REPUBLIC OF MALAWI

IN THE INDUSTRIAL RELATIONS COURT

ZOMBA REGISTRY

IRC MATTER NO. ZA 128 / 129 OF 2025

BETWEEN

FREEMAN TWEA CHISALE .... **1st APPLICANT**

PATRICK CHARLES KANYOZA ………... **2nd APPLICANT**

AND

ELECTRICITY SUPPLY CORPORATION OF MALAWI LIMITED ..... **RESPONDENT**

CORAM:

HON. PETER M.E. KANDULU, Deputy Chairperson

Mr. Ackim Ndlovu, Counsel for the Applicants

Mr. Panji Chirwa, Counsel for the Respondent

Mr. Kakhobwe, Court Clerk

RULING ON DISPOSAL OF CASE ON POINT OF LAW

Introduction & Applicants' Case

This is an application by the Applicants, Freeman Twea Chisale and Patrick Charles Kanyoza, moving this Court to dispose of part of these proceedings on points of law pursuant to the inherent jurisdiction of this Court and applicable procedural rules. Specific focus is placed on determining liability and entitlement to compensation without the necessity of proceeding to a full trial on those issues.

The Applicants specifically pray for the determination of the following questions of law:

(a) Whether judgment on liability for the shortfall in overtime pay should be entered for the Applicants for the period between January 2018 and March 2024 on the same terms as in the settled matters of ***ESCOM Limited v Joshua Mwamukonda & 57 Others*** (Miscellaneous Application No. 3 of 2026), ***Davie Katekesa & 1298 Others v ESCOM Limited*** (IRC Matter No. 111 of 2026), and ***Yohane Malapa & 2525 Others v ESCOM Limited*** (IRC Matter No. 363 of 2026); and

(b) Whether the Applicants are entitled to compensation for unfair labour practices on the same terms as the applicants in the aforementioned matters.

The application is supported by an affidavit sworn on behalf of the Applicants setting out the following material facts:

The Applicants are former employees of the Respondent, having served in various capacities and locations within the jurisdiction between January 2005 and March 2024.

During their employment, the Applicants routinely worked beyond normal working hours, entitling them to statutory overtime pay. However, the Respondent deployed a calculation formula that departed from the mandatory provisions of the Employment Act, resulting in systemic underpayment of overtime entitlements across its workforce.

A group of employees previously instituted proceedings against the Respondent in ***Joshua***

Mwamukonda & 57 Others v ESCOM Limited (IRC Matter No. 72 of 2024), where the Court assessed underpaid overtime and awarded compensation for unfair labour practices (Exhibited as **"FC 1"**).

Upon appeal by the Respondent in ***ESCOM Limited v Joshua Mwamukonda & 57 Others*** (Miscellaneous Application No. 3 of 2026), the parties executed a Consent Order (**Exhibit "FC 2"**) under which the Respondent agreed to

Pay the undisputed underpaid overtime for the period running from January 2018 to March 2024 amounting to MK 601,122,905.00; and

pay each applicant MK 4,000,000.00 as compensation for unfair labour practices.

Subsequent group actions **(*Davie Katekesa & 1298 Others v ESCOM Limited,*** IRC Matter No. 111 of 2026 [**Exhibit "FC 3a"**] and ***Yohane Malapa & 2525 Others v ESCOM Limited,*** IRC Matter No. 363 of 2026 [**Exhibit "FC 3b"**]) were similarly resolved by Consent Orders (**Exhibits "FC 4a"** and **"FC 4b"**), incorporating identical settlement terms for overtime withheld from January 2018 to March 2024 and MK 4,000,000.00 per employee as unfair labour practice compensation.

The Applicants submit that equal treatment and natural justice demand that they be accorded identical terms. Out-of-court engagements took place between counsel where the Respondent produced the Applicants' payslips and verified the withheld overtime calculation along with compensation at **MK 16,580,426.56** in total.

A draft Consent Order reflecting these verified figures was transmitted to the Respondent (**Exhibit "FC 5"**).

Respondent's Opposition

Counsel for the Respondent vehemently opposes the Motion and relies on an Affidavit in Opposition, raising the following substantive grounds:

Lack of Binding Precedent

The Respondent contends that *Joshua Mwamukonda & 57 Others* did not establish a binding legal principle or precedent on liability because the Respondent's defence (IRC Form 2) was struck out on 30th October 2025 due to non-compliance with a procedural order to produce employment records. Thus, the matter proceeded to assessment on a technical default rather than a full judicial determination on the merits. Similarly, the subsequent matters were concluded by compromise/consent without judicial determination of contested legal principles.

Requisite Strict Proof of Individual Facts

The Respondent argues that liability cannot be determined globally on a point of law. Determination of liability requires individual, factual proof of:

- Specific dates and hours worked overtime by each Applicant;
- Specific sums paid versus amounts allegedly outstanding;
- Proof of formal supervisory authorization for such overtime; and
- The exact employment status of each Applicant throughout the relevant period.
- The Respondent highlights that these elements were neither specifically pleaded in detail by the Applicants nor admitted in the Respondent's Form 2 defence, which expressly put the Applicants to strict proof.

Statutory Limitation

The Respondent submits that under Section 4(1)(a) of the Limitation Act, actions founded on contract must be brought within six years from the date the cause of action accrued. Because overtime entitlements accrue at each pay cycle, any claim predating 29th October 2019 (six years prior to the commencement of these proceedings on 29th October 2025) is *prima facie* statute-barred. The Applicants have not pleaded any statutory exceptions (such as fraud, concealment, or formal acknowledgment under Sections 23 or 25 of the Limitation Act) capable of extending time.

Issues For Determination

Having considered the pleadings, affidavits, and submissions of both learned counsel, the following issues fall for determination:

1. Whether this matter is suitable for summary disposal on a point of law without proceeding to a full trial.
2. Whether judgment on liability for the shortfall in overtime pay (for the period January 2018 to March 2024) should be entered for the Applicants on the same terms as in the benchmark ESCOM litigation.
3. Whether the Applicants are entitled to compensation for unfair labour practices in the sum of MK 4,000,000.00 each.

LEGAL ANALYSIS AND FINDINGS

Suitability of the Matter for Disposal on a Point of Law

Section 67(1) of the *Labour Relations Act* (as amended by Act No. 15 of 2021) mandates that matters before the Industrial Relations Court shall be heard and disposed of by the Chairperson or a Deputy Chairperson, while Section 67(2) explicitly confers jurisdiction on this Court to determine matters of both law and fact.

The procedural standard governing summary disposal on a point of law was authoritatively articulated by Chirwa J. in ***Charles Nsaliwa v Malawi Communications Regulatory Authority*** (Civil Appeal No. 30 of 2015):

> *"Now, the test of whether the question of law or construction is 'suitable' to be determined without a full trial of the action is whether all the necessary and material facts relating to the subject matter of the question have been duly proved or admitted, and this postulates that there is no dispute or no further dispute as to the relevant facts at the time when the Court proceeds to determine the question... It may also be worth mentioning that the question of law or construction which is suitable for determination without a full trial must also have the potential that its determination will finally determine the entire cause or matter or any claim or issue therein as for example, the issue of liability, leaving the question of damages and interest therein to be assessed subject only to any possible appeal."*

This approach aligns with English authority in ***Carter (R.G.) Ltd v Clarke*** [1990] 1 WLR 578, where Lord Donaldson MR emphasized that where no genuine triable issues of fact exist, forcing parties through a full trial serves no purpose other than generating delay and unnecessary costs.

Similarly, in ***Tokio Investment Pte Ltd v Tan Chor Thing*** [1993] 3 SLR 170, the Singapore Court of Appeal confirmed that where a decision on legal issues finally settles the rights of the parties, the court should resolve those legal issues directly.

Applying these principles to the present facts, the core underlying factual matrix, namely, that the Respondent systematically deployed an illegal formula for computing overtime pay for its operational staff during the period in question, is undisputed and settled across multiple proceedings involving the exact same employer and class of employees.

Furthermore, through out-of-court engagements, the Respondent produced the Applicants' specific payslips, computed the underlying shortfall using those records, and verified the sum of **MK 16,580,426.56**. The Respondent cannot now resile from figures derived directly from its own employment registers. There remain no live material facts requiring oral trial testimony on the core question of liability for the period between January 2018 and March 2024.

Liability, Issue Estoppel, and Equal Treatment

The Respondent contends that prior settlements and consent orders do not create binding legal precedents. While a consent order may not constitute a contested judicial precedent *stricto sensu*, it creates an **issue estoppel** that precludes a party from re-litigating an issue of fact or law that was conclusively conceded or decided in prior proceedings involving the same subject matter.

In ***McIlkenny v Chief Constable of the West Midlands*** [1980] 2 All ER 227, Lord Denning MR stated (at pp. 237–238):

> *"Likewise, it seems to me that a previous decision in a civil case against a man operates as an estoppel preventing him from challenging it in subsequent proceedings unless he can show that it was obtained by fraud or collusion... If the lorry driver (with the backing of his employer) has had a full and fair opportunity of contesting the issue of negligence in the first action, he should be estopped from disputing it in the second action. He was a party to*

the first action and should be bound by the result of it."

This principle was applied by Tembo J. in ***Darlington Juma v Fyson Magalasi and Britam Insurance Company Limited*** (Personal Injury Cause No. 645 of 2021), where the Court entered judgment on liability on the basis of issue estoppel established in a separate action arising from the same underlying incident.

In ***Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No. 2)*** [1966] 2 All ER 536, Lord Upjohn affirmed that estoppel *"must be applied so as to work justice and not injustice."*

The Respondent is the sole employer across all these matters. It admitted to deploying a faulty overtime calculation formula and subsequently executed Consent Orders covering thousands of its employees in ***ESCOM Limited v Joshua Mwamukonda & 57 Others***, ***Davie Katekesa & 1298 Others v ESCOM Limited***, and ***Yohane Malapa & 2525 Others v ESCOM Limited.***

To permit the Respondent to deny liability or force two individual ex-employees into an expensive trial over the exact same institutional practice and time frame would work significant injustice, violate principles of equal treatment under Malawi labour law, and constitute an abuse of the court process.

Statute of Limitations

The Respondent argues that claims predating October 2019 are statute-barred under Section 4(1)(a) of the Limitation Act. However, in all the benchmark consent decrees cited (*Mwamukonda*, *Katekesa*, and *Malapa*), the parties mutually compromised the historical claim period (2005–2024) by specifically restricting actionable financial recovery to the window running from **January 2018 to March 2024**.

By adopting this standardized period and verifying the specific payroll computations thereunder the limitation issue for the period post-January 2018 has been effectively resolved by the compromised framework applied to all similarly situated staff.

DECISION AND ORDERS

ACCORDINGLY, this Court finds that this matter is fit for disposal on points of law, and hereby ORDERS as follows:

1. **Judgment on Liability**

Judgment on liability for the shortfall in overtime pay for the period running from **January 2018 to March 2024** is hereby entered in favour of the Applicants against the Respondent.

2. **Overtime Pay Award**

The Respondent shall pay to the Applicants the verified and undisputed withheld overtime sum totaling **MK 16,580,426.56** (Sixteen Million, Five Hundred and Eighty Thousand, Four Hundred and Twenty-Six Kwacha, Fifty-Six Tambala).

3. **Unfair Labour Practice Compensation**

The Respondent shall pay to each Applicant the sum of **MK 4,000,000.00** (Four Million Kwacha) as compensation for unfair labour practices, consistent with the standard awards rendered in the benchmark proceedings.

The Respondent is ordered to pay the applicants within 15 days from the today.

4. **Right of Appeal**

Any party dissatisfied with this judgment on liability or the order on compensation reserves the right to appeal to the High Court of Malawi within the prescribed statutory timelines.

DELIVERED IN CHAMBERS this **7th day of August 2025** at **Zomba, Malawi**.

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON