



The Lawyer's Insight

A LAZ NEWSLETTER • Issue 2, August 2024

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THE EDITOR'S INSIGHT

Welcome to the 2nd edition of the *Lawyer's Insight*!

This edition is a dedication to the late Justice Emeritus Annel Musenga Silungwe, the first indigenous Chief Justice of the Republic of Zambia. As a tribute to him, we have reflected on some of his key Judgments in this edition. The LAZ Council has been extremely busy for the last few months and we have highlighted all the activities that we have anchored from pages **16** to **21**. Continue to read on for a recap of key events that have taken place, such as the SADC Lawyers' Association Conference; the LAZ Marathon; and the Bar-Bench Conference. In this edition, In-house counsel has challenged us lawyers to "think green" as we accept briefs and not just collect client fees in haste! Read this interesting piece for more insight at page **7**. We have also taken the time to answer your Frequently Asked Questions (FAQs) on the Lawyer's Co-operative at page **12**. The newsletter also covers updates from our stakeholders on LIAC – please take advantage of the call for arbitrators to the LIAC panel at page **14**. Lawyers are also reminded of the importance of adherence and best practices in tax compliance at page **22**. You will note that it is not just the LAZ Council that has been busy of late. The Court of Appeal has been delivering interesting judgments with far reaching consequences and we have taken the time to review key takeaways from the case of *Stanbic Bank Zambia Limited vs. Natasha Patel (Appeal No. 274/2022)* at page **24**. Look out for more case reviews in the next edition. We close off with LAZ activities in pictures, upcoming events and what to look forward to in the next edition.



We are grateful to our sponsors Stanbic Bank and Zamtel for partnering with us and we encourage other institutions (including law firms) to also come on board. Thank you to the incredible Newsletter team for the wonderful ideas. The Lawyer's Insight is a platform for all lawyers to share their insights on issues that matter to them and to the general public. Therefore, all lawyers are invited to contribute by getting in touch with the LAZ secretariat at sakalae@laz.org.zm or directly to the Editor at misozi@novushmlegal.com with the subject "The Lawyer's Insight."

Happy reading!

Misozi Hope Masengu
Editor



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FROM THE PRESIDENT'S DESK

Greetings to the membership.

Your Council and I have been inundated with various tasks for the past few months, in a bid to deliver on our mandate as an Association. We continue to make great progress, but of course, more needs to be done.

We successfully hosted for the second time, the SADC Lawyers' Association (SADC-LA) Conference and AGM in Livingstone under the theme *"Building Resilient Futures – Convergence of Law and Tech Innovations for Sustainable Investment in Infrastructure, Mining and Energy in Southern Africa."* Up next is the African Bar Association (AFBA) Annual Conference scheduled to be held in Lusaka, from 27th to 31st October 2024. Let us turn out in numbers so that we are not eclipsed by foreign delegates.

On the decentralization drive, we held the first ever Townhall in Livingstone. The Townhall, just like the Provincial Council Liaison Officer initiative, is testament to our resolve to decentralize the operations of LAZ to all 10 Provinces to enhance efficiency and promote inclusion.

We are happy to report that the LAZ Marathon is in the bag! We successfully hosted the marathon in Lusaka and for the first time, in Ndola as well. I had the privilege to run on the Copperbelt with the Kopala team and it was such a thrilling experience. Copperbelt lawyers definitely run more immaculately than Lusaka lawyers 😊 Many thanks go to the Marathon Team; our partners, Lusaka Fitness Squad and Ndola Fitness Squad; and our sponsoring buddy firms/institutions for making the event possible.

In a quest to reciprocate Government's lead in promulgating a Policy that all parastatal and government contracts will nominate

LIAC arbitration, we have commenced the process of amending the LAZ General Conditions of Sale 2018, to include a LIAC arbitration default dispute resolution clause and we have also written to PACRA requesting them to amend the dispute resolution clause in the Standard Articles to LIAC Arbitration.

On the reform front, the process of amending the Legal Practitioners' Practice Rules (2002), to eliminate restrictions on tendering for legal services, contingency fees and to specifically permit international associations in line with the 21st century modern practice trends, has reached an advanced stage. The amended rules are undergoing review by the Chief Justice as required by law before we send them over to the Attorney General for promulgation.

In our quest to expand the business of the law, we are happy to report that the Ministry of Lands has reaffirmed its commitment to ensuring that only lawyers are the recognized professionals to lodge documents at the Lands and Deeds registry, in accordance with the law. The Ministry of Green Economy and Environment has also expressed its commitment to strengthening collaboration and support for the LAZ's climate change capacity building programme, aimed at expanding our skills as a legal profession to support Government and the Business community in green initiatives. This follows courtesy calls to these Ministries.

The Lawyers' Cooperative continues to mobilize monthly savings from the membership, so don't forget to make

your monthly savings and secure your future.

There is definitely a lot to munch on in this Newsletter, happy reading!

Lungisani Zulu
President of the
Law Association of Zambia





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ZAMBIA SUCCESSFULLY HOSTS THE 24TH SADC LAWYERS' CONFERENCE AND AGM



The 24th Southern African Development Community Lawyers' Association (SADC-LA) Conference and Annual General Meeting (AGM) was held at the prestigious Avani Victoria Falls Resort in Livingstone, Zambia from 28th July to 2nd August 2024. The theme of the event was *"Building Resilient Futures – Convergence of Law and Tech Innovations for Sustainable Investment in Infrastructure, Mining and Energy in Southern Africa."* The five-day conference attracted legal professionals from across the SADC region, including South Africa, Botswana, Namibia, Malawi, Democratic Republic of Congo(DRC) and Zambia.

The conference kickstarted with the Women Lawyer's Forum, which was officiated by the Minister of Justice, Princess Kasune(represented by the Permanent Secretary, Amb. Isabelle Lemba); and the keynote address was delivered by Namibia's Minister of Justice, Hon. Yvonne Dausab. The Women's Forum highlighted the various challenges that affect women in the region such as being overlooked in legal structures. The Forum emphasized that women should leverage on each other's strengths in order to overcome the challenges. The main conference was officially opened the next day by Zambia's Vice President, Mrs. Mutale Nalumango. Other notable attendees were Zambia's Minister of Transport and Logistics, Hon.Frank Tayali and Zambia Army Commander, Lieutenant General Sitali Dennis Alibuzwi. The event emphasized the importance of regional integration and sustainable partnerships for unlocking the SADC region's legal, economic, and political potential.

The five-day conference also attracted legal professionals and Bar Associations from across the SADC region. During the SADC-LA AGM, LAZ President, Mr. Lungisani Zulu was elected to the SADC LA Executive Committee, alongside the President of the Law Society of Zimbabwe, Ms. Rumbidzai Matambo. Together, they will work alongside President Dr. Flavio Menete of Mozambique, with Ms. Noxolo-Maduba Silevu of South Africa as Vice President and Ms. Tania Canguia of Angola as Treasurer. The LAZ Vice President, Ms. Matilda Kaoma was also elected as a Council Member. The conference concluded with a successful cocktail and dinner, offering opportunities for networking and celebration.

THE LAZ MARATHON IS IN THE BAG!

