



THE MALAWI JUDICIARY
IN THE INDUSTRIAL RELATIONS COURT
PRINCIPAL REGISTRY
MATTER NO. IRC 613 OF 2017

In the dispute between:

BENSON TENSION LISILIRA.....APPLICANT

-AND-

**ELIZABETH MAYENDA t/a GOOD
MAGANIZO (PVT) SECONDARY SCHOOLRESPONDENT**

CORAM: **TAMANDA C. NYIMBA** : Acting Chairperson
 Felemont Banda : Counsel for the Applicant
 Madalitso M'meta : Counsel for the Respondent
 Rosemary Msimuko : Court Clerk

JUDGMENT

1. In this action, the applicant alleges unfair dismissal, a claim which the respondent firmly contests. Per his originating process, the applicant seeks the following reliefs: compensation for unfair dismissal, severance allowance, notice pay and gratuity.
2. At trial, the applicant testified in person and the respondent, Mrs. Elizabeth Mayenda, testified in her own defence.
3. While substantial evidence was presented, it is unnecessary to recount the same in its entirety. The following summary distils the salient evidence adduced by both parties as garnered from their examination-in-chief, cross-examination and re-examination.
4. The applicant asserts that he was employed by the respondent from 1997 to 2012, serving in various capacities, including as a Teacher, Coordinator, Accounts Assistant and Director. He averred that he earned a monthly salary of MK150,000.00 alongside various utility and housing allowances. He further testified that following the demise of the school's founder, Mr. Goodson Mayenda,

the respondent terminated his services without providing reasons or affording him the opportunity to be heard.

5. Conversely, the respondent testified that the applicant was never employed by the school. She asserted that the applicant was merely the deceased founder's nephew, taken in to assist his uncle pursuant to a familial arrangement. The respondent further asserted that there was no legally binding contract of employment but rather a domestic agreement between the applicant and the late Mr. Goodson Mayenda.
6. This concludes the summary of the relevant evidence in this action.
7. I extend my gratitude to Counsel for both parties for their thorough submissions and valuable assistance. I assure the parties that I have carefully considered all arguments, facts and legal authorities presented. Accordingly, the omission of an express reference to any particular submission in this judgment does not imply that it was overlooked by the Court.
8. Having considered the evidential matrix and the submissions from both learned Counsel, the issues for this Court's determination are:

(a) Whether the applicant was an employee of the respondent;

(b) Whether the applicant was unfairly dismissed; and

(c) Whether the applicant is entitled to the remedies sought.

9. As this is a civil action, the burden of proof rests with the party asserting the affirmative¹, 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.”

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

²[1947] 2 All ER 372.

10. This Court avoids placing parties in “gratuitous suspense” regarding the resolution of a matter. Accordingly, for the reasons detailed below, I find on a balance of probabilities that the applicant was an employee of the respondent and that his claim for unfair dismissal is well-founded.
11. The first issue is whether an employment relationship existed. The respondent’s primary defence is that this was a mere domestic arrangement devoid of contractual force. However, this Court’s attention is drawn to the prior High Court judgment in *Benson Tenson Lisilira v. Elizabeth Mayenda*³. In those proceedings, the respondent herein gave sworn evidence that the applicant was an employee who had stayed at the school since 1997 working as an Accounts Assistant and assisting as a Director. She further testified that the applicant received a salary and was provided with accommodation explaining that her inability to adduce documentary evidence to support this assertion was solely because the relevant records had gone missing. In fact, it is a matter of record that the learned judge in the High Court proceedings noted that the applicant did not dispute the respondent’s evidence regarding his employment status, and for that reason, expressly stated that the applicant was at liberty to pursue his claim under employment law.
12. The implication of these circumstances is that the respondent cannot secure a victory in the High Court by asserting that the applicant was an employee only to appear before the Industrial Relations Court and deny that very same relationship. Put another way, the respondent cannot be permitted to approbate and reprobate, or to blow hot and cold. Consequently, relying on the respondent’s own prior sworn evidence in the High Court matter, I make a definitive finding that the applicant was indeed an employee of the respondent.
13. Having established the employment relationship, I now turn to the second issue, namely, whether the dismissal was unfair.
14. First, I will outline the core legal principles. For an employment termination to be considered fair, it must satisfy the requirements of both substantive and procedural justice. A failure in either area is invariably terminal and results in a dismissal that is legally indefensible or unfair. Substantive justice is concerned with the reason

³ Civil Cause Number 408 of 2014 (HC, PR) [unreported].

for dismissal while procedural justice relates to the manner in which the dismissal occurred.

15. Section 57(1) of the Employment Act provides that the employment of an employee shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirement of the undertaking. The burden of showing that the reasons for dismissal are valid is on the employer⁴.
16. Section 57(2) of the Employment Act provides that the employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide the opportunity.
17. Section 61(2) of the Employment Act provides that in addition to proving that an employee was dismissed for reasons stated in section 57 (1), an employer shall be required to show that in all circumstances of the case he acted with justice and equity in dismissing the employee.
18. The evidence in the instant matter establishes that the respondent manifestly failed to accord procedural and substantive justice to the applicant. Crucially, the respondent conceded in paragraph 9 of her witness statement that there was no notice of a disciplinary hearing and no letter of dismissal. The applicant was summarily dismissed without being furnished with reasons and without any opportunity to be heard. In these circumstances, it follows that the respondent lacked valid justification for the termination. All things considered, in the process of terminating the applicant's contract of employment, the respondent failed to treat him with justice and equity contrary to the dictates of section 61(2) of the Employment Act. This Court, therefore, makes an emphatic finding that the respondent unfairly dismissed the applicant

⁴ Section 61(1) of the Employment Act; *Mangulama v. Raiply Malawi Limited* Matter No. IRC 254 of 2003 [Unreported].

19. Finally, having established that the respondent's termination of his employment constituted unfair dismissal, the applicant is entitled to compensation for unfair dismissal⁵, notice pay⁶ and severance allowance⁷.
20. Regarding reckoning of the reliefs, this Court notes that neither party specifically addressed the Court during trial on quantum of the remedies. Given that the right to be heard is a fundamental tenet of our justice system, the parties would be unfairly prejudiced were I to proceed to assess the reliefs without allowing them to adduce evidence or make submissions regarding the same. Accordingly, I shall defer assessment of the reliefs but, in the interim, I direct as follows:
- (a) The parties are at liberty to agree on quantum of the reliefs within 14 days from the date hereof;
 - (b) Failing such agreement, this Court shall preside over a remedy hearing to assess the reliefs on a date and at a time to be fixed following the filing of assessment papers by both parties and a notice of hearing by the applicant.
21. This was a modularized trial with determination of liability concluding the first instalment. Pursuant to the authority of *JTI Leaf (Malawi) Limited v. Kad Kapachika*⁸, this decision is inchoate for purposes of appeal. It may only be escalated to the High Court once this Court renders its order on assessment of reliefs or if the parties settle the same as directed. To avoid confusion, while the right of appeal subsists under section 65(2) of the Labour Relations Act, it is currently stayed pending conclusion of the relief proceedings or the parties reaching agreement on the same.
22. It is so ordered.

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

Tamanda Chris Nyimba
ACTING CHAIRPERSON

⁵ See section 63 of the Employment Act.

⁶ See section 30(2) of the Employment Act.

⁷ See section 35(1) of the Employment Act.

⁸ MSCA Civil Appeal No. 52 of 2016 [unreported].