

2024/IRCLK/1039

IN THE HIGH COURT FOR ZAMBIA
INDUSTRIAL RELATIONS DIVISION
HOLDEN AT LUSAKA

COMP. No. IRCLK/___/2024

BETWEEN:

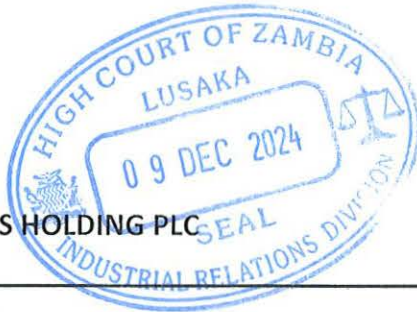
LOMBE MBALASHI
BRIAN MUSONDA

1ST COMPLAINANT
2ND COMPLAINANT

AND

ZCCM INVESTMENTS HOLDING PLC

RESPONDENT



COMPLAINANTS' JOINT AFFIDAVIT IN SUPPORT OF COMPLAINT

We, **LOMBE MBALASHI** and **BRIAN MUSONDA**, both **Zambian Nationals** of Stand No. 38534, Ibex Hill, Lusaka and Flat No. 9 Ibex Gardens, Ibex Hill, Lusaka respectively in the Lusaka Province of the Republic of Zambia **DO** hereby **MAKE OATH** and **SAY** as follows;

1. That our full names, nationality and residential addresses are as stated above.
2. That we are the Complainants in this matter and therefore competent to depose to this our Joint Affidavit from facts and information within our personal knowledge verily believing the same to be true.
3. That the 1st Complainant joined the Respondent's employment as a Legal Officer on 3rd February, 2009 and later on served the Respondent as Property Manager and Deputy General Counsel.
4. That in or around May, 2023 following a vacancy in the office of the Respondent's General Counsel, the Respondent advertised the position of General Counsel in the print media and the 1st Complainant was later on offered the position of General Counsel after competitive interviews on five (5) year fixed term contract renewable at the option of the Respondent effective 3rd June, 2023. A copy of the 1st Complainant's Contract of Employment dated 5th June, 2023 is now produced and shown to us marked as exhibit "LMBM1".
5. That the 2nd Complainant was initially employed by the Respondent as its Chief Investments Officer on a 3 year contract effective 5th October, 2020. Following the expiry of the 2nd Complainant's initial Contract of Employment on 4th October, 2023, the 2nd

Complainant was offered employment by the Respondent as its Chief Investments Officer on 5 year contract renewable at the option of the Respondent effective 5th October, 2023. A copy of the 2nd Complainant's Contract of Employment dated 28th day of September, 2023 is now produced and shown to us marked as exhibit "LMBM2".

6. That by separate Addenda dated 1st day of June, 2024, the Complainants' Contracts of Employment were varied to the extent shown in the said Addenda. Now produced and shown to me marked as exhibits "LMBM3" and "LMBM4" are the said Addenda.
7. That the 1st Complainant's duties as Respondent's General Counsel included legal representation, providing legal advice, negotiating, drafting and vetting all the agreements involving the Respondent company, providing support services to the other directorates and taking care of all legal matters for the Respondent, its Board and all its subsidiaries.
8. That the 2nd Complainant was in charge of investments in the Respondent Company which included structuring of transactions and management of the Respondent's existing investments in various companies or entities in which the Respondent hold shares.
9. That the Complainants as part of their duties were, *inter alia*, heavily involved in the negotiation of Kansashi Royalty transaction, Mopani Copper Mines transaction to find a strategic equity partner as well as the Konkola Copper Mines transaction to facilitate the re-entry of Vedanta Resources Limited to manage Konkola Copper Mines.
10. That in or around May, 2024, we became aware of attempts and manoeuvres by the Respondent's Board to hound us out of our employment.
11. That further to paragraph 10 above, the Respondent's Board Chairperson a Mr. Kakenenwa Muyangwa at a meeting held at the Industrial Development Corporation Head Office in the presence of the Respondent's Chief Executive Officer, Dr. Ndoba Vibetti, and in the presence of the 1st Complainant informed the meeting of the Respondent's controlling Shareholder's intention to hound us out of our employment.
12. That despite the Respondent's Board's desire to hound us out of our employments, we ensured that the Mopani Copper Mines USD 1.1 Billion Dollar Transaction, the USD 1.5 Billion Dollar Konkola Copper Mines Transaction, the USD 300 Million Dollar acquisition of

Lubambe Copper Mines as well as the USD 400 Million Dollar Maamba Phase II transactions were concluded successfully.

13. That over and above our official duties, we constantly provided support to various government Ministries with the Ministry of Mines the last by way of assisting in providing information for a Ministerial Statement and accompanying the Minister of Mines to deliver a Ministerial statement in the National Assembly on 14th and 22nd November 2024 over the sale of Mopani Copper Mines Transaction.
14. That in recognition of our abilities and experience, the Respondent Company's Chief Executive Officer, appointed us to head various critical operational teams and to represent the Respondent on Boards such as Mingomba Minerals Limited (1st Complainant) and Mopani Copper Mines and Zambia Gold Company (2nd Complainant).
15. That in the afternoon of 27th November, 2024, we were both summoned to the Respondent's Chief Executive Officer's office where we also found the Respondent's Chief Human Resources and Administration Officer Mrs Betty Meleki.
16. That at the said meeting alluded to under paragraph 15, the Respondent's Chief Executive Officer, informed us that he had received instructions from the Secretary to the Cabinet to terminate our employment contracts.
17. That further to paragraph 16 above, the Respondent's Chief Executive Officer informed both of us that the Respondent had decided to place us on administrative leave while negotiating a mutually acceptable Separation Agreement and we were also informed that a Committee would be set up to conduct the negotiation for a Mutual Separation Agreement.
18. That we requested the Respondent's Chief Executive Officer to put what he was telling us in writing of which he promised to do so.
19. That by separate letters dated 27th November, 2024 (which were only served on us on 28th November, 2024) from the Respondent's Chief Executive Officer addressed to each of us, we were informed that we had been placed on administrative leave effective 28th November, 2024 until further notice. No reason whatsoever was given in the said letters

for placing us on administrative leave. The copies of the said letters are now produced and shown to us marked as exhibits "LMBM5" and "LMBM6".

20. That further to paragraph 19 above, we wish to state that there is no provision for administrative leave under the terms and conditions of service we served or worked under.
21. That by separate letters dated 28th November, 2024 from the Respondent's Chief Executive Officer addressed to each of us, we were invited for a meeting at Protea Tower Hotel Arcades, Lusaka the following day on 29th November, 2024 and were also further requested to make proposals for mutual separation to be considered at the said meeting. The copies of the said letters are now produced and shown to us marked as exhibit "LMBM7" and "LMBM8" respectively.
22. That having realised that the Respondent (at the behest or instigation of its Board) was bent and determined more than ever to hound us out of our employment and as instructed in exhibit "LMBM7" and "LMBM8", we prepared and submitted to the Respondent's Chief Executive Officer our individual separate proposals for mutual separation. The copies of the proposals for mutual separation both dated 29th November, 2024 addressed to the Respondent's Chief Executive Officer are now produced and show to us marked as exhibit "LMBM9" and "LMBM10".
23. That as instructed by the Respondent's Chief Executive Officer in exhibits "LMBM7" and "LMBM8", we did attend the meeting at Protea Tower Hotel Arcades in the morning of 29th November, 2024.
24. That the meeting alluded to above under paragraph 23 comprised a Mr. Akapelwa Mubita (who is a Vice Chairperson of the Respondent's Board and who chaired the meeting), Mr. Anthony Chilengi, a Board Member of the Respondent from the Ministry of Mines, Mrs Betty Meleki the Respondent's Chief Human Resources and Administration Officer (who acted as Secretary to the Meeting) and a Mr. James Kalokoni, a Legal Practitioner practising under the Firm of Messrs Kalokoni and Company (the Negotiating Committee).
25. That separate negotiation sessions were held with each of us with the negotiating team starting with the 2nd Complainant.

26. That at the inception of each separate negotiating session, Mr. Akapelwa Mubita informed each of us that the decision to separate from the Respondent's employment was an instruction or directive from the Respondent's controlling Shareholder.
27. That during each separate negotiating sessions, Mr. James Kalokoni informed each of us that the Respondent had resolved to pay us all our statutory dues i.e. 3 months' salary in lieu of notice, prorated gratuity and accrued leave days as separation dues as this according to him was provided for by the law and that anything else would have to be negotiated.
28. That the above proposals from the Negotiating Committee through Mr. James Kalokoni were unacceptable to each of us and we each insisted that any negotiations had to centre around our separate proposals contained in exhibits "LMBM9" and "LMBM10" above.
29. That due to the Respondent's Negotiating Committee's intransigence, the negotiations did not yield any positive results and we were separately informed by the Chairperson of the Negotiating Committee, (Mr. Akapelwa Mubita) that the Negotiating Committee would revert to us either that afternoon or the following Monday with the Respondent's position on the Separation Agreement.
30. That at around 14:00 hours on 2nd of December, 2024, we were both separately called on our mobile phones by the Respondent's Chief Human Resources and Administration Officer with instructions to attend a meeting with the Respondent's Chief Executive Officer at Southern Sun Hotel at which we attended. The Respondent's Chief Human Resources and Administration Officer was also present at the meeting together with the Respondent's Chief Executive Officer.
31. That at the meeting alluded above under paragraph 30, we were both informed by the Respondent's Chief Executive Officer that the Respondent's Board Meeting held on the afternoon of Friday the 29th November, 2024 after the failed negotiation meeting had instructed or directed him to terminate our Contracts of Employment with immediate effect.
32. That we were each separately handed letters of termination of employment by the Respondent's Chief Executive Officer dated 2nd December, 2024 purportedly effected under **Clause 22.0** of each of our Contracts of Employment which provides for termination

by giving three (3) months' notice in writing or payment of salary in lieu of notice. The said letters stated, *inter alia*, that we would be paid 3 months' salary in lieu of notice, accrued leave days and prorated gratuity for the period of the contract served. The copies of the said termination letters with the attached computations of the dues are now produced and shown to us marked as exhibits "LMBM11" and "LMBM12" respectively.

33. That no valid and justifiable reason relating to misconduct or incompetence on our part or to the Respondent's operational requirements whatsoever was given in exhibits "LMBM11" and "LMBM12" for terminating our Contracts of Employment.
34. That we have been informed by our Counsel herein, Mr. Fredrick Mudenda, and verily believe the same to be true that the Respondent's purported termination of our Contracts of Employment is illegal, unlawful and unfair as the termination of our Contracts of Employment could only be done legally on the part of the Respondent as employer for a valid and justifiable reason relating to either conduct, performance or operational requirements of the Respondent.
35. That we have both served the Respondent with diligence, commitment and hard work to the best of our abilities with no record of any misconduct or incompetence.
36. That further to paragraph 34 above, we have been informed by our Counsel herein, Mr. Fredrick Mudenda, that the purported termination of our Contracts of Employment was wrongful as it was done contrary to Clause 35(c) of the Respondent's Terms and Conditions of Service which requires for a valid and justifiable reason in order to terminate our Contracts of Employment. A copy of the Respondent's Terms and Conditions of Service of June, 2024 is now produced and shown to us marked as exhibit "LMBM13".
37. That the various events prior to the unlawful, unfair and wrongful termination of our Contracts of Employment and subsequently the traumatic manner or fashion of termination of our Contracts of Employment, points to the Respondent Board's interference and desire to hound us out of our employment.
38. That the unlawful, unfair and wrongful termination of our Contracts of Employment at the behest or instigation of the Respondent's Board came shortly after a botched attempt at forcing on us to agree to a Mutual Separation Agreement on the Respondent's terms.

39. That the traumatic fashion in which the unlawful, unfair and wrongful termination of our Contracts of Employment was inflicted by the Respondent at the behest and instigation of its Board, has caused to us undue stress, mental suffering and embarrassment.
40. That the termination of our Contracts of Employment at the behest of the Respondent's Board was done wantonly in total disregard of our protected rights as employees.
41. That as a consequence of the Respondent's contumelious disregard to our rights and its illegal actions and further as a result of the traumatic termination of our Contracts of Employment, we have both suffered mental stress, anguish, inconvenience and embarrassment leading to us having to seek medical services.
42. That following the unlawful, unfair and wrongful termination of our Contracts of Employment, demand letters dated 4th December, 2024 were sent to the Respondent by our Advocates herein containing our demands. The copies of the said demand letters to which we have had no response to as at the time of commencement of this action are now produced and shown to us marked collectively as exhibit "LMBM14".
43. That we depose to the above facts verily believing the same to be true and correct to the best of our knowledge.

SWORN by the said

LOMBE MBALASHI


And

BRIAN MUSONDA

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DEPONENT

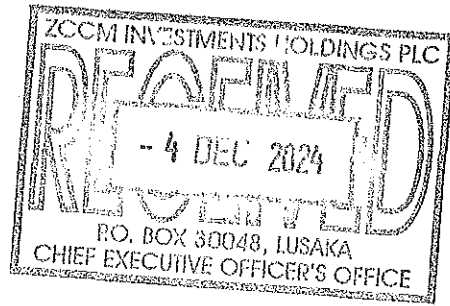
DEPONENT

at Lusaka the 9th day of DECEMBER 2024)

BEFORE ME:.....


KHOZANI DAKA
AHCZ, A/C7
COMMISSIONER FOR OATHS
LEGAL PRACTITIONER
COMMISSIONER FOR OATHS

LMBM14a



4th December, 2024

The Chief Executive Officer
ZCCM Investments Holding Plc.
ZCCM-IH Office Park
Stand No. 16806 Alick Nkhata Road
Mass Media
P.O. Box 30048
LUSAKA

Attention: Dr. Ndoba J. Vibetti

Dear Sir,

RE: LOMBE MBALASHI vs. YOURSELVES – CLAIM FOR COMPENSATION OR DAMAGES FOR UNLAWFUL AND UNFAIR TERMINATION OF CONTRACT OF EMPLOYMENT

We refer to the above matter. We act for Mr. Lombe Mbalashi in this matter (Our Client). Please take note of our interest.

Our Client has availed us, *inter alia*, your letter of 2nd instant terminating his employment contract purportedly under Clause 22.0 of his Contract of Employment which provides for termination by giving three (3) months' notice in writing or payment of salary in lieu of notice. No reason whatsoever was given in your said letter for the purported termination of our Client's Contract of Employment. In terms of the law, termination of a Contract of Employment can only be done for a valid reason relating to either conduct, performance or operational requirements of an organisation.

Section 52(2) of the Employment Code Act No. 3 of 2019 provides that:

52. (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. (Underlining ours for emphasis only)

In view of the above section, your purported termination of our Client's Contract of Employment is illegal, unlawful and also unfair. You ought to have known (especially after the Court of Appeal decision between your former Chief Executive Officer Dr. Pius Kasolo and Yourselves handed down only few days ago on 28th November, 2024) that it is mandatory under the law for an employer to proffer or give a valid and substantiated reason for termination of employment. Your organisation is a public institution which should adhere to fair play.

You are no doubt very aware of your Board's long held desire for reasons best known to it to get rid of our Client from your organisation. This desire was repeated to our client at your meeting with him on 2nd December 2024 at Southern Sun Hotel where you informed our client that following a board meeting held on Friday 29th November 2024, the board instructed and/or directed your management to terminate our Client's Contract of Employment with immediate effect following a failed negotiation for Separation Agreement held on 29th November, 2024 at Protea Towers Arcades Hotel. At the negotiation meeting for a Separation Agreement held on 29th November, 2024, the Vice Chair of the Board who chaired the meeting informed our Client that the decision to separate was an instruction from the Shareholders.

The illegal and unlawful termination of our Client's Contract of Employment came shortly after a botched attempt at forcing a purported mutual Separation Agreement. Before that, through your letter of 27th November, 2024 you placed or put our Client on a purported administrative leave which does not exist under the terms and conditions of service our Client served.

Your records will show that our Client has served your organisation to the best of his ability (with no record of any misconduct or incompetence) from 3rd February 2009 when he joined your employment as Legal Officer rising to the position of General Counsel.

The traumatic fashion in which your illegal termination of our Client's employment was inflicted, has caused undue distress and mental suffering to our Client as he has worked in uncertainty for over a year knowing fully well that the desire to get rid of him was ever present. The various events prior to the illegal termination and subsequently the traumatic manner or fashion of termination points to your Board's interference and/or political interference.

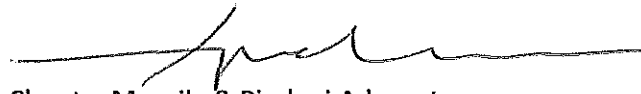
Unless compelled, our Client does not desire to go to Court to enforce or vindicate his legal rights. This is why this letter is long.

Our instructions are to demand that our Client be:

- a. Paid forty-two (42) months' salary as compensation or damages as loss of employment. This is in line with judicial precedent for loss of high-profile jobs which are not easily found.
- b. Paid his gratuity for 4 years.
- c. Assessed for the 2024 performance management contract as agreed and executed and be paid his bonus as per company policy.
- d. Paid company performance bonus for the 2021 financial year.
- e. Paid all allowances and perquisites he enjoyed in the course of his employment.

Unless we favourably hear from yourselves before close of business on Friday the 6th of December 2024, we will have no option but to commence legal action against yourselves.

Yours faithfully,



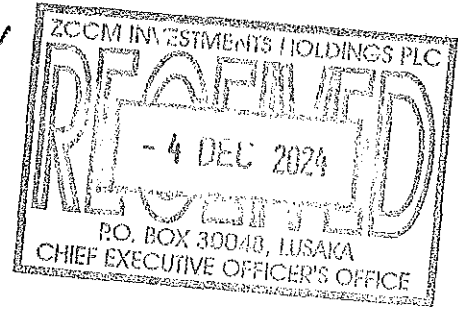
Chonta, Musaila & Pindani Advocates

Cc: Board Members ZCCM-IH

Cc: The Labour Commissioner

Received by.....FRIDAH.....Sign.....[Signature].....Date.....04/12/2024.....

LMBM 146



4th December, 2024

The Chief Executive Officer
Zambia Consolidated Copper Mines Investments Holding Plc.
ZCCM-IH Office Park
Stand No. 16806 Alick Nkhata Road
Mass Media Complex Area
P.O. Box 30048
LUSAKA

Attention: Dr. Ndoba J. Vibetti

Dear Sir,

RE: BRIAN MUSONDA vs. YOURSELVES – CLAIM FOR COMPENSATION FOR THE UNLAWFUL AND UNFAIR TERMINATION OF CONTRACT OF EMPLOYMENT

We refer to the above matter. We act for Mr. Brian Musonda in this matter (Our Client). Please take note of our interest.

Our Client has availed us, *inter alia*, your letter of 2nd instant terminating his employment contract purportedly under Clause 22.0 of his Contract of Employment which provides for termination by giving three (3) months' notice in writing or payment of salary in lieu of notice. No reason whatsoever was given in your said letter for the purported termination of our Client's Contract of Employment. In terms of the law, termination of a Contract of Employment can only be done for a valid reason relating to either conduct, performance or operational requirements of an organisation.

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In view of the above section, your purported termination of our Client's Contract of Employment is illegal, unlawful and also unfair. You ought to have known (especially after the Court of Appeal decision between your former Chief Executive Officer Dr. Pius Kasolo and Yourselves handed down only few days ago on 28th November, 2024) that it is mandatory under the law for an employer to proffer or give a valid and substantiated reason for termination of employment. Your organisation is a public institution which should adhere to fair play.

You are no doubt very aware of your Board's long held desire for reasons best known to it to get rid of our Client from your organisation. This desire was repeated to our client at your meeting with him on 2nd December 2024 at Southern Sun Hotel where you informed our client that following a board meeting held on Friday 29th November 2024, the board instructed and/or directed your management to terminate our Client's Contract of Employment with immediate effect following a failed negotiation for Separation Agreement held on 29th November, 2024 at Protea Towers Arcades Hotel. At the negotiation meeting for a Separation Agreement held on 29th November, 2024, the Vice Chair of the Board who chaired the meeting informed our Client that the decision to separate was an instruction from the Shareholders.

The illegal and unlawful termination of our Client's Contract of Employment came shortly after a botched attempt at forcing a purported mutual Separation Agreement. Before that, through your letter of 27th November, 2024 you placed or put our Client on a purported administrative leave which does not exist under the terms and conditions of service our Client served.

Your records will show that our Client has served your organisation to the best of his ability (with no record of any misconduct or incompetence) from the time he joined your employment as Chief Investments Officer on 4th October, 2020.

The traumatic fashion in which your illegal termination of our Client's employment was inflicted, has caused undue distress and mental suffering to our Client as he has worked in uncertainty for over a year knowing fully well that the desire to get rid of him was ever present. The various events prior to the illegal termination and subsequently the traumatic manner or fashion of termination points to your Board's interference and/or political interference.

Unless compelled, our Client does not desire to go to Court to enforce or vindicate his legal rights. This is why this letter is long.

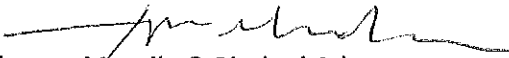
Our instructions are to demand that our Client be:

- a. Paid forty-two (42) months' salary as compensation or damages as loss of employment. This is in line with judicial precedent for loss of high-profile jobs which are not easily found.
- b. Paid his gratuity for 4 years.
- c. That he be sold the personal to holder vehicle which he was due to purchase in February, 2025.
- d. Assessed for the 2024 performance management contract as agreed and executed and be paid his bonus as per company policy.

- e. Paid company performance bonus for the 2021 financial year.
- f. Paid all allowances and perquisites he enjoyed in the course of his employment. Inclusive of car allowance as per his Contract of Employment.

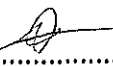
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Yours faithfully,



Chonta, Musaila & Pindani Advocates

- Cc: Board Members ZCCM-IH
- Cc: The Labour Commissioner

Received by.....FRIDAH.....Sign..........Date.....04/12/2024.....