



THE MALAWI JUDICIARY  
**IN THE INDUSTRIAL RELATIONS COURT**  
PRINCIPAL REGISTRY  
**MATTER NO. IRC 196 OF 2020**

In the dispute between:

**SUSAN BIZWICK.....APPLICANT**

**-AND-**

**SPEEDY'S FOOD INDUSTRIES LIMITED.....RESPONDENT**

**CORAM:**     **TAMANDA C. NYIMBA**     : Acting Chairperson  
                  Hope Innocent Mvonye     : Counsel for the Applicant  
                  Gracian Luzu             : Counsel for the Respondent  
                  Rosemary Msimuko       : Court Clerk

**JUDGMENT**

1. In this action, the applicant alleges unfair dismissal, a claim which the respondent contests. In her originating process, the applicant seeks the following reliefs: compensation for unfair dismissal, severance allowance, notice pay, gratuity and pension.
2. At trial, the applicant was her own witness. The respondent, however, failed to call any witnesses in its defence. The circumstances surrounding this failure are that after the applicant closed her case, the matter was scheduled for the hearing of the respondent's case. On the scheduled date, Counsel for the respondent appeared late and without a witness. He then addressed this Court seeking an adjournment on the premise that the respondent's legal practitioners had administratively failed to diarize the matter and, therefore, had not prepared the respondent's witness.
3. I refused to grant the adjournment and proceeded to order the closure of the respondent's case. The explanation provided by Counsel for the respondent, that he simply forgot to diarize the court date, amounts to inexcusable remissness. This was not a compelling reason to have the matter stood over, especially considering that ample notice of at least a month had been given for this long-outstanding case. Tolerating the respondent's inefficiency by countenancing an adjournment on such

flimsy grounds would have made this Court irresponsibly complicit in wasting the scarcest of judicial resources, namely, time. This Court was well within the proper exercise of its discretion to deny the prayer for an adjournment, prioritizing expedition and the saving of judicial time.

4. Ultimately, refusing the adjournment did not result in a denial of justice. The respondent suffered no prejudice as its Counsel had already been afforded the opportunity to thoroughly test the probative value of the applicant's case through rigorous cross-examination during an earlier trial session. Consequently, only the applicant's evidence remains on the record.
5. The following is a summary of the essential evidence elicited during the applicant's examination-in-chief, cross-examination and re-examination.
6. The applicant was employed by the respondent on 14 March 2016 as a Poultry Attendant, earning a monthly wage of MK36,000.00. On 9 September 2019, she fell ill while on duty and was permitted to seek medical assistance. Thereafter, she proceeded home, having notified the respondent that she still felt unwell. On 12 September 2019, the applicant returned to the hospital where she was treated for diarrhea which is corroborated by the diagnostic notes in her health passport<sup>1</sup>. She later resumed work without incident.
7. On 3 October 2019, the applicant was presented with a warning letter by her Supervisor, Miss Olivia Nkhoma. She refused to sign the said letter on the grounds that the allegations therein did not accurately reflect her conduct and she had not been subjected to any disciplinary hearing. Upon inquiring into the issuance of the warning letter, she was referred to the respondent's Human Resources Officer, Mr. Paul Thawani. There, she maintained her refusal to sign the letter and was subsequently instructed to vacate the respondent's premises and return the following day.
8. Upon her return the following day, she was once again sent home and instructed to report back on a subsequent date. This pattern persisted until 6 November 2019 when she received a dismissal letter dated 6 October 2019. The applicant recounted that she was never summoned to any disciplinary hearing.

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<sup>1</sup> Exhibit marked **SB2**.

9. This concludes the relevant evidence in this matter.
10. I must commend learned Counsel for the applicant for his comprehensive written submissions. I have meticulously evaluated all arguments and legal authorities canvassed therein. Accordingly, the absence of an express reference to any specific submission within this judgment should by no means be construed as a failure by this Court to consider it.
11. Having considered the evidential matrix, the issues for this Court's determination are: (a) whether the applicant was unfairly dismissed; and (b) whether the applicant is entitled to the remedies sought.
12. As this is a civil action, the burden of proof rests with the party asserting the affirmative<sup>2</sup>, 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**<sup>3</sup> 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.”*

13. I should point out at the outset of my analysis that this Court is mindful that there is no material to consider from the respondent, save for the evidence elicited during the cross-examination of the applicant by Counsel for the respondent. In this context, it is apposite to quote a passage from the High Court case of **John Maulidi v. Enock Malindi and Prime Insurance Company Limited**<sup>4</sup>, wherein Kamwambe, J., observed the following regarding situations where no evidence is tendered by the defence:

*“There is nothing to consider as evidence from the [respondent's] side. The Court does not argue on behalf of any party. It must play its neutral role so that there is no smell or appearance of bias just because one party is not there. However, the interests of the [party who has tendered no evidence] [....] shall be safeguarded. The [applicant] should prove each and every averment he*

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<sup>2</sup>**Chipiliro Banda v. Southern Bottlers Ltd** [2012] MLR 53 (HC).

<sup>3</sup>[1947] 2 All ER 372.

<sup>4</sup>HC (PR) Civil Cause Number 1773 of 2009 (Unreported).

*makes on a balance of probabilities. The Court should convince itself that this position is reached. It is not automatic that [the applicant] has the day, just like that, just because the other party has tendered no evidence, [.....]. The Court should closely consider and scrutinise [applicant's] evidence in case there are some material contradictions. There could also be material omissions”.*

14. I shall bear this *dictum* in mind as I examine the issues in this matter.
15. I have a tradition of not placing parties in what I call “gratuitous suspense” regarding the final determination reached upon evaluating the evidence in light of the applicable law. Accordingly, having closely scrutinized the applicant’s evidence, it is my decision that, on a preponderance of probabilities, the applicant’s claims be upheld. My reasoning follows.
16. First, I 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 for dismissal while procedural justice relates to the manner in which the dismissal occurred.
17. 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 employer<sup>5</sup>.
18. 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.

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<sup>5</sup> Section 61(1) of the Employment Act; *Mangulama v. Raiply Malawi Limited* Matter No. IRC 254 of 2003 [Unreported].

19. 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.
20. In the matter at hand, the letter of termination indicates that the applicant was dismissed on grounds of absenteeism and insubordination. The dismissal was thus clearly rooted in conduct. Bearing the nature of this dismissal in mind, this Court proceeds to ascertain whether the respondent afforded the applicant both procedural and substantive justice.
21. I shall first examine the initial limb, namely, procedural justice, which concerns the manner in which the dismissal was effected. Upon evaluating the testimony adduced in this matter, it is abundantly clear that the respondent manifestly failed to accord procedural justice to the applicant. The applicant provided clear evidence that she was never summoned to a disciplinary hearing prior to being issued either the warning letter or her termination. This constitutes a flagrant circumvention of the right to be heard encapsulated in the venerable maxim *audi alteram partem* and enshrined in section 43 of the Constitution of the Republic of Malawi. To paraphrase what was articulated in *Ernest Mtingwi v Malawi Revenue Authority*<sup>6</sup>, section 57(2) of the Employment Act imposes a strict obligation upon an employer to provide an employee with a genuine opportunity to defend themselves against allegations before the ultimate sanction of termination is imposed.
22. The respondent's failure to afford the applicant a hearing amounts to a grave procedural breach. On this score, it is the finding of this Court that the respondent wholly denied the applicant procedural justice, thereby rendering her dismissal unfair.
23. I turn to the second limb of substantive justice which concerns the validity of the reason for dismissal. In matters where the Court must determine whether an employer's reason for dismissal is fair or valid based on the facts known at the time, it examines the cited misconduct or reason to ascertain if the termination was justified. If the proffered reason is not supported by evidence, the Court may conclude that there was no justification for the dismissal<sup>7</sup>.

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<sup>6</sup> Civil Cause No. 3389 of 2004.

<sup>7</sup> *Mahowe v. Malawi Housing Corporation* Civil Cause No. 3687 of 2000 (HC) [Unreported].

24. The respondent in this matter failed to call any witnesses to establish a valid reason for the dismissal. Pleadings in themselves are not evidence and are of no effect without supporting evidence<sup>8</sup>. The applicant's evidence, that she was permitted to go to the hospital and that she had to recuperate before resuming work later, remains entirely uncontradicted. Dismissing the applicant without adducing any contrary evidence to validate the termination falls drastically short of proving a valid reason for dismissal. Ineluctably, this Court concludes that the respondent lacked a valid reason to terminate the applicant's employment. Therefore, the dismissal was unfair as the respondent failed to satisfy the requirements of substantive justice.
25. All things considered, in the process of terminating the applicant's contract of employment, the respondent failed to treat her with justice and equity contrary to the dictates of section 61(2) of the Employment Act. The sum of the foregoing considerations fortifies this Court's determination that the respondent unfairly dismissed the applicant.
26. Finally, having established that the respondent's termination of the applicant's employment was both procedurally and substantively unfair, the applicant is entitled to all the reliefs prayed for.
27. 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.

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<sup>8</sup> *McDonald Mhone -vs- Michael Chavula and Prime Insurance Company Limited* Civil Cause Number 93 of 2016 [Unreported].

28. 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*<sup>9</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 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.
29. It is so ordered.

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

*Tamanda Chris Nyimba*  
**ACTING CHAIRPERSON**

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<sup>9</sup> MSCA Civil Appeal No. 52 of 2016 [unreported].