REPORTABLE (34)

UNIVERSITY OF ZIMBABWE
v
(1) JEALOUS ZHAKATA N.O (2) VENGAI MUGABE

SUPREME COURT OF ZIMBABWE
GUVAVA JA, UCHENA JA & MWAYERA JA
HARARE: 17 JANUARY 2025

T. Zhuwarara, for the appellant
F. Mahere, for the second respondent
No appearance for the first respondent

GUVAVA JA:

[1] This is an appeal against the whole judgment of the Labour Court ("the court *a quo*"') which was handed down on 21 October 2022 in which it confirmed a draft ruling made by the first respondent in favour of the second respondent.

[2] After hearing submissions from counsel, the following order was issued by this Court:

"The appeal be and is hereby dismissed with costs."

It was indicated that reasons for the judgment would follow in due course. These are now proffered hereunder.

THE PARTIES

[3] The appellant is a statutory institution of higher learning constituted in terms of the University of Zimbabwe Act [*Chapter 25:16*]. The first respondent is a Labour Officer working under the Ministry of Public Service, Labour and Social Welfare ("the Ministry")

who was seized with the dispute between the appellant and second respondent in terms of s 93 of the Labour Act [*Chapter 28:01*] ("the Labour Act"). The second respondent is a male adult formerly employed by the appellant as the University Bursar.

BACKGROUND FACTS

[4] At the outset it is important to set out the full facts of this matter in order to get a clear understanding of how the events unfolded. The second respondent was employed by the appellant as a Bursar on a fixed term contract on 1 July 2017, which contract was due to expire on 30 June 2021. On 5 June 2018 the second respondent wrote a memorandum to the Vice Chancellor ("the VC") of the appellant, raising concerns about some procurement transactions which the VC had instructed him to authorise for payment in his capacity as the University Bursar. The second respondent informed the VC that the transactions were against the provisions of the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*] ("the Public Procurement and Disposal of Public Assets Act") and the regulations made thereunder. In the memorandum, the second respondent directed the VC's attention to the fact that all procurements whose value is in excess of US$20 000 must be subject to a bid. The VC did not respond to the memorandum.

[5] On 14 June 2018, following pressure to authorise the payments, the second respondent again wrote to the VC and insisted on his earlier position that he could not authorize transactions which did not meet the set requirements of public procurement law and regulations. He also informed the VC that if his continued refusal to approve the transactions was going to be a stumbling block to the progress of the University, he was prepared to resign and was requesting a round table conference to discuss his immediate exit from the University. He also stated that in the event that the parties agreed to his exit, they could determine a mutually agreeable package.

[6] On 19 June 2018, the VC of the University, wrote to the second respondent informing him that he was accepting his immediate resignation as a Bursar. The communication referred to clause 15.2 of the second respondent's employment contract which stated that either party could terminate the contract upon giving three months' notice in writing. Based on this clause the second respondent was informed that as he had resigned with immediate effect, he had breached the contract by not giving the mandatory three months' notice and was therefore required to pay the appellant an equivalent of three months' salary. The VC also informed the second respondent that his last day of employment was 20 June 2018.

[7] On 20 June 2018, the second respondent responded to the VC's letter of 19 June 2018 and stated that his memorandum of 14 June 2018 was not a resignation letter. He explained that it was an invitation to hold a discussion with the sole purpose of suggesting that his contract of employment may be terminated on amicable and mutual terms should the parties so wish. The second respondent also denied owing the appellant three months' salary *in lieu* of notice. However, the VC insisted that the second respondent had resigned. The appellant thereafter paid the second respondent terminal benefits in the sum of $4 089.04 on 24 September 2018.

[8] On 16 July 2018, the second respondent wrote a letter to the Ministry alleging that he had been unfairly dismissed and seeking conciliation of the matter. The first respondent invited the parties for conciliation proceedings. The parties failed to reach settlement, and the first respondent then terminated the conciliation proceedings by consent of the parties and proceeded to decide the matter in terms of s 93(5)(c) of the Labour Act.

