

**REPUBLIC OF ZAMBIA  
IN THE HIGH COURT FOR ZAMBIA  
INDUSTRIAL RELATIONS COURT**

10M T173 6/94  
IRC/ND/.81./2018

**NOTICE OF COMPLAINT UNDER SECTION 85**

(Rule 9)

**WALLACE BANDA**

**COMPLAINANT**

**VERSUS**

**MOPANI COPPER MINES PLC**

**RESPONDENT**



1. This complaint is presented by **WALLACE BANDA** of House No. 9 **Oleander Avenue, 14<sup>th</sup> Street Luanshya.**
2. Any communication for the Complainant relating to this complaint may be sent to **Messrs Muya and Company**, 1<sup>st</sup> Floor, Beverley House, President Avenue, P.O Box 71322, info@muyaco.com, Ndola .
3. The name and address of the employer against whom the complaint is made is Mopani Copper Mines Plc Central Street, Nkana West, P.O. Box 22000, Kitwe.
4. The grounds on which this complaint is presented are:
  - i. The Complainant was wrongfully and unfairly dismissed from the employment of and by the Respondent Company for violation of a company policy of which he did not have prior notice of.
  - ii. The Complainant was wrongfully dismissed from his employment as the proper procedure as laid down in the Respondent Company's 2018 Disciplinary Code (hereinafter called "the Disciplinary Code") was not followed during his disciplinary hearing.

- iii. The Complainant was wrongfully and unfairly dismissed for alleged offences which warranted a minor penalty than summary dismissal according to the Disciplinary code.
  - iv. That the Complainant was wrongfully and unfairly dismissed for alleged offences he did not commit
5. The Complainant seeks the following reliefs (here specify, in relation to each proposed respondent, the relief under section 85 and 108 (2)) :
- i. A declaration that the Complainant be deemed retired;
  - ii. A declaration that the Complainant's termination was wrongful and unfair;
  - iii. Terminal benefits accrued;
  - iv. Damages for wrongful termination of employment;
  - v. Interest;
  - vi. Costs; and
  - vii. Any other award the court may consider fit in the circumstances of the case.

Dated at Ndola this.....day of ..... 2018

Per:  **MESSRS MUYA AND COMPANY**

1<sup>st</sup> Floor, Beverly House  
President Avenue  
P.O. Box 71322  
Email: [info@muyaco.com](mailto:info@muyaco.com)  
Ndola

**ADVOCATES FOR THE COMPLAINANT**

**To: THE RESPONDENT**  
Mopani Copper Mines Plc  
Central Street  
Nkana West  
[mopani@mopani.com.zm](mailto:mopani@mopani.com.zm)  
Kitwe

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**NOTICE OF COMPLAINT**

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Per: **MESSRS MUYA AND COMPANY**  
1<sup>st</sup> Floor, Beverly House  
President Avenue  
P.O. Box 71322  
Email: [info@muyaco.com](mailto:info@muyaco.com)  
Ndola

**ADVOCATES FOR THE COMPLAINANT**

**IN THE HIGH COURT FOR ZAMBIA  
INDUSTRIAL RELATIONS COURT  
HOLDEN AT NDOLA**



IRC/ND/81/...../2018

BETWEEN:

**WALLACE BANDA**

**COMPLAINANT**

AND

**MOPANI COPPER MINES PLC**

**RESPONDENT**

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**AFFIDAVIT IN SUPPORT OF THE NOTICE OF COMPLAINT**

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I, **WALLACE BANDA** of House No. 9 Oleander Avenue, 14<sup>th</sup> Street Luanshya of the Copper Belt Province of the Republic of Zambia **DO HEREBY MAKE OATH** and **SAY** as follows:

1. That my full names and Address are as stated above
2. That I am a Zambian National
3. That I am the Complainant in this matter therefore competent to depose to this Affidavit from facts within my personal knowledge and belief
4. That I was employed as a Cost Accountant by the Respondent Company on the 24<sup>th</sup> May, 2011 in the Department of Finance. There is now produced and shown to me a true copy of my letter of appointment and acceptance thereto marked as "**WB1a-c**"
5. That my conditions of employment and service were as stipulated in my letter of appointment (exhibit "**WB1a-c**") and in accordance with the Respondent Company's Senior Staff Conditions of employment and Service which was never availed to me
6. That my duties as a cost Accountant included approving of all stores/ petty cash /purchase requests in the workflow among other things.

7. That in or about June 2017 to March 2018 the Engineering Manager as budget holder of the Mindolo S/V Engineering Department issued instructions for the purchase of tools and flowmeters for use in the Department and these requests were processed in the workflow system through its originator. Produced and marked **"WB2a-b"** is a copy of a letter from the Engineering Manager to the Operations Manager in particular paragraph 4, line 2 to evidence the same
8. That in this regard, the Engineering Department which I am not part of, is the End User and through its Manager requests were made from various sections for approval.
9. That the requisition Tools were for different sections per foreman in line with each departmental/sectional cost centers. The said sections include; Electrical, Mobile, Production, Ore Handling and Hoisting
10. That the Flowmeters were to be purchased based on the Best Practice Audit report as availed to us by the Engineering Manager at Mindolo SV for the following pump chambers. Pump Chambers 2930 and 4040 each with 5 pumps and pump chamber 5360 with 3 pumps. Produced and marked **"WB3a-g"** is a true copy of the Best Practice Audit Report to evidence the same
11. That the cost of each flowmeter was linked to a particular pump as a single equipment
12. That the above requisitions went through the correct approving system or workflow in the Respondent Company's Hierarchy of approvers with distinct job disciplines, authorities and departments. There is now produced and shown to me a true copy of the approving system marked as **"WB4"**

13. That following the approval of the purchase of tools and flowmeters as raised by the end user (that is, the Engineering department), on the 12<sup>th</sup> July, 2018 I was accused of approving split orders which was purportedly stated to be in contravention of the laid down procedure hence, I was suspended from work with immediate effect. There is now produced and marked "**WB5a-f**" is a true copy of the letter to that effect
14. That the offences/charges leveled against me included; Unethical Business Conduct or Breach or Repudiation of Contractual obligations-Deliberate Breach or Aiding and Abetting a Breach of Procedure for Personal Gain or Selfish Interest, Non Compliance with Established Procedures/Standing Instructions and Substandard/Poor Work Performance. Reference is made to exhibit marked "**WB5a**"
15. That following the above accusations, I was asked to show cause as to why disciplinary action should not be taken against me
16. That on the 16<sup>th</sup> July, 2018 I wrote to the Respondent denying all the offences and giving justification as to the approval of the split orders that the Department of Finance had made through me. Produced and marked "**WB6a-b**" is a true copy of the letter
17. That in my exculpatory letter, I repeated the contents of paragraphs 8 to 12 of this my Affidavit which justifies my approval of the split orders
18. That further, I categorically explained that I am not responsible for initiating requisitions but the End User who is aware of what is required for use in his section is upon getting approval of such from the Engineering Manager; decisions are made on what should be processed in the system (workflow)
19. That I also informed the Business Controller that in the Respondent Company's system of approvers I am not the final approver thus, after my

approval, the requisitions were taken to higher authorities for further and final approval

20. That all the personnel in the approval system including the final approver did approve the said split orders indicating that we were all in consensus of the practice of splitting the orders being common.
21. That it must further be noted that from my past experience splitting orders have been made and approved and this has been said to be the common practice in the Respondent Company. This practice has continued even after my dismissal over the same. That produced and marked "**WB7**" are copies of split orders that were approved after being charged and dismissed on the same issue.
22. That in spite of giving the above explanation, on the 19<sup>th</sup> July, 2018 I was formerly charged by the Respondent Company merely on the ground that the reasons given in my exculpatory letter were not convincing. However, the rationale for that finding was not stated. Produced and marked "**WB8**" is a true copy of the letter
23. That after my formal charge, a case hearing was held on the 24<sup>th</sup> July 2018 after which I was summarily dismissed. Produced and marked "**WB9a-b**" is a true copy of the letter of dismissal
24. That after the hearing, the charge of Unethical Business Conduct or Breach or Repudiation of Contractual obligations- Deliberate Breach or Aiding and Abetting a Breach of Procedure for Personal Gain or Selfish Interest was dropped whereas the charge of Non Compliance with Established Procedures/Standing Instructions and Substandard/Poor Work Performance upheld
25. That I am of view and belief that I was wrongly and unfairly charged and later on found guilty for the above offences based on the following grounds:

26. That firstly, the basis on which the above offences were upheld was that I failed to to freely carry out necessary investigations so that I satisfy myself that each item was correct and appropriate and that my actions resulted in dividing transactions into more than one part hence evading a limit of authorisation contrary to clause 4.1 subheading 2 and 4 of the Respondent's company Delegated Approval Authorization policy 039 which I was never given notice of during my employment. I only got to have knowledge of this policy at the time of my case hearing. Produced and collectively marked as "**WB10**" is a true copy for the said policy
27. That whenever the Respondent Company came up with a new policy it was standard practice that employees were always given notice of the same. For example, when the ZERO tolerance for alcohol at work policy and the additional amendments made to Disciplinary Code were implemented, employees were made aware of the same by way of posters and notification by email. However, this was not the case for policy 039, Produced and marked "**WB11**" is a true copy of the Notice pertaining the revision of the Disciplinary Code
28. That secondly, the charges that I was found guilty of fall under categories 1 clause 3.1 (b) and 2 clause 3.2 (h) of the Respondent Company's 2018 Disciplinary Code which only calls for the penalty of severe warning or final warning for first offender. Produced and marked "**WB12a-i**" is a true copy of the 2018 Disciplinary Code (hereinafter called "the Disciplinary Code
29. That I was however given the penalty of summary dismissal which is not prescribed anywhere in the Disciplinary code for the categories of the above stated offences for a first offender,
30. That the Disciplinary code (that is, exhibit "**WB12a-i**") stipulates guidance to line officials administering initial case hearings under clause 4.10. That factors such as the disciplinary and service record of the offender; long

service; good record and the fact that one is a first offender stipulated thereunder were not taken into consideration and all these ran in my favour

31. That thirdly, the dismissal was discriminatory or selective in the sense that despite the split orders having correctively passed through the Respondent's approving hierarchy with several system approvers; as may be shown by exhibit "**WB4**" only a targeted few of us were found to be in breach of policy 039. This is so regardless of the fact that I am not even the final approver in that hierarchy
32. That the higher, final approver and other officers in the said approving hierarchy were neither charged nor dismissed. They are still in employment with the Respondent
33. That based on the reasons stated from paragraphs 8 to 33 above, I was not satisfied with my dismissal as such, I filed my first and second appeals with the Superintendent Employee Relations (Nkana) on the 27<sup>th</sup> July and 2<sup>nd</sup> August, 2018 but they were both dismissed. Produced and marked "**WB 13a-d**" are true copies of my letters of appeal and the response thereto
34. That as an employee who had served for a long period of 7 years, with a good disciplinary and service record and the fact that I was a first offender if at all the charges levelled against me had been properly proved, in terms of section 4.10.2 of the Disciplinary Code I was supposed to have been treated with more lenience
35. That in the premises I was wrongfully and unfairly summarily dismissed for offences which did not warrant the same
36. That my dismissal was wrongful and unfair as the offences for which summary dismissal is prescribed in the code that is, unethical business conduct – breach or repudiation of contractual obligations – deliberate breach or aiding and abetting a breach of procedure for personal gain or selfish interest, were dropped against me
37. That my dismissal was wrongful and unfair as it was based on a policy that I was never given notice of

38. That my dismissal was further wrongful and unfair I was one of the targeted few of approvers that were selectively dismissed in the Respondent Company's Hierarchy or system of approvers

39. That I depose to the contents of this affidavit believing the same to be true and correct to the best of my knowledge and information.

**SWORN** by the said )

**WALLACE BANDA** ) ..... *Wallace Banda* .....

At Ndola this 5<sup>th</sup> day of Oct 2018)

**BEFORE ME:** .....

*Natalie M. Mulenga*  
**COMMISSIONER FOR OATHS**

*Natalie M. Mulenga (Ms.)*  
LL.B. (UNZA) ACT. Arb. (UK)  
COMMISSIONER FOR OATHS  
ADVOCATE OF THE HIGH COURT OF ZAMBIA