



THE MALAWI JUDICIARY
IN THE INDUSTRIAL RELATIONS COURT
PRINCIPAL REGISTRY
MATTER NO. IRC 178 OF 2022

In the dispute between:

SWEETY JOHN BOSCO.....APPLICANT

-AND-

CENTRAL HIGH INTERNATIONAL SCHOOL.....RESPONDENT

CORAM: **TAMANDA C. NYIMBA** : Acting Chairperson
 Lucy Mablekisi Kusani : Counsel for the Applicant
 Masurool Daud Abdallah : Counsel for the Respondent
 Rosemary Msimuko : Court Clerk

JUDGMENT

1. The applicant in this action alleges that she was unfairly dismissed by the respondent. As per the particulars of the claim set out in IRC Form 1, the applicant seeks the following reliefs: compensation for unfair dismissal, three months' notice pay, severance allowance, damages for unfair labour practices, payment for 18 accrued leave days and payment for 34 hours of overtime. The respondent denies the applicant's claims.
2. Inevitably, the matter proceeded to a full hearing following the parties' failure to find common ground or wholly settle the dispute at the Pre-hearing Conference stage.
3. At the hearing, the applicant gave evidence on her own behalf. The respondent, on the other hand, called a single witness: Mr. Salim Karim, a member of the respondent's board of directors.
4. While extensive evidence was adduced, it is unnecessary to recount the testimonies in their entirety. I will now outline the most pertinent and abridged evidence, drawn

in no particular order from the examination-in-chief, cross-examination and re-examination of both the applicant and the respondent's witness.

5. The applicant was employed by the respondent as an Accounts teacher in February 2021. On 15 March 2022, she was summoned to a "Commission of Inquiry-Hearing" regarding allegations that she had authored petitions to various public bodies and circulated WhatsApp messages spreading false accusations against the respondent. For inconsequential reasons that need not be rehearsed in this judgment, the said "Commission of Inquiry-Hearing" did not take place.
6. Subsequently, the respondent summoned the applicant to a disciplinary hearing via a letter dated 17 March 2022. Notably, the invitation letter neither stated the charges or offences the applicant was being called to answer nor did it indicate which provision(s) of the Conditions of Service governing her employment she had allegedly violated.
7. The disciplinary hearing convened on 18 March 2022. In addition to the applicant, it was attended by Mr. Faruk Nathanie (a member of the respondent's board), Mr. Harilal (the respondent's Administrator) and Mr. Salim Karim (a board member and the respondent's witness in this matter).
8. During the hearing, a document that the applicant had allegedly authored and sent to the Anti-Corruption Bureau (ACB – one of the public bodies in question) was produced. The disciplinary panel members then took turns asking the applicant a series of questions regarding this document. The applicant laboured to respond as the line of questioning took her entirely by surprise.
9. Following the hearing, the applicant received a communication from the respondent on 21 March 2022 summarily terminating her employment. The termination was grounded on allegations that her conduct violated Clause 15.2(e) of the respondent's Conditions of Service. Clause 15.2(e) reads:

"15.2 The School shall be entitled to dismiss an employee who commits an act of misconduct. Acts of misconduct shall include, but will not be restricted to the following:

(e) *Misconduct, whether in the course of the employee's duties or not, inconsistent with the fulfilment of the express or implied conditions of his employment."*

10. The foregoing concludes the abridged and pertinent evidence in this matter.
11. I commend Counsel for both parties on their thorough written submissions. I assure the parties that I have carefully considered all the arguments and legal authorities presented; therefore, if a specific point is not explicitly mentioned in this judgment, it should not be assumed that the Court has overlooked it.
12. Having considered the evidential matrix, the following issues call for determination by this Court: (a) whether the applicant was unfairly dismissed by the respondent; (b) whether the applicant was subjected to unfair labour practices; and (c) whether the applicant is entitled to payment for 18 accrued leave days and 34 hours of overtime pay.
13. This being 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."
14. This Court has 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, for the reasons I shall set out hereunder, it is my judgment – on a preponderance of probabilities – that the applicant must succeed on all her claims. My reasoning follows.
15. I begin with the first issue: *whether the applicant was unfairly dismissed by the respondent.*

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

²[1947] 2 All ER 372.

