

HH 79-2003
HC 1793/99
JUSTON KWANGWARI
versus
COMMERCIAL BANK OF ZIMBABWE LTD

HIGH COURT OF ZIMBABWE
NDOU J,
HARARE, 9 July 2002 and 14 May, 2003

E W WMorris for the applicant
S F Hwacha for the respondent

NDOU J: The plaintiff, Juston Kwangwari, (hereinafter referred to as Mr Kwangwari) was offered a post of General Manager - Delivery Channels by the defendant, the Commercial Bank of Zimbabwe Limited (hereinafter referred to as CBZ), on 2 November, 1998. Mr Kwangwari duly accepted the offer. In terms of the agreement between Mr Kwangwari and CBZ, Mr Kwangwari would be on probation for six months during which time his contract of employment could be terminated by either party giving seven days notice in writing of such intention. Mr Kwangwari commenced work on 1 November 1998 and the six months probation period expired on 30 April 1999. On 30 April 1999 the contract of employment was neither terminated nor was Mr Kwangwari confirmed as a permanent employee of CBZ. Instead the acting Managing Director, Mr Len Loader, addressed a memorandum to Mr Kwangwari in the following terms:-

"Subject Probation Period

With regards to your letter of appointment, I have been requested by the managing Director, Mr G Gono, to advise you that your probation period is being extended to 30 June, 1999, that you make an appointment with Mr Gono as soon as he returns from Europe and clear the air.

HH 79-2003

HC 1793/99

Please be guided accordingly".

A memorandum dated 22 April 1999 referred to by Mr Loader was also addressed to Mr Kwangwari. It reads:

"Subject: Market Research Market : Market Perception Towards CBZ
My memo dated 20 April 1999 refers.

Our Managing Director, Mr Gono wrote me the following note before he left for Europe:

'I am very disappointed by the non-delivery of the Probe Market Research report by Mr Kwangwari. Please reassure me that its not a deliberate case of insubordination considering as I have said before, that people were initially reluctant to undertake this exercise in the first place. No excuse justifies the 3 months delay. It's taken too long and Mr Kwangwari or whoever is responsible deserves to be reprimanded for non-performance.

Please take this into account when reviewing Mr Kwangwari's 6 months probation, which ends this month. At that rate of performance, he may not fit in any of my new departments'.

I have had the opportunity to discuss this with him and reassured him that the delay was not done deliberately. I therefore suggest that you make every effort to have the report produced, evaluate it and make your recommendations taking into account our Strategic Plan. This must be ready when Mr Gono returns from Europe mid May.

As I shall be handing over Delivery Channels to Mr Gono as from 1 June 1999, I suggest that you make an appointment with him and clear the matter".

From the above facts it is clear that CBZ unilaterally purported to extend Mr Kwangwari's probation to 30 June 1999. There was no written agreement extending the probation period signed by both parties. As advised by Mr Loader, Mr Kwangwari addressed a memo to Mr Gono, the Managing Director of CBZ on 17 May 1999. The memo reads:-

HC 1000/20003

"Subject: Probation Period

Reference is made to Mr I. Loader's memo dated 30 April 1999 on the above. Could you be kind enough to slot me in your busy schedule, so that we can discuss this issue'.

CBZ, through Mr Loader, in his substantive position as Executive Director, Operations responded on 31 May 1999. Mr Loader wrote to Mr Kwangwari in the following terms:-

"Termination of Contract of Employment

I refer to my letter to you dated 30 April 1999 advising of the extension of your probationary period and our discussion today. I now wish to give you formal notice of termination of your contract of employment with Commercial Bank of Zimbabwe Limited effective end of business, 7 June 1999 in terms of the notice period required as per your contract of employment.

The reason for termination of your contract of employment arises from the fact that your performance has failed to measure up to the standard expected by the Bank, details of which have been discussed with you...".

(The rest of the memorandum is characterised by handover/takeover procedures not relevant to this matter).

Mr Kwangwari acknowledged receipt of this letter on 4 June 1999.

As a result of this last communication Mr Kwangwari commenced these proceedings against CBZ. The parties agreed at the pre-trial conference that the issues for determination during the trial are -

- (a) whether the defendant extended the plaintiff's period of probation;
- (b) whether the defendant could unilaterally extend the period of probation without the plaintiff's consent, the contract of employment not having been terminated during the period of probation;
- (c) whether the plaintiff accepted the extension of his probation period.