The 2024 Annual LAZ Marathon was held on 27th July 2024, in Lusaka and Ndola under the theme “*Mental Wellness and Justice.*” This is the second Marathon which LAZ has successfully conducted and this time, with the assistance of the Lusaka Fitness Squad and the Ndola Fitness Squad. The event highlighted not only our athletic excellence as LAZ, but also our strong commitment to promoting mental wellness and justice. The Marathon was officiated by the new Justice Minister Hon. Princess Kasune and it was also well attended by our Judges and State Counsels, which gave it the deserved prestige and dignity. Our members also did not disappoint as they showed up in droves with zest and great energy.

21K Race Winners:

Congratulations to Rodrick Mudenda, Elizabeth Daka, Abigail Mwila, Bernard Mpundu, Tisa Kalemba, and Edward Mwale for their outstanding performances in the 21K race.

10K Race Winners:

Congratulations to Brenda Mumbi, Aason Hiyamwa, Offless Sijuwa, Nicola Puccinelli, Chipso Godo, and Joab Chikoti for leading the 10K race.

5K Race Winners:

There were no winners for the 5K race.

Mobile Clinics

Alongside the Marathon, the Legal Aid and Pro bono Committee (in collaboration with the National Legal Aid Board and National Legal Aid Clinic for Women) also hosted Mobile Clinics both in Lusaka (at Longacres Mall) and in Ndola (at Kafubu Mall). In Lusaka, six (6) advocates successfully registered for pro bono cases



in accordance with the Pro bono Policy, whilst only two (2) pro bono cases were taken up by the advocates in Ndola. In terms of legal advice, Ndola performed extremely well as more than twenty (20) members of the public came forward to receive free legal advice. Unfortunately, no member of the public came forward to request for legal advice in Lusaka.

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The LAZ Marathon is more than just a RACE - it's a MOVEMENT!

SHOULD THE LEGAL PROFESSION GO GREEN?

By **Sudzika Nyirenda** (Senior Legal Manager, FNB) and **Chishimba Lamba** (Senior Legal Counsel, Copperbelt Energy Corporation)

Introduction

As Zambia strives to develop and grow her economy, the important role that legal practitioners play in facilitating various transactions cannot be overstated. Typically, Legal Counsel is consulted and receives instructions to close the deal. Often riding on the closed deal are benefits such as growth in trade and enterprise, establishment of a manufacturing base, employment of nationals et cetera. But how much thought in deal-closing goes into the protection of the environment? Do the lawyers involved in the transaction play any role in ensuring that the transaction fosters sustainable, environment-friendly development; or is ours simply a deal-closing mandate? This article attempts to merely generate interest in considering the role of counsel in transactions. It is not an assessment of the adequacy or otherwise of the legal framework, but serves as a clarion call for lawyers to intentionally adopt a conscientious approach to deal-making that recognizes, maintains and protects environmental interests.

The Challenge

The challenge of sustainable development is perhaps most pronounced in the mining and extractive industries. There is no doubt that mining in Zambia, complete with its excavation, burrowing and blasting activities, accounts for a large portion of damage to the environment: i.e. pollution of soil, air and water, deforestation and the decimation of natural flora and fauna.

Other kinds of industries too such as manufacturing, construction (both residential and commercial) agriculture, transportation and health, all impact the environment to varying degrees.

Legal Framework

The legal regime for the protection of the environment is rooted in constitutional provisions and supplemented by

other legislation, key of which is the Environmental Management Act ("EMA") No. 12 of 2011. Article 43(1) (c) and (d) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 (the "Constitution") prescribes the responsibility for citizens to protect and conserve the environment and to utilise natural resources in a sustainable manner; as well as to maintain a clean and healthy environment. Article 255 of the Constitution also sets out the principles



of environmental and natural resources management and development and states in part as follows:

- “(a) *natural resources have an environmental, economic, social and cultural value and this shall be reflected in their use;*
- (b) *the person responsible for polluting or degrading the environment is responsible for paying for the damage done to the environment;*
- (c) *where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;*
- (d) *the conservation and protection of ecologically sensitive areas, habitats, species and other environment shall be done in a sustainable manner...”*

Further, the EMA under section 4 grants every person in Zambia an enforceable right to a clean, safe and healthy environment, actionable even for threatened breach. In addition, section 5 of the EMA provides that every person has a duty to safeguard and enhance the environment and to inform the Agency of any activity or phenomenon that affects or may affect the environment.

The Courts are also playing their part in enforcing legal provisions for environmental protection. The Court of Appeal in the case of *Moses Lukwanda and 9 others v Zambia Airforce Projects Limited and 7 others* CAZ/08/323/2019 granted an interim injunction for construction of a housing project, over concerns of possible water contamination from effluent discharges at the housing project, destruction of the forest and the effects on surrounding rivers, thereby impacting negatively on public access to clean and safe water.

The Lawyer's Role

It is clear from the foregoing, that

The Courts are also playing their part in enforcing legal provisions for environmental protection.

laws are in place for environmental protection. In the words of Dr. Pamela Towela Sambo, “*Zambia has seen progressive environmental laws both in the Constitution and several Acts of Parliament. The major problem has been a lack of compliance and enforcement.*” (Sambo, Pamela T. (2020) “*Moses Lukwanda and 9 others v Zambia Airforce Projects Limited and 7 others* CAZ/08/323/2019,” **SAIPAR Case Review: Vol. 3: Issue. 1, Article 11 at 57. Available at:** <https://scholarship.law.cornell.edu/scr/vol3/iss1/11>).

Considering the drastic and long-lasting effects of economic activities on the environment, we must do more than merely comply with and enforce the law. For Counsel, it must no longer be sufficient that the Project brief covers the Environmental Impact Assessment Report and the grant of the much sought-after Zambia Environmental Management Agency (ZEMA) Decision Letter. Rather, it must be that such documentation, approvals and licenses reflect a culture and a sincerely-held position of environmental management and protection, from project conception

to actualization, and beyond. A whole culture of environmental protection and sustained development is required.

Counsel must include environmental considerations in their briefs, where appropriate. Whether the instruction relates to a complex commercial deal (such as the damming of a river or inundation of a gorge for power generation) or a single-unit residential property lease or sale, this must be a key consideration for Counsel. It is understandable that some deals/transactions are bigger and more impactful than others, but in all of them (with consistency and regularity), Counsel is urged to make environmental consideration a top issue on the checklist.

The entrenchment of a culture of environmental protection will require more than legislating and judicial pronouncements. All stakeholders, including legal practitioners, must play their part. Dr. Sambo again:

“It can be argued that adequate environmental law provisions combined with a ‘green’ judiciary are likely to make a significant contribution towards the development of an environmental ethos and good environmental governance in Zambia. These two factors, however, are by no means significant in themselves.” (Ibid)

Conclusion

The challenge of environmental degradation in our pursuit of economic development will persist, notwithstanding that the laws do exist to protect the environment. As lawyers, we must conscientiously incorporate environmental sustainability in our business decisions and carry our clients along this worthwhile cause.

If only lawyers at least think about the issue, the purpose of this article would have been achieved.

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REFLECTIONS ON THE JUDGMENTS OF THE LATE CHIEF JUSTICE EMERITUS ANNEL MUSENGA SILUNGWE

Chanda Chungu, LLB(Cape Town), LLM(Cape Town), MSc (Oxford), Lecturer, UNZA

Justice Emeritus Annel Musenga Silungwe died on 30th June 2024 at the age of 88. In his long and illustrious career spanning from 22nd November 1966 to his retirement in 1992, Justice Silungwe served in various capacities including as Senior Resident Magistrate, District Registrar, Minister of Legal Affairs and Attorney-General. His distinguished legal career culminated into his appointment as a Judge and thereafter, as the first indigenous Chief Justice of the Republic of Zambia.

It was during Justice Silungwe's seventeen (17) years of service as Chief Justice (1975 to 1992) that he set himself apart as a luminary in the legal profession. Some of his earliest decisions delivered by the Supreme Court continue to provide the basis for the protection of fundamental rights today, especially in the area of criminal law.

In his first decision as Chief Justice, Silungwe in the case of *Chilufya v. The People* (1975) Z.R. 138 (S.C.), confirmed that confessions are only admissible where a prior warning is given to avoid a party being coerced by implication into making an adverse admission that would prejudice his presumption of innocence. In the subsequent case of *Toko v. The People* (1975) Z.R. 196 (S.C.), the court in a judgment delivered by Justice Silungwe clarified that the police or anyone responsible for conducting an identification parade must do nothing that might directly



or indirectly prevent the identification from being proper, fair and independent.

The Judge's inclination to protect the interests of accused persons in criminal proceedings continued as demonstrated in the case of *James Chibangu v. The People* (1978) Z.R. 37 (S.C.) where an accused person was charged and convicted of the murder of his wife with his bare hands and a cooking pot. The court considered whether the defence of provocation applied. Judge Silungwe brilliantly held that the defence is available when viewed objectively and is judged from the perspective of whether an ordinary person in the accused's community would have reacted the same way. Further, provocation will only be a defence where the reaction and retaliation was reasonable and proportional in the circumstances. Applying the defence to the facts, the Judge held that provocation failed as the killing of the wife in the circumstances was disproportionate.

As it relates to the sentencing of accused persons, the erstwhile Chief Justice clarified that when a penalty is subject of appeal, the appellate court can only impose a sentence that the original trial court could have imposed. In *Kosamu and Another v. The People* (1982) Z.R. 29 (S.C.), he also clarified that an appellate court cannot enhance a sentence imposed by the trial court beyond the scope of that court. This decision provided useful guidance and limits on the powers of the court in relation to sentences. Clearly, accused persons were protected from adverse sentences that are or go beyond the jurisdiction of the trial court that first heard the matter. Justice Silungwe also assisted in the development of rules of evidence. In *John Mkandawire and Others v. The People* (1978) Z.R. 46 (S.C.), it was held that the evidence of a single identifying witness must be treated with the greatest caution because of the danger of an honest mistake being made. In *Gastove Kapata v. The People* SCZ Judgment No. 9 of 1984, the law on when judicial notice

can be taken was aptly developed.

There is no doubt that Justice Silungwe was tasked with protecting the human rights of all persons, even those accused of committing serious offences. With respect to detention, the Chief Justice handed down a decision in the case of *James Chanda Kasamanda v. The Attorney General* (1988-1989) Z.R. 132 (S.C.) (the "James Chanda case") wherein he was adamant that there must be valid and substantiated grounds for any detention, that must exist at the time the detention is contemplated. In the case of *Attorney-General v Valentine Shula Musakanya* SCZ Judgment No. 18 of 1981, he held that all detained persons should be availed with the reasons for their detention or restriction, as soon as possible. He went further and held that a detained person must be given reasonable opportunity to be heard and make representations on the merits to militate against his/her detention. The James Chanda case has been pertinent in guarding against arbitrary detentions that threaten the freedom of movement of citizens.

Any tribute to Justice Silungwe must include the seminal decision of *Edward Jack Shamwana and 7 Others v. The People* (1985) Z.R. 41 (S.C.). The case established a number of important principles relating to the evidence of accomplices, confessions, corroboration and hearsay evidence. The case was a milestone, and to this day continues to permeate and influence the profession in the area of criminal law and evidence.

The Judge's inclination to protect human rights extends to the employment context where Justice Silungwe in the case of *Kangombe v Attorney-General* (1972) Z.R. 177, held that the dismissal of an employee contrary to the statutory provisions was null and void. Justice Silungwe also decided the case of *Herbert Ijegal Okwo Ozokwo v. The Attorney General* (1985) Z.R. 218 (S.C.) which was the case to determine how an employee's termination benefits are to

be calculated. In a lucid decision, he, on behalf of the apex court held that the use of salary means gratuity is calculated using the emoluments that an employee was receiving, being the basic salary and allowances.

In the seminal decision of the *Attorney-General v. DG Mpundu* (1984) Z.R. 6 (S.C.), the Supreme Court dealt with an employee who was unlawfully suspended by his employer. In the first decision of its kind in this jurisdiction, the court held that mental distress and inconvenience can be compensated for by way of damages where there is breach of contract.

As a crucial arm of the three arms of government, former Chief Justice Silungwe was cognisant of the concept of separation of powers and the limits of the Judiciary in overstepping the mark in relation to the powers of the Executive. In *Godfrey Miyanda v. The Attorney General* (1983) Z.R. 78 (S.C.), he made it clear that the executive was entitled to exercise powers expressly or implicitly provided and the court cannot demand reasons because power was carried out. The Judge's reasoning was repeated in *Nkaka Chisanga Puta v. The Attorney-General* (1983) Z.R. 114, where he held that the courts do not have the expertise or jurisdiction to determine the reasonableness of the President declaring a state of emergency. Justice Silungwe appropriately guided that the appropriate forum to hold the Executive to account in this regard was the third arm of government, i.e. Parliament.

The Judge's respect for the separation of powers; his development of several rules in the law of evidence and criminal practice; coupled with the protection of human rights, have set the jurisprudential campus for the apex court for many years to come.

May his Soul Rest in Eternal Peace.

FREQUENTLY ASKED QUESTIONS

ON THE LAWYERS' CO-OPERATIVE

By Womba Silumbu Kankondo, LAZ Honourary Treasurer

INTRODUCTION

The Lawyers' Multi-Purpose Co-operative Society Limited (the "Lawyers' Co-operative") is an approved Special Purpose Vehicle (SPV) to further the welfare of the members of the Law Association of Zambia (LAZ), through regular collective savings and investments from the members. The establishment of the Lawyers' Co-operative was approved by a Resolution of the LAZ Annual General Meeting held in April, 2023. In accordance with the said Resolution, every paid-up member of

The Lawyers' Co-operative is an approved Special Purpose Vehicle (SPV) to further the welfare of the members of the Law Association of Zambia.



LAZ automatically becomes a member of the Lawyers' Co-operative, credited with K1,000.00 shares.

Q1. WHAT IS THE COMPOSITION OF THE LAWYERS' COOPERATIVE?

The Lawyers' Co-operative is registered as a Co-operative. It is overseen by an interim five(5) member board, chaired by Dr. Tukiya Kankasa-Mabula. The other board members are: Dr Chola Kafwabulula as Vice Chairperson; Ms. Lydia Sameta-Chilumba as Treasurer; Ms. Liya Banda

Tembo as Vice Treasurer and Ms. Miria Mazyambe as the Secretary. The members of the Board are members of the LAZ who responded to an expression of interest from LAZ for persons to serve on this Board. The Board of the Lawyers' Co-operative is accountable to the LAZ Council, which is the Supervisory Board and to the members of the Co-operative in General Meeting.

Q2. WHAT IS THE MISCHIEF TO BE CURED?