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 employer³.
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.
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 present matter, the respondent dismissed the applicant based on allegations that she circulated petitions and messages to various public bodies which purportedly disturbed the proper functioning of the respondent school and posed a serious risk to its reputation. The dismissal was, therefore, grounded in conduct. Bearing the nature of this dismissal in mind, I proceed to ascertain whether the respondent afforded the applicant both procedural and substantive justice.
21. I turn first to the issue of procedural justice, which concerns the manner in which the dismissal occurred. Based on the testimony elicited from the respondent's witness, Mr. Salim Karim, during cross-examination, it is evident that the

³ Section 61(1) of the Employment Act; *Mangulama v. Raiply Malawi Limited* Matter No. IRC 254 of 2003 [Unreported].

respondent fell woefully short of providing the procedural safeguards legally owed to the applicant.

22. As a starting point, the applicant was given barely 24 hours to prepare for her disciplinary hearing having received the invitation on 17 March 2022 for a hearing scheduled on 18 March 2022. Furthermore, the invitation letter contained neither the specific charges she was to answer nor the exact clause in the Conditions of Service she allegedly breached. Plainly, the applicant was left to guess and make assumptions regarding the allegations and evidence against her.
23. Moreover, it is clear that the disciplinary hearing was highly irregular. Mr. Karim confirmed that while the applicant was accused of petitioning multiple public bodies, the only evidence presented pertained to her correspondence with a single entity, the Anti-Corruption Bureau (ACB). This evidence was not even attached to the hearing invitation and the applicant was never informed of the identities of the other public bodies she allegedly petitioned.
24. At the disciplinary hearing, no witnesses were called to testify against the applicant depriving her of the opportunity to confront her accusers. Furthermore, she was denied the opportunity to call her own witnesses. Most shockingly, Mr. Harilal, one of the three panellists presiding over the hearing was the very subject of the ACB complaint authored by the applicant. This rendered the panel fundamentally conflicted and violated the cardinal principle that justice must not only be done but must manifestly be seen to be done.
25. Consequently, in the circumstances laid bare, this Court makes an emphatic finding that the respondent patently failed to extend procedural justice to the applicant thereby rendering the dismissal unfair.
26. I now address the second limb, to wit, substantive justice which concerns the validity of the reason for dismissal. In determining whether an employer's reason for dismissal is fair or valid, the Court examines the cited misconduct against the facts known at the time to ascertain if the termination was justified. If the reason is unsupported by evidence, the Court may conclude that the dismissal lacked justification⁴.

⁴ *Mahowe v. Malawi Housing Corporation* Civil Cause No. 3687 of 2000 (HC) [Unreported].

27. The respondent alleged that the applicant's communications damaged its image and brought it into disrepute. The pertinent question is whether this allegation is supported by sufficient evidence to justify the dismissal.
28. The respondent's witness conceded that copies of the alleged WhatsApp messages, social media posts and complaints from concerned parents were never brought before this Court. The sole piece of evidence tendered was a letter written by the applicant to the ACB⁵. Crucially, the respondent failed to adduce any evidence demonstrating that the applicant's complaints to the ACB were false or baseless. In these circumstances, it is the inescapable finding of this Court that the respondent had no valid reason to dismiss the applicant. The applicant was, therefore, unfairly dismissed on account of the respondent's failure to extend substantive justice to her.
29. Furthermore, the applicant was purportedly dismissed for violating clause 15.2 (e) of the respondent's Conditions of Service. However, it is undisputed that the respondent failed to provide the applicant with a copy of these Conditions during her employment. A copy was only provided on 4 September 2023 long after the applicant's dismissal⁶. Failing to provide an employee with the Conditions of Service and subsequently dismissing them for breaching those very terms 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 relations⁷. This conduct constitutes a glaring infraction of section 27 of the Employment Act and amounts to an unfair labour practice.
30. Altogether, in 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. Collectively, these considerations fortify the determination that the dismissal was fundamentally unfair.
31. I turn to the applicant's claims for 18 accrued leave days and 34 hours of overtime pay.

⁵ See exhibit **SK 3**.

⁶ See exhibit **SJB 9**.

⁷ *Kalinda v Limbe Leaf tobacco Ltd* Civil Cause No. 542 of 1995 [Unreported].

32. Concerning accrued leave, under paragraph 12.1 of the respondent's Conditions of Service, it is provided that "*an employee shall upon the completion of each year of service be entitled to Eighteen (18) working days leave to be taken at the convenience of the School*".
33. The applicant provided cogent evidence that she did not take annual leave during her tenure. During cross-examination, she convincingly testified that while the school closed for holidays, this was distinct from the statutory annual leave she was entitled to under her contract. The respondent vehemently disputed this claim but produced no evidentiary support. As the custodian of its own records, the respondent bore the burden of proving that the applicant had exhausted her leave. Had the applicant taken leave, the respondent ought to have produced approved leave applications as proof. It failed to do so.
34. Regarding overtime, section 39 of the Employment Act entitles an employee to overtime pay when they work: (a) in excess of normal working hours (ordinary overtime); (b) on a public holiday (holiday overtime); or (c) on a day they would otherwise be off duty (day-off overtime). Additionally, the Employment Agreement between the parties herein stipulated that "[a] typical workday is from 7:00 am to 2:30 pm with a lunch break from 12:35 to 1:05 pm. Saturdays are normally holidays but whenever there is an activity such as staff development seminar, sports and games activities or any other activity organized by the school, the Employee is expected to attend these without any claim for extra pay"⁸.
35. The applicant herein carefully detailed 34 hours of overtime in paragraph 31 of her witness statement comprising 23 hours of day-off overtime and 11 hours of ordinary overtime. In response, the respondent's witness merely stated he could neither confirm nor deny the claim deferring to the School Administrator. As with the leave claim, the respondent produced no documentary evidence – such as timesheets – to rebut the applicant's assertions.
36. In the result, the applicant succeeds on her claims for 18 days of accrued leave, 23 hours of day-off overtime and 11 hours of ordinary overtime.

⁸ See exhibit **SJB 2**.

37. Having successfully established that the termination of her employment contract amounted to an unfair dismissal, the applicant is rightfully entitled to compensation for unfair dismissal⁹, three months' notice pay¹⁰ and severance allowance¹¹. The applicant is also entitled to damages for unfair labour practice¹², payment of 18 accrued leave days and payment of 34 hours overtime pay.
38. Regarding the quantification of these remedies, this Court notes that neither party specifically addressed the issue of quantum during the trial. While it is generally efficient to address liability and assessment in an omnibus fashion, the right to be heard remains a fundamental tenet of our justice system. The parties would be unfairly prejudiced were I to proceed with the assessment without allowing them the opportunity to adduce evidence or make submissions on the matter. 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.
39. 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*¹³, 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 the parties reaching an out of court settlement. To avoid confusion, while the right of appeal subsists under Section 65(2) of the Labour Relations Act, it is currently stayed pending the conclusion of the relief proceedings or the parties reaching agreement on the same.
40. It is so ordered.

⁹ See section 63 of the Employment Act.

¹⁰ See section 30(2) of the Employment Act.

¹¹ See section 35(1) of the Employment Act.

¹² See section 31(1) of the Constitution of the Republic of Malawi.

¹³ MSCA Civil Appeal No. 52 of 2016 [unreported].

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

Tamanda Chris Nyimba
ACTING CHAIRPERSON