



REPUBLIC OF MALAWI
IN THE INDUSTRIAL RELATIONS COURT
ZOMBA REGISTRY
IRC MATTER NUMBER ZA 192 OF 2025
BETWEEN

ELLENA MPHONGOZIDANA.....APPLICANT

AND

YAMBA MALAWI.....RESPONDENT

CORAM:

HON. PETER M.E. KANDULU, DEPUTY CHAIRPERSON

Mumvana Mtukule, Counsel for the Applicant

Respondent: Absent,

Mr Patrick Banda: Court Clerk

JUDGMENT

Introduction

The Applicant, Ellena Mphongozidana, commenced these proceedings against the Respondent by filing an IRC Form 1 on 8th December 2025, claiming: compensation for Unfair Dismissal; compensation for Unfair Labour Practices; Severance Pay; Repatriation to her home village; and Salary arrears for acting as Programme Manager for a period of eight (8) months.

The Respondent filed an IRC Form 2 on 2nd February 2026, denying all allegations. A Pre-Hearing Conference was subsequently conducted where the parties agreed upon the following issues for determination by this Court:

Whether the Applicant was offered the position of Programme Manager in an acting capacity, and if so, whether she is entitled to salary arrears. Whether the Applicant was subjected to unfair labour practices during her employment. Whether the Applicant was unfairly or unlawfully dismissed, and consequently entitled to compensation and severance pay. Whether the Applicant is entitled to repatriation costs.

Failure of the Respondent to Attend Trial

When this matter was called for trial, the Applicant appeared and was ready to proceed. However, the Respondent failed to attend the trial, and no reason or explanation for their absence was proffered to the Court or the Applicant. Section 74 of the Labour Relations Act provides for Failure to attend

“If a party fails to attend or to be represented at the proceedings of the Industrial Relations Court without good cause, the Industrial Relations Court may proceed in the absence of that party or representative.”

Consequently, the Court proceeded to hear the matter ex-parte pursuant to section 74 of the Labour Relations Act. The Court has considered and analysed the evidence adduced by the Applicant as uncontroverted, while remaining cognizant of the evidentiary standard applicable to civil matters.

Burden and Standard of Proof

The burden of proof initially rests upon the party who substantially asserts the affirmative of an issue (*Joseph Constantine Steamship Line v. Imperial Smelting Corporation Ltd* [1942] AC 154). The burden is fixed at the commencement of trial by the state of the pleadings (*B. Sacranie v. ESCOM*, HC/PR Civil Cause No. 717 of 1991). The standard of proof required is on a balance of probabilities (*Miller v. Minister of Pensions* [1947] 2 All ER 372).

However, in employment law context, specifically regarding claims of unfair dismissal, once the employee establishes the fact of termination/dismissal, Section 61(1) of the Employment Act (Cap. 55:02) shifts the legal burden to the employer to establish the reason for the dismissal. It was therefore the duty of the Respondent to furnish this court with the valid reasons on the termination of the employment of the Applicant. Unfortunately, the respondent decided not to attend court proceedings despite having being served with the notice of hearing the matter.

Analysis of Law, Facts, and Evidence

Acting Allowance / Salary Arrears as Programme Manager

The Applicant gave evidence that following the resignation of the former Programme Manager (Mr. Noel Phuka Chinyama) in November 2024, she was invited to a virtual meeting with the Director of Human Resources (Mr. Kenwood Chitsonga Mataka) and the interim Executive Director (Mr. Maxwell Kaliati). In that meeting, she was appointed to work as Acting Programme Manager from 28th November 2024 to March 2025. This role was formally announced to staff members on 25th November 2024, and she was provided with handover notes by the outgoing manager on 27th November 2024 (exhibited before this Court).

Although the Respondent subsequently attempted to verbally reverse the appointment two weeks later without proper formal procedures, the evidence shows that she carried out the supervisory duties, responsibilities, and operational burdens of the position.

Where an employee performs the duties of a higher post at the instance and directive of the management, equity and natural justice under Section 31(1) of the Constitution of the Republic of Malawi (which guarantees fair labour practices) require that the employee be remunerated for the higher responsibilities undertaken. The Respondent's failure to attend court leaves the Applicant's evidence on this point completely unrefuted. The Court finds that the Applicant did act in the capacity of Programme Manager and is entitled to payment of the acting allowance/salary differential for the period worked.

Unfair Labour Practice and the Renewal of Contract / PIP

The Applicant's uncontradicted evidence is that:

She was continuously employed on yearly renewable contracts from 14th April 2021. During a retrenchment exercise in January 2025 where 9 staff members were let go, the Respondent assured her that her position was safe because her presence was required in Mangochi.

Despite this assurance and a past practice of yearly renewals, on 24th April 2025, her contract was renewed for only 3 months instead of the customary 1 year, and she was simultaneously placed on an 80-day Performance Improvement Plan (PIP) without prior notice or performance warnings.

Under the terms of the PIP, she was entitled to periodic reviews and bi-weekly coaching meetings. However, in June 2025, before the expiration of the 80-day PIP period and without conducting a single performance review or offering coaching, the HR Director presented her with a letter stating her contract would not be renewed upon its expiry in July 2025.

Under Section 31 of the Constitution of the Republic of Malawi, every person has the right to fair and safe labour practices and to fair remuneration.

Setting up a conditional Performance Improvement Plan for an employee as a prerequisite for contract renewal, and then arbitrarily terminating or refusing to renew the employment relationship prior to completing the PIP or granting the contractually promised support/coaching, constitutes bad faith, deceit, and a flagrant breach of fair labour practices. The Respondent misrepresented its intentions and used the 3-month contract and unfulfilled PIP as a pretext to bypass standard termination and retrenchment procedures.

Unfair Dismissal

The main applicable law is Section 57 of the Employment Act, which provides:

(1) 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 requirements of the undertaking.

(2) The employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided with an opportunity to defend himself against the allegations made unless the employer cannot reasonably be expected to provide the opportunity.

Where an employer purports to rely on non-renewal of a fixed-term contract, but the underlying circumstances show a legitimate expectation of renewal created by the employer's conduct and past dealings, an abrupt non-renewal without reason or hearing amounts to a constructive dismissal (**Kettie Mukamba v. Malawi Revenue Authority**, Matter No. IRC 101 of 2008; **Chakhaza v. Portland Cement Co.** (2008) MLLR 118).

Furthermore, under Section 61(1) of the Employment Act:

"In any claim or complaint arising out of the dismissal of an employee, it shall be for the employer to provide the reason for dismissal and if the employer fails to do so, there shall be a conclusive presumption that the dismissal was unfair."

(See also: *Khoswe v. National Bank of Malawi Ltd* (2008) MLLR 201; *Chisowa v. Ibrahim Cash 'n' Carry* (2008) MLLR 385).

By failing to appear at trial, the Respondent offered no valid reason connected with conduct, capacity, or operational requirements to justify the sudden non-renewal of the contract, nor did it afford the Applicant an opportunity to be heard or defend her performance record under the PIP (Section 57(2)). Consequently, by operation of Section 61(1), there is a conclusive presumption that the dismissal was unfair.

Remedies & Orders

Having found that the Applicant was unfairly dismissed, subjected to unfair labour practices, and denied her acting dues, the Court makes the following orders:

Salary Arrears / Acting Allowance:

The Applicant is awarded salary arrears representing the difference between her salary as District Coordinator and that of Programme Manager for the period worked in an acting capacity.

Compensation for Unfair Dismissal:

In terms of Section 63 of the Employment Act, the Applicant is awarded compensation for unfair dismissal taking into account her period of service (April 2021 to July 2025), loss of earnings, and the unjust manner of dismissal.

Compensation for Unfair Labour Practice:

Pursuant to Section 31 of the Constitution, the Applicant is awarded damages/compensation for unfair labour practices arising from the Respondent's bad-faith handling of the PIP, misleading promises regarding job security during retrenchment, and arbitrarily changing her terms of service.

Severance Pay:

The Applicant is entitled to severance pay in accordance with Section 35 of the Employment Act.

Repatriation:

In terms of Section 62 of the Employment Act, the Respondent shall pay the costs of repatriating the Applicant and her belongings from her duty station in Mangochi to her home village.

Assessment of Quantum

The Registrar of the Industrial Relations Court Zomba registry shall assess the exact monetary quantum of the awards (Salary Arrears, Compensation for Unfair Dismissal, Compensation for Unfair Labour Practice, Severance Pay, and Repatriation Expenses) upon application by the Applicant with supporting wage documentation.

The file shall therefore be remitted to the Registrar to schedule the hearing of the assessment proceedings of this matter. The Respondent shall be required to serve the Respondent with the notice of the assessment proceedings and all supporting documents for the quantum assessment.

PRONOUNCED IN CHAMBER this 8th 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