

LABOUR JUSTICE VICTORY SCORED AND WON FOR THE BENEFIT OF WORKERS AND WORKING CLASS OF ZIMBABWE BY MUCHECHE LAWS ON 3 NOVEMBER 2025 FOR JOB SECURITY AND PROTECTION

By **Senior Lawyer Caleb Mucheche**- Zimbabwe First President/Country Representative for African Labour Law Society/Association for Labour Practitioners in Zimbabwe/Founder President of Labour Association of Zimbabwe

© Caleb Mucheche 2025, born on during revolutionary month on **4 November**.

Case details: MAXMIND INVESTMENT (PVT) LTD v FUMISAYI MUREHWA (LC/H/782/25).

Date: Judgment issued by the Labour Court of Zimbabwe on 3 November 2025.

Respondent Worker/Employee's Legal Practitioner: C. Mucheche.

Central theme: Labour Court of Zimbabwe banning/outlawing/sinking of termination on notice and Section 12(4a) of the Zimbabwean Labour Act.

INTRODUCTION

1. The Labour Court of Zimbabwe, in a landmark judgment delivered during the revolutionary month of November 2025 (Judgment issued 03 Nov 2025), essentially banned, outlawed and sunk the termination of employment on notice by an employer in Zimbabwe. The judgment, **MAXMIND INVESTMENT (PVT) LTD v FUMISAYI MUREHWA (LC/H/782/25)**, involved the legal representation of **MUCHECHE LAWS** (C. Mucheche for the respondent) and applied a purposive and mischief interpretation to **Section 12(4a)** of the Labour Act as amended by the Labour Amendment **Act No. 11 of 2023**. The appellant (employer) was **MAXMIND INVESTMENT (PVT) LTD. ASAMBENI BRAVO/KUDOS/HATS OFF LABOUR JUSTICE IN ZIMBABWE!!!** The Court's decision affirmed that a clause for termination on notice in an original contract of employment is no longer a valid legal ground for ending an employment relationship unilaterally. This legal protection of a worker or employee against arbitrary, unjust, nefarious, heartless, notorious, capricious, spineless, draconian, wanton, brazen or barbaric of a job or employment on notice apply to any type of contract of employment whether permanent contract or fixed term contract.

Partner: Mr Caleb Mucheche LLM Commercial Law (South Africa).
 LLM Labour Law (Zambia) LLB Hons (UZ-Zimbabwe).
 Mrs Farai Chinyama-Nyengerai LLB (UZ), LLM (UZ)

1 | Page

Associates: Ms. Chido. Makura LLB Hons (MSU). Ms. Fadzai Fortunate Shingairai Sibanda LLB Hons (GZU).

Consultants: Dr. Jimcall Pfumorodze LLB Hons (UZ), LLM International Trade and Investment Law Cum Laude (Western Cape/Amsterdam), LLD International Trade and Investment Law (Pretoria). Mrs. Dorothy Zihove- LLB Hons (UZ), LLM Corporate Law (UNISA). Ms. Tsitsi B. Zakeyo LLB Hons (UCT-SA).

Legal Practitioners, Commercial and Corporate Law, Investment Law, Banking Law, International Business Transactions Law, Business Law, Labour and Employment Law, Advocates, Conveyancers, Notaries Public, Estate Planning, Trusts Law, Family Law and Administrators of Deceased Estates, Intellectual Property, Patents & Trade Marks Agents & Commissioners of Oaths.

2. The key legal issue addressed was whether a termination on notice, pursuant to a clause in the original contract, was lawful under the amended Labour Act.

FACTUAL BACKGROUND AND GROUNDS OF APPEAL

3. The respondent, Fumisai Murehwa, was employed by the appellant, Maxmind Investment (Pvt) Ltd, as a Human Resources Manager on a two-year fixed-term contract commencing July 1, 2024, and ending June 30, 2026. On April 3, 2025, the appellant terminated the contract on three months' notice, relying on **Clause 12** of the employment contract, which allowed termination by either party subject to the Labour Act and stipulated three months' notice.
4. The matter was referred to arbitration, and the Arbitrator found the termination unlawful based on **section 12(4a)** of the Labour Act as amended by **Act No. 11 of 2023**. The Arbitrator ordered reinstatement or payment of damages.
5. The appellant's appeal to the Labour Court was based on the following main grounds:
 - The Arbitrator erred in finding constructive dismissal (though the Arbitrator's finding was on unlawful termination).
 - The Arbitrator erred in finding that an employer cannot terminate on notice when the contract allowed it.
 - The Arbitrator grossly misdirected herself in awarding an unjustified quantum of damages.

INTERPRETATION OF SECTION 12(4a) OF THE LABOUR ACT

6. The core of the judgment rests on the interpretation of **section 12(4a)** of the Labour Act, which provides that a contract of employment may be terminated only, on the part of an employer, by:
 - Mutual agreement in writing.
 - For a breach of contract after due inquiry.
 - In "any other manner agreed in advance by the employer and employee concerned".
7. The Labour Court upheld the Arbitrator's finding that the termination was unlawful and constituted an unfair labour practice. The Court reasoned that the new **section 12(4a)** was enacted to curtail the common law right of employers to terminate on notice.

Flawed reliance by the employer on Clause 12 of the contract of employment to purport to justify or support the unjust termination of a worker/employee's job on notice

8. The Court rejected the appellant's argument that Clause 12 of the contract—stating termination "shall be (3) three months' notice"—constituted a valid pre-agreed manner of termination under Section 12(4a)(b).
9. The Court cited ***Art Corporation v Moyana 1989 (1) ZLR 304 (S)***, stating that a notice period clause only sets a minimum notice period, but does not grant the right to dismiss on notice without valid legal grounds.

10. The Court held that the clause was subject to the provisions of the amended **Section 12(4a)**.

UNITED NATIONS INTERNATIONAL LABOUR ORGNISATION (ILO) CONVENTION 158 AGAINST EMPLOYMENT OR JOB TERMINATION ON NOTICE BY AN EMPLOYER

Zimbabwean labour law against termination of a worker or employee's contract of employment on notice as provided for in terms of **section 12 (4a)** of the **Zimbabwean Labour Act** is fully compliant with **section 65** of the **Constitution of Zimbabwe** as supreme law and **United Nations ILO Convention 158** which expressly ban/outlaw termination of a worker or employee's job on notice by making it legally mandatory that the termination of a worker or employee's job on notice is only legally permissible for a just cause related to the employee's conduct (workplace misconduct) or the operational requirements of the employer (retrenchment/redundancy).

SUPREMACY OF THE CONSTITUTION OF ZIMBABWE OVER ANY OTHER LAW, CUSTOM OR PRACTICE INCONSISTENT WITH IT E.G TERMINATION OF A WOPRKER'S JOB ON NOTICE BY AN EMPLOYER

The Constitution of Zimbabwe is a supreme law which overrides, supersedes, overtakes and prevails over any other law, custom, practice or conduct inconsistent with it. Termination of a worker's job on notice by an employer is a classic example of a custom, practice or conduct in gross violation, breach and mutilation of the Constitution of Zimbabwe.

The Constitution of Zimbabwe is superior law akin or similar to **Great Moses** and his brother **Aaron's** staff/rod which was superior to the Egyptian magicians' staffs/rods, graphically described in the **Bible** in **Exodus 7:8-13** as follows:

"The Lord said to Moses and Aaron, When Pharaoh says to you, 'Perform a miracle,' then to say to Aaron, 'Take your stuff and throw it down before Pharaoh,' and it will become a snake."

So Moses and Aaron went to Pharaoh and did as the Lord commanded. Aaron threw his staff down in front of Pharaoh and his officials, and became a snake.

Pharaoh then summoned wise men and sorcerers, and Egyptian magicians also did the same things by their secret arts.

Each one threw down his staff and it became a snake. But Aaron's staff swallowed up their staff. 13. Yet Pharaoh's heart became hard and he would not listen to them, just as the Lord had said.'

Section 2 of the Constitution of Zimbabwe

2 Supremacy of Constitution

- (1) *This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.*
- (2) *The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them.*

The protected constitutional right to fair labour practices and standards codified, embedded and entrenched in terms of **section 65 (1)** of the **Constitution of Zimbabwe** among others (*inter alia*) affords ironclad legal protection against an unjust, unfair and inequitable termination of employment like arbitrary termination on notice by an employer.

TERMINATION OF WORKER OR EMPLOYEE ON NOTICE VIOLATES CONSTITUTIONAL AND NATURAL JUSTICE RIGHT TO BE HEARD

The constitutional right to be heard (*audi alteram partem*) by a neutral and unbiased decision-maker/adjudicator (*nemo judex in sua causa*) before any adverse decision is made against any person who includes an employee, is jealously guarded by the law as was elucidated and enunciated by the Supreme Court of Zimbabwe in the leading *locus classicus* scintillating case of **Taylor v Minister of Education 1996 (2) ZLR 772 (S), per CHIEF JUSTICE ANTONY ROY GUBBAY** (as then he was) quoting the Bible and God Almighty as follows:

“ Even God did not banish/chase away Adam and Eve from the garden of Eden without giving them the right to be heard.”

See also similar and related legal principle in various Supreme Court and High Court of Zimbabwe judgments in **Forestry Commission v Moyo 1997 (1) ZLR 254 (S), Rwodzi v Chegutu Municipality 2003 (1) ZLR 600 (H), Zesa Enterprises (Pvt) Ltd v Stevawo SC 29/17, Moyo v Rural Electrification Agency SC 4/14, Chitzanga v Chairman of the Public Service Commission and Another 2000 (1) ZLR 201 (H), Professor Geoff Feltoe, A Guide to Administrative Law in Zimbabwe (2008)**.

Section 69 of the Constitution of Zimbabwe is the gateway and gatekeeper of access to justice before any court or tribunal of law and allied ancillary legal right to be heard by an unbiased neutral adjudicator.

Section 69 of the Constitution of Zimbabwe

69 Right to a fair hearing

- (1) *Every person accused of an offence has the right to a fair and public trial within a reasonable time before an independent and impartial court.*

- (2) *In the determination of civil rights and obligations, every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court, tribunal or other forum established by law.*
- (3) *Every person has the right of access to the courts, or to some other tribunal or forum established by law for the resolution of any dispute.*
- (4) *Every person has a right to choose and be represented by a legal practitioner before any court, tribunal or forum.*

TERMINATION OF A JOB ON NOTICE A VIOLATION OF EXALTED AND ELEVATED CONSTITUTIONAL LABOUR RIGHTS IN TERMS OF SECTION 65 OF THE CONSTITUTION OF ZIMBABWE

Section 65 of the Constitution of Zimbabwe

65 Labour rights

- (1) *Every person has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage.*
- (2) *Except for members of the security services, every person has the right to form and join trade unions and employee or employers' organisations of their choice, and to participate in the lawful activities of those unions and organisations.*
- (3) *Except for members of the security services, every employee has the right to participate in collective job action, including the right to strike, to a reasonable extent, but a law may restrict the exercise of this right in order to maintain essential services.*
- (4) *Every employee is entitled to just, equitable and satisfactory conditions of work.*
- (5) *Except for members of the security services, every employee, employer, trade union, and employer or employees' organisation has the right to—*
 - (a) *engage in collective bargaining;*
 - (b) *organise; and*
 - (c) *form and join federations of such unions and organisations.*
- (6) *Women and men have a right to equal remuneration for similar work.*
- (7) *Women employees have a right to fully paid maternity leave for a period of at least three months.*

**UNITED NATIONS INTERNATIONAL LABOUR ORGANISATION (ILO) CONVENTION
C158 - TERMINATION OF EMPLOYMENT CONVENTION, 1982 (NO. 158)**

The General Conference of the International Labour Organisation,

*Having been convened at Geneva by the Governing Body of the International Labour Office, and
having met in its Sixty-eighth Session on 2 June 1982, and*

*Noting the existing international standards contained in the Termination of Employment
Recommendation, 1963, and*

*Noting that since the adoption of the Termination of Employment Recommendation, 1963,
significant developments have occurred in the law and practice of many member States on the
questions covered by that Recommendation, and*

*Considering that these developments have made it appropriate to adopt new international
standards on the subject, particularly having regard to the serious problems in this field resulting
from the economic difficulties and technological changes experienced in recent years in many
countries,*

*Having decided upon the adoption of certain proposals with regard to termination of employment
at the initiative of the employer, which is the fifth item on the agenda of the session, and*

Having determined that these proposals shall take the form of an international Convention;

*adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two
the following Convention, which may be cited as the Termination of Employment Convention,
1982:*

PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

Article 1

*The provisions of this Convention shall, in so far as they are not otherwise made effective by
means of collective agreements, arbitration awards or court decisions or in such other manner as
may be consistent with national practice, be given effect by laws or regulations.*

Article 2

- 1. *This Convention applies to all branches of economic activity and to all employed persons.*
- 2. *A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:*
 - (a) *workers engaged under a contract of employment for a specified period of time or a specified task;*
 - (b) *workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;*
 - (c) *workers engaged on a casual basis for a short period.*
- 3. *Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.*
- 4. *In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.*
- 5. *In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.*
- 6. *Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International*

Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

*For the purpose of this Convention the terms **termination** and **termination of employment** mean termination of employment at the initiative of the employer.*

PART II. STANDARDS OF GENERAL APPLICATION

DIVISION A. JUSTIFICATION FOR TERMINATION

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 5

*The following, *inter alia*, shall not constitute valid reasons for termination:*

- (a) *union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;*
- (b) *seeking office as, or acting or having acted in the capacity of, a workers' representative;*
- (c) *the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;*
- (d) *race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;*
- (e) *absence from work during maternity leave.*

Article 6

- 1. *Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.*
- 2. *The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.*

DIVISION B. PROCEDURE PRIOR TO OR AT THE TIME OF TERMINATION

Article 7

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

DIVISION C. PROCEDURE OF APPEAL AGAINST TERMINATION

Article 8

- 1. *A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.*
- 2. *Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.*
- 3. *A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.*

Article 9

- 1. *The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.*

- 2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:
 - (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
 - (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.
- 3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

DIVISION D. PERIOD OF NOTICE

Article 11

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

DIVISION E. SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

Article 12

- 1. *A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to-*
 - *(a) a severance allowance or other separation benefits, the amount of which shall be based *inter alia* on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or*
 - *(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or*
 - *(c) a combination of such allowance and benefits.*
- 2. *A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).*
- 3. *Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.*
- **PART III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS**

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

Article 13

- 1. *When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:*
 - *(a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;*

- (b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.
- 2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.
- 3. For the purposes of this Article the term **the workers' representatives concerned** means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

DIVISION B. NOTIFICATION TO THE COMPETENT AUTHORITY

Article 14

- 1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.
- 2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.
- 3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

PART IV. FINAL PROVISIONS

Article 15

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 16

- *1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.*
- *2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.*
- *3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.*

Article 17

- *1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.*
- *2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.*

Article 18

- *1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.*
- *2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.*

Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 20

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 21

- 1. *Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-*
 - *(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;*
 - *(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.*
- 2. *This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.*

Article 22

The English and French versions of the text of this Convention are equally authoritative."

The requirements for a mutual separation agreement and compensation for a fixed term contract of employment: Some Zimbabwean and South African decided cases relied upon by the Labour Court of Zimbabwe

11. Drawing a legal inspiration from **Ruturi v Heritage Clothing (Pvt) Ltd 1994 (2) ZLR 374 (S)**, the Court emphasised that a termination by mutual agreement must be a separate, contemporaneous agreement entered into mutually by the parties at the time of termination, one that stands on its own two feet. The Court confirmed that the employer cannot rely on a clause buried in the original contract signed long before the termination, as this would reintroduce the mischief the legislature intended to abolish. The Court thus concluded there was no mutual termination of the contract. The Labour Court of Zimbabwe also relied on other decided cases like **Mbatha v National Foods (Pvt) Ltd SC 149/20, Barclays of Zimbabwe v Mapfanya and Anor SC 90/21, Magodora v Care International Zimbabwe 2014 (1) ZLR 397 (S), Zimbabwe Revenue Authority v Mudzimuwaona 2018 (1) ZLR 159 (S), Myers v Abrahamson 1952 (3) SA 121 (C) at 127D-E.**

ASSESSMENT OF QUANTUM OF DAMAGES

12. The Court confirmed that the damages for unlawful termination of a fixed-term contract are calculated based on the unexpired period of that contract (15 months in this case). The measure of damages is the loss suffered, which is the sum due for the unexpired period, less any amount earned or reasonably earnable through mitigation.

13. While the Arbitrator failed to justify the awarded figures, the Labour Court, exercising its powers under **section 89(2)(a)(i)** of the Labour Act, conducted its own assessment of the damages, specifically addressing the issue of mitigation.

MITIGATION OF LOSS

14. The appellant's argument that the respondent failed to mitigate his loss was rejected. The respondent provided evidence of:

- Actively seeking alternative employment (job applications, emails).
- Venturing into a horticulture business that ultimately failed.

15. Citing **Hampton Fokoseni v Lobels Bakery SC 20/04**, the Court noted that a senior employee like a Human Resources Manager would face significant difficulty securing a comparable post due to their management history, age, and the prevailing economic climate, justifying the finding that the respondent did not sit on his laurels. The Court was satisfied that the respondent had mitigated his loss.

QUANTUM OF AWARDED

16. Finding no reason to reduce the damages due to a failure to mitigate, the Court reviewed and upheld the Arbitrator's total award of **US\$56,835.84**.

17. The award was based on the full unexpired period of 15 months.

18. The Arbitrator had already correctly reduced the net salaries component from the claim by **US\$12,211.42** for the cash in lieu of notice deposited by the appellant.

19. The Court rightly and justly confirmed the calculations for the allowances (airtime, medical aid, pension, fuel) were justified by the documentary evidence presented.

DISPOSITION/DETERMINATION/OPERATIVE PART OF THE JUDGMENT

20. The Labour Court dismissed the appeal and ordered the appellant to pay the respondent's costs. The judgment conclusively affirms that **section 12(4a) of the Labour Act** requires a termination to be based on a contemporary mutual agreement, breach of contract, or a specifically pre-agreed manner that is not merely a clause stipulating a notice period. An employer can no longer unilaterally terminate an employment contract on notice merely by relying on a provision in the original contract.

CONCLUSION AND TAKE AWAY LEGAL SOLUTION FOR EMPLOYERS AND EMPLOYEES TO DO A LEGAL DUE DILIGENCE TO AVOID INSERTING OR PUTTING UNLAWFUL CLAUSES WHICH VIOLATE THE LAWS, LEGISLATION/STATUTES OF ZIMABWE WHEN WRITING OR DRAFTING ANY CONTRACT OF EMPLOYMENT

Employers and employees **MUST DO LEGAL DUE DILIGENCE AND AVOID including/importing/inserting/putting** any **unlawful clauses** which violate or breach laws, legislation or statutes of Zimbabwe as such clauses are against public policy (**contra bones mores**) and an empty noise (**brutum fulmen**), *as unlawful clauses are legally unenforceable and unpalatable.*

DATED AT HARARE THIS.....^{45th} DAY NOVEMBER 2025


Caleb Mucheche Head Partner (HP)
CALEB MUCHECHE AND PARTNERS
LAW CHAMBERS
No. 6 Meredith drive,
Eastlea,
HARARE (Mr. Mucheche/HP/bs)