



THE MALAWI JUDICIARY

# IN THE INDUSTRIAL RELATIONS COURT

PRINCIPAL REGISTRY

MATTER NO. IRC 1061 OF 2021

In the dispute between:

**MACDONALD KANJOBVU.....APPLICANT**

**-AND-**

**MALAWI NATIONAL EXAMINATION BOARD.....RESPONDENT**

|               |                          |                              |
|---------------|--------------------------|------------------------------|
| <b>CORAM:</b> | <b>TAMANDA C. NYIMBA</b> | : Acting Chairperson         |
|               | Alex Bonongwe            | : Counsel for the Applicant  |
|               | Kondwani Susuwele-Banda  | : Counsel for the Respondent |
|               | Rosemary Msimuko         | : Court Clerk                |

## **RULING**

### **1 PRELIMINARIES**

- 1.1 By notice of motion, the applicant moved this Court to determine this matter on points of law pursuant to Section 67(3) of the Labour Relations Act read with Rule 16 of the Industrial Relations Court (Procedure) Rules.
- 1.2 The applicant contends that his dismissal from the respondent's employ was marred by gross procedural irregularities and violations of the principles of natural justice rendering his dismissal unfair and subjecting him to unfair labour practices. Consequently, he seeks the following reliefs: compensation for unfair dismissal, damages for unfair labour practices, severance allowance and three months' notice pay.
- 1.3 In support of the motion, the applicant filed a sworn affidavit. The respondent resists the motion strictly on points of law and elected not to file an opposing affidavit. Thus, the facts deposed by the applicant remain unchallenged. The motion is further supported and opposed by extensive heads of argument and skeleton arguments filed by Counsel for the applicant and Counsel for the respondent respectively.

- 1.4 At the hearing, both parties formally adopted their papers and supported them with detailed oral arguments. I am deeply grateful to learned Counsel for both parties for their thorough submissions all of which I have fully considered in preparing this ruling.

## **2 THE FACTUAL MATRIX**

- 2.1 It is incumbent upon this Court to proceed on the basis of the uncontested facts being those proven, admitted or agreed upon by the parties insofar as they are relevant to resolving the present motion and, ultimately, the substantive suit. To that end, the brief facts of the matter are as follows:
- 2.2 The applicant was employed by the respondent as a Senior Security Officer on 7 December 2018. On 28 June 2021, the respondent suspended the applicant from duty pending investigations into alleged acts of misconduct. The suspension letter was written and signed by Mr. W.M. Mzama, the respondent's Chief Human Resources Management Officer.
- 2.3 Prior to subjecting the applicant to disciplinary proceedings, the respondent deployed an investigative team (which included Mr. S. Masapula, the respondent's Human Resources Management Officer) to gather facts at Jetty Private Secondary School in Karonga and St. Joseph College of Nursing in Chiradzulu.
- 2.4 On 11 August 2021, the applicant was invited to a disciplinary hearing to answer to five charges, namely: improper use of MANEB property, incompetence due to incapacity, substantial negligence or indolence in the discharge of duties, impersonation and insubordination or intransigence towards superiors. The charges were drafted and signed by the respondent's Chief Human Resources Management Officer, Mr. W.M. Mzama.
- 2.5 Contrary to Clause 13.7.6.2 of the respondent's own Terms and Conditions of Service, the applicant was neither informed of the investigation results nor provided with the investigation report to enable him to prepare for the hearing. Furthermore, while the respondent's invitation letter expressly undertook to parade a member of the investigative team as a witness during the hearing, this did not materialize.

- 2.6 At the hearing, Mr. S. Masapula sat on the respondent's four-member Disciplinary Committee. The Chairperson neglected to inform the applicant of the specific roles Mr. Masapula or the other members would play. Nevertheless, once the proceedings commenced, Mr. Masapula continuously interrogated the applicant confronting him with evidence from the very investigations he had conducted on behalf of the respondent. Concurrently, the disciplinary hearing report designated Mr. Masapula as the Committee's Secretary.
- 2.7 Upon the hearing's conclusion, the Disciplinary Committee found the applicant guilty and recommended "serious disciplinary action" against him. Thereafter, Mr. Mzama submitted the Committee's Report to the respondent's Acting Executive Director for direction. Tellingly, Mr. Mzama appended a minute advising the Acting Executive Director that, given the gravity of the offences, the appropriate penalties would be demotion to Grade M11, discharge or a request for the applicant's resignation.
- 2.8 Subsequently, Mr. Mzama, who had previously authored the suspension letter, drafted the charges and proposed the specific disciplinary penalties, wrote and signed the applicant's letter of summary dismissal dated 20 September 2021. The applicant appealed this dismissal on 29 September 2021. In accordance with Clause 13.7.6.4 of the respondent's Terms and Conditions of Service, this appeal fell to be heard by the Director of Corporate Services. Instead, the appeal was heard and dismissed by Mr. Mzama himself who communicated his decision via a letter dated 14 October 2021.
- 2.9 This concludes the simple and straightforward facts in this matter.

### **3 ISSUES FOR DETERMINATION**

- 3.1 Having carefully examined the motion and appreciated the papers in support and in opposition, the issues this Court is called upon to determine are as follows:

*(1) Whether this matter is suitable for disposal on points of law;*

*(2) Whether Mr. S. Masapula, by sitting on the Disciplinary Committee after investigating the applicant, acted as a judge in his own cause in violation of*

*the nemo judex in causa sua rule thereby flouting procedural justice and rendering the applicant's dismissal unfair;*

- (3) Whether Mr. Mzama, by determining the applicant's appeal instead of the Director of Corporate Services (having already drafted the charges and signed the suspension and dismissal letters) acted as a judge in his own cause in violation of the nemo judex in causa sua rule thereby contravening procedural justice and rendering the applicant's dismissal unfair;*
- (4) Whether the respondent's failure to inform the applicant of the investigation results prior to the hearing contravened Clause 13.7.6.2 of the Terms and Conditions of Service and whether the failure to call an investigative team member as a witness, despite an express undertaking to do so, breached procedural justice thereby rendering the applicant's dismissal unfair;*
- (5) Whether, if answered affirmatively, the respondent's conduct outlined in issues (2), (3) and (4) above constitutes unfair labour practices;*
- (6) Whether the applicant is entitled to compensation for unfair dismissal, damages for unfair labour practices, severance allowance and three months' notice pay.*

#### **4 THE APPLICABLE LAW**

- 4.1 This being a civil action, the burden of proof rests on the party asserting the affirmative<sup>1</sup>, namely, the applicant. The requisite standard of proof is on a balance of probabilities.
- 4.2 Rule 16 of the Industrial Relations Court (Procedure) Rules makes provision for the procedure to be followed respecting applications or motions not fully covered by the said rules. Section 67(2) of the Labour Relations (Amendment) Act, 2021 grants power to this Court to determine matters of law and fact. Rule 5A (1) (c) of the Industrial Relations Court (Procedure) Rules also provides for disposal of a matter on a point of law.

---

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

- 4.3 In *Charles Nsaliwa v. Malawi Communications Regulatory Authority*<sup>2</sup>, the Court emphasized that the decisive consideration is whether there are material factual disputes requiring resolution through evidence. In *Council of the University of Malawi v. Benjamin Chirwa and Others*<sup>3</sup>, the Court similarly affirmed that the jurisdiction to dispose of a matter on a point of law should only be exercised where no factual disputes exist and a legal determination will fully dispose of the matter.
- 4.4 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 for dismissal while procedural justice relates to the manner in which the dismissal occurred.
- 4.5 In the interests of concision, I undertake to cite – where relevant – the rest of the applicable statutory or case law in appropriate places in the “*Analysis and Disposal*” segment of this ruling.

## 5 ANALYSIS AND DISPOSAL

- 5.1 This Court eschews placing parties in what it terms “gratuitous suspense” regarding its decisions. Consequently, for the reasons set out below, the applicant’s motion must succeed.

*(1) Whether this matter is suitable for disposal on points of law;*

- 5.2 As the authorities dictate, under this procedural device, it is a fundamental principle that this Court operates upon uncontested facts. As noted earlier, the respondent elected not to file an opposing affidavit thereby explicitly relying on the facts and evidence contained in the applicant’s affidavit. In the absence of any material factual disputes, this motion is perfectly amenable to disposal on a point of law.

*(2) Whether Mr. S. Masapula, by sitting on the Disciplinary Committee after investigating the applicant, acted as a judge in his own cause in violation of the nemo iudex in causa sua rule thereby flouting procedural justice and rendering the applicant’s dismissal unfair;*

---

<sup>2</sup> Civil Appeal No. 30 of 2015 [Unreported] at pp. 5-6.

<sup>3</sup> Civil Appeal Number 12 of 2016 (Being IRC Matter No. 195 of 2014) [Unreported].

- 5.3 It is indisputable that Mr. Masapula was part of the investigative team and subsequently sat on the Disciplinary Committee. Learned Counsel Susuwele-Banda, for the respondent, argued that holding a workplace to the inflexible standards of a formal judicial tribunal would lead to absurdity citing *Lameck Moyo v National Bank of Malawi PLC*<sup>4</sup>. Counsel further contended that Mr. Masapula acted merely as a secretary, not an “accuser,” and thus did not sit in his own cause.
- 5.4 This Court decisively rejects the respondent’s narrow interpretation of the *nemo judex in causa sua* rule. The rule against bias concerns not only actual bias but appearances and the likelihood of bias. As noted in *Zodetsa v Council for the University of Malawi*<sup>5</sup> and the classic English case of *R v Sussex Justices ex parte McCarthy*<sup>6</sup>, justice must not only be done but must manifestly and undoubtedly be seen to be done.
- 5.5 Having personally investigated the applicant and gathered adverse facts, Mr. Masapula undoubtedly held a professional interest in the outcome of the disciplinary hearing, namely, ensuring the applicant was implicated by his investigative findings. It is unsurprising, therefore, that the applicant’s uncontroverted evidence confirms Mr. Masapula continuously interrogated him and confronted him with evidence during the hearing. Put simply, Mr. Masapula’s inclusion on the panel was a calamitous procedural oversight that vitiated the findings of the Disciplinary Committee. Inescapably, this breach of procedural justice renders the applicant’s dismissal unfair.

*(3) Whether Mr. Mzama, by determining the applicant’s appeal instead of the Director of Corporate Services (having already drafted the charges and signed the suspension and dismissal letters) acted as a judge in his own cause in violation of the nemo judex in causa sua rule thereby contravening procedural justice and rendering the applicant’s dismissal unfair;*

- 5.6 It is an uncontested fact that Mr. Mzama suspended the applicant, drafted the disciplinary charges, proposed specific penalties for the Acting Executive Director’s consideration, issued the dismissal letter and subsequently heard the

---

<sup>4</sup> MSCA Civil Appeal No. 19 of 2009.

<sup>5</sup> [1994] MRL 412.

<sup>6</sup> [1924] 1 KB 256.

applicant's appeal. The respondent attempts to justify this by arguing that the position of Director of Corporate Services was vacant making it expedient under Clause 13.7.4 for Mr. Mzama to handle the appeal rather than leave it in abeyance. Unfortunately for the respondent, it failed to depose an opposing affidavit to establish the vacancy of this position at the material time. Thus, the facts as deposed by the applicant remain unchallenged.

5.7 And so, this Court is entirely unpersuaded by the respondent's evidentially groundless contentions. The right to appeal serves as a logical safeguard designed to ensure a neutral review of a first-instance decision. By extensively immersing himself in the prosecutorial and preliminary stages of the disciplinary process, Mr. Mzama thoroughly compromised his impartiality. This conflict of interest precluded any fair adjudication of the appeal. Hearing an appeal against one's own preliminary decisions is a textbook breach of the *nemo iudex in causa sua* rule as affirmed in *Cooper v Wilson*<sup>7</sup> and *Jawadu v Malawi Revenue Authority*<sup>8</sup>.

5.8 Furthermore, it is incontrovertible that the position of Chief Human Resources Management Officer is not synonymous with that of the Director of Corporate Services to whom the appeal rightfully lay. By allowing Mr. Mzama to determine the appeal, the respondent flagrantly infringed Clause 13.7.6.4 of its own Terms and Conditions of Service. Once again, this contravention of procedural justice renders the applicant's dismissal unfair.

*(4) Whether the respondent's failure to inform the applicant of the investigation results prior to the hearing contravened Clause 13.7.6.2 of the Terms and Conditions of Service and whether the failure to call an investigative team member as a witness, despite an express undertaking to do so, breached procedural justice thereby rendering the applicant's dismissal unfair;*

5.9 The respondent submitted it was merely required to "inform" the applicant of the investigation results under Clause 13.7.6.2 not to furnish the physical report. Relying on *Lameck Moyo*<sup>9</sup>, the respondent argued that because the applicant allegedly pleaded guilty to the "bulk" of the charges, parading witnesses and

---

<sup>7</sup> [1937] 2 KB 309.

<sup>8</sup> [2008] MLLR 397.

<sup>9</sup> n.4 above.

strictly adhering to procedural justice was rendered unnecessary under section 59(1)(a) of the Employment Act.

- 5.10 I firmly reject this proposition. Section 43 of the Constitution of the Republic of Malawi guarantees the right to lawful and procedurally fair administrative action, which, as confirmed in *Chawani v Attorney-General*<sup>10</sup>, entrenches the rules of natural justice. The Constitution is the supreme law of the land. An employer cannot wield an employee's alleged misconduct as a shield to bypass constitutional and statutory guarantees of procedural fairness. Furthermore, in *Zodetsa*<sup>11</sup>, the Court adopted Lord Denning's pronouncement in *Surinder Singh Kanda v. Government of the Federation of Malaya*<sup>12</sup> that:

*"If the right to be heard is to be real which is worth anything, it must carry with it a right in the accused to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him, and then he must be given a fair opportunity to correct or contradict them."*

- 5.11 Indeed, the right to be heard is illusory if the accused is kept in the dark regarding the evidence against him and denied the opportunity to contradict it. By ambushing the applicant with undisclosed facts at the hearing and failing to parade the investigating officer for cross-examination, despite an express undertaking to do so, the respondent failed to accord the applicant procedural justice.

- 5.12 It must also be noted that the respondent has materially misrepresented the record. It is factually incorrect that the applicant pleaded guilty to four charges. Neither exhibit **MK 4** (summary dismissal letter) nor exhibit **MK 5** (minutes of the disciplinary hearing) reflect such a plea. Exhibit **MK 5** merely states that "*Mr. Kanjobvu accepted that he flouted the procedures as stated above in the five charges that were raised against him.*" With the greatest respect to Counsel for the respondent, an admission of flouting procedures is not synonymous with an unequivocal plea of guilty to the substantive charges.

---

<sup>10</sup> [2000- 2001] MLR 77 (SCA).

<sup>11</sup> n.5 above.

<sup>12</sup> [1962] AC 322.

5.13 Unquestionably, the applicant only pleaded guilty to two of the five charges, to wit, improper use of MANEB property and insubordination. I align with Counsel Bonongwe's submission that the fact these two admissions were extracted after a grueling three-hour disciplinary hearing indicates the proceedings were highly contentious. A clear dispute of facts existed. The unchallenged evidence confirms the hearing was deeply confrontational. It is settled law that where facts are disputed, the employer must parade witnesses to afford the employee the right of cross-examination<sup>13</sup>. Moreover, insofar as these admissions were made before an improperly constituted tribunal, they are inconsequential at law.

5.14 Therefore, this Court determines that the respondent breached Clause 13.7.6.2 by failing to disclose the investigation results prior to the hearing and breached procedural justice by failing to call an investigative witness as promised, thereby rendering the applicant's dismissal unfair.

*(5) Whether, if answered affirmatively, the respondent's conduct outlined in issues (2), (3) and (4) above constitutes unfair labour practices;*

5.15 This question is answered in the affirmative. Plainly, the cumulative procedural infractions detailed in issues (2), (3) and (4) above cannot be described as even handed, reasonable, acceptable and expected from the standpoint of employer, employee and all fair-minded persons looking at the unique relationship between employee and employer and good industrial and labour relations<sup>14</sup>. These violations constitute unfair labour practices in contravention of section 31(1) of the Constitution of the Republic of Malawi.

*(6) Whether the applicant is entitled to compensation for unfair dismissal, damages for unfair labour practices, severance allowance and three months' notice pay.*

5.16 Having successfully established that the termination of his employment amounted to an unfair dismissal, it ineluctably follows that the applicant is entitled to

---

<sup>13</sup> *Khoswe v National Bank of Malawi* [2008] MLLR 201.

<sup>14</sup> *Kalinda v Limbe Leaf tobacco Ltd* Civil Cause No. 542 of 1995 [Unreported].

compensation for unfair dismissal<sup>15</sup>, damages for unfair labour practices<sup>16</sup>, three months' notice pay<sup>17</sup> and severance allowance<sup>18</sup>.

## 6 CONCLUSION

6.1 In light of the uncontested facts, the applicable law and the foregoing analysis, the applicant's motion carries the day. Judgment is hereby entered in favour of the applicant. The respondent is ordered to pay the applicant compensation for unfair dismissal, damages for unfair labour practices, severance allowance and three months' notice pay.

6.2 Regarding assessment of the remedies, I note that neither party specifically addressed the Court in the course of arguing the motion on quantum of the reliefs. In point of fact, while it is efficient to deal with liability and assessment in an omnibus fashion, the parties were not heard on the precise topic of reckoning of the reliefs. 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 quantum without allowing them to adduce evidence or make submissions regarding the same. Accordingly, I shall defer the assessment of the reliefs. 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.

6.3 Determination of the liability question concludes the first part of the applicant's action. Pursuant to the authority of *JTI Leaf (Malawi) Limited v. Kad Kapachika*<sup>19</sup>, 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

---

<sup>15</sup> See section 63 of the Employment Act.

<sup>16</sup> See section 31(1) as read with sections 46(2)(a) and 46(4) of the Constitution of the Republic of Malawi.

<sup>17</sup> See section 30(2) of the Employment Act.

<sup>18</sup> See section 35(1) of the Employment Act.

<sup>19</sup> MSCA Civil Appeal No. 52 of 2016 [unreported].

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.

6.4 It is so ordered.

**Pronounced** this 3<sup>rd</sup> day of August 2026 at IRC, **PRINCIPAL REGISTRY**

*Tamanda Chris Nyimba*  
**ACTING CHAIRPERSON**