HH 79-2003
HC 1793/99

In my view, this matter could have been dealt with as an opposed application. Be that as it may, the trial procedure was opted for. At the commencement of the trial Mr *Morris*, conceded that the reinstatement of Mr Kwangwari at CBZ was no longer feasible due to the delay in the finalisation of this matter. All that Mr Kwangwari now seeks is salary for two (2) years together with benefits applicable in terms of the agreement. Mr Kwangwari is now employed elsewhere.

Mr Kwangwari testified in support of his case. He confirmed most of what is apparent from the documents referred to in the preceding paragraphs. He said when he received the memorandum purporting to extend his probation he queried this. The author thereof, Mr Loader, indicated to him that the memorandum was self-explanatory and that if he had problems with the contents he had to see Mr Gono upon his return from Europe mid month of May. After the return of Mr Gono he made valiant attempts to see him. He did not succeed due to the latter's busy schedule. To his surprise and dismay he received the memorandum dated 30 April 1999 whose contents I have already outlined. Although it was stated therein "our discussion today", Mr Kwangwari testified that he never held any such discussion with Mr Loader or Mr Gono. He stated that after he received the memorandum he went to see Mr Loader who referred him to letters from Mr Gono. He was paid his salary until the end of June 1999. Thereafter he remained unemployed until 30 June 2001. During this period he made several attempts to obtain alternative employment. He attended several interviews. The most frustrating question which hindered his chances of obtaining employment is the manner in which he left employment with CBZ. Eventually Zimbank, for whom he had worked before venturing to CBZ, took him back. He stated that, as far as he was aware, the contract he signed on 2 November 1998 means he would be on probation for six months. He understood the probation to operate in two ways. It gave him an opportunity to assess CBZ and CBZ an opportunity to assess his performance. Under cross-examination he stated that from 2 November 1998 he knew that he would not permanently employed by CBZ until 30 April 1999. He conceded that on 30 April 1999 he did not receive confirmation of permanent employment with CBZ. He did not sign any other contract stating that from 30 April 1999 he has become permanently employed by CBZ. After his agreed probation period expired sometime in May 1999, he requested the cost-of-living induced increment. CBZ refused to award him that on the basis that it was only

HC 1000/20005

due to permanent employees of CBZ. He did not challenge this attitude in the Labour Tribunals. He stated that he believed that he was permanently employed on the basis of the contract. He made reference to clauses in the contract of 2 November 1998. Maybe at this stage I should quote the contents of the said letter of appointment -

"Dear Mr Kwangwari

Post of General Manager (Delivery Services)

I refer to your application for employment and subsequent interview with us and am pleased to make you an offer of employment as Head of Internal Audit (*sic*) reporting directly to the Executive Director (Operations).

The terms and conditions of this offer are as follows -

1. Your employment will commence on November 1, 1998.
2. The basic salary being offered to you during the first six months of your employment with the Bank is \$65 000,00 per month payable in arrears.
3. In addition, you will be entitled to the following benefits and allowances:
 - (a) Housing Allowances of \$4 000,00 per month taxable
 - (b) Bank maintained car of the appropriate range (min 626 Cronos) taxed per new tax laws as amended from time to time
 - (c) Home entertainment allowance of \$2 000,00 per month taxable
 - (d) Electricity, water and telephone allowance up to \$1 500,00 per month paid against actual bills
 - (e) Leave days: 30 annual and 10 days casual per year
 - (f) You may join 2 clubs of your choice for which membership fees shall not exceed \$7 500,00 per year
 - (g) Non contributory medical aid (PSMAS) Executive Scheme
 - (h) Mortgage protection scheme
 - (i) Non contributory NSSA
 - (j) Annual bonus/13th cheque
 - (k) Annual business class holiday trip for you and your partner calculated on the basis of Harare/London/Harare
 - (l) Fees for up to 2 children per year up to High School against actual bills (Tuition Fees only). Scheme to be revised soon

HH 79-2003

HC 1793/99

The Bank does have a profit sharing scheme when we make profits for which you will be eligible

(m) Staff loan and advance facilities

4. You will be on probation for six months during which time the contract of employment may be terminated by either party giving seven days notice in writing of such intention.
5. You will be required to sign a formal contract of employment and an Oath of Secrecy in terms of our service regulations on joining our institution.
6. Your services are transferable to any office of our organisation in Zimbabwe.
7. Your services will be governed by the existing service rules and regulations of our institution or as may be framed thereafter.
8. The Bank will take over all outstanding staff loans standing in your name with your present employer on joining, subject to terms and conditions applicable to staff loans at Commercial Bank of Zimbabwe.
9. Please note that this offer of employment is subject to receipt of satisfactory medical reports.

Should you agree to the offer, kindly sign and return the duplicate of this letter together with 2 passport size photographs of yourself at your earliest convenience but before end of Tuesday, November 1, 1998.

I wish, on behalf of the Board/Chairman Mr N M Vingirai and the entire Board of Directors to congratulate you on this appointment and extend a warm welcome to you to the Jewel Management and Staff of CBZ family.

Yours sincerely

(Signed)

G Gono

MANAGING DIRECTOR

Date accepted 2/11/98 Signed (Juston Kwangwari)"

What Mr Kwangwari seems to be saying is that he was employed by CBZ on a full term contract subject to a resolute condition that during the probation period of six months the contract is terminable by either side on seven days' notice. In support of that assertion reference was

HC 1000/20007

made by Mr *Morris* to specific clauses in the above letter of offer viz:

- (a) In paragraph 1 "I refer to your application for employment and subsequent interview with us and am pleased to make you an offer of employment..."
There is no mention of probation in this introductory paragraph.
- (b) In paragraph 8, "The Bank will take over all outstanding staff loans standing in your name with your present employer on joining, subject to terms and conditions applicable to staff loans at Commercial Bank of Zimbabwe."
- (c) In paragraph 9 "Please note that this offer of employment is subject to receipt of satisfactory medical reports".
- (d) In the concluding paragraph: "I wish on behalf of the Board/Chairman Mr N M Vingirai and the entire Board of Directors to congratulate you on this appointment and extend a warm welcome to you to the Jewel Management and Staff of CNZ family".

Mr *Morris* submits that these clauses are *indiciae* that this is a full term contract of employment. He submits that such clauses are only relevant when the employee is being offered full term employment. He submits that medical reports would not be required if the contract was a probationary one for a period of six months. Another clause, not captured in paragraphs (a) to (d), is the question of annual bonus. We submitted that an annual bonus is not relevant for a six months contract. The cumulative effect of all these clauses is that the parties entered into a full term agreement of employment.

Mr *Hwacha* submits that the probation in paragraph 4 is a suspensive clause. A permanent relationship between the parties was suspended. What the parties are saying is that they are not in permanent relationship unless the plaintiff's performance is satisfactory to the defendant. The plaintiff cannot become a permanent employee

by default. The parties did not sign a formal agreement appointing the plaintiff as a permanent employee of the defendant company. The fact that the plaintiff made valiant attempts to meet Mr Gono is consistent with there being no contract in existence after the six months. He was adamant that there is, from the testimony of the plaintiff and the contents of the documents produced nothing that makes the plaintiff a permanent employee of the defendant.

The employment relationship, the *locatio conductio operarum*, is one of the most common legal relationships in society. The contract must comply with the usual laws relating to the formation of contracts. Generally, no formalities are required for contracts of employment except where some statutory law specifically requires it. Employers often seek to protect themselves against being permanently saddled with an incompetent worker by inserting so-called probationary clauses into their employees' contracts of service. Probationary clauses typically reserve for the employer the right to terminate the contract after a specific period if the employee's performance is found to be unsatisfactory. At common law, a probationary clause apparently empowers the employer to terminate, at will, at the conclusion of the stipulated period. The question is whether such termination amounts to dismissal or a mere non-renewal of the contract. Probationary clauses provide for a trial period during which the reciprocal periods of notice required for termination are shorter, and which purportedly give both parties the right either to confirm or not to confirm the contract at the conclusion of the probationary period. As alluded to above, at common law these clauses give the employers absolute power to terminate the contract on expiration of the probationary period. The courts, however, do not take such a liberal view of probationary clauses, and require employers to justify the dismissal of probationary employees in much the same way as they are required to do in the case of any other employee, with the possible proviso that the court may be disposed to accept, in the case of the dismissal of a probationary employee, reasons slightly less compelling that they would require in the case of employees of longer standing - see *Black Allied Workers Union v One Rander Steak House* (1988) 9 LL.J 326 (IC); *Kadesh v G Snow & Co* (1989) 10 U.J. 420 (IC); *Kadesh v G Snow & Co* (1980) 10 LLJ 420 (IC); *Carlton-Shields v James North (Africa)* (1990) 11 LL.J 82 (IC); and *Rickert's Basic Employment Law* by Grogan (2 ed) at pages 38 and 111-12. Before dismissal is embarked upon the general principle is that the employee should be timeously informed of his deficiency, be told how to

HC 1000/20009

rectify it and be given a reasonable opportunity to improve before any action is taken against him - see *Venter v Renown Food Products* (1989) 10 U.J 320 (IC) and also *Zungu v Strip Gasket Industries* (1986) 7 U.J 747 (IC) and *Madayi v Timpson Bata (Pty) Ltd* (1987) 6 LL.J 404 (IC) for the exception to this rule. The plaintiff occupied the position of a senior manager and this is a relevant factor because his position was of vital strategic importance to CBZ and as such, he could not easily be accommodated elsewhere. Generally, higher standards are expected of senior or managerial employees than ordinary workers doing work of a relatively menial nature. While fair warnings should be given in cases of this kind, a duty also rests on such a senior employee independently to assess his problems and take steps to reform. In the English case of *James v Waltham Holy Cross UDC* [1973] ICR 398; [1973] IRLR 202, NRC it was stated:

"An employer should be very slow to dismiss upon the grounds that the employee is incapable of performing the work which he is employed to do, without first telling the employee of the respect in which he is failing to do his job adequately, warning him of the possibilities or likelihood of dismissal on this ground and giving him an opportunity of improving his performance".

Such warning may be dispensed with in exceptional cases where the inadequacy of performance is so extreme that there must be an irredeemable incapacity. In such circumstances a warning and an opportunity for improvement are of no benefit to the employee and may constitute an unfair burden on the employer. In another English decision in *Okereke v Post Office* [1974] IRLR 170 it was stated -

"There is no reason why an employee whose capability is complained of should be given an opportunity to explain away what is being held against him. The proper test of fairness in capability cases is whether the employee was made aware of his failings and given a last opportunity over a reasonable period to show that he can do the job". See also *McPhail v Gibson* [1977] ICR 42; [1976] IRLR 254, EAT.

The essence of a probationary appointment is that the employer retains the right not to confirm the appointment after a specified period, particularly on grounds of capability. In *Donn v Greater London Council*

IDS Brief 65 the majority of the tribunal held that the tests which are applied to a probationary employee are not necessarily the same as those which apply to a confirmed appointment, and a decision not to retain a probationer may be justified even through a similar decision made with respect of a fully established employee may not be justified. For a probationary employee must know that he is on trial, and must therefore establish his suitability for the post. I agree with this approach. The employer, however, must give the employee a proper opportunity to prove himself, and give a warning if the required standards are not being met. A probationary employee is still an employee, and is therefore entitled to have appropriate guidance and advice -see *Hamblin v London Borough of Ealing* [1975] 1 RLR 354; *Post Office v Mughai* [1977] ICR 763, [1977] IRLR 178; *Ilea v Lloyd* [1981] 1 RLR 394 and *Law of Employment* by M Selwyn 6th ed at page 44 para 2.53. I again agree with this approach.

The objective of a probationary period is not only to assess whether the employee has the technical skill and ability to do the job; it also serves the purpose of ascertaining whether the employee is a suitable employee in a much wider sense. This would include an assessment of aspects such as his ability to get on with existing employees, customers or clients, his demeanour and diligence, as well as his character and his ability to fit in - see *The South African Law of Unfair Dismissal* by P A K Le Roux and A Van Niekerk at pages 71 and 72

HC 1000/200011

para 5.8. The learned authors quoted the words of a Canadian arbitrator as follows:

"The company during the probation period has the right to lay down standards it expects a probationary employee to meet if he is to be retained, and such standards are not necessarily related to quality and quantity but also may include consideration of an employee's character, ability to work in harmony with others, potential for advancement and general suitability as an employee of the company concerned: (Quoted in F F & B M Palmer - *Collective Agreement Arbitration in Canada* 3rd Ed (Butterworths 1991) at 296.

The objective of a probationary period is to provide the parties with an opportunity to test one another and to find out whether they are compatible - see *Amalgamated Beverage Industries (Pty) Ltd v Jonker* (1993) 14 LLJ 1232 (1.AC); *Ndamse v Fyfe-King* NO 1939 EDI. 259 at 262 and *Thomas v Carlton Pharmacy* (1992) 11CD 94 (IC). In the case of *Ndamse v Fyfe-King (supra)* at pages 262 to 263 GANE J stated as follows:

"Can an employee on probation in the sense above described whose every action is admittedly a proper subject of scrutiny and judgment claim to be in a better position than if he had not been on probation? Can he in effect argue "Even if my conduct at an early stage of my probation shows entire unfitness for my contemplated position and even though it is clear from my conduct that I shall never fit myself for that position, nevertheless I claim the right to hold the position until the last moment of my probation period'. So to state the position is to provide the answer to the question. Such a position cannot be maintained. The very use of the word 'Probation' alone seems to lead to the same conclusion. If at any time it becomes clear that the purpose of the probation has been already frustrated, then there is no object in continuing the probation and no objection at least to a dismissal on reasonable notice."

Generally, where an employer wishes to dismiss a probationary

employee on the grounds of incapacity or inability to do the job, the South African courts have required the employer to go through a process of appraisal and consultation prior to dismissal in order to acquaint the employee with the standards required of him, and to provide the employee with an opportunity to improve - see *Carlton-Shields v James North (Africa) (Pty) Ltd* (1990) 11 11.J 82 (IC); *Enslin v Society for the Prevention of Cruelty to Animals* NHK 13/2/1580; *Nandoo and Ors v Brand Engineering (Pty) Ltd* NHK 13/2/187 and *Van Dyke v Markly Investments (Pty) Ltd* (1988) 9 LL.J 918 (IV). I agree with this approach with the qualification that a senior probationary employee, like Mr Kwangwari, should himself realise that he also bears some responsibility to raise problems that he might have and to ensure that he complies with the required standards.

In casu CBZ sought to terminate the extended agreement before the expiry of the extended probationary period. The common law position is, that termination could take place prior to the expiry of the probationary period if the employee is found to be unsuitable for the job prior to the completion of the probationary employment - see *Muzondo v University of Zimbabwe* 1981 (4) SA 755 (Z); *Ndamse v Fyfe-King NP* (*supra*) and *The South African Unfair Dismissal* (*supra*) at page 73. The court has to investigate the substantive fairness of a dismissal for incapacity. In *Amalgamated Beverage Industries (Pty) Ltd v Jonker* (*supra*) at 1249G-1250A it was held that the position of a probationary employee should not be equated with that of a permanent employee and that an employer is entitled to terminate a probationary employee's employment provided that it does not behave 'grossly unfairly or arbitrarily'. In other words there is a duty to act reasonably and in a *bona fide* manner. A probationary employee enjoys the prospects of permanent employment provided he meets the standard set by the employer. The courts should prevent the probationary employee being deprived of the prospects of such employment on the basis of a spurious claim of misconduct - see *Numsa v Tek Corporation Ltd & Ors* (1991) 12 LLJ 577 (LAC).

Mr Kwangwari was a managerial employee. As an employee in the

HC 1000/200013

higher levels of the hierarchy within CBZ, he still qualified for protection against unfair dismissal. The court should generally investigate allegations of unsatisfactory work performance in order to ascertain that the dismissal was fair. However, the court will, to some extent at least, be prepared to defer to the opinion of management regarding the competence of managerial employees. Mr Kwangwari's managerial position will be taken as one of the relevant factors in the determination of the issues in this matter. His seniority at CBZ and experience in the banking sector are of such a nature that he is expected to realise of his own accord that he is not meeting the required standards in most situations - see *Blue Circle Materials (Pty) Ltd v Haskins* (1992) 1 CCD 6 (LAC) and *Stevenson v Sterns Jewellers (Pty) Ltd* (1986) 7 LLJ 318 (IC). What is important, however, is that Mr Kwangwari, as a managerial employee, should also be given a fair hearing prior to the dismissal.

In the present matter I have to determine whether CBZ behaved grossly unfair, and arbitrarily. I should protect Mr Kwangwari as a probationary employee from being deprived of the prospect of permanent employment, if he meets the standards set by the employer, on the basis of a spurious claim of unsatisfactory work performance.

In casu, before embarking on dismissal, CBZ timeously informed Mr Kwangwari of his alleged deficiency. He was told how to rectify the deficiency and given a reasonable opportunity to improve before action was taken. This was all in black and white in Mr Loader's memorandum addressed to Mr Kwangwari dated 22 April 1999. Part of that memorandum explicitly stated -

"...Mr Gono, wrote me the following note before he left for Europe.