The Lawyers' Co-operative is registered

under the Societies Act No. 20 1998 to provide a platform for members to be financially empowered through collective savings and investments and other initiatives. The Lawyers' Co-operative was principally established to promote a culture of savings by members through enabling collective investments that will generate economic returns to ameliorate hardships in retirement and other times of need. Through the Lawyers' Co-op, members are encouraged to save, invest and prosper.

Q3. WHAT ARE THE OBJECTIVES OF THE CO-OPERATIVE?

According to Article 3 of the Lawyers' Co-operative's Bylaws, the Lawyers' Co-operative seeks to:

- Promote the welfare of members of the Law Association of Zambia;
- Offer members an opportunity to save and access financial products at reasonable rates and terms;
- Provide a platform for investment initiatives by members;
- To ensure the safety and soundness of member funds; and
- Offer other services as permissible by law for the benefit of members.

Q3 WHO IS ELIGIBLE TO JOIN THE COOPERATIVE?

All paid up members and employees of LAZ are eligible for membership of the Lawyers' Cooperative. Members are required to fill in the membership form and to pay the K100 membership fee.

Q4. WHAT IS THE MINIMUM PRESCRIBED SHARE?

The minimum prescribed shares are K1,000 and the membership fee is K100. LAZ has paid up the K1,000 minimum shareholding for each member of LAZ and will continue to do so for new members as they come on

board. This is the minimum shareholding and cannot be withdrawn.

Q5. CAN A MEMBER CONTRIBUTE OVER AND ABOVE THE MINIMUM SHARE?

Members are encouraged to buy more shares in the Cooperative at K1000 per share. The shareholding determines the level of dividends when paid out.

Q6. WHAT INVESTMENTS ARE CURRENTLY IN PLACE?

The Lawyers' Co-operative currently only has investments in government Bonds. The LAZ Council has delegated to the Board, the implementation of the Members' Funeral Grant currently standing at K50,000 and secured by a Government Bond. This bond which was initially invested by the LAZ Council is the largest with a face value of ZMW4,470,000.00 from a cost of investment of K2,300,000.00. The annual gross income from this bond is K624,085.48. From its inception in September 2023, the Co-operative has invested a total sum of ZMW 1,436,390.84 as at July 2024 month end.

Q7. WHAT PLANS DOES THE COOPERATIVE HAVE FOR THE FUTURE?

The Lawyers Co-operative intends to provide members with a diversified investment portfolio. In furtherance of this, the Board has begun the process of strategic planning and identified a Road Map. The draft Strategy will be submitted for stakeholder consultation before adoption by the Board and AGM in due course. With respect to member welfare, the Cooperative is considering Group Life Assurance for interested members. Proposals from members for other potential investments would be most welcome. The long-term view for the Cooperative is very ambitious and includes venturing into real

estate and possibly a financial institution.

Q8. ARE THE INVESTMENTS SAFE

The investments in the Lawyers' Co-operative are very safe. The Lawyers' Cooperative has the LAZ behind it, with the oversight of Council and a credible board.

Q.9 WHY SHOULD YOU JOIN THE LAWYERS' COOPERATIVE?

- Secure Savings Options: It provides a safe and reliable investment platform, with a range of savings options to cater to individual members' needs. Whether you are saving for short-term goals or building for the future, the Lawyers' Cooperative provides a safe and reliable platform.
- Solid Reputation and Ethical Practices: The Cooperative operates with integrity, transparency, and in accordance with ethical business practices. It abides by strict standards and regulations to ensure your investments and savings are safe.
- Profit-sharing: Enjoy the benefits of shared success through dividends and interest on savings.
- Community Support: Connect with like-minded individuals who care about your success.
- Interest Rates: For the investments fixed before 1st January 2024 investing or saving with the Lawyers' Cooperative sees your investments yielding a 14% interest rate on all your savings till maturity. Post 1st January 2024, yields will be determined at the bond auction.

CONCLUSION

If you have any further questions or need additional information, please don't hesitate to reach out to the Lawyers' Cooperative on lawyerscoop@laz.org.zm Let's remember to Save, Invest & Prosper.

UPDATES FROM OUR STAKEHOLDERS

THE LUSAKA INTERNATIONAL ARBITRATION CENTRE (LIAC): AN OVERVIEW

By **Kadidja Sidibe**, Deputy Secretary General - LIAC

The Lusaka International Arbitration Centre (LIAC) was established with the aim to provide efficient and cost-effective arbitration services. LIAC is meant to provide a platform for both domestic and international parties seeking to resolve commercial disputes with the objective of making Lusaka a regional hub for alternate dispute resolution.

What is LIAC?

LIAC is an independent, not-for-profit organisation based in Lusaka, Zambia. It offers comprehensive alternate dispute resolution rules and procedures that align with international best practices while taking into account the unique legal and cultural landscape of the region. The panels of LIAC consist of seasoned ADR professionals from diverse backgrounds, ensuring a fair and impartial process.

Why Choose LIAC?

There are several compelling reasons why parties opt for LIAC arbitration:

1. **Neutrality:** LIAC provides a neutral venue for resolving disputes, particularly those involving parties from different countries.
2. **Expertise:** LIAC neutrals possess in-depth knowledge of various industries and legal disciplines, enabling them to make informed decisions.
3. **Confidentiality:** LIAC proceedings are strictly confidential, safeguarding sensitive information.

4. **Enforceability:** LIAC awards are recognised and enforceable under the New York Convention.

How Can Lawyers Get Involved?

Lawyers play a pivotal role in LIAC proceedings. They can represent parties, act as arbitrators, or contribute to the development of LIAC's rules and procedures. Here's how lawyers can engage with LIAC:

1. **Representing Parties:** Lawyers can advocate for their clients' interests throughout the ADR processes, from drafting submissions to presenting arguments during hearings.
2. **Becoming an Arbitrator:** Experienced lawyers can apply to join LIAC's panel of arbitrators, subject to meeting specific criteria.
3. **Contributing to LIAC's Development:** Lawyers can participate in LIAC's various committees and working groups, offering valuable insights and expertise to enhance the LIAC's operations.

Conclusion

LIAC stands as a testament to the growing prominence of arbitration in Africa. By providing a credible and accessible platform for resolving disputes, LIAC will contribute significantly to the region's economic development. For lawyers, LIAC offers numerous opportunities to expand their practice and contribute to the advancement of international arbitration.



CALL FOR APPLICATIONS FOR ADMISSION TO THE INTERNATIONAL AND DOMESTIC PANELS OF ARBITRATORS

The Lusaka International Arbitration Centre (LIAC) aims to provide a forum for the resolution and administration of international commercial and domestic arbitrations and other alternative dispute processes in the country. Its establishment is a response to the demand from the business community for a reputable forum for speedy disposal of commercial disputes. As part of the ongoing efforts to build a diverse and highly qualified panel of arbitrators, LIAC invites expressions of interest from suitably qualified and experienced professionals who are interested in listing on the LIAC Panel of Arbitrators.

Criteria for Listing on the LIAC Panels of Arbitrators:

Domestic Panel:

We seek candidates that meet the minimum standards set out below:

- Educational degree(s) and/or professional license(s) appropriate to the applicant's field of expertise;
- At least five (5) years post qualification experience;
- A recognised course of study in the practice of arbitration and have been at least qualified to Full Membership of the Chartered Institute of Arbitrators;
- Experience as an arbitrator or counsel in two or more arbitration cases; and
- Membership in a professional association(s).

International Panel:

We seek candidates that meet the minimum standards set out below:

- Educational degree(s) and/or professional license(s) appropriate to your field of expertise;
- At least ten (10) years post qualification experience or senior-level business or professional experience;
- Be a Fellow of Chartered Institute of Arbitrators or any comparable professional arbitration institute; and
- Experience as an arbitrator or counsel in five or more arbitration cases; and
- Membership in a professional association(s).

Admission:

Application for admission to the LIAC Panel of Arbitrators shall be made at the following link:
<https://liac.co.zm/admission-to-liac-panels/>

The LIAC Board of Directors reserves the right, in its absolute discretion, to admit or to refuse the admission of any person to the Panel.

Admission Fee:

The fees for admission to the LIAC Panels of domestic and international arbitrators are set out in the table below:

Status	Domestic Panel (\$)	International Panel (\$)	Both Panels (\$)
Resident	100	200	300
Non-Resident	150	250	350

For any enquiries please contact us at secretariat@liac.co.zm. We look forward to receiving your application and the opportunity to welcome you to LIAC's panel of distinguished arbitrators.

Per: Nakasamba Banda-Chanda
Secretary General

LAZ ACTIVITIES LATELY...

PRESS STATEMENT BY THE OASIS FORUM - GOOD GOVERNANCE, RULE OF LAW AND CONSTITUTIONALISM

At a joint media briefing held on 3rd June 2024, the Oasis Forum expressed deep concern over the recent happenings in the country, which it described as a clear depiction of a departure from the principles of constitutionalism, rule of law, and good governance by the current political administration. According to the statement, this departure is marked by a series of divisive statements from various political leaders, which threaten to undermine the nation's unity and stability. The Oasis Forum emphasized the need for leaders to uphold the nation's motto, "One Zambia, One Nation," and urged the government to address these issues with utmost urgency. The statement also pointed out the rising complaints of marginalization of citizens in different regions of Zambia. According to the Oasis Forum, there is a growing perception that the New Dawn Government is favouring certain regions, particularly the so-called "Zambezi region," in terms of appointments to national offices and business opportunities. The Oasis Forum warned that this perception fuels divisive sentiments and could exacerbate regional tensions. It called on the government to ensure equitable distribution of opportunities and to take tangible steps to promote inclusivity, thereby preventing any form of regionalism or tribalism from taking root.



PRESS STATEMENT - THE OBLIGATION OF THE STATE TO PROTECT CITIZENS AND ENSURE THE FREE ENJOYMENT OF THEIR RIGHTS, INCLUDING THE FREEDOM OF EXPRESSION AND ASSEMBLY

The Council issued a press statement on the 11th of July 2024, condemning the arrest and detention by the Police in Lusaka, of peaceful "Fix ZESCO" protesters who gathered at ZESCO Headquarters on 10th July 2024, to express their dissatisfaction with the mismanagement of the power situation and the failure to adhere to load shedding schedules by ZESCO. The LAZ council emphasized that such police actions are a clear affront to the rights and liberties guaranteed under Articles 11 and 20 of the Constitution. The press statement read in part as follows:

"LAZ is aware that the protesters duly complied with the notification requirements under the Public Order Act, Chapter 113 of the Laws of Zambia, and, therefore, finds the conduct of the police inimical to democratic tenets which every public body is constitutionally required to abide by. We demand the unconditional and immediate release of all those arrested. Though there was a slight improvement in the conduct of the Police, which we had hoped would continue following the recent holding of political rallies by opposition parties, LAZ finds the latest act from the Police Service rather unfortunate and a departure from the good progress that had been made."

The Council reiterated that in a democratic country such as ours, citizens are entitled to freely air their views, including through peaceful demonstrations against the public body concerned on any matter affecting them; and that the State has a corresponding obligation to provide security for those expressing their views.

COURTESY CALL ON THE NEW MINISTER OF JUSTICE

The Council, led by the President Lungisani Zulu, on 28th June 2024, paid a courtesy call on the newly appointed Minister of Justice, Hon. Princess Kasune MP, the first female Justice Minister in Zambia. The courtesy call was intended to discuss critical issues affecting the legal profession and to strengthen stakeholder engagement with the Ministry of Justice (MoJ). The President introduced the newly elected LAZ Council to the Minister and expressed LAZ's readiness to support her and the MoJ. The President also highlighted the crucial role which the MoJ plays as a stakeholder in assisting LAZ to achieve its mandate. The key issues raised by the President included the necessity of an open-door policy at the MoJ for better communication; a clear constitutional reform roadmap; the need to address concerns about the abuse of the Public Order Act; and the need to increase the number of High Court Judges. The President also informed the Minister that the Legal Professionals Bill was being worked on by LAZ, which is generally



intended to modernize the sector, and to specifically advocate for among other things, greater utilization of local lawyers in government dealings, thereby increasing work for lawyers. Hon. Kasune assured her commitment to inclusivity and an open-door policy, expressing optimism about

collaborating with LAZ to address these issues. The meeting concluded positively, with both parties looking forward to ongoing cooperation to enhance Zambia's legal framework and judicial system. The Minister was later invited to the Writ for a great night of laughter and dance!

RE-LAUNCH OF "THE WRIT" - YOUR STARTING POINT

On 27th July 2024, the Law Association of Zambia (LAZ) through the House & Welfare Committee proudly re-launched "The Writ" previously known as the LAZ Bar. The re-launch was aimed to among other things, align with the rejuvenated theme and purpose of the Bar. The re-launch ceremony was officiated by Hon. Judge William Mweemba (who was the guest of honour), Hon. Judge Abah Patel, Hon. Judge Kazimbe Chenda, alongside the LAZ Vice President Ms. Matilda Chanda Kaoma, the Chairperson of the House and Welfare Committee, Mr. Mulenga Sholomo and other LAZ Council members. In his remarks, Hon. Judge William Mweemba encouraged LAZ members to take advantage of "The Writ" as a place to relax, connect, and share ideas. He emphasized the importance of such a space for lawyers, who often face high levels of stress, which can impact on their mental well-being and general wellness. The Writ - Your starting point is a safe place for all legal practitioners, including Judges and Magistrates to unwind, relax and network. This initiative is part of the House & Welfare Committee's mandate to promote wellness and recreation among the members.



SWEARING IN CEREMONY - JUDICIAL COMPLAINTS COMMISSION (JCC) AND ANTI-CORRUPTION COMMISSION (ACC) BOARD

On 28th June 2024, Mr. Kephass Kampamba Katongo and Ms. Eva Jhala were sworn in as members of the Judicial Complaints Commission (JCC) and Mr. Jack Kalala as a member of the Board of the Anti-Corruption Commission (ACC). The Council, led by the President, Lungisani Zulu, was in attendance at State House to witness the swearing in ceremony. In addition, the LAZ President also took the opportunity to discuss various national issues with the President of the Republic of Zambia, Mr. Hakainde Hichilema.



COURTESY CALL ON THE CHIEF JUSTICE

On 16th July 2024, the Council led by the President, Lungisani Zulu paid a courtesy call on the Hon. Chief Justice Dr. Mumba Malila, S.C. The Chief Justice was accompanied by the Hon. Deputy Chief Justice, Michael Musonda, S.C.; the Hon. Mr. Justice Nigel Kalonde Mutuna; the Hon. Mr. Justice Arnold Mweetwa Shilimi; the Hon. Mrs. Justice Judy Zulu Mulongoti; and Mr. Rodgers Kaoma (Special Assistant to the Chief Justice). The President stressed that the Judiciary is a key stakeholder for LAZ and it was crucial to compare notes and map a way forward for the mutual benefit of the parties. The President also highlighted various pertinent issues including; (i) the need to address the expanded jurisdiction of the Subordinate Courts, especially in view of the limited capacity of the said courts, especially out of Lusaka where there is lack administrative support; (ii) the need to address the growing problem of delayed judgments, despite the great efforts of Bar-Bench Liaison Committee; (iii) the need to increase the number of Judges in the High Court of Zambia, so as to meet the ever growing demand in the dispensation of justice. In this regard, the President proposed that the Judicial Service Commission (JSC) should prescribe the number of judges to afford flexibility in making changes, instead of embedding this in legislation; (iv) The President also informed the meeting that the reform of the Legal Practitioners' Rules (SI 52 of 2001) was underway and would need the concurrence of the Chief Justice before being signed off. The President stated that the amendments will introduce various changes, including the removal of the restriction on contingency fees, removal of the restriction on public tenders and deal with how the Legal Practitioners Committee (LPC) regulates discipline and



metes sanctions.

The Chief Justice stated that with regards to the increased jurisdiction of the Subordinate Courts, the reasoning was to give room to the High Court and that in the long term, the Judiciary would like to have a Chief Resident Magistrate (CRM) heading each division so as to increase capacity. The Chief Justice also agreed with the President that there was need to increase the number of judges especially in the High Court, and also stated that LAZ has his full support in terms of the Legal Practitioners Rules. He also expressed the importance of the Bar Bench Conference, which is an opportunity for the bar and the bench to address some of these issues. The Deputy Chief Justice emphasized that the role of LAZ as a crucial stakeholder has evolved and that the Judiciary depends on LAZ to equally speak out on the needs of this arm of government – he made a clarion

call for LAZ to question itself on how it can support the office of the Chief Justice and the Judiciary as a whole. In his capacity as the Chairperson of the Bar-Bench Liaison Committee, Hon. Mr. Justice Nigel Mutuna also challenged legal practitioners to ensure that matters which are reported to the Bar-Bench Liaison Committee are completed from the perspective of the legal practitioners, for instance, lawyers must ensure that they have invoked the 60- day rule provided under the amended High Court Rules (SI 58 Of 2020), so that Judges are also held to account. The Judge also encouraged LAZ to hold sensitization workshops/webinars on the performance of new laws/rules, e.g SI 58. He also informed the meeting that the Judiciary will soon be issuing Protocols on Virtual Hearings and E-Filing Rules, which will be shared with the membership for their input.

THE 2024 BAR-BENCH CONFERENCE

The 2024 Bar-Bench Conference, held on 16th and 17th August at the Kenneth Kaunda International Conference Centre in Lusaka, marked a significant moment in the Zambian legal community, bringing together key stakeholders from the Bar and the Bench. Officiated by the Chief Justice Dr. Mumba Malila, SC, the conference was themed “Commemorating the 50th Anniversary of the Supreme Court and the Law Association of Zambia,” underscoring the deep-rooted connection between these two vital institutions.

This year's conference was particularly noteworthy, as it was the first of its kind since 2010, reflecting a renewed commitment to fostering dialogue and collaboration within the legal fraternity. In his opening remarks, the Chief Justice emphasized the importance of speed in justice delivery, maintaining high standards in law practice and

adjudication, and fostering effective communication between judges and legal representatives. He highlighted the need for unity in identifying potential areas for law reform, improving the justice delivery system, and enhancing the rule of law. The LAZ President Mr. Lungisani Zulu emphasized that the conference offered a valuable opportunity for reflection on the shared journey between the Supreme Court and the Law Association of Zambia (LAZ). He urged the legal community to use the opportunity to resolve differences and foster collaboration for the greater good of society.

The conference sessions covered a range of critical issues, from the role of fast-track courts in combating economic and financial crimes, to the importance of judicial ethics in the digital age. The discussions also focused on the establishment of a Judicial College,



which promises to equip the judiciary with the tools and knowledge necessary to navigate the complexities of the 21st century. The event has laid the groundwork for a stronger and more resilient judiciary and legal profession. The commitment to justice, fairness, and the rule of law remains at the forefront, guiding the ongoing efforts to strengthen Zambia's legal system for the benefit of its citizens.



COURTESY CALL ON THE NEW MINISTER OF LANDS AND NATURAL RESOURCES

The Council, led by the President, Lungisani Zulu paid a courtesy call on the Minister of Lands and Natural Resources, Hon. Silva Masebo, MP. The Minister was accompanied by the Permanent Secretary; the Commissioner of Lands; the Chief Lands Officer; the Director IT; and the Surveyor General. The meeting discussed among other things, the various challenges which legal practitioners have been facing with the new Zambia Integrated Land Administration (ZILAS). The meeting resolved that only legal practitioners in good standing with LAZ will be allowed to lodge documents at the Lands and Deeds Registry. To this effect, Law firms are encouraged to open accounts under the ZILAS system to access the services at the Ministry and that a team from LAZ and the Ministry will be constituted to actualize the Memorandum of Understanding (MoU) previously executed in 2023. Finally, the meeting resolved that the Ministry will assist LAZ to acquire land for the development projects which LAZ wishes to embark on. The meeting concluded on a good note, with the expectation that further meetings will be held to resolve any outstanding issues. Following the meeting, the Ministry released a Press Statement to the effect that the public should comply with Regulation 3 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia. The Press Statement read in part as follows:

"...we continue to face challenges which we are committed to resolving. For example, we have noted with concern an increase in the number of applications for services under the Lands and Deeds Department by people who are not lawyers or interested persons in the documents. This has resulted in submission of substandard documents, fraud as well as errors which in turn impacts negatively on service delivery. According to Regulation 3 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, no documents relating to land other than a state grant is supposed to be registered by the Registrar of Lands and Deeds unless it is presented for registration by a person interested in the documents or by a legal practitioner. Persons interested in the documents are parties to the documents submitted for registration."



TAX COMPLIANCE BY LAW FIRMS: THE IMPORTANCE OF ADHERENCE AND BEST PRACTICES

By **Nsatusile Mgone** LLB, AHCZ, LLM (Commercial Law)
Tax and Legal Manager, EY Zambia

It is imperative for law firms in Zambia to not only provide exemplary legal services to their clients but to also meticulously adhere to the nation's tax laws and regulations. Tax compliance is a fundamental aspect of running a successful law firm, as it ensures the firm's financial integrity and upholds its reputation within the legal community.

This article delves into the importance of tax compliance for law firms in Zambia, highlighting the commercial and tax law implications that underscore the necessity of maintaining a compliant tax record. It also recommends the best practices to be considered.

Understanding Tax Obligations

Zambian law firms, like all other businesses, are subject to a variety of taxes in the Zambian jurisdiction. These include, personal income tax (PIT), value-added tax (VAT), withholding tax (WHT), payroll-related taxes (PAYE) as well as transaction taxes such property transfer tax (PTT) and Customs and Excise duties, as the case may be. Understanding these obligations is the first step in ensuring



compliance. Failure to comply can lead to severe penalties, including fines, interest on unpaid taxes, and even criminal charges that could tarnish the firm's reputation and its ability to practice law. The commercial and tax law considerations are detailed below.

