All communications should be addressed to:
"The Provincial Labour Officer"
Telephone: (0242):792751/2/3

ZIMBABWE

Reference:
Ministry of Public Service
Labour and Social Welfare
P.O. Box CY 572
Causeway
Harare.

Form L.R. 7

LABOUR ACT (CHAPTER 28:01)

ARBITRATION AWARD

Three copies of this form shall be completed by the Arbitrator concerned of which: -

1. **One copy shall be retained by the Arbitrator.**
2. **The others shall be served on the parties to the arbitration.**

Name, designation and address of the arbitrator

Mercy Dare (Mrs) Arbitrator
Labour Relations Department
P.O Box CY 572
Causeway, Harare.

Name and address of parties to the matter in dispute

Matthew Dondo	**1st Claimant**
And	
Francis Machimbidzofa	**2nd Claimant**
And	
Getrude Muchakare	**3rd Claimant**
And	
Everisto Chisi	**4th Claimant**
And	
Samson Njovo	**5th Claimant**
And	
Fungai Gumbu	**6th Claimant**
And	
Trust Phiri	**7th Claimant**
And	
Wallace Chibikira	**8th Claimant**
And	
Godfrey Ushe	**9th Claimant**
And	
Peter Chigaba	**10th Claimant**
And	
Pilani Ngoniye	**11th Claimant**
And	
Joshua Chanyau	**12th Claimant**
And	
Josiah Nyapfumbi	**13th Claimant**

And
Victor Chidende **14th Claimant**
c/o Mupindu & Partners
7 Angus Road, Eastlea
Harare.

V

Movement For Democratic Change **Respondent**
MDC – T
c/o Mwonzora & Asociates
20 Cleveland Road
Milton Park
Harare

Dispute
Alleged unlawful termination of contracts and non-payment

or salaries.

Award by Arbitrator Mercy Dare

Date 5th **of** August **2025**
Harare **Place, Makombe Harare**

LABOUR ADMINISTRATION LABOUR RELATIONS MAKOMBE
AUG 2025
P.O. BOX CY 572, CAUSEWAY
ZIMBABWE TEL: 0242-792

Claimants' Submissions

The claimants submitted that they were employed by Movement For Democratic Change in various capacities. They also submitted that the respondent suspended Fungai Gumbu, Getrude Machakaride, Matthew Dondo, Francis Machimbidzofa, Trust Phiri and Everisto Chisi. Trust Phiri. The claimants averred that the respondent just ceased payment of their salaries without any explanation and from November 2023 upto May 2025, the respondent has not paid the arrear salaries.

The claimants submitted that the respondent acknowledged owing part of the debt through a Schedule which it made indicating arrear salaries. The claimants claim arrear salaries and benefits upto June 2025.They argued that the non-payment of their salaries constitutes a fundamental breach of their contracts of employment and a violation of the Labour Act.

They also argued that the disciplinary proceedings are a nullity given the irregularities, non-observance of principles of natural justice and non-compliance with statutory provisions. They stated that the suspensions did not mention any enabling statutory instrument and did not give sufficient detail. They further argued that the suspension period went beyond 14 working days in contravention of the provisions contained under SI 15 of 2006, the Model Code. They cited the case of McFoy v United Africa Co. Ltd in which the court ruled that if an act is a void, it is a nullity and every proceeding which is founded on it is a nullity. The claimants therefore argued that the disciplinary proceedings emanating from the unlawful suspensions are unlawful.

The claimants who were suspended from employment argued that the respondent refused to furnish the names of the respondent's witnesses and thereby hindering the claimants' ability to prepare their defense and exercise their right to cross examine witnesses. This they argued is against the principles of natural justice and the right to a fair hearing. They also argued that the Chairperson failed to act as a neutral arbiter in that he made unilateral decisions without consulting other committee members and instructing two of the claimants to participate in the deliberations in the absence of their legal representatives.

The claimants argued that the respondent did not terminate their contracts but just stopped paying their salaries until a time when the employees were no longer able to report for work. They argued that they remain employees of the respondent until the date of payment of their arrear salaries and terminal benefits.

The claimants pray for an order that the suspensions by the respondent were unlawful and that the respondent be ordered also to pay all outstanding salaries and benefits up to the date of the award or the date of lawful termination.

The claimants also pray for an order directing the respondent to pay them gratuity and cash in lieu of leave.

The claimants' computation of claims are as follows:

1.	Matthew Dondo	US$10 800,00
2.	Francis Machimbidzofa	US$9 000,00
3.	Getrude Muchakare	US$9 000,00
4.	Everisto Chisi	US$9 000,00
5.	Samson Njovo	US$5 400,00
6.	Fungai Gumbu	US$8 280,00
7.	Trust Phiri	US$9 900,00
8.	Wallace Chibikira	US$14 400,00
9.	Godfrey Ushe	US$8120,00
10.	Peter Chigaba	US$1750,00
11.	Pilani Ngoniye	US$6480,00
12.	Joshua Chanyau	US$4350,00

Respondent's Submisions.

The respondent denied the claimants' claims for arrear salaries. It submitted that the 4th and 10th claimants left the organization to join the Citizens Coalition for Change. The respondent thus argued that the 4th and 10th claimants terminated their contracts of employment through absenteeism. It also submitted that the 8th claimant left the organization and joined ZANU PF. It therefore argued that the 8th claimant terminated his contract of employment. It further stated that the 9th claimant terminated his contract through absenteeism from work.

The respondent also averred that the 11th and 13th claimants absented themselves from work and thus terminated their contracts. It also submitted that the 14th claimant is still its employee and is serving at the Kwekwe office. The respondent submitted that the 12th claimant was not its employee but he ran away from the police to escape a theft issue and has since joined the Citizens Coalition for Change.

It also averred that the 1st, 2nd, 3rd, 5th, 6th, and 7th claimants were charged on allegations of various misconducts. It also submitted that the claimants were arraigned before a disciplinary committee but they walked out of the hearing during the proceedings and thereby terminated their contracts. The respondent argued that it does not owe the claimants arrear salaries. It also stated that the claimants were always paid in the local currency and not in United States Dollars and should not claim payment of their arrear salaries in US Dollars because the organization relies on a Government Grant.

The respondent also argued that some of the claimants' claims have prescribed in terms of the Labour Act.

Arbitrator's Findings and Analysis.

Terms of Reference.

Whether or not the claimants' contracts were unlawfully terminated.
Whether or not the claimants are owed salaries and terminal benefits. If so, determine the quantum thereof.
Determine the appropriate remedy in the matter.

In limine

The respondent argued that some of the claimants' claims have prescribed. It did not state which claims and for which period has prescribed. The claimants referred their matter to Ministry of Labour on the 14th of August 2024.Six of the claimants had been suspended from employment on the 13th of November 2023.The suspension issue will be analysed in this award. Some of the claimants last received their salaries in December 2023.I therefore find that their claims are still within time because they referred their dispute within the two years prescribed by the Labour Act, Chapter 28:01.Having established that the claimants' claims were referred within time, I now proceed to look into the terms of reference in turn.

Whether or not the claimants' contracts were unlawfully terminated.

Claimants in this matter argued that they are still employees of the respondent whereas the respondent argued that the claimants were its employees save for one, the 12th claimant but their contracts terminated through various ways. MDC-T argued that the claimants repudiated their contracts. The respondent argued that some of the claimants terminated their contracts through absenteeism, joining other political organisations and walking out of the disciplinary hearing. The respondent argued that they conducted disciplinary hearings against the claimants but it is worth noting that it did not adduce evidence of the disciplinary hearings which they conducted. No minutes of the disciplinary hearings were tendered, no suspension letters were attached by the respondent. The claimants argued that their suspension from employment was unlawful and should be deemed null and void since it was not in terms of any statute. There is no proof to show that the respondent conducted disciplinary hearings against the claimants. Also to note is the fact that no verdict was given or decisions of the alleged disciplinary hearings.

The respondent had no right in terms of the law to stop paying the claimants their monthly salaries since their contracts were not terminated. The respondent's unilateral decision not to pay the claimants amounts to a breach of the terms of a contract of employment. The claimants in this matter argued that they are owed arrear salaries. The respondent argued that they only acknowledge owing the claimants in terms of the computations it had made. The respondent did not provide the computations of the arrear salaries which it acknowledges owing. It neither provided figures of the amounts which it acknowledges owing the claimants. Section 125 of the Labour Act provides as follows:

Every employer upon whom any agreement, determination or regulation is binding under this Act in relation to remuneration to be paid, time to be worked or other particulars as may be prescribed shall at all times keep in respect of all persons employed by him, records of the remuneration paid, of the time worked and of those other particulars.

The employer is the custodian of records of employment in terms of the law. It should have adduced the wage records and salary payments sheets but it failed to do so.

The respondent did not explain why it did not pay the claimants for the period under claim. There is no proof of any express termination of employment. The respondent alleged that the claimants absented themselves from work and thus they repudiated their contracts of employment. It is trite at law that repudiation occurs where there is an express indication by a party to the contract that it no longer wants to be bound by the contract. In the case Econet Wireless In Trusto Mobile Ltd & anor the court held that" **It is correct in determining whether a party has repudiated a contract, the test to be applied is whether the party has acted in such a way as to lead a reasonable person to the conclusion that he did not intent to fulfil his part of the**

contract." It is my considered view that it is the respondent which repudiated the contract of employment between the parties through its continued failure to remunerate the employees. The claimants were incapacitated from reporting for duty by the respondent's unlawful actions. The claimants kept going to work up to a time that they could no longer afford to go to work because of the continued non-payment of salaries. It is the respondent which reneged from its obligation to remunerate the employees. The respondent was entitled at law to level charges of absenteeism against the claimants given that absenteeism is a misconduct. It is my considered view that the claimants remained employees of the respondent and are also entitled to salaries for the whole period of their claim given that there was no termination of employment. The effective date of termination of the contracts should be held as the date of this arbitral award.

There is no proof that was produced to substantiate the respondent's claims that two of its employees joined other political organisations. The respondent did not provide the alleged dates of joining other political organisations. The two claimants whom the respondent argued terminated their contracts through joining other political organisations should also be paid all arrear salaries and benefits given that the respondent did not provide proof to substantiate its averments. It is trite at law that he who alleges should prove their averment. The maxim was applied in the case of Circle Tracking v Mahachi. The burden of proof on this aspect in the matter in casu lied on the respondent.

The respondent did not provide proof of having conducted disciplinary hearings against six of the suspended employees. It also did not provide proof of the suspension of the claimants. The claimants argued that the respondent did not use any enabling statute in suspending them. If an employer suspends an employee without using a code of employment, the suspension should be held null and void. The employer is required to state a code of conduct when suspending an employee so that procedures for investigation, disciplinary hearings and penalties can be followed. The use of an employment code ensures that principles of natural justice are observed. It is also pertinent in this matter to note that the respondent did not give a verdict to the claimants for the alleged misconducts. It is desirable that matters are brought to finality than leaving them pending indefinitely. Bringing matters to finality enables closure.

I hold that the continued suspension of the claimants and failure by the respondent to bring the matter to finality is unlawful. It falls short of the provisions for procedural and substantive fairness laid out under the model code, SI 15 of 2006. I also hold that the respondent unlawfully suspended the employees since it did not use any enabling statute. I therefore hold that the suspensions and any subsequent procedures emanating from the unlawful suspension null and void.

Whether or not the claimants are owed salaries and benefits and if so determine the quantum thereof.

The respondent in its arguments indicated that there is no longer an employment relationship between itself and 13 of the claimants. The claimants argued that they are still employees of the respondent but were only incapacitated to report for duty on various dates due to continued non-payment of their salaries. The claimants submitted that they are ready to provide their service but the employer repudiated the contract by conduct. I therefore find that tacitly the employment relationship no longer exists between the parties because of the prolonged breach of contract by the respondent which failed to meet its obligation to remunerate the employees. I therefore find it appropriate to order that the respondent pays the claimants not only their arrear salaries but also their terminal benefits given that it can no longer fulfill the requirements of a contract of employment and no longer wishes to be bound by the terms of the contracts. The claimants should therefore be paid their notice pay, arrear salaries and compensation for loss of employment save for Victor Chidende who should be paid arrear salaries only since he is still an employee of the respondent.

The respondent only acknowledged owing the claimants arrear salaries in terms of a schedule which they did not attach to their submissions. It is therefore apparent that the respondent knows that it owes the claimants arrear salaries but failed or neglected to pay them.
The respondent argued that the claimants should be paid their arrear salaries using the local currency and not in US Dollars. The claimants argued that they were always paid their salaries in United States Dollars. The law recognizes both US Dollar and ZIG as legal tender and therefore I order that the claimants be paid the amounts shown below in US Dollars or equivalent at prevailing official rate.

I order Movement For Democratic Change MDC-T to pay the 14 claimants the sum of US$176 465 or equivalent in ZIG using the prevailing official rate of the date of payment.
This amount of US$176 465,00 includes arrear salaries, notice pay and compensation for loss of employment and is broken down as follows: See table below

Table

Claimant	Arrear Salaries in USD	Notice pay(3 mnths)	Compensation for loss of employment 1 month per year of service	Total Due
1.Matthew Dondo	$10 800	$900	US$7 200 (24years service)	US$ 18 900
2.Francis Machimbidzofa	$9 000	$750	US$2750 (11 years of service)	US$12 500
3.Getrude Muchakare	$9000	$750	US$1000 (4 years of service)	US$10 750
4.Everisto Chisi	$9000	$750	US$1 500 (6 years)	US$11 250
5.Samson Njovo	$5 400	$450	US$2 700 (6 years of service)	US$8550
6.Fungai Gumbu	$8280	$690	US$1380 (6 years)	US$10 350
7. Trust Phiri	$9900	$825	US$4400 (16years)	US$15 125
8.Wallace Chibikira	$14 400	$1800	US$15 000 (25 years)	US$31 200
9.Godfrey Ushe	$8120	$540	US$4 500 (25 years of service)	US$13 160
10.Peter Chigaba	$9000	$750	US$5750 (23 years)	US$15 500
11.Pilani Ngoniye	$6480	$540	US$2880 (16 years)	US$9 900
12.Joshua Chanyau	$4350	$450	US$1050 (7 years of service)	US$5850
13.Josiah Nyapfumbi	$4935	$705	US$1410 6 years of service	US$7050
14.Victor Chidende	$6380			US$6380
Total Due				USD176 465,00

Appropriate remedy

I therefore order Movement for Democratic Change MDC-T to pay the claimants the sum of USD176 465,00 or equivalent at official bank rate for arrear salaries, notice pay and compensation for loss of employment. The amount should be distributed to the claimants as shown in the table above. This award should be implemented within 30 days from the date of its issue.

M. Dare

Government Arbitrator
Harare Region.