*
> *(i) regulated through the process of collective bargaining under the Industrial and Labour Relations Act; or*
> *(ii) governed by any agreement between an employer and employee providing for conditions which are not less favourable to the employee than the minimum conditions set out in this Order."* (Emphasis mine)

4.7 The import of the provision above is that in a situation where there is a contract/agreement between an employer and a protected employee which provides better conditions of employment than the ones stipulated in the General Order, the provisions in the contract/agreement shall apply to the employee. I shall, therefore, proceed to determine the Complainant's claims, against this backdrop.

4.8 I have also noted that the Complainant did not produce his most recent contract of employment on account of the fact that the Respondent had not given him the same as it was undergoing some changes. This being the case, the Court admitted into evidence what it considered the best evidence adduced by the Complainant, being his initial contract of 2020. In the absence of the current contract, the Court has proceeded on the assumption that the terms under which

the Complainant was serving at the time of his dismissal, were as under the 2020 contract, to be adjusted in line with any improvements in the law subsequent to 2020. This, notwithstanding, I wish to caution employers to take note that Section 22 (1) of the Employment Code Act, 2019, requires every contract for a period of six months or over to be in writing. Further, in subsection (2) of the section, an employer is required to read and explain the terms of the contract of employment to the employee who is required to enter the contract voluntarily and full of understanding of the terms of that contract. An employee who consents to entering into a contract of employment may indicate consent by signing the contract or affixing on the contract, a thumb or finger print in the presence of a person other than the employer (subsection (3)).

4.9 Furthermore, section 72 of the Employment Code Act requires an employer to explain to the employee the rate of wages and conditions relating to the payment of wages before commencement of the employment or when changes in the nature of the employment take place. Thus, an employer is required to provide his employee with a copy of the employment contract after reading and explaining the

terms of the contract and the conditions relating to the payment of his wages. Significantly, even under an oral contract of employment, an employer is required to keep a record of the contract in the manner prescribed in the First Schedule to the Employment Code Act; the presumption being that the employee will be given a copy, as otherwise it would not make any sense for an employee to sign copies of the employment contract or record of oral contract and end up not being given any.

4.10 It is, therefore, inexcusable for the Respondent herein to have failed and/or neglected to avail the Complainant his contract of employment. The position of the law being as above, one can only speculate as to the motives behind the action by some employers of withholding from their employees, copies of their employment contracts. In my view, the motives are suspiciously sinister. Therefore, such employers must be subjected to administrative penalties as provided in Section 22 (7) of the Employment Code to deter other employers or would-be employers from doing the same to their employees.

4.11 I now turn to the Complainant's claims and shall begin by dealing with the claim for salary to be followed by the claim

for unfair and unlawful dismissal. I will then address the claim for damages for breach of contract. Thereafter, I will deal with the claims for gratuity and leave days together; followed by costs and other benefits.

Claim for payment of Salary for July, 2021

4.12 The Complainant testified that after he was released from Police custody without a charge and reported back to work, he was told that he was dismissed. That, upon being advised as such, he asked for his salary for the month of July, 2021 and his benefits, which he was told he was not owed and which were not duly paid out to him by the Respondent. The General Order provides that the minimum wage for a general worker should be K1,050.00, excluding any amounts paid in lieu of rations. I have perused the Complainant's Pay Slip and observed that the basic pay thereon, has been indicated as K1,050. On this score, I am satisfied that the Respondent was compliant with the statutory minimum wage.

4.13 It is clear from the evidence led by the Complainant that he did, indeed, work in the month of July, 2021, as the evidence has not been refuted. The Supreme Court guided,

in the case of *Kitwe City Council v. William Ng'uni*[3], that you cannot award a salary or pension benefits, for that matter, for a period not worked for because such an award has not been earned and might properly be termed as unjust enrichment. The inverse of this principle, in my view, is true and applicable in *casu*. You cannot neglect or take away a benefit or salary that has accrued, regardless of what happens subsequent to its accrual. In the case of an employer purporting to dismiss an employee under the provisions of Section 50, the employer ought to comply with Section 51 of the Employment Code Act, which provides as follows:

> *"(1) An employer who summarily dismisses an employee under section 50 shall pay the employee, on dismissal, the wages and other accrued benefits due to the employee up to the date of the dismissal.*
>
> *(2) An employer who fails to comply with Subsection (1), is liable to an administrative penalty."*

4.14 In this regard, I find that the Complainant is justified in his claim for his salary for the month of July, 2021. Therefore, this claim succeeds.

Unfair and unlawful dismissal

4.15 The Complainant is claiming for damages for unfair and unlawful dismissal. Under the grounds of complaint in the

Notice of Complaint, the Complainant states that he was on a one-yearly renewable contract, and was dismissed from employment on 29th July, 2021, while in the Affidavit in Support of the Complaint, he asserts that he was dismissed after being accused of attempting to steal from the warehouse without substantiating the accusation. The Complainant has, thus, contended that his dismissal was unfair and unlawful, and he is seeking damages for the same.

4.16 It is imperative to ask at this point, 'what amounts to unfair dismissal'? According to the authors Mwenda and Chungu in A Guide to Employment Law in Zambia, unfair dismissal is dismissal that is contrary to the statute or based on an unsubstantiated ground. It is a creation of statute. In the case of *Care International Zambia Limited v. Misheck Tembo*[4], the Supreme Court was of the view that unfair dismissal is dismissal which is contrary to statute and that it is usually a much more substantial right for the employee and the consequences for the employer of dismissing unfairly are usually much more serious than those which attend to a wrongful dismissal, which is a dismissal contrary to the contract of employment. The Supreme Court, further,

clarified unfair dismissal, as follows, in the case of *Supabets Sports Betting v. Batuke Kalimukwa*[5]:

> *"In a recent decision of this Court, Moses Choonga v. Zesco Recreation Club, Itezhi-tezhi, our holding was that, the dismissal was unfair and unlawful as the reason given was not related to the qualifications or capability of the appellant in the performance of his duties... in order to determine whether a dismissal was fair or unfair, an employer must show the principal reason for the dismissal.*
> *That such reason must also relate to the conduct; capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do; or to operational requirements of the employer's business.*
>
> *We do acknowledge the legal position that unfair dismissal is a creature of statute with its origins in the need to promote fair labour practices by prohibiting employers from terminating employees' contracts of employment, except for valid reasons and on specified grounds. The position is substantially in line with Article 4 of the International Labour Organisation (ILO) standards, Convention 158, Termination of Employment, 1982."*

4.17 The Complainant in *casu* has effectively testified that he was dismissed from employment following accusations of attempted theft of face masks lodged against him, which said accusations the Respondent failed to substantiate. In this regard, therefore, Section 50 (1) of the Employment Code provides the only instances where summary dismissal is permitted. It provides as follows:

"An employer shall not dismiss an employee summarily except in the following circumstances:

(a) where an employee is guilty of gross misconduct inconsistent with the express or implied conditions of the contract of employment;

(b) for willful disobedience to a lawful order given by the employer;

(c) for lack of skill which the employee, expressly or impliedly warranted to possess;

(d) for habitual or substantial neglect of the employee's duties;

(e) for continual absence from work without permission of the employer or a reasonable excuse; or

(f) for misconduct under the employer's disciplinary rules where the punishment is summary dismissal."

4.18 The Respondent having not appeared to defend this matter, there is no evidence tendered on behalf of the Respondent to rebut the Complainant's testimony that he was dismissed on unjustifiable grounds. The Employment Code Act, in Section 52 (5) specifically provides that an employer shall bear the burden of proof that the termination of a contract of employment was fair and for a valid reason. There is simply nothing on the Respondent's part to show that the circumstances outlined in Section 50 (1) of the Employment Code applied to the Complainant.

4.19 Therefore, the summary dismissal of the Complainant was unjustified and in contravention of the Employment Code, and thereby, unfair. Being in breach of the provisions of the

law, it goes without saying that, the dismissal of the Complainant was also unlawful.

4.20 Having found that the dismissal of the Complainant by the Respondent was unfair and unlawful, the next issue to be determined is that of quantum of damages.

4.21 It is trite that the normal measure of damages for unfair, unlawful or wrongful dismissal is the applicable contractual length of notice or the notional reasonable notice where the contract is silent (see the case of *Swarp Spinning Millis Plc. V. Sebastian Chileshe and Others*[6]). In that case the Supreme Court stated, however, that the normal measure is departed from where the termination may have been inflicted in a traumatic fashion which caused undue stress or mental suffering. In *Charles Ng'onga v. Alfred H. Knight (Z) Limited*[7], the Supreme Court confirmed that the normal measure of damages is an employee's notice period or as it is provided for in the law and can only be departed from when the employee proves that he is deserving of more and the conduct of the employer was so serious that it warrants a higher award of damages. In *casu*, the Complainant has not provided any evidence to show that his dismissal was

inflicted in a traumatic fashion which caused undue stress or mental suffering; therefore, he is only entitled to the normal measure of damages, being one month's salary.

Damages for Breach of Contract

4.22 A claim of damages for breach of contract in employment law will be premised on the employee's contract of employment, written or otherwise. An invitation to the court to determine whether an employee is entitled to damages for breach of contract, following his dismissal, is an invitation to the court to examine the actual contract of employment in contention. It is essentially, a call to the court to make a finding that an employee was wrongfully dismissed. Unlike unfair dismissal which is a creature of statute, wrongful dismissal focuses on the form of the dismissal and refers to dismissing an employee in breach of contractual terms, such as non-compliance with a disciplinary procedure. The essence of complying with a disciplinary procedure is to ensure the determination of disciplinary offences in a fair, transparent manner and to protect employees from unwarranted loss of employment.

4.23 The Complainant, herein, did rightly produce a contract of employment for this Court's examination, which it has done. The contract, stipulates as follows, under Clause 20:

> *"20. TERMINATION OF EMPLOYMENT*
>
> *Both parties may terminate this contract of employment as follows:*
>
> *20.1 During probation either party shall terminate the other in one days' notice*
>
> *20.2 In the case of a confirmed employee either party shall give 1 months' notice or payment, which is monthly basic pay*
>
> *20.3 Summary dismissal does not require notice or payment in lieu of notice*
>
> *20.4Termination on medical grounds with recommendation from a registered medical officer or institution according to regulations stated in Clause 13.2*
>
> *20.5 The Employer reserves the right to terminate the employment free of any obligation in granting financial compensation to the employee in any occurrence of the following circumstances:*
>
> *a. When the employee is assessed as disqualified by management during probationary period*
>
> *b. When gross negligence conducted by the employee causes the Employer substantial or expensive financial loss*
>
> *c. When the employee misconducts himself according to the EMPLOYEE DISCIPLINARY CODE OF CONDUCT FOR INTERNAL USE*
>
> *d. When the employee commits an illegal or criminal offence and is prosecuted by relevant authorities*
>
> *e. When the Employer is unable to process the NAPSA for the employee due to materials provided by the employee."*

4.24 From the facts presented before this Court, it appears that the Respondent based its termination of the Complainant's

employment on Clauses 20.3 and 20.5 c. and d. I have, further, perused the Disciplinary Code of Conduct annexed to the contract (exhibit "EL1"), listing 48 incidences that can lead to the ultimate dismissal of the employee. However, it appears the Complainant was not charged under any of them or dismissed on the premise of having committed any of the incidences.

4.25 The evidence of the Complainant was that after the Respondent accused him of attempting to steal from the warehouse, the CCTV footage revealed no evidence of the same, and that he was later taken to the Police and released because the Respondent failed to produce any evidence of its accusations against the Complainant. It was the Complainant's further testimony that when he reported for work afterwards, he was dismissed and his boss told him there was no work for him anymore. From this testimony, it appears the Respondent did not cite the termination clause of the contract of employment or, indeed, any incident from the disciplinary code. This, in my view, constitutes a clear breach of contract and warrants the finding of wrongful dismissal and an award of damages in respect of the same. This, notwithstanding, the Supreme Court guided in the

case of *Choonga v. Zesco Recreation Club, Itezhi-tezhi*[8], that damages for both wrongful and unfair dismissal should not be made separately as they ordinarily arise from the same set of facts. In the premises, the Complainant's claim for damages for breach of contract is overtaken by the damages for unfair/unlawful dismissal.

Claim for Gratuity and Leave Days

The Complainant is also seeking gratuity and leave days' pay. I will begin with the leave days. The Complainant herein has been established as a protected employee, covered by the General Order. The Order provides as follows, regarding annual leave:

> *"5. (1) An employer shall grant leave of absence on full pay to an employee at the rate of two days per month, subject to, and in accordance with, the following conditions:*
>
> *(a) except on termination of the employee's service, an employee shall be entitled to leave only on the completion of six months' continuous service with that employer;*
>
> *(b) paid public holidays and Sundays shall not be included when computing the period of leave; ..."*

4.26 The Employment Code Act, which cuts across a broader category of employees, also provides as follows, under Section 36, on annual leave:

> *"36. (1) An employee, other than a temporary or casual employee, who remains in continuous employment with the same employer for a period of twelve consecutive months shall be granted, during each subsequent period of twelve months while the employee remains in continuous employment, annual leave on full pay at a rate of at least two days per month.*
>
> *(2) The leave referred to under subsection (1) is in addition to any public holiday or weekly rest period, whether fixed by any law, agreement or custom."*

4.27 The idea behind the provisions above is that they will automatically apply to an employee, whether or not their contract of employment stipulates so. Therefore, in establishing whether an employee claiming unpaid leave days is entitled to an order that the same be paid out to him, regard first, must be had to his contract of employment. I have perused the Complainant's contract of employment and it clearly states that the Complainant is entitled to earn 2 leave days where he is in full attendance in a working month. This is in consonance with the provisions of the law reproduced above. Thus, for the claim of leave days to be sustained, as the Complainant is seeking herein, evidence should be adduced before court, demonstrating that there are leave days unpaid. Unfortunately, the Complainant herein has not tendered

any evidence to substantiate this claim for unpaid leave days; and there is no way by which this Court may reasonably arrive at the conclusion that there are leave days unpaid. Hence, this claim fails.

4.28 As regards gratuity, Clause 11 of the Contract of Employment provides as follows:

> *"11. GRATUITY*
> *Upon successful completion of the contractual period, the Employer is entitled to pay gratuity to the employee. Nevertheless, gratuity payment does not apply when any of the following occurs:*
>
> *Employee serves at the company less than 3 months*
>
> *In addition, apart from the situation mentioned above where gratuity does not apply and medical discharge occurs within the contract period, gratuity shall be calculated till date of termination pro rata."*

4.29 From the above, I deduce that a completed contractual period is a prerequisite for qualification of payment of gratuity. However, the Contract goes on to state that an employee who serves for less than three months will not be entitled to gratuity. I take that to mean that employees who serve for more than three months are entitled to payment of gratuity even if they have not completed the contractual period. I further understand the provision to mean that where an employee is discharged on medical grounds,

within the contractual period, the same shall be entitled to gratuity on a prorated basis. I would like to believe that the rationale behind the pro rating of the gratuity in the latter case is that the employment of such employee comes to an end by no will or fault of his.

4.30 In *casu*, the Complainant crossed the 3-month threshold, as he had actually worked for seven months of the contractual period, but was not released from employment on medical grounds. The crucial question to answer, therefore, is; where does the Complainant, thus, stand given that he crossed the threshold disqualifying him from being entitled to gratuity, but his contract was not terminated on medical grounds? It has been established earlier in this judgment that the Complainant's dismissal was unfair/unlawful. The Complainant's dismissal having been unjustifiable, and at the instance of the Respondent, it is only fair that the Complainant should not be punished for the actions of the Respondent. Thus, Clause 11 of the Contract of Employment, not being clear as to how the situation in *casu* would be treated, the best course to take is to apply the Clause in a similar fashion to how gratuity is paid in the event that an employee is discharged on medical grounds.

In this regard, I find that the Complainant's claim for gratuity has succeeded.

Costs and any other benefits the court may deem fit

4.31 As earlier established, the Complainant herein is captured as a protected employee under the General Order on Minimum Wages and Conditions of Employment. As a protected employee under the General Order, there are no doubt, several benefits that the Complainant is entitled to as a matter of right, such as transport allowance, housing allowance, lunch allowance, to mention, but a few; and this Court would be well within its powers to order such benefits. I have perused the Complainant's pay slip, exhibited as "EL2", which clearly indicates that the Complainant used to be paid K315.00 as housing allowance, K100.00 as bonus pay/work performance pay and K180.00, as lunch allowance. This is also stipulated in Clause 8 of the Contract of Employment, under "Remunerations". These figures, together with the Complainant's basic salary were aggregating K1,645.00, and were in consonance with the General Order. I find, therefore, that these allowances are not outstanding for the

duration of the Complainant's contract except the ones attached to the July salary, herein, adjudged payable.

4.32 The Complainant also prayed for costs to be granted in his favour. Ordinarily this Court does not award costs in favour of one party. However, Rule 44 of the Industrial Relations Court Rules gives an exception where one party has been guilty of unreasonable delay, or of taking improper, vexatious or unnecessary steps in any proceedings, or of other unreasonable conduct. I am of the view that the failure by the Respondent to file an Answer and appear before this Court falls within the ambit of unreasonable behaviour envisaged in Rule 44 of the rules of this Court. For these reasons, I am awarding costs to the Complainant.

5. ORDERS

5.1 In view of the foregoing, judgment is entered for the Complainant and it is hereby ordered that the Complainant shall be paid the sum of K1,645.00, being an aggregate of his salary for the month of July, 2021 and allowances;

5.2 It is, further, ordered that the Complainant shall be paid damages for unfair and unlawful dismissal being one month's salary and allowances amounting to K1,645.00;

5.3 The Respondent shall also pay the Complainant gratuity as per Clause 11 of the Contract of Employment on a pro rata basis for the period of 1st January, 2021 to 29th July, 2021;

5.4 The awards above shall attract interest at short term bank deposit rate from the date of the Notice of Complaint to the date of Judgment and thereafter, at current lending rate as determined by the Bank of Zambia, from the date of Judgment until full payment;

5.5 Costs are awarded to the Complainant to be agreed by the parties or taxed in default thereof.

5.6 Leave to appeal is denied.

Delivered at Lusaka this 10th day of March, 2022

Dr. W. Sithole Mwenda
JUDGE