



**REPUBLIC OF MALAWI
IN THE INDUSTRIAL RELATIONS COURT
ZOMBA REGISTRY**

IRC MATTER NUMBER ZA 21 OF 2025

BETWEEN

HOLLACE KAZIPUTA.....APPLICANT

AND

CAPE BAY LIMITED.....RESPONDENT

CORAM:

HON. PETER M.E. KANDULU, DEPUTY CHAIRPERSON

Applicant: Present, Unrepresented

Respondent: Present, Unrepresented

Mr Kakhobwe: Court Clerk

JUDGMENT AND ORDER ON COMPENSATION

INTRODUCTION AND BACKGROUND

The Applicant, Hollace Kadziputa, instituted these proceedings against the Respondent, Cape Bay Limited, claiming statutory and contractual entitlements comprising withheld wages in the sum of MK693,836.00, leave pay amounting to MK253,836.00, and pension contributions. The matter was originally referred to this Court from the District Labour Office pursuant to Section 64(3) of the *Employment Act* (Cap. 55:02).

The Originating Application (IRC Form 1) was filed on 25th August 2025. Default judgment was initially entered by the Registrar on 28th May 2026 due to the Respondent's failure to defend. However, the said default judgment was subsequently set aside, and the Respondent filed its Notice of Intention to Defend and Form 2 Defence on 16th June 2026.

Mediation before the Registrar having failed to resolve the dispute, a Certificate of Compliance was issued, referring the following issues for substantive determination:

Whether or not the Applicant was underpaid by the Respondent. Whether or not the Applicant misappropriated the Respondent's assets/money. Whether or not the Applicant is entitled to arrears for underpayment of the minimum wage. Whether or not the Respondent was legally entitled to deduct monies from the Applicant's terminal benefits representing alleged misappropriated assets or money.

The Burden of Proof

The legal burden of proof in civil and labor disputes rests upon the party who substantially asserts the affirmative of an issue (*Joseph Constantine Steamship Line v. Imperial Smelting Corporation Ltd* [1942] AC 154). This burden remains static throughout the trial (*B. Sacranie v. ESCOM*, HC/PR Civil Cause No. 717 of 1991).

The Standard of Proof

The requisite standard of proof is on a balance of probabilities (*Miller v. Minister of Pensions* [1947] 1 All ER 372). The Court must evaluate the competing evidence and decide which narrative is more probable than not.

Evaluation Of Evidence And Legal Findings

On Minimum Wage and Claims of Underpayment (Issues 1 & 3)

The Applicant testified under oath that he was employed as a driver on 6th November 2021 at a agreed monthly basic salary of MK120,000.00. He resigned voluntarily by letter dated 3rd March 2025 giving one month's notice, completing his handover on 31st July 2025.

The statutory minimum wage prescribed under the *Employment (Minimum Wages) Order* during the relevant period ranged from MK50,000.00 per month (2021–2024) to MK90,000.00 per month (effective February 2024). Since the Applicant’s contract rate was MK120,000.00 per month, his salary consistently exceeded the prescribed statutory threshold. Consequently, the claim for arrears based on statutory minimum wage underpayment fails.

Regarding the Applicant's claim for extra compensation for performing supervisory roles over four departments for a period of 4 months, this Court notes that no written agreement, employment variation contract, or institutional policy was produced to prove an entitlement to a supervisory allowance. In accordance with established principle (*Eleni v. Chibuku Products Ltd*), extra duties performed voluntarily or without formal contractual variation do not automatically ground a enforceable claim for quantum meruit pay. This claim is accordingly dismissed.

On Alleged Misappropriation and Unlawful Deductions (Issues 2 & 4)

The Applicant testified that upon receiving his terminal benefits breakdown letter on 10th August 2025, he discovered the Respondent had unilaterally deducted funds alleging he had misappropriated assets/money. He maintained that he was never subjected to a disciplinary hearing nor given an opportunity to respond to any allegations.

The Respondent paraded two witnesses, Matias Thomas and Twine. Both witnesses gave vague testimony regarding a motor vehicle (Reg. No. BR 184) taken to a car wash on 9th April 2025 which allegedly had a deflated or missing tyre on 10th April 2025. Neither witness adduced credible evidence proving that the Applicant misappropriated funds or willfully damaged company property. Under cross-examination, Matias Thomas admitted he knew nothing about the handover state on 31st July 2025 or the contractual terms between the parties.

Section 56(3) of the *Employment Act* prohibits an employer from imposing fines or monetary penalties on an employee. While Section 56(4) permits deductions as restitution for damaged property, Section 57(2) of the Act, alongside fundamental principles of natural justice (*audi alteram partem*), mandates that no disciplinary or financial penalty may be inflicted without affording the worker a fair hearing (*Phiri v. Bank of Malawi* [2008] MLLR 131; *National Bank of Malawi v. Tsitsi* [2004] MLR 33).

The Respondent failed to establish misappropriation on a balance of probabilities (Issue 2). Furthermore, deducting monies from terminal benefits without a disciplinary hearing was unlawful, arbitrary, and null and void (Issue 4). The Respondent is ordered to refund all withheld amounts.

Unrebutted Claim for Overtime Pay and Leave Pay

The Applicant testified under oath that throughout his employment (6th November 2021 to 31st July 2025), he worked 3 overtime hours per day (beyond the statutory 8-hour workday standard under Section 36) without overtime compensation, and that he never took annual leave.

The Respondent elected not to cross-examine the Applicant on these points, nor did it present any counter-evidence such as time-sheets or leave records. Unchallenged oral evidence on oath stands as proven fact (*Chawani v. Attorney General* [2000-2001] MLR 28). Under Section 50 of the *Employment Act*, the Applicant is legally entitled to overtime pay calculated at 1.5 times his hourly rate, as well as cash in lieu of accumulated annual leave under Section 44 of the Act.

Assessment of Computation and Order on Compensation

Basic Mathematical Parameters:

Monthly Salary: MK120,000.00

Daily Rate: $\text{MK120,000} \div 26 \text{ days} = \text{MK4,615.38}$ per day

Hourly Rate: $\text{MK4,615.38} \div 8 \text{ hours} = \text{MK576.92}$ per hour

Overtime Rate (1.5×): $\text{MK576.92} \times 1.5 = \text{MK865.38}$ per hour

Period of Service: 6th November 2021 to 31st July 2025 = 44.8 Months 1,165 working days)

Claim Item	Basis of Computation	Awarded Amount (MK)
Withheld/Deducted Wages	Unlawful deduction from terminal benefits breakdown	MK 693,836.00
Accrued Annual Leave Pay	18 working days per year for 3.7 years (66.6 days × MK4,615.38)	MK 253,836.00
Overtime Compensation	3 hrs/day × 1,165 days = 3,495 hrs @ MK865.38/hr	MK 3,024,503.10
Pension Contributions	Statutory Remittance into an approved pension scheme (National Pension Scheme)	<i>To be remitted directly to pension fund operator</i>

TOTAL MONETARY AWARD	DIRECT		MK 3,972,175.10
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FINAL DETERMINATION AND ORDERS

Judgment is Hereby Entered in favor of the Applicant, Hollace Kadziputa, against the Respondent, Cape Bay Limited, in the following terms:

1. Refund of Deductions & Leave: The Respondent shall pay the Applicant MK693,836.00 in withheld terminal benefits and MK253,836.00 for accrued annual leave pay.
2. Overtime Compensation: The Respondent shall pay the Applicant MK3,024,503.10 for 3 hours of daily overtime worked over the duration of employment.
3. Total Award: The total sum of MK3,972,175.10 shall be paid by the Respondent to the Applicant within thirty (30) days from the date of this Judgment.
4. Pension: The Respondent is ordered to calculate and remit all outstanding employer and employee pension contributions for the period 6th November 2021 to 31st July 2025 into a designated Pension Fund pursuant to the *Pension Act* (Cap. 55:03).

Pronounced in Open Court this 1st day of September 2026 at the Industrial Relations Court, Zomba Registry, Malawi.



HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON