



IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

HOLDEN AT ZOMBA

IRC MATTER NUMBER ZA 62 OF 2025

BETWEEN:

AGNESS PHIRI APPLICANT

AND

CATHOLIC HEALTH COMMISSION (MANGOCHI DIOCESE) RESPONDENT

CORAM:

HON. PETER M.E. KANDULU, Deputy Chairperson

Mr. Yahaya, Counsel for the Applicant

Respondent: Present, Unrepresented

Mr. Patrick Banda: Court Clerk

JUDGMENT AND ORDER

Introduction

The Applicant, Agness Phiri, instituted these proceedings against the Respondent, Catholic Health Commission (Mangochi Diocese), seeking the following reliefs:

(a) Compensation for unfair dismissal; (b) Damages for unfair labour practice; (c) Salary arrears up to the date of judgment; (d) Severance pay; (e) Leave pay; (f) Notice pay; (g) Costs of the action; and (h) Adjustment of all remedies to account for the devaluation of the Malawi Kwacha.

The Respondent filed its response via IRC Form 2, denying liability and contending that the Applicant was not unfairly dismissed but rather resigned voluntarily from her employment.

At the hearing, the Applicant appeared and testified as a sole witness, adopting her sworn witness statement and tendering several exhibits. The Respondent, despite having notice of the hearing, failed to cross-examine the Applicant or lead any evidence to substantiate its defence.

Evidence and Applicant's Case

In her testimony, the Applicant stated that she was employed by the Respondent on 12th January 2009 as an HIV/AIDS Coordinator at Mpiri Health Centre in Machinga District. She worked five days a week for a net monthly salary of MK74,000.00. She exhibited her letter of appointment marked "AP1".

In 2019, the Applicant enrolled for weekend degree studies (Saturdays and Sundays) at the Catholic University of Malawi. She testified that her studies did not interfere with her contractual duties, as her weekends were non-working days. She informed her supervisor (Fr. Grevulo) about her studies, but the Respondent expressed displeasure.

Shortly thereafter in 2019, the Respondent unilaterally removed the Applicant from the payroll and withheld her monthly salaries without explanation, despite her continuing to discharge her daily duties. Facing severe financial hardship and starvation, she sought access to her pension contributions for survival.

She was advised by the Respondent's representative (Fr. Malajira) that her pension could only be processed if she tendered a written resignation letter. Reluctantly, and under economic duress, she submitted a letter indicating she had resigned voluntarily. She maintained that she did so solely to secure her pension funds, fully intending to seek legal redress for what she considered to be constructive dismissal.

In support of her position, the Applicant tendered:

Exhibit "AP2": Admission letter to the Catholic University; Exhibit "AP3": Photograph confirming she remains in possession of the Respondent's official motorcycle; and Exhibit "AP4": Electronic chat records detailing her conversation with Fr. Malajira, wherein she confronted him for using her forced resignation letter as a trap to deny her fair dismissal rights.

The Respondent did not cross-examine the Applicant or call any witnesses to refute these assertions.

Issues for Determination

Having evaluated the pleadings and uncontroverted evidence, the Court identifies the following main issues for determination:

Whether the Applicant was constructively and unfairly dismissed by the Respondent and whether the Applicant is entitled to the reliefs and remedies sought.

Applicable Law

Statutory Presumption and Burden of Proof

Section 61(1) of the Employment Act (Cap 55:02) establishes that in any claim arising out of the dismissal of an employee, the burden lies on the employer to prove the reason for the dismissal. Where the employer fails to provide a valid reason, there exists a conclusive presumption that the dismissal was unfair. Furthermore, under Section 61(2), the employer must demonstrate that they acted with justice and equity in all circumstances.

Where an employee alleges constructive dismissal under Section 60 of the Employment Act, the burden rests on the employee to show that the employer's conduct made the continuation of the employment relationship unreasonable.

Judicial Precedents on Constructive Dismissal and Unrebutted Evidence

As settled in *Earl v Slater & Wheeler (Airlyne)* Ltd [1973] 1 WLR 51 and re-affirmed by this Court in *Kolowekamo v Malawi Environmental Endowment Trust* (IRC Matter No. 295 of 2003), the employer must demonstrate a potentially fair reason for termination. Failure to discharge this initial burden forces a finding of unfair dismissal.

Furthermore, on the effect of a party failing to cross-examine or call material witnesses, the court in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P124 and *NBS Bank Limited v BP Malawi Limited* (Commercial Cause No. 12 of 2007) held that the uncontradicted evidence of a witness, coupled with the adverse inference drawn from a party's failure to present available witnesses, converts prima facie evidence into conclusive proof.

Analysis and Findings

Whether the Applicant was constructively and unfairly dismissed

Constructive dismissal occurs where an employer commits a fundamental breach of the employment contract, leaving the employee with no reasonable option but to terminate the relationship.

Paying remuneration is the primary obligation of an employer. The uncontradicted evidence shows that the Respondent unilaterally cut off and withheld the Applicant's salary from 2019 simply because she enrolled in weekend studies. Pursuing further education on non-working days without compromising working hours does not constitute a disciplinary offense under Malawi labour law. Unilaterally stopping salary payments while an employee continues to report for duty constitutes a repudiatory breach of the employment contract.

Regarding the Respondent's defence that the Applicant voluntarily resigned: the Court finds that the Applicant's "resignation" letter was procured through coercive financial pressure and economic duress. Coercing an unpaid employee to sign a resignation letter as a prerequisite to accessing accrued pension benefits vitiates genuine consent. Exhibit AP4 clearly corroborates that the resignation was not voluntary.

The Applicant's evidence is further corroborated by her continuous possession of the Respondent's official motorcycle (Exhibit AP3), an indicator that the employment relationship was severed abruptly under contentious circumstances rather than through a normal handover process following voluntary resignation.

The Respondent elected not to cross-examine the Applicant nor call Fr. Malajira or Fr. Grevulo to controvert these facts. Applying the rule in *NBS Bank Limited v BP Malawi Limited*, this Court draws an adverse inference that any evidence the Respondent might have led would have damaged its case.

Consequently, this Court finds that the Applicant was constructively dismissed, and by operation of Section 61 of the Employment Act, such dismissal is conclusively presumed to be unfair.

Entitlement to Remedies and Reliefs

Having established that the Applicant was unfairly dismissed, she is entitled to statutory and compensatory remedies under Section 63 of the Employment Act:

(a) Salary Arrears

The Applicant worked without remuneration following the illegal withholding of her salary. She is entitled to full back pay for all unpaid monthly salaries up to the date of this judgment.

(b) Compensation for Unfair Dismissal & Unfair Labour Practice

Pursuant to Section 63(4) of the Employment Act, the Applicant is awarded compensation reflecting her length of service (from 2009) and the egregious conduct of the Respondent in forcing a resignation under economic distress.

(c) Notice Pay

In accordance with Section 29 of the Employment Act, the Applicant is entitled to pay in lieu of notice.

(d) Severance Pay

Under Section 35 of the Employment Act, an employee whose contract is unfairly terminated or constructively broken by the employer is entitled to severance pay based on completed years of service.

(e) Leave Pay

Accrued, unused annual leave days up to the date of construct termination are payable under Section 44 of the Employment Act.

Order

It is Hereby Ordered and Adjudged that

1. Judgment is entered in favour of the Applicant against the Respondent for constructive and unfair dismissal.
2. The Respondent shall pay the Applicant the following heads of relief, to be assessed by the Registrar of this Court upon formal application:
 - (i) Salary arrears;
 - (ii) Compensation for unfair dismissal and unfair labour practice;
 - (iii) Severance pay;
 - (iv) Notice pay; and
 - (v) Accrued leave pay.

PRONOUNCED IN OPEN COURT this 2nd day of September 2026 at Zomba, Malawi.



A handwritten signature in purple ink, appearing to read "Peter M.E. Kandulu".

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON