

IN THE INDUSTRIAL RELATIONS COURT  
HOLDEN AT NDOLA

COMP/65/2015

BETWEEN:

FELIX CHIPWEPWE

AND

CHANTETE MINING SERVICES



COMPLAINANT

RESPONDENT

BEFORE: HON. JUDGE Dr. W. S. MWENDA - DEPUTY CHAIRPERSON  
HON. J.M. BWALYA - MEMBER  
HON. G.M. SAMUSUNGWA - MEMBER

For the Complainant : In Person

For the Respondent : Mr. F. Chibwe of Messrs ECB Legal  
Practitioners

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## JUDGMENT

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**Cases referred to:**

1. Chilanga Cement Plc v Kasote Singogo, SCZ Judgment No. 13 of 2001
2. Masauso Zulu v Avondale Housing Project Limited (1982) Z.R. 172  
(SC)

This is a case in which the Complainant is seeking compensation for loss of employment, re-instatement to his usual position as a truck driver, terminal benefits, one month's salary in lieu of notice, costs, interest and any other dues the Court may deem fit.

The Complainant's evidence is to the effect that his employment was wrongfully terminated on 2 February, 2015. It is his contention that he was injured whilst on duty on 12 February, 2015 and he was served with a letter of termination on 27 February, 2015 whilst he was on two weeks sick leave. It is his averment that he was not supposed to be terminated because of the injury he had whilst on duty.

In an Affidavit in Support of Answer filed into Court on 28 August, 2015, the Respondent deposed that it employed the Complainant as a truck driver pursuant to a contract which commenced on 27 May, 2013. The Respondent averred further that on 2 February, 2015 it addressed all head office employees explaining clearly that they had received notice of termination of its contract with Kansanshi Mine and the Complainant was among the employees in attendance.

The Respondent further deposed that it was explained to the Complainant that he was among those to be terminated and that the termination letter was prepared indicating that his last working day was 28 February, 2015. According to the Respondent, communication was sent to all affected employees to collect their letters from the Human Resource Office.

The Respondent deposed that the Complainant did not collect his letter, however he was aware of the termination. The Respondent averred that on 12 February, 2015 around 08.30 hours the Complainant was injured. He fractured his finger while removing old tyres from the low bed (a type of vehicle). The Respondent further averred that it has since been paying for his medicals at Care Well Hospital, including physiotherapy treatment.

The Respondent deposed that it reported the incident to the Workers Compensation Fund Control Board. The Respondent further averred that the Complainant was paid his dues.

During the trial, the Complainant whom we shall refer to as "CW" gave evidence in his own behalf. He averred that he started work on permanent basis as a Truck Driver on 27 May, 2013 and was dismissed from work without reasons on 27 February, 2015. CW narrated how he was injured and taken to hospital. His testimony was basically a repeat of what is contained in his Notice of Complaint and Affidavit in Support thereof.

CW insisted that the Respondent did not report his injury to Workers Compensation Fund Control Board until he came to Chantete Mining with an Inspector, a Mrs. Chibasa who according to CW, advised the Respondent not to terminate any person who had been injured whilst carrying out his duties.

It was CW's evidence that the Respondent was told among other things, to take him to any hospital within Zambia and to spend up to K200,000 on him. In addition, the Respondent was told to provide transport for CW from home to the hospital.

According to CW the Respondent was also told to place him back on the payroll and start paying him fifty per cent (50%) of his salary until he recovered. It was CW's evidence that this was not done, instead he was told to apply if he needed assistance from the Respondent. CW averred that he refused to write the letter because he was injured whilst at work.

In addition CW testified that shortly after terminating his employment the Respondent employed another person in his place. He averred further that he was only given one day's notice of termination instead of 30 days. He said the letter was backdated to 2 February instead of it showing 27 February, 2015.

During Cross-examination CW maintained that the Respondent did not follow procedure when terminating him.

CW was referred to clauses 18 and 23 of the Contract of Employment, which is exhibited as "HM1" in the Affidavit in Support of Answer to Complaint. The two clauses are reproduced hereunder as follows:-

"Clause 18: Termination of Services: Your services may be terminated for any reason recognized in Zambian law subject to a fair procedure being followed. Reasons for such termination include termination for misconduct, for incapacity and for operational requirements."

Clause 23: Redundancy Benefits will apply according to the requirements of the Laws of Zambia. Should the employee become redundant due to work being ended prior to the end of his/her contract period, one month's notice plus 2 months basic pay for each completed year of service will be paid to the employee.

In response CW stated that he was not part of those who were declared redundant.

CW was further referred to exhibit "HM2" in the Affidavit in Support of Answer to Complaint which is a letter to the Respondent from FQMO (Kansanshi) informing it of the termination of service contract with effect from 1 February, 2015 and the last day on site being 28 February, 2015.

CW claimed he did not know about the contract between Kansanshi and the Respondent.

Counsel for the Respondent further referred CW to exhibit "HM3" which was his letter of termination of the employment contract due to the restructuring and changes in the way Kansanshi Mining Plc would be doing business in future. The letter also indicated that the Respondent's Contract - Mining Operations had been terminated and the contractual agreement would cease to exist by 28 February, 2015.

In further cross-examination CW, admitted that there was consistency in reasons for redundancy in his letter of termination dated 2 February, 2015, exhibit "HM2" in the Affidavit in Support of Answer to Complaint dated 28 August, 2015 and the letter to the Labour Office dated 2 February, 2015, document 1 in the Notice to Produce dated 31 August, 2015. He confirmed that both letters have the subject of termination and both indicate his last working day as 28 February.

CW admitted under further cross-examination that he was declared redundant and was paid his benefits but said that he was still claiming his benefits because the Respondent did not follow the law since he was not given notice.

CW further confirmed that he was taken to Carewell Hospital but he said he wanted the Respondent to take him to another hospital. He also confirmed that he had been receiving physiotherapy.

During re-examination CW insisted that he was not given notice. He maintained that the letter was given to him on 27 February, 2015 when he was still sick. He said the Respondent refused to give him a payslip because they would have started arguing over the dues.

This marked the end of the Complainant's case.

The Respondent called three witnesses in support of its case.

The first witness (RW1), was Mr. Humphrey Mambwe, the Human Resource Manager. RW1 repeated the evidence contained in the Affidavit in Support of Answer to the Complaint of which he was the deponent.

RW1 explained what led to the Complainant's termination of employment, which testimony was similar to that given by CW.

It was RW1's further testimony that after they received information about Kansanshi's intention to terminate its contract with the Respondent, all employees including the Complainant, were informed by the Managing Director, Mr. Alex Best that a good number of them would be declared redundant.

In the same meeting Mr. Best mentioned that employees in various departments would meet with their heads of department who would

inform them which employees would be declared redundant and which ones would not.

It was RW1's testimony that the Complainant was present in the Boardroom when the employees were being informed about the redundancies as it was a working day and the meeting was convened just after the employees had reported for work at 08.00 hours.

RW1 explained to the Court that the meeting in the Boardroom was a short one as Mr. Best had to go to Solwezi to inform other workers about the end of contract with Kansanshi and the resultant redundancies.

Commenting on the claim by the Complainant that the Respondent employed someone to replace him after the former's employment was terminated, RW1 said they only had two low bed drivers, that is, the Complainant and a Mr. Japhet Njobvu. RW1 averred that Mr. Njobvu was a long service low bed driver and the only one who was driving a dolly (a truck with three parts). According to him, the Complainant did not have the licence or experience to drive the low bed which was driven by Mr. Njobvu. RW1 testified that these were the factors that were considered when declaring the Complainant redundant and retaining Mr. Njobvu. In addition, RW1 averred that Mr. Njobvu was in the company before CW and could operate the two machines.

It was RW1's testimony that todate the Respondent has not employed a low bed driver and that they still have Mr. Njobvu.

RW1 was referred to exhibits "HM2" and "HM3" and it was his evidence that the letter cancelling the contract was received on 29 January, 2015 and that the Respondent had an obligation to inform the Labour Office. RW1 gave a breakdown of employees to be declared redundant as follows:

Solwezi Kansanshi	-	133 employees
Kitwe office	-	17 employees
Expatriate and Senior Management	-	10 employees

RW1 testified that the Branch Manager for Workers Compensation Fund Control Board informed the Complainant that his claim for compensation was being worked on since the Respondent had reported the accident to the Board. He also confirmed the Complainant's testimony regarding physiotherapy treatment given to the Complainant and provision of transport from house to the hospital.

RW1 testified that the Complainant was not paid in lieu of notice because he was given notice of termination in the letter of 2 February, 2015. He referred the Court to exhibit "HM4" which was the Complainant's last pay slip which showed that he was paid for the whole month of February, 2015 when he did not work.

RW1 reiterated that no one had been employed to replace the Complainant and that only one store man was brought back and Mr. Lazarus Ng'ambi a light truck driver.

RW testified that the letters of termination given to the employees including the Complainant were done on the same day, 2 February, 2015

and that the responsibility to collect the letters lay on the employees after they were informed about them by their heads of departments.

Under cross-examination, RW1 told the Court that the Complainant had been told by his head of department to go to Human Resource Department to collect the letter from his office and that it was his decision to collect it on 27 February, 2015. He further testified that the hard copy of the letter of termination followed the verbal notification.

RW1 told the Court that when the Complainant was injured he was serving notice and the Respondent had no jobs and even had to move their office.

In re-examination, RW1 reiterated what he had said during examination in chief that since he was signing so many letters all employees were told directly by their heads of department to collect their letters from Human Resource Department. He said it was up to the employees to come and collect the letters from him.

RW1 confirmed that the Complainant has continued to receive transport money from the Respondent and receiving physiotherapy from Konkola or Nchanga Mine hospitals.

The second witness for the Respondent (RW2) was Lazarus Ng'ambi. RW2 gave testimony regarding the meeting that was held in the Respondent's boardroom where the workers were informed about the redundancies.

RW2 averred that his contract of employment was also terminated. It was his testimony that on the material day in January, 2015 they were called in

the morning to go to the board room. He said he met with the Complainant when they were called. After the meeting in the boardroom they were informed that Mr. Inus, their boss would give them further information.

It was RW2's testimony that the following day Mr. Inus, the Logistics boss called Dickson, then himself and the Complainant to his office. He testified that Mr. Inus told them that there was nothing he could do about what had happened. He told them among other things, that it was not their fault but Kansanshi's and that he would call them back when things improve.

According to RW2 when they left their boss's office the Complainant wondered how they could terminate him when he had a class C.E. licence and leave Mathews who had a class C licence. RW2 averred that the Complainant asked for his car keys. He gave him the keys and he drove out.

RW2 said he was sent to Solwezi and a few days after he came back he was informed that the Complainant had been injured.

RW2 testified that after the Complainant was discharged from hospital he told him that he was not feeling well and that the hospital had told him to perform light duties. The Complainant said that he did not want to work because of the way he was feeling and wanted to go home and he went home.

It was RW2's testimony that the Complainant came to the farewell party on 27 February, and their boss Mr. Inus reminded the Complainant that he

had asked him to do light duties and enquired why he had gone and only to come on the day of the party. RW2 said that they were together with the Respondent at the farewell party and even had drinks together

RW2 testified that he collected his termination letter on 27 February, 2015 from the Human Resource Office but that it was available from 2 February, 2015. He also testified that he was paid his terminal benefits. He said he did not collect his letter of termination early because he already knew that he had been terminated. In addition, he said that he did not bother to collect his letter because he thought Kansanshi might reverse its decision.

Regarding the meeting in the boardroom and the meeting with the head of department the following day, RW2 said that the Complainant was in the boardroom on the material day and that he (the Complainant) was standing next to him. The Complainant did not challenge this evidence.

On the meeting with the head of department, RW2 said upon coming from the said meeting he found Lazarus and the Complainant and informed them that the head of department wanted to talk to them. He said he saw the Complainant and Lazarus enter the office of the head of department.

During cross-examination RW2 maintained that the Complainant was in the boardroom during the meeting.

In re-examination RW2 reiterated his evidence that the Complainant was in the boardroom and that all the workers were aware of the termination. RW2 further maintained that the Complainant was told about the

termination by Mr. Inus in his presence. Further, he testified that he and the Complainant were told to go and collect their letters any time and that he decided on his own to get the letter on 27 February, 2015.

The third Witness for the Respondent (RW3) was Dickson Chisanga. He basically repeated the evidence given by RW2 and others regarding the meeting in the Respondent's boardroom and that the said meeting was mandatory for all employees.

RW3 testified that it was communicated to all employees that the contract with Kansanshi Mine had been terminated. He said that he was the first to be called by Mr. Inus, the head of department and was informed that he was amongst those to be terminated. Mr. Inus also instructed him to call Lazarus and the Complainant. He did accordingly and saw the two enter Mr. Inus' office.

RW3 said that they were told that some of the employees would be terminated as of 28 February, 2015 and others would remain. Those to be terminated would get notifications through their heads of department.

In cross-examination, RW3 stood his ground on his assertion that the Complainant was in the boardroom meeting and that in fact he stood next to him.

This marked the close of the Respondent's case.

At the close of the cases for both parties they expressed their desire to file written submissions. We have received submissions from both parties and are grateful for the same.

We have carefully considered all the evidence before us and in our view, the following are the undisputed facts:

1. The Complainant was employed as a Truck Driver by the Respondent on 27 May, 2013 and worked as such up to 28 February, 2015.
2. On 29 January, 2015 the Respondent received communication from Kansanshi to the effect that the service contract between the two parties would be terminated on 28 February, 2015. The Respondent was given 1 February, 2015 as notification day and 28 February, 2015 as the last day on site.
3. Arising from the notification of termination of contract, the Respondent asked all heads of department to choose employees to be declared redundant.
4. On 2 February, 2015 the Respondent wrote to the Department of Labour informing them about the redundancies and on the same day noticed the affected employees about the termination of their contracts of employment through a standard letter.
5. After being notified about the termination of his contract of employment on 2 February, 2015, the Complainant suffered an injury on 12 February, 2015 while on duty.
6. The injury was reported to Workers Compensation Fund Control Board who at the time of hearing this matter were processing the Complainant's claim.

7. The Complainant has been and is still receiving physiotherapy from a mine hospital and is also receiving transport money from the Respondent to attend the physiotherapy sessions.
8. The Complainant has received the benefits due to him.

Having considered the evidence on record we find that there are only two issues to be determined by this Court, namely:

- (i) whether or not the Complainant was wrongfully terminated; and
- (ii) whether or not he is entitled to the relief sought.

We have carefully followed the arguments from both parties and it is our finding that the Respondent followed the provisions of the contract, namely clause 23, on redundancy.

We do not agree with the Complainant that he was given one day's notice. On the contrary, he was given the requisite one month's notice as per the provisions of clause 23 of the Contract of Employment which provided as follows:

*Redundancy Benefits will apply according to the requirements of the Laws of Zambia. Should the employee become redundant due to work being ended prior to the end of his/her contract period, one month's notice plus 2 months basic pay for each completed year of service will be paid to the employee.*

It is not in dispute that the Complainant's employment contract was terminated due to the termination of the Contract on Mining Operations with Kansanshi Mining Plc following its restructuring and changes in the way it was to do business in future. The termination of the contract with

Kansanshi Mining Mining Plc. rendered the Complainant redundant as there was no work for him. The Complainant was not the only employee declared redundant by the Respondent, but one of many.

The case of **Chilanga Cement Plc v Kasote Singogo** (1) re-affirms the position that section 26B of the Employment Act does not apply to employees serving under written contracts of employment. We concur with the submission by learned Counsel for the Respondent that section 26B of the Employment Act did not apply to the Complainant in this case because he served under a written contract of employment and therefore what applied to him was clause 23 of his contract of employment.

We have established that there is overwhelming evidence that the Complainant was aware or ought to have been aware of the terminations and what precipitated them. There is evidence on record from RW2 and RW3 that the Complainant was in attendance at the boardroom meeting held on 2 February, 2015, which was a compulsory meeting for all employees at head office where they were informed about the termination of the contract with Kansanshi Mine with effect from 28 February, 2015. There is also compelling evidence on record that the Complainant was informed by his head of department, Mr. Inus that he was among those to be terminated.

Therefore, from the evidence before us we have no doubt that the Complainant was aware that his contract would be terminated and the reasons for the termination.

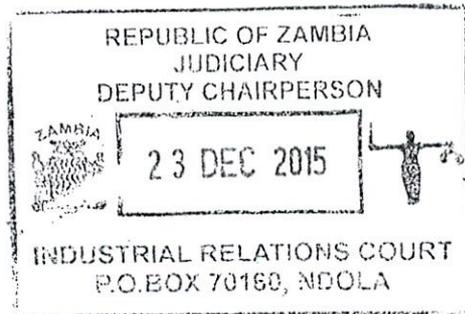
In view of the foregoing, we find and hold that the Respondent acted within the law and that it paid the Complainant his terminal benefits according to his contract of employment. The Complainant has failed to prove that he was wrongfully terminated as per the requirement in of **Masauso Zulu v Avondale Housing Project Limited (2)**. We thus find the complaint to be without merit and we dismiss the same. Consequently, the relief sought fails and is also dismissed. We make no order for costs.

Informed of Right of Appeal to the Supreme Court within thirty (30) days of the date hereof.

Delivered at Ndola the **23<sup>rd</sup>** day of **December, 2015**.

  
Judge W.S. Mwenda (Dr)  
**DEPUTY CHAIRPERSON**

  
J.M. Bwalya  
MEMBER



  
G.M. Samusungwa  
MEMBER