Commercial Considerations

From a commercial standpoint, tax compliance is integral to the financial health of a law firm. Adherence to tax laws can significantly affect the firm's profitability, sustainability and continuity. Law firms must be diligent in record-keeping, timely tax filing, and accurate reporting of income and expenses. This diligence not only prevents the financial strain of penalties but also positions the firm as a reliable and trustworthy entity in the eyes of clients, financial institutions, and other stakeholders.

Tax Law Considerations

From a tax law perspective, non-compliance can have far-reaching financial implications through the penalties and interests charged. Non-compliance can also lead to burdensome disputes with the Zambia Revenue Authority should they conduct tax audits. This would not only damage the firm's legal standing and its lawyers' ability to practice but would also put a strain on the access to justice by the clients. Law firms are expected to be custodians and beacons of legal adherence, setting an example for clients and the community.

Mitigatory Considerations and Best Practices

To mitigate the risks associated with non-

compliance, law firms in Zambia should consider the following best practices:

- a) **Implement Robust Tax Management Strategies:** This includes staying abreast of changes in tax legislation, seeking professional tax advice, and investing in training for staff responsible for financial management.
- b) **Document Compliance Procedures:** Law firms should consider developing and maintaining a detailed manual of tax compliance procedures tailored to the specific needs. This should include step-by-step guides for all processes related to tax compliance, from calculating liabilities to filing returns. This documentation can serve as a traceable reference point for internal checks and balances.
- c) **Conduct Risk Assessments:** Regularly perform risk assessments to identify areas where the law firm may be vulnerable to non-compliance. This proactive approach allows the firm to address potential issues before they become problematic and to allocate resources effectively to mitigate identified risks.
- d) **Foster a Culture of Compliance:** Partners should set the tone for a firm-wide culture that values compliance with tax laws in the law firm. This can be achieved by recognizing and rewarding compliance efforts. A culture that prioritizes ethical behavior and compliance can significantly reduce the risk of non-compliance.
- e) Engage independent tax advisors to perform a detailed tax health check. This will inform the law firm on any exposures that may exist in their process and allow for timely mitigatory measures to be implemented.

By incorporating these best practices, law firms in Zambia can strengthen their approach to tax compliance, ensuring they meet their legal obligations while maintaining the highest standards of professional conduct.

Conclusion

In summation, tax compliance is not merely a legal obligation for law firms in Zambia; it is a cornerstone of ethical business practice that safeguards the firm's commercial interests and upholds its legal integrity. By recognizing the importance of tax compliance and taking proactive steps to fulfill these obligations, law firms can ensure their longevity and reputation in Zambia's legal landscape. As the legal industry continues to evolve, those firms that prioritize tax compliance will stand out as leaders, demonstrating a commitment to excellence in both commercial acumen and legal proficiency.

In light of the foregoing, ponder on the following questions: Is your law firm's tax record as clean as it could be? When was the last time your firm conducted a robust risk assessment—what were the findings? Is non-compliance to tax, if exposures exist, worth risking the efficiency of your tax practice?

Disclaimer: This Article is a personal opinion of the author and is not affiliated with any firm, organization, or employer. The article is for informational purposes only and should not be considered as professional advice.

SEVERANCE PAY: 5 KEY TAKE AWAYS FROM THE STANBIC BANK VS. NATASHA PATEL CASE

By Misozi Hope Masengu – LLB(Zambia); LLM(England), MCI Arb

Introduction

On 22nd August 2024, the Court of Appeal (CA) handed down its judgment in the case of *Stanbic Bank Zambia Ltd vs. Natasha Patel* (Appeal No. 274 of 2022) ZMCA 2024 (the “*Stanbic vs. Natasha case*”) and addressed the question of entitlement to severance pay under the Employment Code Act No.3 of 2019 (the “*Employment Code*” or the “*Code*”). The *Stanbic vs. Natasha case* is significant because it effectively overturns the previous decisions of the High Court in various cases including: *Mupila vs. Yu Wei* (COMP/IRCLK 222 of 2021); *Dansiano Phiri vs. Afronet Trading Limited T/A Fresh Bakery* (COMP/IRCLK/283/2022); and *Saviours Mundia vs. Consolidated Farming Unit* (COMP/IRCLK 442/2019) (the “*previous High Court decisions*”). The previous High Court decisions held that employees on permanent contracts are entitled to severance pay as permanent contracts are fixed term contracts (i.e. they have a fixed end date, being retirement age).

This article highlights five (5) key take aways from the *Stanbic case* that all employers, employees and legal advisers should be aware of.

1. A Permanent Contract is not a Fixed Term Contract. In the previous High Court decisions, the High Court held that



a permanent contract is a contract of fixed duration because it expires on the employee’s attainment of the retirement age as defined in the Employment Code. In overturning the decisions, the CA held that a permanent contract is distinct from a fixed duration contract because there is no single retirement age, as the law allows for normal retirement, early retirement,

and late retirement, which means that the retirement age is not fixed from the outset. This contrasts with a fixed duration/term contract which has a specified and fixed end date. It would be interesting to see if the CA’s position would change where the employer and employee pre-determine the employee’s retirement age in the employment contract, given the holding by

the Supreme Court in the case of *Nyambe Martin Nyambe and Others vs. Konkola Copper Mines Plc (Appeal No. 2 of 2022)* SCZ (2023), that contractual terms such as retirement age are binding on the parties.

2. An Employee Engaged on a Permanent Contract is not Entitled to Severance Pay. Considering that a permanent contract is not a fixed duration/term contract, an employee on a permanent contract is not entitled to severance pay under section 54(1)(b) and section 54(1)(c) of the Employment Code, which provide respectively, that where a contract of fixed duration expires, severance pay shall be a gratuity of 25% of the employee's basic pay earned during the contract period or retirement benefits provided under an applicable private pension scheme (whichever is applicable) (section 54(1)(b)); and that where a fixed duration contract has been terminated, severance pay will be a gratuity of 25% of the employee's basic pay earned during the contract period as at the effective date of termination (section 54(1)(c)). It is the author's view that an employee on a permanent and pensionable contract would still be entitled to severance pay in the event of a medical discharge, redundancy, or if the employee dies in service as provided under the Code.

3. A Dismissed Employee is not Entitled to Severance Pay under Section 54 of the Code. The CA held that an employee that is dismissed is not entitled to severance pay under section 54 of the Code. Severance pay is only payable upon the *termination or expiration* of a contract, and this does not include cases of dismissal (see the recent CA judgment in the case of *Midlands Milling 2011 Ltd vs. Lloyd Tembo* which states the distinction between termination and dismissal). The CA in the *Stanbic vs. Natasha* case has essentially overturned the precedent set in *Mupila vs. Yu Wei* (cited above), where it was held that unfairly or unlawfully dismissed employees on permanent contracts are entitled to severance pay.

4. A dismissed employee is only entitled

A dismissed employee is only entitled to accrued leave days and a salary.

to accrued leave days and a salary. The CA restated its position in the case of *Zubao Harry Juma vs. First Quantum Mining & Operation Limited –CAZ Appeal No. 102/2022*, that a dismissed employee is only entitled to accrued leave days and a salary up to the date of dismissal.

5. The CA has limited the entitlement to severance pay under the section 54(1)(c) of the Code to employees on long-term contracts only. In a summary of its judgment, the CA held that section 54(1)(c) of the Employment Code applies only to employees eligible for gratuity specifically those on long-term contracts of 12 months or more, renewable for further terms. The import of this holding is that only employees on long-term contracts (i.e. exceeding 12 months) are eligible to severance pay under section 54(1)(c) and by parity of reasoning, section 54(1)(b)). The author is of the view that this reasoning open to challenge for the following reasons:

Firstly, fixed duration contracts under the Employment Code do not refer solely to long-term contracts, but also include short-term contracts. There would be no justification to hold the view that a short-term contract is not a fixed duration contract.

Secondly, section 54(3) of the Code specifically excludes a casual employee; an employee on probation; a temporary employee; and an **employee engaged on a long-term contract** from entitlement to severance pay. The Code does not exclude employees on short-term contracts and permanent employees from being entitled to severance pay under section 54. Therefore, the said section should apply to these two(2) categories of employees only, but subject to meeting the criterion in section 54 for payment of severance. For instance, whilst a permanent employee is not entitled to severance pay in the form of gratuity under section 54(1)(b) and (c) because it's not a fixed duration contract, the said employee would still be entitled to severance pay in the event of a medical discharge, redundancy or death in service as provided under section 54 of the Code.

Thirdly, employees on long-term contracts are entitled to gratuity under section 73 of the Employment Code. Thus, if such employees are also entitled to severance pay (in the form of gratuity) under section 54(1)(b) or (c) as held by the CA, then it means that they would be entitled to double gratuity (i.e. both under section 73 and section 54(1)(b) and (c)), which is unjustifiable and tantamount to unjust enrichment. Therefore, in the author's view, section 54 does not apply to employees on long-term contracts at all, as expressly provided under section 54(3) of the Code.

Conclusion

The CA decision in the *Stanbic vs. Natasha* case has undoubtedly brought clarity to the debate on whether permanent contracts should be considered to be fixed term/duration contracts and the varying implications for the employee. However, it has raised even more questions that require answers. It remains to be seen whether the Supreme Court will provide the much-needed clarity as courts continue to pronounce themselves on various provisions of the Employment Code.

REMEMBERING OUR DEPARTED SOULS

SENIOR COUNSEL GEORGE HAMALA HAMANYANGA

The late Mr. George Hamala Hamanyanga was laid to rest at the Lusaka Leopards Hill Memorial Park, following his untimely death on Sunday, 23rd June 2024. During the valedictory session held at the Supreme Court in Lusaka, Mr. Hamanyanga was described as a paragon of the legal profession, whose contributions will be greatly missed. The President of LAZ, Mr. Lungisani Zulu, honored Mr. Hamanyanga as a well-respected legal practitioner who upheld integrity and professionalism throughout his 31 years of active practice.



SENIOR COUNSEL MOSES PATRICK MUYAWALA

The late Mr. Moses Patrick Muyawala died on 4th July 2024 and was laid to rest on Saturday, 6th July 2024, following a heartfelt valedictory session held in his honor at the Supreme Court in Lusaka. He was remembered as an admirable legal practitioner, dedicated to the law with a deep sense of duty. He was also described to be known for his passion and commitment in mentoring young lawyers.



HON. MR. JUSTICE ANNEL MUSENGA SILUNGWE, SC

The late Hon. Mr. Justice Annel Musenga Silungwe, S.C, former Chief Justice of the Republic of Zambia, died on 30th June 2024 and was put to rest on 8th July 2024. Having served for a period of 17 years, the late former Chief Justice was the longest serving and first indigenous Zambian to hold the position of Chief Justice. He was celebrated for his significant contributions to the development of a "Zambianized" judicial system during his over four decades of service to the legal profession. His legacy will continue to inspire the legal profession.



Dr. MAUREEN MWANAWASA

The late Dr. Maureen Mwanawasa and Former First Lady of the Republic of Zambia died on 13th August 2024, at Maina Soko Military Hospital in Lusaka and out to rest on 19th August 2024. The legal fraternity and the nation will forever cherish her contributions to the profession and her unwavering dedication to the betterment of society.



RETIRED JUDGE KABAZO CHANDA

The late Retired Judge Kabazo Chanda was put to rest on 21st August 2024.



LAZ ACTIVITIES IN PICTURES

5 Senior Lawyers Take Silk



Mrs. Frances Mwangala Zaloumis, S.C; Mrs. Nelly Mutti, S.C; Mrs. Kondwa Sakala - Chibiya, S.C; Hon. Jack Mwimbu, S.C and Mr. Arshad Dudhia, S.C, were called to the inner bar on 17th June 2024.

Wellness Talk



LAZ Honorary Secretary Arnold Kaluba, Prof. Francis Kasolo, and LAZ Honorary Treasurer Womba Kakonda Silumbu at the Writ during a Mental Health Talk.

Meet and Greet of the new Minister of Justice



LAZ President Mr. Lungisani Zulu and Minister of Justice Princess Kasune and the Permanent Secretary Amb. Isabelle Lemba join attendees on the dance floor during a lively meet-and-greet event, held at The Writ.

LAZ ACTIVITIES IN PICTURES

LAZ Legal Eagles Quiz Night



Participants engrossed in the spirited competition during the LAZ Legal Eagles Quiz Night, making the evening both enjoyable and intellectually stimulating.

LAZ Council Visit NLACW



LAZ Council Visit NLACW to Reaffirm Commitment to Women's Rights And Access To Justice In Zambia

Farewells



Bidding farewell to Maxwell Sakala (Senior Legal Officer); Mervis Mate (Secretary) and Betha Banda (Bar Lady).

LAZ Pays Courtesy Call on German Embassy



LAZ pays courtesy call on Minister of Green Economy and Environment



UPCOMING EVENTS

CONFERENCE	DATES	VENUE	THEME
LAZ CHEVENING Information Webinar	5th September	Webinar	"All you need to know about the Chevening Scholarship"
LAZ – African Legal Support Facility (ALSF) Webinar	24th September	Virtual	"How the African Legal Support Facility can support Lawyers in Zambia"
Pan African Lawyers Union (PALU) 2024 Annual Conference	16th to 19th October	Addis Ababa, Ethiopia	"Africa as a global powerhouse: Empowering minds, enhancing paths"
African Bar Association (AFBA) 2024 Annual Conference	27th to 31st October	Mulungushi International Conference Centre Lusaka, Zambia	"Building Credible Legal Frameworks to enhance intra-Africa trade, Project Financing and Industrialization of Africa"
International Bar Association (IBA) Annual Conference	15th to 20th September	Centro Citibanamex, Mexico City	
International Bar Association (IBA) 10th World Women Lawyers Conference	23rd to 25th October	The Ritz-Carlton, Toronto, Canada	"Driving Change"

LOOK OUT FOR THE NEXT ISSUE!

Limited Liability Partnerships under the Legal Professionals Bill – All you need to know

Guest Feature

And much more!

If you would like to join the Editorial Team and be a contributor, please send all expressions of interest to the LAZ Secretariat at sakalae@laz.org.zm. All letters, articles, insights, thoughts and activities should be sent to our Secretariat at the same address with the subject "The Lawyer's Insight."