[9] On 25 June 2019, the first respondent made a ruling stating that he had no jurisdiction to determine the matter. He declined jurisdiction on the basis that in terms of the contract of

employment the parties had agreed that in the event of a dispute arising their preferred dispute resolution method would be arbitration. Aggrieved by this decision, the second respondent approached the Labour Court with an application for review of the decision of the first respondent under case number LC/H/REV/21/19. The Labour Court per KACHAMBWA and MURASI JJ set aside the determination and remitted the matter to the first respondent for a determination of the matter on the merits.

[10] In determining the resumed hearing, the first respondent found that the second respondent's letter could not be construed as a letter of resignation and concluded that he had not resigned. He found that the second respondent had been unfairly dismissed by the appellant. The appellant was ordered to pay to the second respondent the sum of USD323 036.69 or equivalent RTGS at the prevailing RBZ Auction system rate as damages in lieu of reinstatement. The appellant was also ordered to deliver a Toyota Land Cruiser which the second respondent was using or ought to have been using, two laptops, a desktop and 11 520 litres of fuel. The fuel was to be paid for in local currency at the prevailing RBZ Auction System rate.

[11] The first respondent sought to make an application confirming the draft ruling before the court *a quo* but was out of time. On 30 March 2022, condonation for the late filing of the application for confirmation was granted per KUDYA J under case number LC/H/419/21. Following this order, the first respondent made an application for confirmation of the draft ruling in terms of s 93(5)(3) of the Labour Act, to the court *a quo* on 19 May 2022.

[12] At the confirmation proceedings the court *a quo*, taking into account a concession by the appellant during the proceedings that the employment contract had been unlawfully terminated, concluded that the sole issue for consideration was the first respondent's

determination on the quantification of damages. The court held that for fixed term contracts, one arrives at the value of the wages or salary benefits the employee would have earned save for the premature termination of the contract, by calculating the salary due to the employee for the unexpired period of employment.

[13] In addition, the court noted that there was need to consider the reasonable period it would take a person in the position of the second respondent to obtain similar employment. Further, that the rates used for wages, salaries or benefits to be applied were those applicable at the time of dismissal and not at the time of assessment by the court. The court further noted that if the rates applicable at the time were in a currency no longer in use, then the damages would be assessed in the currency in use at the time of the assessment. The court held that the order by the first respondent showed that the damages were to be paid in United States Dollars or the equivalent RTGS at the prevailing rate. The court *a quo* found that the first respondent had correctly applied the principles relating to quantification of fixed term contracts and confirmed the draft ruling.

[14] Aggrieved by the decision of the court *a quo*, the appellant appealed to this Court on the following grounds:

> "1. The court *a quo* erred on a point of law by making a finding that the appellant unlawfully terminated the 2nd respondent in circumstances where the 2nd respondent had in fact terminated the fixed term contract between the parties.
>
> 2. A *fortiori*, the court *a quo* erred in failing to find that the *ex turpi causa* principle applied to the 2nd respondent thus he was bound by his decision to end the employment relationship between the parties and could not be granted damages for unlawful termination of employment.

3. The court *a quo* erred at law in failing to hold that by operation of law, as from the effective date, that is 22 February 2019, the USD values expressed in the employment contract between the parties became values expressed in RTGS at a rate of one is to one. Accordingly, the 2nd respondent could not be awarded damages expressed in foreign currency.
4. The court *a quo* erred at law in ignoring the proper principles applicable to quantification of damages; and in particular erred at law in awarding damages without hearing evidence such that the decision arrived at was grossly irrational such that no sensible judicial officer properly exercising his mind would have arrived at such a decision."

[15] The grounds of appeal raise three issues for determination which are:

1. Whether or not the court *a quo* erred in finding that the appellant unlawfully terminated the second respondent's employment contract.
2. Whether or not the court *a quo* erred in confirming the first respondent's award of damages to the second respondent.
3. Whether or not the court *a quo* erred in failing to find that the United States Dollar values expressed in the employment contract between the parties became values expressed in RTGS at a rate of one is to one.

SUBMISSIONS BEFORE THE COURT

[16] At the commencement of the hearing, the Court inquired from counsel for the appellant, Mr *Zhuwarara*, whether it was proper to appeal against the issue of unfair dismissal in light of the concession made by the appellant before the court *a quo* that the second respondent's contract of employment was unlawfully terminated. In response counsel argued that the concession by the appellant that the second respondent's contract had

been unlawfully terminated had to be construed in accordance with the facts of the matter. He argued that the facts clearly showed that the respondent had opted to terminate his contract of employment. In this regard, counsel submitted that the concession by the appellant was not properly made as it was wrong at law and the court *a quo* erred by accepting the concession.

[17] Counsel further argued that the second respondent had made it clear that he did not want to continue with the employment relationship as the relationship between him and the appellant could not be reconciled. He requested for his "immediate exit" from employment on this basis. Counsel maintained that this was a resignation, and that the resignation took immediate effect and as such the actions of the Vice Chancellor, of locking the second respondent out of his office, was a recognition by the appellant that the employment contract had terminated. Relying on the case of *Madondo* v *Conquip Zimbabwe (Private) Limited* 2016 (1) ZLR 99 (S) counsel emphasized the point that resignation can be with immediate effect and that the facts relating to such a conclusion must be viewed objectively.

[18] With regard to the issue of damages, counsel argued that the respondent's damages could not be quantified in United States Dollars as his contract of employment was not denominated in such a currency.

[19] On the contrary, counsel for the second respondent, Ms *Mahere,* submitted that there was an unequivocal concession by the appellant that the labour officer was correct in finding that the second respondent had been unfairly dismissed. Counsel submitted that it was not proper for the appellant to attack a concession it had made before the court *a quo.* Counsel further submitted that second respondent never resigned, but he requested for a discussion to agree on a mutual termination of the employment.

[20] In relation to the award of damages, counsel submitted that it was apparent from the appellant's grounds of appeal that there was an acceptance that the second respondent's contract was expressed in United States Dollars. Further, the appellant never challenged that second respondents contract was in United States Dollars at the hearing before the labour officer. Counsel submitted that there was evidence before the first respondent that the second respondent's salary was denominated in United States Dollars and this evidence was never challenged during all the hearings.

ANALYSIS

Whether or not the court *a quo* erred in finding that the appellant unlawfully terminated the second respondent's employment contract.

[21] This issue arises from the appellant's first and second grounds of appeal and calls upon the Court to determine whether the second respondent's contract of employment was unlawfully terminated. Counsel for the appellant made a valiant effort to persuade the Court that the memorandum by the second respondent was a letter of resignation. He argued that the second respondent was bound by his decision to resign from employment and as such the *ex turpi causa* principle applied to him. Based on these arguments he submitted that the concession which had been made before the court *a quo* by the appellant that the contract of employment was unfairly terminated was wrong at law and it ought to be disregarded.

[22] These arguments bring forth two issues for determination. The first, is whether the memorandum dated 14 June 2018 written by the second respondent to the VC constituted a letter of resignation. Arising from this answer is the second issue of whether or not the concession made by the appellant before the court *a quo* was wrong at law.

[23] It is common cause that that the memorandum written by the second respondent on 14 June 2018, was not written in a vacuum. It arose and was flowing from the memorandum he had written on 5 June 2018. The memorandum of 14 June 2018 must therefore be read in the context of that discussion. It is also clear from the record that the second respondent wrote the two memorandums to the VC challenging the way procurement transactions for the University were being handled. They were not following the requirements of the Public Procurement and Disposal of Public Assets Act and the regulations thereof. Upon making his initial suggestion to the VC on 5 June 2018 that procurement transactions follow the bid system, which request was not responded to, the second respondent penned a second memorandum in which he again reiterated the need for procurement transactions to follow procurement laws and regulations. It is in this memorandum that the second respondent informed the VC that as a subordinate he wished to support the vision of the VC but in so doing he could not violate the law. As a result, he suggested a way forward to resolve the impasse. For a full understanding it is prudent that I quote the relevant portion of the memorandum:

> "It is apparent that our positions will not be reconciled and as such in order for me not be a stumbling block to the progress of the University, I am requesting that we come to the table to discuss my immediate exit from this esteemed organization and to agree a mutually determined termination of my contract."

[24] The VC immediately clutched onto the words "my immediate exit" and on 19 June 2018 wrote to the second respondent informing him that his resignation from the post of Bursar had been accepted. The VC further informed the second respondent that his contract of employment had no provision for a round table discussion for resignation and mutual termination of his contract of employment and therefore he had resigned. The VC also informed the second respondent that his resignation with immediate termination was a

repudiation and breach of the contract requiring that he pay to the appellant an equivalent of three months' salary in lieu of notice.

[25] The question which begs an answer is whether the second respondent, by his letter dated 14 June 2018, resigned from the post of Bursar. Resignation refers to a legal act where an employee voluntarily and unilaterally terminates their employment contract by informing their employer of their intention to leave essentially ending the employment contract without the employer's consent. Even if notice is not given, such act of resignation is held to be valid as it is a unilateral act. See *Jakazi & Anor* v *The Anglican Church of the Province of Central Africa* SC 10/13 and *Riva* v *NSSA* 2002 (1) ZLR 412 (H) at p 414A-B.

[26] In *Madondo* v *Conquip Zimbabwe (Pvt) Ltd* (*supra*) GWAUNZA JA (as she then was) defined resignation as follows at p 101 C-D:

> "It is in this respect pertinent to first define what a resignation is and then, what form it should take. The Oxford Advanced Learner's Dictionary defines resignation as:
>
> 'an act of giving up one's job or position.'
>
> The form a notice of resignation should take is not 'cast in stone' as it were. One can resign verbally, by a letter or through whatever way may be preferred as long as the communication is transmitted to the correct recipient. *In casu* the Pension Withdrawal form which was filled by the appellant contained a section which required one to state the reason why he or she wished to withdraw the pension contributions or why they no longer wanted to be part of the pension scheme. This is where the appellant stated her reason as "leaving Conquip." Taking the Oxford Dictionary definition of a resignation I am satisfied that this reason denoted an 'act' by the appellant, of giving up her job.'"

[27] In *Rustenburg Town Council* v *Minister of Labour & Ors* 1942 TPD 220, MURRAY J dealt with the effect of a notice of termination of a contract of employment. At p 224, the learned judge said:

> "The giving of notice is a unilateral act: it requires no acceptance thereof or concurrence therein by the party receiving notice, nor is such party entitled to

> refuse to accept such notice and to decline to act upon it. If so, it seems to me to follow that notice once given is final, and cannot be withdrawn – except obviously by consent…"

Finally, in *A.C Controls (Private) Limited* v *Midzi & Anor* HH 75-10 UCHENA J (as he then was) at p 4-5 held that:

> "This means once the employee tenders a letter of resignation to his employer, the contract of employment is terminated as the employer cannot refuse to accept his resignation, but can only agree to the employee's withdrawal of his resignation if he is inclined to doing so. The employer can however institute a claim for the damages he may suffer as a result of the employee's resignation without giving him adequate notice."

[28] The key takeaway from the above authorities is that for resignation to be valid at law it must be communicated (in whatever way) and must be received by the correct recipient. It does not require acceptance as it is unilateral, and finally must be an act of giving up one's job or position. *In casu*, the memorandum dated 14 June 2018 cannot be construed as a resignation letter. The memorandum was clear and unambiguous. It was a request by the second respondent that if the VC was of the view that he was failing in his duties by refusing to endorse the procurement transaction, then he was willing to discuss his termination of employment on a mutual basis. It was, for all intent and purpose, a request which had to be understood in the context of the unworkable relationship which was developing between the second respondent and the VC. It could not be interpreted as a notice of resignation as evidenced by the qualifying factor of an envisaged discussion of the termination.

[29] It was counsel for the appellant's argument that the present case falls within the four corners of the *Madondo* case (*supra*) in that the second respondent communicated that he wanted to leave immediately and that the appellant had no obligation to consider his request for a mutual termination. However, in my view the present case is clearly

distinguishable from the *Madondo* case. In *Madondo* v *Conquip Zimbabwe (Pvt) Ltd* (*supra*) the appellant therein was found to have resigned due to the fact that she had filled in a Pension Withdrawal form which contained a section which required the reason why she was withdrawing the pension contributions and which required her to state if she wished to be no longer part of the pension scheme. In filling in the form, the appellant gave her reason as "leaving Conquip". The Court interpreted this reason as an act by the appellant of giving up her employment as clearly one cannot withdraw her pension and at the same time continue in employment.

[30] In the present case, the second respondent informed the VC in clear terms that he was requesting a roundtable discussion to discuss his immediate termination on mutual terms if the VC considered him a stumbling block. The operative word in his communication to the VC being the word "request". It is apparent that the second respondent envisaged a discussion where the parties would consider mutual termination if that was the only way to resolve the problem. It was also apparent from the letter that pending any such termination he would continue with his duties as evidenced by him attending meetings and coming to work daily until the time when he was locked out of his office. These facts cannot in any way be construed as being indicative of an act of resigning. In this regard, I take the firm view that the second respondent's memorandum dated 14 June 2018, cannot be construed as a resignation notice. The appellant was wrong to interpret it in that manner and to thereafter lock him out of his office thus unlawfully terminating the contract of employment.

[31] Having come to the above finding, it follows that the concession made by the appellant before the court *a quo* was properly made and accepted by the court *a quo.* The law has

been settled in the case of *Kufa & Anor* v *The President of the Republic of Zimbabwe & Ors* CCZ 22/17 at para 19 where GARWE JA (as he then was) reaffirmed the position that:

> "The law is clear that once a fact is conceded, no evidence needs to be called to prove such fact. The law is also settled that once a concession on an issue of fact is made, such concession cannot be withdrawn, except on application and good cause shown."

[32] The fact that the second respondent was unfairly terminated was conceded by the appellant before the court *a quo* and we find that the concession was well made. In any event no effort was made at any stage to withdraw the concession by the appellant. As stated above, a concession once made, may only be withdrawn upon application and will only be granted on good cause. The appellants first and second grounds of appeal are therefore devoid of merit.

Whether or not the court *a quo* erred in failing to find that the United States Dollar values expressed in the employment contract between the parties became values expressed in RTGS at a rate of one is to one.

[33] The appellant contended that the court *a quo* erred at law in failing to hold that by operation of law, as from the effective date, that is 22 February 2019 when the Presidential Powers (Temporary Measures) (Amendment of Reserve Bank of Zimbabwe Act & Issue of Real Time Gross Settlement Electronic Dollars (RTGS Dollars)) ("S.I. 33/19") was promulgated, the United States Dollars (USD) values expressed in the employment contract between the parties became values expressed in RTGS at a rate of one is to one. Accordingly, the second respondent could not have been awarded damages expressed in foreign currency.

[34] In its heads of argument, the appellant submitted that the date of wrongful dismissal was 19 June 2018, and the claim was based on a contract made in 2017. It further submitted that the first respondent heard the dispute on 28 August 2018 and rendered his ruling on

29 December 2020. Further, that since the judgment was rendered after S.I. 33 of 2019 had been promulgated the first respondent could not ignore the dictates of law that all liabilities prior to 22 February 2019 became values expressed in RTGS at parity of one to one. The appellant therefore argued that the amount due to the second respondent ought to have been in RTGS and not USD.

[35] The record shows that the second respondent in his claim for damages before the first respondent, produced evidence of his salaries and benefits through pay slips. It was common cause that the contract of employment between the appellant and the second respondent was valued in USD and when the proceedings before the first respondent were heard the damages were valued in USD. The appellant's ground of attack is centred on the fact that as at 29 December 2020, when the ruling was made, the values due to the second respondent had become values in RTGS as per the provisions of S.I. 33 of 2019.

[36] The court *a quo* found that the calculations of the first respondent were proper and went on to uphold the value of the damages as being payable in USD or at the prevailing interbank rate as at the date of payment. In coming to this conclusion, the court *a quo* noted, quite aptly in my view, as follows:

> "The rates used for wages, salary or benefits are those that were applicable at the time of dismissal and not those at the time of assessment by the court. However, if the rates applicable at the time were in a currency no longer in use, damages will be assessed in the currency in use at the time of the assessment."

[37] Damages arising from breach of fixed term contracts are a compensatory remedy for an employee who would have been unfairly dismissed. Such damages must place the employee in an economically viable position which he or she would have enjoyed had the contract subsisted. The preservation of this economic value can only be achieved through an order of damages which has value. An assessment of such damages in value

at the present date or future date may thus lead to an unfair assessment. This position was reiterated in the case of *Olivine Industries (Pvt) Ltd* v *Nharara* 2006 (1) ZLR 203 (S) at 206G where it was held as follows:

> "The respondent can only be compensated by an amount that should be calculated at the rates applicable at the time and not at today's rates or some future unknown rates. An order for payment "at today's rates" is vague and inappropriate in the circumstances. Today's rates will obviously be very different from the rates that prevailed at the time."

[38] A calculation of the second respondent's wages, salaries and benefits in USD was thus justified as his contract of employment was valued in USD. The application and operation of S.I. 33 was aptly discussed in *Zambezi Gas Zimbabwe (Pvt) Ltd* v *N.R. Barber (Pvt) Ltd & Anor* 2020 (1) ZLR 138 (S) at 145 F- G wherein MALABA CJ held that:

> "The phrase "immediately before" means that the liability should have existed at a date before the effective date and that such liability should have been valued and expressed in United States dollars. The issue of the time-frame within which the liability arose in relation to the effective date of 22 February 2019 does not matter. **What is of importance is the fact that the liability should have been valued before the effective date in United States dollars and was still so valued and expressed…**
>
> Section 4(1)(d) of S.I. 33/19 provides that all assets and liabilities that were valued and expressed in United States dollars immediately before the effective date shall "on and after" the effective date be deemed to be values in RTGS dollars at a rate of one-to-one to the United States dollar…
>
> The values referred to in s 4(1)(d) of S.I. 33/19 show that after a one-to-one conversion the RTGS dollar takes the value and character of the United States dollar.
>
> **The effect of the phrase "on and after" is that the conversion of the values of "all assets and liabilities" which were valued and expressed in United States dollars immediately before the effective date to values in RTGS dollars at a rate of one United States dollar to one RTGS dollar would apply at the time the value of the asset or liability is liquidated or discharged.**"(Emphasis added)

[39] The above authority is instructive in that the deeming of values expressed in USD to RTGS values becomes effective and operational on or before 22 February 2019 and that

for the conversion to apply there must have been an ascertainable value to the liability or asset. In other words, this means that the liability or asset sought to be converted on a one-to-one basis, ought to have been valued in an ascertainable USD value before the effective date. *In casu*, the value of the damages only became ascertainable when the court *a quo* confirmed the draft ruling of the first respondent. This is because as per the *dictum* in *Isoquant Investments (Pvt) Ltd t/a Zimoco v Darikwa* 2020 (1) ZLR 1268 (CC) a draft ruling is of no legal force at the stage when it is made by a labour officer. An employee cannot enforce a "draft ruling". It is a ruling that is made pending the decision of a court, which may or may not subsequently give final legal effect to the "draft ruling".

[40] The value of the damages was established through the quantification process done by the first respondent. In *Main Protective Clothes (Pvt) Ltd* v *Ncube* HB 192/22 the court held as follows at p 4 the court noted that:

> "*In casu* the damages had not been quantified, stated or expressed in United States Dollars as at 22nd February 2019. Therefore, there was no debt immediately before the first effective date, valued and expressed in United States Dollars. Had that been the case, then quantified damages would have been payable in the local currency, falling squarely within the provisions of sections 44 C of the RBZ Act and 22 of the Finance (No. 2) Act of 2019. I find therefore that section 22 of the Finance (No. 2) Act is of no application to the present matter."

[41] The debt had not become due at the date of promulgation of S.I. 33 of 2019 as the damages had not been quantified. The true value of the quantified damages payable and due to the second respondent became ascertainable upon confirmation of the draft ruling by the court *a quo* and as such did not fall within the provisions of S.I. 33 of 2019. The court *a quo* cannot therefore be faulted for upholding the first respondent's valuation of the damages in United States Dollars to be paid at the prevailing market rate. (See *Unifreight Africa Limited (Formerly Pioneer Corporation Africa Limited)* v *Emily*

Mashinya CCZ 13/24). The third ground of appeal therefore lacks merit and ought to be dismissed.

Whether or not the court *a quo* erred in confirming the first respondent's award of damages to the second respondent.

[42] The first respondent, upon being satisfied that the appellant was liable to pay the second respondent damages, granted the second respondent payment of damages in the sum of US$323 036.69 plus other benefits. The court *a quo* confirmed the award of damages as it was of the view that the rates used for wages, salaries or benefits to be applied are those applicable at the time of dismissal and not at the time of assessment by the court.

[43] Damages in respect of unfair termination of fixed term contracts are generally calculated regard being had to the total amount the employee would have earned under the contract had the employment relationship continued. Essentially such damages aim to place the employee in the position he or she would have been in had the contract run its full course, unless the contract of employment specifies otherwise with a specific termination clause. In *Zimbabwe Revenue Authority* v *Mudzimuwaona* 2018 (1) ZLR 159 (S) at 162 D-E GOWORA JA (as she then was) discussed the assessment of such damages as follows:

> "One of the first categoric statements on the assessment of damages for unlawful dismissal was enunciated by GUBBAY CJ in *Gauntlet Security Services* v *Leonard* 1997 (1) ZLR 583 (S) in which he said:
>
> > 'The employee is entitled to be awarded the amount of wages or salary he would have earned save for the premature termination of his Contract by the employer. He may also be compensated for the loss of any benefit to which he was contractually entitled and of which he was deprived in consequence of the breach.'"

The remarks by the learned judge show that in assessing damages for unlawful termination of an employment contract, the court has to place the employee in the position he would have been save for the premature termination of the contract. This is in line with the object

of damages which is to place a party in the position he or she would have been in, save for the premature termination of the contract.

[44] The ruling by the first respondent clearly sets out the manner in which the damages were assessed. The first respondent took into consideration the fact that the unlawful termination of the second respondent had taken effect from July 2018 and the assessment of the damages was calculated for the period from July 2018 to June 2021 when the contract's life would have come to an end. The assessment thus took into account the wages, salaries and benefits the second respondent would have earned save for the premature termination of the contract of employment and it placed him in the position he would have been. This calculation is clearly in accordance with the authorities set out above.

[45] The court *a quo's* confirmation of the award in favour of the second respondent is unassailable in this regard and cannot be faulted. The fourth ground of appeal is without merit.

[46] On costs the second respondent has successfully resisted the appeal. No reasons were advanced for this Court not to follow the norm. Costs must follow the cause.

DISPOSITION

[47] The court *a quo's* confirmation of the draft ruling was in accordance with the law. For the reasons set out above, the appellant's grounds of appeal lack merit. It is for the foregoing reasons that at the close of argument an order was issued as set out in para 1 of this judgment.

UCHENA JA : I agree

MWAYERA JA : I agree

Atherstone & Cook, appellant's legal practitioners

Chinawa Law Chambers, 2nd respondent's legal practitioners