'I am very disappointed by the non-delivery of the Probe Market Research report by Mr Kwangwari...people were initially reluctant to undertake this exercise in the first place. No excuses justified (sic) the 3 months delay. It's taken too long and Mr Kwangwari or whoever is responsible deserves to be reprimanded for non-performance. Please take this into account when reviewing Mr Kwangwari's 6 months probation which ends this month. At the rate of performance, he may not fit in any of my new departments'. (the emphasis is mine).

In the same memorandum Mr Loader further stated -

"I therefore suggest that you make every effort to have the report produced, evaluate it and make your recommendations taking into account our Strategic Plan. This must be ready when Mr Gono returns from Europe mid-May".

In his testimony Mr Kwangwari does not say that he produced the said report before the set deadline of mid-May. It seems to be beyond

dispute that up to the time of the termination the report was still outstanding. It seems to me that whether Mr Kwangwari is found to be permanent or probationary, we have an issue of unsatisfactory performance. What is the position CBZ has to justify the dismissal? I take the view stated in the *Workers Union v One Rander Steak House, supra*, that, unlike the position at common law, the employer does not have absolute power to terminate the contract on expiration of the probationary period. Justification of the dismissal of probationary employees is required in much the same way as in the case of any other employee, with the possible proviso that the court may be disposed to accept, in the case of a probationary employee, reasons slightly less compelling than in the case of permanent employees.

I have already indicated that Mr Kwangwari was duly informed of the deficiency in writing. He was given a reasonable opportunity to remedy it but he obviously did not do so. His position is fairly senior and at a strategic level at CBZ. The nature of the report is crucial in the competitive banking sector. He obviously should be aware of the necessity of market research. As a senior manager he is also expected independently to assess his problems and to take the necessary steps to perform. In this case he had been warned of the possibility or likelihood of dismissal and given an opportunity to improve. I agree with the decision in the case of *Okereke v Post Office (supra)* that in exceptional cases the warning may be dispensed with in instances where the inadequacy of performance is so extreme that there must be an

HC 1000/200015

unredeemable incapacity. In such circumstances, a warning and an opportunity for improvement are of no benefit to the employee and constitute an unfair burden on the employer. This case does not fall within this exceptional category, so CBZ has to justify the dismissal of Mr Kwangwari.

The proper test of fairness, *in casu*, is whether Mr Kwangwari, the probationary employee, was made aware of his failings and given a last opportunity over a reasonable period to show that he can do the job. In my view, he was made aware and given a reasonable opportunity to remedy his weakness. He failed to do so. His position was of vital strategic importance to CBZ and, therefore, CBZ was justified, in the circumstances to dismiss him. The dismissal was fair in the circumstances. He was given sufficient notice and fully paid during the notice period and, therefore, he is not entitled to any further payment according to the evidence before me.

On the question of the extension of the probation, I have already indicated that Mr Kwangwari did not produce any evidence showing that the parties agreed to convert his status from being a probationary to a permanent one. Can it be said that he became a permanent employee by default? I do not think so. I am unable to find a legal basis for making such a finding. In this case CBZ made its position very explicit i.e. the probationary period was being extended. The question of a waiver of extension does not even arise because of the timeous communication of its position to Mr Kwangwari in writing. There is no basis for Mr Kwangwari to assume that CBZ abandoned its right to extend or terminate the probationary contract. There is no legal basis to justify an inference of an election to employ Mr Kwangwari on a permanent basis - see *Boko and Ano v City Council* 1996 (1) ZLR 232 (5). The question of delay or "standby" does not arise here to be taken into

HH 79-2003

HC 1793/99

consideration in arriving at the conclusion as to whether or not CBZ did or did not lose its rights. Mr Kwangwari cannot claim permanent employment by default or waiver - see *North Eastern Districts Association (Prop) Ltd v Surkley Ltd & Ors* 1932 WLD 181 at 186. *Medusa (Pty) Ltd v Krochel Tools & Products (Pty) Ltd* 1988 (4) SA 415 (W) at 428 F; *North Vaal Mineral Co Ltd v Lonase* 1961 (3) SA 604 (T) at 609 B; *Resto Dairy (Pty) Ltd v Auto Protection Insurance Co Ltd* 1963 (1) SA 632 (A) at 643 F-G and *The Law of Contract in South Africa* by Christie 2 ed at page 529.

Accordingly, I find that there is no legal basis for finding that Mr Kwangwari was permanently employed by CBZ. In the light of the above findings, I accordingly, dismiss the plaintiff's claim with costs.