THE MALAWI JUDICIARY

IN THE INDUSTRIAL RELATIONS COURT

PRINCIPAL REGISTRY

MATTER NO. IRC 966 OF 2020

In the dispute between:

BENJAMIN WATCH & 6 OTHERS……………………………..………….APPLICANTS

-AND-

ELECTRICITY SUPPLY CORPORATION OF MALAWI LTD……..…………...…………………………………………RESPONDENT

CORAM:	**TAMANDA C. NYIMBA**	: Acting Chairperson
	M. Msungama & P. Mwakikunga	: Counsel for the Applicants
	D. Kanyenda	: Counsel for the Respondent
	Rosemary Msimuko	: Court Clerk

JUDGMENT

1. In this action, the applicants seek various reliefs arising from their employment with the respondent. Specifically, the applicants allege that they were subjected to unfair labour practices, denied benefits (including lunch, night and electricity allowances, accrued leave pay and pensions), and were unfairly and unlawfully dismissed without notice, proper reasons or an opportunity to be heard. The respondent contests the action in its entirety asserting that the applicants' employment was not terminated by dismissal but rather ended automatically by effluxion of time and upon the completion of specific tasks under the various phases of the Malawi Rural Electrification Programme (MAREP).

2. I presided over the trial during which the applicants called two witnesses: Mr. Salimu Mahomed and Mr. Samson Manjolo. The remaining five applicants, who did not testify, adopted this evidence as their own. The respondent presented one witness, Mr. Richard Samba, the Chief Human Resources Officer (Planning and Development) at the respondent corporation.

3. While extensive evidence was adduced, it is unnecessary to recount the testimony in its entirety. The following summary distils the most pertinent evidence from the applicants and the respondent's witness, as elicited during examination-in-chief, cross-examination and re-examination.

4. Mr. Salimu Mahomed testified that he was engaged as a temporary general worker and/or power linesman on 1 January 1991 working until his employment was terminated in 2015. He tendered two letters into evidence for the purpose of certifying his employment with the respondent. The first letter (**Exhibit SM 1**), headed "To Whom It May Concern" and dated 18 August 2005, is unsigned but purportedly authored by the Officer in Charge, Mangochi, bearing the name A.B. Chimangeni inscribed in longhand. The second letter (**Exhibit SM 2**), similarly headed, is undated and purportedly authored by M. Kalilombe (Zone Supervisor), though signed by another individual on his behalf.

5. Mr. Mahomed asserted that the respondent ceased issuing written contracts to the applicants, verbally advising them instead that their employment was ongoing. He further stated that he was remunerated monthly and subject to PAYE deductions consistent with the treatment of permanent staff. He testified that despite performing the same duties as permanent power linesmen, he did not receive lunch, night, risk, house or electricity allowances which he tabulated in a supporting document (**Exhibit SM 3**).

6. During cross-examination, Mr. Mahomed conceded that his own evidence indicated he worked from 1991 to 2005 and subsequently from 2011 to 2018 with no proof of employment between 2005 and 2011. He admitted that his final signed contract was for a fixed duration which ultimately expired. Furthermore, he acknowledged that operating within the same field does not guarantee identical pay grades and that allowances require supervisory approval for which he possessed no supporting evidence.

7. Mr. Samson Manjolo testified that he was employed as a temporary general worker and/or power linesman from 2001 until 2018. Echoing Mr. Mahomed, he stated that the respondent withheld written contracts and verbally instructed the applicants to continue working. He corroborated that PAYE was deducted from their wages, tendering a 2017 payslip (**Exhibit P5**) and a self-calculated table of allowances (**Exhibit P4**).

8. Under cross-examination, Mr. Manjolo admitted that, save for the 2017 payslip, he possessed no documentary evidence, such as an identity card or contract, confirming his continuous employment from 2001 to 2018. He conceded that his most recent contract carried a fixed term that had expired. He also affirmed that allowances require supervisory approval admitting he had no evidence of such approval or of any denied leave applications.

9. Turning to the respondent's sole witness, Mr. Richard Samba testified that the applicants were engaged as temporary labourers on fixed-term contracts for various phases of MAREP producing a sample of the relevant advertisement (**Exhibit RS 1**). He explained that the original advertisements and contracts were destroyed in a 2013 fire that gutted ESCOM House. To supplement his testimony, he tendered a sample temporary labourer engagement form (**Exhibit RS 2**), conditions of service (**Exhibit RS 3**) and an offer letter (**Exhibit RS 4**). Mr. Samba maintained that the applicants' employment terminated automatically by effluxion of time or upon the completion of specific MAREP tasks meaning that there was no "dismissal" and no corresponding obligation to provide notice, reasons or a hearing to the applicants.

10. Under cross-examination, Mr. Samba confirmed that the applicants were paid monthly and subjected to PAYE deductions, clarifying that the Malawi Revenue Authority mandates tax deductions for all employees. He confirmed that temporary labourers fell under Grade A3 and performed manual, seasonal and demand-driven tasks (such as pole erection and excavation), unlike permanent electricians who require specialized qualifications (**Exhibit RS 5**). Mr. Samba reiterated that there were lengthy intervening breaks in service between the expiration of one contract and the commencement of another during which the applicants were free to pursue other interests or careers a point which was corroborated by Mr. Mahomed's five-year employment gap.

11. The foregoing concludes the summary of the pertinent evidence in this matter.

12. This Court expresses its gratitude to Counsel for both parties for their succinct and focused submissions. For the avoidance of doubt, all relevant arguments have been fully considered in arriving at this decision even where not expressly cited in the text of this judgment.

13. Having considered the evidential matrix and the submissions of both learned Counsel, the key issues this Court must resolve are as follows:

(a) *Whether the applicants were unfairly dismissed or whether their contracts of employment were lawfully terminated by reason of effluxion of time;*

(b) *Whether the successive renewal of the applicants' fixed-term contracts of employment transmogrified into permanent employment or contracts of unspecified duration; and*

(c) *Whether the respondent's treatment of the applicants amounted to unfair labour practices and whether they are entitled to the claimed benefits.*

14. This being a civil action, the burden of proof rests with the party asserting the affirmative[1], namely, the applicant. The applicable standard of proof is the balance of probabilities. The meaning of this standard is best illustrated by contrasting the requirements for succeeding versus failing to meet it. In ***Miller v. Minister of Pensions***[2] Denning J had this to say:

> *"If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not."*

15. Section 25(2) of the Employment Act provides for three distinct types of contracts, to wit: a contract for an unspecified period of time, a contract for a specified period of time and a contract for a specific task. Under section 28(2) of the Employment Act, a contract of employment for a specified period of time shall automatically terminate on the date specified for its termination, and unless it is expressly or tacitly renewed, no notice is required for its termination.

16. Conversely, section 28(3) of the Employment Act stipulates that where the purpose or effect of a contract of employment that is purported to be for a specified period or specific task is the filling on a lasting basis of a post connected with the normal and permanent activity of an undertaking, it shall be deemed to be a contract of unspecified duration.

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[1] ***Chipiliro Banda v. Southern Bottlers Ltd*** [2012] MLR 53 (HC).

[2] [1947] 2 All ER 372.

17. This Court has a tradition of not placing parties in what I call "gratuitous suspense" respecting the final determination reached upon an evaluation of the evidence in light of the applicable law. Accordingly, for the reasons I shall set forth below, it is my judgment – on a preponderance of probabilities – that the applicants' claims for compensation for unfair dismissal, damages for unfair labour practices and unpaid allowances are not well-founded and must be dismissed. My reasoning follows.

18. I begin with the first issue:

(a) Whether the applicants were unfairly dismissed or whether their contracts of employment were lawfully terminated by reason of effluxion of time;

19. Learned Counsel for the applicants contends that the applicants were abruptly and unfairly dismissed without notice or reasons in violation of section 57 of the Employment Act. On the other hand, learned Counsel for the respondent vigorously counter-argues that there was no "dismissal" at all as the applicants' contracts of employment simply expired by the effluxion of time.

20. It is well-established that the law draws a clear distinction between the unilateral termination of a contract of unspecified duration and the automatic expiration of a fixed-term contract of employment. Under section 28(2) of the Employment Act, a contract for a specified period terminates automatically on its end date. No notice or hearing is required because the end date is predefined by the mutual agreement of the parties.

21. The evidence of both Mr. Salimu Mahomed and Mr. Samson Manjolo confirms that they signed written contracts containing express commencement and termination dates. It is an undeniable fact that these contracts were temporary engagements tied directly to different phases of MAREP. Once the duration of a given fixed-term contract expired, the employment relationship between the applicants and the respondent ceased automatically. The respondent was under no legal obligation to provide a notice of termination or reasons nor was it required to comply with the rules of natural justice before the fixed-term contracts expired by the effluxion of time.

22. The provision of reasons would have been obligatory if, and only if, the respondent had purported to sever the employment relationship with the applicants on any date preceding the termination dates respectively indicated in the said contracts. Sections 57(1) and (2) of the Employment Act cannot be brought to bear on the facts of the instant matter as those provisions are inapplicable to fixed-term contracts of employment whose terms straightforwardly determine by the effluxion of time.

23. In ***Kalowekamo v. Malawi Environmental Trust***[3]**,** the Supreme Court of Appeal established that because a fixed-term contract of employment determines when its term expires or after the completion of the task envisaged by the contract, such a contract cannot be the subject of an action for unfair dismissal under the provisions of the current Employment Act. The Court further held that section 28(3) of the Employment Act does not give licence to a court to reject the clear terms of a contract, rewrite it and in the process suppress the clear intentions of the contracting parties.

24. This holding was further restated by the Supreme Court of Appeal in ***Aon Malawi Ltd v. Garry Tamani Makolo***[4]. Consequently, the applicants herein, having been employed by the respondent on fixed-term contracts of employment had no business coming before this Court to accuse the respondent of unfairly dismissing them.

25. The second issue relates to:

> *(b) Whether the successive renewal of the applicants' fixed-term contracts of employment transmogrified into permanent employment or contracts of unspecified duration;*

26. It is the applicants' argument that because they worked for the respondent for many years and their contracts were repeatedly renewed, their employment metamorphosed into contracts of unspecified duration under section 28(3) of the Employment Act.

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[3] [2008] MLLR 21.
[4] MSCA Civil Appeal No 22 of 2018 (unreported) delivered on 20th April 2021.

27. It so happens that this Court addressed a nearly identical argument in ***Nelson Milonde & Anor v. Blantyre Malaria Project***[5]. In that matter, this Court held that successive renewals do not automatically change the status of fixed-term contracts to contracts of unspecified duration unless the criteria of section 28(3) are met. Section 28(3) only deems a contract to be of unspecified duration if its purpose is to fill *"on a lasting basis [...] a post connected with the normal and permanent activity of an undertaking"*.

28. Sight should not be lost of the fact that the applicants herein were engaged to perform manual tasks (specifically, pole erection and pole excavation) which are demand-driven and seasonal. It is also undisputed that the applicants' contracts of employment were tied to MAREP. In that regard, the evidence shows that under MAREP, the respondent does not install power lines continuously on a daily basis. This is because MAREP is a periodic or phased exercise dependent on funding from the Malawi Government and the World Bank meaning the respondent's workforce needs fluctuate based on available grants.

29. It must be repeated that the applicants herein performed non-technical or manual services that were inherently project-tied. Thus, if the respondent were forced to hire manual or temporary labourers on a permanent basis, it would be saddled with paying salaries during idle months when no active pole erection or excavation projects exist. As held in *Milonde*[6], an employer whose operations and salaries depend on project-based funding, which may be sporadic and unpredictable, cannot reasonably be expected to offer permanent contracts of unspecified duration.

30. Furthermore, and significantly, the applicants' claims of continuous service are severely undermined by their own evidence. Mr. Mahomed's evidence revealed a massive gap in employment between 2005 and 2011. He attempted to bridge this gap by tendering unsigned exhibits, **SM 1** and **SM 2**. However, Mr. Mahomed failed to call the purported authors, namely, A.B. Chimangeni (Officer in Charge, Mangochi) and M. Kalilombe (Zone Supervisor), to authenticate these unreliable documents.

[5] Matter No. IRC 1180 of 2022.
[6] As above.

31. The principle outlined in ***Mpungulira Trading Ltd v. Marketing Services Division***[7] as well as ***Maonga and others v Blantyre Print and Publishing Co Ltd***[8] is apposite here. The principle dictates that the failure to call a crucial and material witness works against the party who has so failed because the Court assumes that the only reason such a witness is not called is that their evidence would be adverse to the party who should have called them. Consequently, the applicants' exhibits SM 1 and SM 2 carry no weight and this Court finds that the applicants' employment was interrupted by lengthy breaks of several years. They did not have continuous or unbroken service.

32. Finally, it is this Court's considered view that the deduction of PAYE and the application of standard working hours do not alter the fixed-term nature of the applicants' contracts. I agree with the respondent that PAYE is a statutory requirement imposed by the Malawi Revenue Authority on all taxable earnings regardless of employment status. Furthermore, standardized working hours apply to all personnel at the respondent organization and do not convert temporary manual labour under fixed-term contracts into permanent contracts of unspecified duration. The applicants and the respondent voluntarily entered into these fixed-term contracts and are bound by their express terms.

33. I now shift my attention to the final issue concerning:

(c) Whether the respondent's treatment of the applicants amounted to unfair labour practices and whether they are entitled to the claimed benefits.

34. The applicants claim that they were subjected to unfair labour practices because they were denied lunch, night, housing and electricity allowances that were given to permanent employees. This claim must equally fail.

35. For one, it is standard industrial practice that different grades of staff receive different salaries and benefit packages depending on their qualifications, training and responsibilities. It is irrefutable that the applicants herein were unskilled labourers who lacked the technical, formal electrical training and qualifications required of permanent graduate engineers and certified electricians. Disparities in

[7] [1993] 16(1) MLR 346
[8] [1991] 14 MLR 240 (HC).

perks based on grades and qualifications are not discriminatory; they are legally justified.

36. For two, the applicants failed to produce a single shred of evidence showing that any supervisor or authorized official sanctioned their alleged work outside their duty station to guarantee payment of the allowances they claim. The tables of allowances submitted by the applicants' two witnesses were unilaterally compiled by the applicants themselves and do not constitute official records of approved fieldwork. Moreover, the applicants remained silent and failed to demand these allowances during the subsistence of their contracts, raising them only as an afterthought upon the expiration of their employment.

37. In the end, for all the reasons meticulously and conscientiously explained, the applicants' claims are totally misplaced. Consequently, all the applicants' claims stand dismissed forthwith.

38. This is a Court of first instance. As such, any party aggrieved by the decision herein, it being final in this Court, is at liberty to exercise their right of appeal to the High Court within the dictates of section 65 (2) of the Labour Relations Act.

39. It is so decided.

Pronounced this 3rd day of August 2026 at IRC, **PRINCIPAL REGISTRY**

Tamanda Chris Nyimba
ACTING CHAIRPERSON