

## **COMMENTS WITH RESPECT TO CONDITIONS OF SERVICE RUKURU MINING LTD - Conditions of Service.16.12.docx.**

Here are my commentary statements with respect to the above document. These are comments from Rumphi district labour office, Box 55, Rumphi being made by Kalani Malema, the District Labour Officer. The comments are made in line with the current country existing labour legislation Acts and other relevant laws in respect of LABOUR AND EMPLOYMENT. Specifically the following country's labour legislative Acts are referred: Labour Relations Act (LRA) No. 16 of 1996; Occupation Safety, Health and Welfare Act (OSHWA) No. 21 of 1997; Employment Act (EA) No. 6 of 2000 and its Amendment Act of 2010; Workers Compensation Act (WCA) No. 7 of 2000, and the Pension Act (PA) No. 11 of 2011. Comments are made according to section by section. Further clarifications and/or queries to some commentary statements made are welcome from the office and indeed from me.

I have looked and read through your said conditions of service attentively. Seriously, the document is almost perfect as it is more than 90 % compliant with the country labour and employment laws. However, the following few comments and observations have been made here and there just to help make your document towards 100 % compliance with labour laws. Hence read them closely and see how best you can use them to improve your document further.

### **2 Definitions and general conditions**

Acts and Statutory provisions

Reference to any such Acts and Provision refer to the currently valid issue including any amendment.

With this definition did you intend to mean as follows? "Reference to any such Acts and Provisions means reference to all the currently operational Malawi labour legislative Acts and other statutory Acts/ provisions including their amendments therein.

#### **3.1. Contract of Employment**

**Any contract must include:** Edit this to: Any contract of employment must include the following employment particulars: This differentiates an employment contract from any other contract such as outsourcing employment contract (contract for employment) or sales contract etc, etc. For details, see my comments under 3.2 below.

#### **3.2 Temporary Employment**

Phrase: "Contract for temporary employment" should read as "Contract of temporary employment". In the Employment Act, 2000, only Contract OF employment is covered AND not Contract FOR employment which involves outsourcing employment contracts.

Last sentence for paragraph 1 should read and extend as follows: "No other benefits are due in respect of temporary employment contracts provided they are not pension related benefits." Note that currently we have, in Malawi, the Pension Act of 2011 as an added new labour law which mandates every employer to be running pension schemes with every employee under his/her employment except the exempted employees/employers. In this Act, employees under any temporary form of employment including those on probationary period are covered as well. See the attached Pension Act, 2011 and thereafter you need to consult the Registrar of Financial Institutions

within the office of Reserve Bank Governor on how you can go about to comply with this new labour law or not. Otherwise for purposes of your conditions of service, the sentence should be written as I have edited to be inclusive with any other labour law in the country as you have claimed in your introductory paragraph.

### **3.4. Probationary period**

I presume you are quoting section 26 subsections 1 & 2 of the Employment Act of 2000.

*The Employment Act 2000 states,  
that a probationary period of up to 12 months may apply and the contract may be terminated by either party without notice during this period.*

If that is your intention to quote the provision as your reference in your conditions of service, then you need to quote the original clause as it is in the Act without paraphrasing. What you have quoted is not the correct wording of the law. We are not allowed to put our own words into the law provisions.

For the last sentence, “ During probation, no other benefits are due to the employee besides the salary provided they are not pension related benefits” See my comment in 3.2 above.

### **3.6 Termination**

A contract for temporary employment may be terminated by giving one week clear notice to the other party. This should read A contract of and not for. See my comment in 3.2 above.

Contracts for a specific task or time end without notice at completion **of the task or contract time.** The yellow highlighted words are necessary additions to complete the meaning of your condition statement.

### **3.8. Severance Payment**

On termination of a contract by the employer, other than **fair** dismissal or contract expiry, severance payment is due as stipulated in the Employment Act and its amendments. Add “fair” because unfair dismissal at termination of employment contract qualifies employee for severance payment according to section 2 subsection 1 of the Employment Amendment Act, 2010.

### **3.9. Young Persons**

The employment of young persons between 14 – 18 years ... This should be edited to “The employment of young persons from 14 – 17 years ... to be inline with section 21 (1) of the Employment Act, 2000. Note that in Malawi, an 18 year aged person is an adult and not a child hence my edition in your phrase.

### **3.10. Female Employees**

The company does not discriminate against **female** employees. Add the word female as highlighted.

### **4.1. Public Holiday not paid (This should just be titled “**Public Holiday Payments**”**

If an employee is absent without authorization on the working day preceding a public holiday, then

the public holiday is not paid. This conditional clause is correct in respect of my suggested title edition

AND it is in contradiction to your title “Public Holiday not Paid”. What if the employee is authorized to be absent on a working day preceding the public holiday, shall that public holiday still not paid?

#### **4.1. Leave**

Leave entitlement is due for confirmed employees. Once confirmation is given, then the entitlement is calculated from the date of employment.

This is good, your condition inhere indeed exceeds the EA provisional requirement of working at least for one year to qualify for “Annual” leave, for example. In your case, it means a confirmed employee at 7 months service with you, that is, after 6 months of your probationary service, for instance, will be qualified for a leave. That is good if your intention is like that having understood the annual leave clause in the EA, of 2000.

#### **4.1.3. Date of leave**

*The Employment Act 2000 states that Leave shall be granted by the employer, in consultation with the employee, as from a date determined by the employer.*

For this citation, please do as per my comment in 3.4 above. Put three dots at end of the word employer and not full stop if you do not want to complete writing all the words of the provision 45 (1) (a) of the EA, 2000. Example: *The Employment Act 2000 states that Leave shall be granted by the employer, in consultation with the employee, as from a date determined by the employer ...* This becomes okay when it comes to citing the law provision.

#### **5 Salaries, Wages and allowances**

All salaries, wages and other benefits, whether in legal tender or in kind, are paid **as provided for in the country’s labour laws or as prescribed in this conditions of employment** or any ...

#### **6.5. Resignation**

If an employee absconds from work instead of resigning in the correct manner, **than** this is cause for summary dismissal. I guess this than was intended to be **then**.

#### **7.11. Freedom of association and information**

In particular, employees are free to join relevant labour organizations. This sentence is important with respect to granting freedom of association to employees hence it should edited as follows: “In particular, employees are free to **establish** and join relevant organizations **of his or her own choosing** provided provisions in the Malawi labour relations Act, of 1996 under freedom of association are complied with.”

#### **8.1. Death support for family member**

If a close family member of a confirmed employee dies during the employment period of the employee and the employee is the person responsible for the funeral costs, then the company will render cash support as per Appendix, ...

This is fine. However you need to consider even the unconfirmed employees as well, with something little i.e. less than Mk30, 000.00 financial support would be necessary. From your conditions of service document, I find that your employee of 5 months service with you will still be

unconfirmed. What would happen if this employee, very dedicated at work, is equally grieved in respect of funeral of a close relation. Should this employee be left unsupported? The criteria you used to come up with Mk30, 000.00 for confirmed employees could also be used to determine something little for the unconfirmed employees. Otherwise this would demonstrate some elements of discrimination in your terms and condition of service/ employment contrary to section 5 subsection 1 of the Employment Act, 2000 as cited below:

*“No person shall discriminate against any employee or prospective employee on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.”*

#### **8.4. Corporate Social Responsibility (CSR)**

The company will undertake CSR projects in the vicinity of its operation. These projects are intended for the community at large and not individual members. CSR projects are not designed for staff members, but the community as a whole. **These CSR projects will be done or agreed upon in line with regulations provided for in the country existing mining and environmental laws including their amendments or new enactments therein.** Meanwhile your conditions should have this additional sentence to address any questions likely to arise from stakeholders e.g. employees or the mining community members about CSR.

Secondly the concept “Corporate social responsibility” if possible should be defined and included under part 2 above of your conditions of service document. Example: Corporate social responsibility refers to all the interventions that may be undertaken by the company in order to help address the company’s operational impact on society and the environment.

Note/ It is necessary for the company to undertake such interventions, although not a legal requirement, because failure to do so may result into the company suffering direct losses as a result of their actions through the cost of rectifying environmental damage, fines and taxes as well as through their adverse publicity costs if their business is believed to cause damage to the environment.

Finally, your conditions of service under this CSR section are subject to change or to be edited in the future to be in line with the pending new enactments to replace/repeal the Mines and Minerals Act of 1981; to amend the Environmental Management Act of 1996 etc.

#### **9.1. Personal Protective Equipment (PPE)**

Employees are given protective clothing and equipment suitable for their work post. This equipment belongs to the company and must be taken care of. Staff who report for duty with less than the minimum PPE may be sent home **and marked absent for the work day**, as it would otherwise be dangerous to work. Consider adding these yellow highlighted words. The neglect in use of PPE by employees in the mining sector is becoming a habitual challenge as evidenced with cases at Mchenga and Kaziwiziwi Coal mines. Hence we need to be strict as stakeholders to enforce this provision starting from the conditions of service itself.

#### **9.3.2. Medical Assistance**

Medical assistance rendered to an employee who suffered an accident while performing his duty as instructed, will be paid by the company as laid down in the **Workman’s** Compensation Act or any other relevant and valid legislation. Replace this word with “Workers’ ... .. of 2000 or ...

Do the same edition to 9.3.3 i.e. replace the word **Workman’s**.

## OTHER REQUESTS MADE IN YOUR EMAIL

1. As regards to Workers' Compensation Act, 2000, I do not have an E-copy to share with you as of now. If I source one from my Ministry headquarters, I will remember to share with you. However, meanwhile, you can procure a hard copy from Government Printing/Press stores in Mzuzu, Luwingu at less than Mk3, 000.00 I hope.
2. As regards to your question as in your below presentation:

"Further, I have one more question. We do face a problem, that we issue expensive protective equipment to our staff and some disappear with them after the first week pay. Boots and other clothing costs easily K 20.000 or more. **Is it possible to keep part of the salary as deposit for such equipment for some time?** i.e. if we keep the pay for one day per week as deposit, which will be paid out once they leave or once they have worked for a period of time? Casual workers earn K 6.000,00 per week, yet they have equipment in their possession for more than 3 times the value."

**Answer:** NO it is not possible to keep part of the salary as deposit for such equipment for some time. Salaries and/or wages are very much protected (according to our Malawi labour laws and other International labour laws, the ILO conventions, to which Malawi ratified) in respect of such purported deposits. However, I understand the gravity of your problem faced in this case and will consult my Regional Labour Officer I Mzuzu to see how best such a problem can be addressed. Meanwhile, you can be ensuring that the first week pay to an employee is done before the said employee presents his/her company PPE under his/her care to the pay master and get them at the start of his/her next working day.

This is the END of my commentary and response document to the Rukuru Coal Mining Company Ltd – Conditions of Service, document 16.12 and email questionnaire sent to me dated Tue, Nov 29, 2016.

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