



REPUBLIC OF MALAWI
IN THE INDUSTRIAL RELATIONS COURT
ZOMBA REGISTRY
IRC MATTER NUMBER ZA 144 OF 2025
BETWEEN

BAULENI WAYA.....APPLICANT

AND

PRECIOUS MPANDU.....RESPONDENT

CORAM: HON. PETER M.E. KANDULU, DEPUTY CHAIRPERSON

H. Edward, Counsel for the Applicant

B. Khwale, Counsel for the Respondent

Mr Patrick Banda: Court Clerk

JUDGMENT AND ORDER

Introduction

The Applicant, Bauleni Waya, commenced these proceedings by filing an IRC Form 1 on 2nd October 2025, claiming damages for unfair dismissal, unfair labour practices, salary arrears, notice pay, severance allowance, gratuity, and overtime pay.

The Respondent, Precious Mpandu, filed IRC Form 2 on 14th October 2026, denying all claims and asserting that no employment relationship ever existed between the parties.

Issues for Determination agreed at

At the pre-hearing conference, the parties agreed and endorsed the following issues for determination:

Whether an employment relationship existed between the Applicant and the Respondent. Whether the Applicant's termination constituted an unfair dismissal. Whether the Applicant is entitled to the reliefs claimed in IRC Form 1 (salary arrears, notice pay, severance pay, gratuity, overtime pay, and damages).

Applicant's Case

PW1 (Bauleni Waya - Applicant)

Testified that he was employed orally via telephone by the Respondent in October 2022 as a foreman/supervisor at a monthly salary of MK175,000. He was engaged because the Respondent, residing in South Africa, suspected other relatives of misappropriating funds.

His duties involved supervising construction projects at Nkhate and Puteni, procuring materials, overseeing workers, purchasing 4 land plots, purchasing livestock (6 cows and goats), managing stored furniture/goods sent from South Africa, and paying utility bills.

Claimed his salary was repeatedly delayed, resulting in accumulated arrears of MK5,425,000 over his 33 months of service.

He stated that on or around 5th July 2025, he was abruptly dismissed without written notice, a reason, or a disciplinary hearing, and was instructed to hand over keys and property to the Respondent's representative.

Under Cross-Examination & Re-Examination, He confirmed that the Respondent was his in-law. He explained that land was registered in the Respondent's name as the owner, but he executed transactions, delivered money, sourced materials, and managed continuous site work. He denied that this suit was brought out of revenge for magistrate court proceedings concerning converted goods, noting the Respondent/family initiated those proceedings first.

PW2 (Kefasi Bazaliyo)

A bricklayer who constructed houses at Nkhate and Puteni under the Applicant's direct supervision.

He confirmed the Applicant gave daily work instructions, allocated tasks, monitored progress, and communicated instructions from the Respondent. He understood PW1 to be the foreman/manager. He stated he heard the Applicant complain about unpaid salary while continuing to perform supervisory duties.

PW3 (Fyness Fabiano)

Applicant's wife and niece to the Respondent's father.

She testified that she assisted in purchasing maize and rice for the Respondent in 2024 under the Applicant's direction when he was busy, using funds sent from South Africa through the Applicant. Confirmed PW1 was engaged after the Respondent's mother declined to handle his local errands.

Respondent's Case

Note: The Respondent did not attend court to give oral evidence or execute a sworn witness statement, having returned to South Africa.

RW1 (Mphandu Flyton)

Respondent's father and Applicant's uncle-in-law.

He testified that family members assisted the Respondent with personal projects out of familial goodwill. He claimed Eleki Saulo (RW2) oversaw Puteni construction and that he personally supervised Nkhate construction, where PW1 merely signed as a witness to a land deal.

He stated that goods sent from South Africa in July 2025 were received by PW1's wife as an alternative contact. When PW1 failed to hand them over, RW1 initiated proceedings at Ngabu Magistrate Court where PW1 was ordered to pay compensation. He asserted PW1 filed this labour claim in retaliation.

RW2 (Eleki Saulo)

Respondent's father-in-law.

Stated he acquired Puteni land for the Respondent and supervised the construction of two houses there. Claimed he never saw PW1 working as a foreman or supervisor and denied knowledge of any livestock purchases.

RW3 (Group Village Headman Puteni)

He confirmed authorizing a customary land agreement (Exhibit PC1) for the Respondent presented by RW2 in September 2025.

Under Cross-Examination, He acknowledged that the transaction in Exhibit PC1 was finalized in September 2025, after the Applicant had already stopped working in July 2025.

Burden of Proof

In civil matters, the general rule is that he who asserts must prove on a balance of probabilities (**Securicor (Mw) Ltd v Central Poultry Ltd** [1995] 1 MLR 250; **Nkuluzado v Malawi Housing Corporation**).

Standard of Proof

However, under Section 61 of the Employment Act (Cap 55:02), once an employment relationship is established, the burden shifts to the employer to provide a valid reason for dismissal. Failure to do so creates a conclusive statutory presumption that the dismissal was unfair (**Chisale v MTL**, IRC Matter 328 of 2002).

Definition of Employment Relationship

Section 3 of the Employment Act defines an employee as a person who offers services under an express/implied, oral/written contract for remuneration, or who is in a position of economic dependence and under an obligation to perform duties.

As held by the Supreme Court of Appeal in **Malinda & Ors v Carlsberg Malawi Ltd** [2025] MWSC 1, there is no single decisive test. The court must evaluate the totality of the relationship (substance over label).

Tests to be applied by the Court

Before the employer/ employee rights and obligations can accrue to any of the parties, it must be determined that there is, in fact, an employer/ employee relationship. This is even more vital considering that, by definition, an employee under section 3 of the EA, an employee excludes an independent contractor. The court must therefore determine whether it is dealing with an employee or an independent contractor.

If the terms are such that they establish the employee/employee relationship and not otherwise, the relationship would have been established. **Urban Mkandawire vs. University Council** (supra). This test would, however, only apply in expressly created employment contracts. For implied contracts and even for express contracts where the relationship is not clear, the courts have used various tests, which have also been used in other areas of the law:

The Court considers three classical criteria (*Simango v Blantyre Newspapers Ltd* [2008] MLLR 488; *Bello v Tambulasi* [2026] MWIRC 19; *Ready Mixed Concrete Ltd v Minister of Pensions* [1968] 2 QB 497)

1. Control Test

Degree of authority over how, when, and what work is performed. If the master has more control over the operation of the service provider, the service provider will be deemed an employee.

In *Nchizi vs. Registered Trustees of the SDA Association of Malawi*, 13 MLR, 303, Banda, J (as he was then) stated at 307:

“... whether a contract (was one) of employment depended on whether there was or there wasn’t a right of the master to superintend or control the manner in which the work was done.”

Simango vs. Blantyre Newspapers Ltd (2008) MLLR, 488 and *Ready Mixed Concrete Ltd vs. Minister of Pensions & National Insurance* (1968) 2 QB 497

2. Integration Test

Where the service provider is integrated into the master’s system, he will be deemed an employee.

See: *Simango vs. Blantyre Newspapers Ltd* (2008) MLLR, 488 and *Bank voor en Scheep NV vs. Slatford* (1953) 1 QB 248 Whether the work forms an integral part of the enterprise/operations (*Stevenson, Jordan & Harrison Ltd v Macdonald* [1952] 1 TLR 101).

3. Economic Reality / Dependence Test

This is even more highlighted in section 3 itself. If a person is economically dependent on the other, he will be deemed an employee. *Chisowa vs. Ibrahim Cash ‘n’ Carry* (2008) MLLR, 385 Whether the worker relies on the engagement for remuneration and works under an obligation rather than as an independent entity or casual gratuitous helper (*Carlsberg Malawi Ltd v Lameck* Civil Appeal 12 of 2017).

Failure of a Material Party to Testify

Where a party fails to testify or call a crucial witness who possesses primary knowledge of the disputed facts, the court is entitled to draw an adverse inference that such evidence would have been unfavorable to that party (*Mpungulira Trading Ltd v Marketing Service Division* (1993) 16(1) MLR 346).

Analysis of the Facts, Evidence and the Law

Whether an employment relationship existed between the parties

The Respondent contends that the Applicant's tasks were merely informal, sporadic family favours rendered out of familial affinity. The Court rejects this characterization.

Oral Contract and Scope of Work

Section 3 of the Employment Act explicitly recognizes oral and implied contracts. The evidence of PW1, corroborated by independent builder PW2, establishes that PW1 was engaged in October 2022 as a supervisor/foreman. PW2 confirmed under cross-examination that PW1 gave daily instructions, managed construction materials, monitored progress, and acted as the resident manager at both Puteni and Nkhate sites.

Extent of Entrusted Responsibilities

The Applicant's duties went far beyond casual domestic favors. He was entrusted with managing continuous construction projects, purchasing land, procuring livestock, handling bulk farm purchases, keeping property keys, and managing shipments sent from South Africa. Keeping keys to storerooms and managing site logistics are core indices of an employment relationship.

Application of Legal Tests

Control & Obligation

The Respondent directed projects remotely via phone, while PW1 executed directives on the ground, creating a clear manager-subordinate dynamic as testified by the Applicant and the said evidence was corroborated by the applicant's witnesses. This evidence remain uncontroverted as the Respondent himself did not come to refute this piece of the evidence that he was calling the Applicant.

Economic Dependence & Remuneration

An agreed salary of MK175,000 per month was established by PW1's direct evidence and supported by PW2's account of ongoing complaints regarding delayed wages.

Substance Over Form

Applying *Bello v Tambulasi (supra)*, the substance of the relationship was a continuous contract of service running from October 2022 to July 2025.

Adverse Inference from Respondent's Silence

The contract was allegedly formed directly between the Applicant and the Respondent over the telephone. The Respondent chose not to testify or sign his witness statement. Applying *Mpungulira Trading Ltd v Marketing Service Division*, the Respondent's failure to give direct evidence leaves PW1's first-hand account of the verbal contract unrefuted. The testimony of RW1, RW2, and RW3 consists of secondary observations and cannot displace direct evidence of a two-party agreement.

Finding

The Court holds that an employment relationship existed between the Applicant and the Respondent from October 2022 to 5th July 2025 at an agreed monthly salary of MK175,000.

Whether the Applicant was unfairly dismissed

Under Section 57 of the Employment Act, an employment contract may only be terminated for a valid reason connected with the capacity, conduct, or operational requirements of the undertaking, and in compliance with procedural fairness (the right to a fair hearing).

The uncontradicted evidence shows that on or around 5th July 2025, the Respondent unilaterally terminated PW1's services by requiring him to surrender all keys and properties without providing a written termination notice, stating a valid statutory reason, or holding a disciplinary hearing.

Under Section 61 of the Employment Act, the failure of the employer to provide a valid reason creates a conclusive presumption of unfair dismissal (*Chisale v MTL*) (*supra*).

This court finds that the Applicant's termination was both substantively and procedurally unfair.

Compensation

Salary Arrears

PW1 served for 33 months (October 2022 to July 2025) at MK175,000 per month (Total gross earned: MK5,775,000). Having received minimal payments, he proved outstanding arrears amounting to MK5,425,000.00. This sum is awarded in full.

Notice Pay (Section 29, Employment Act)

Having served for over 2 years, the Applicant was entitled to one month's statutory notice (or pay in lieu). He is awarded MK175,000.00.

Severance Pay (Section 35, Employment Act)

The Applicant was unfairly dismissed after completing 2 full years of continuous service. Pursuant to the First Schedule of the Employment Act, he is entitled to 2 weeks' wages for each completed year of service ($35/52 \times \text{MK175,000} \times 2 \text{ years}$). He is awarded **MK168,269.23**.

Damages for Unfair Dismissal & Unfair Labour Practice

Taking into account the length of service (nearly 3 years), the abrupt summary termination, lack of hearing, and deliberate withholding of earned wages, the Court awards 2 months' salary as compensation/damages for unfair dismissal:

$2 \times \text{MK175,000} = \text{MK350,000}$

Gratuity

In Malawian labour law, gratuity is a contractual entitlement. In the absence of an express contractual clause or institutional scheme for gratuity, statutory severance pay covers terminal compensation. The claim for gratuity is dismissed.

Overtime

No specific log or concrete evidentiary breakdown was provided to substantiate overtime hours. The claim for overtime pay is dismissed.

Summary of the determination and Orders

Judgment is entered in favor of the Applicant against the Respondent in the following terms:

1. Outstanding Salary Arrears MK 5,425,000.00
2. Notice Pay (1 Month) MK 175,000.00
3. Severance Allowance MK 168,269.23
4. Damages for Unfair Dismissal (2 Months) MK 350,000.00

The Court awards the Applicant the total Award of **MK 6,118,269.23**

The Respondent shall pay the Applicant the total sum of MK 6,118,269.23 within thirty (15) days from the date of this Judgment.

Pronounced in Chamber this 13th day of October 2026 at the Industrial Relations Court, Zomba Registry, Malawi.



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

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON