



**REPUBLIC OF MALAWI  
IN THE INDUSTRIAL RELATIONS  
ZOMBA DISTRICT REGISTRY  
MATTER NO. IRC 120 OF 2025**

**BETWEEN**

**DAVID CHIGOMBO ..... APPLICANT**

**-AND-**

**PLASTIC CONTAINERS LIMITED ..... RESPONDENT**

**CORUM: HON. PETER M.E KANDULU**

M. Kafere, Counsel for the Applicant

F. Kalonga, Counsel for the Respondent

P. Banda, Court Clerk

## **JUDGMENT**

### **Introduction**

The Applicant, David Chigombo, instituted these proceedings against the Respondent, Plastic Containers Limited, on 5 December 2025, claiming compensation / damages for constructive dismissal, unfair labour practices, severance pay, and accrued leave allowance.

The core of the Applicant's grievance is that the Respondent systematically stripped him of his substantive accounting duties following a corporate acquisition, thereby committing a fundamental breach of his contract of employment and creating an intolerable working environment that forced him to resign on 30 October 2025.

Conversely, the Respondent denies all claims, contending that it was undergoing a legitimate business restructuring following an acquisition, that no individual employee's duties were unlawfully altered or removed, that extensive employee consultations were conducted, and that the Applicant resigned prematurely out of a misapprehension of the restructuring process.

### **The Applicant's Evidence**

The Applicant gave evidence on his own behalf. He testified that he was employed by the Respondent on 14 January 2019 as an Accountant under an open-ended contract of employment (Exhibit DC1).

His core duties as Accountant included:

- (a) Preparation of management accounts;
- (b) Costing and profitability analysis;
- (c) Management of payables and receivables;
- (d) Inventory and stock management;
- (e) Petty cash handling;
- (f) Cheque payments and reconciliations; and
- (g) Preparation of draft year-end financial statements.

The Applicant testified that from October 2024, his responsibilities regarding management accounting, costing, and inventory/stock management were unilaterally removed and transferred to a colleague, Nimish Choudhary. In March 2025, his role in generating sales invoices was reassigned to another

staff member, Tushar. In July 2025, he was instructed to cease handling petty cash, and by September 2025, he was formally removed from all petty cash responsibilities. He produced screenshots (Exhibits DC2, DC3, and DC4) in an attempt to demonstrate these operational reassignments.

The Applicant further testified that on 28 August 2025, employees formally wrote to management seeking clarification on ongoing rumours regarding the company's restructuring (Exhibit DC5), followed by a second joint letter on 13 October 2025 (Exhibit DC6). Receiving what he perceived as inadequate clarification, the Applicant tendered his resignation on 30 October 2025 (Exhibit DC7), citing constructive dismissal due to the unreasonableness of continuing in an environment where his core roles had been completely eroded.

Under cross-examination, the Applicant admitted that he did not tender a formal written job description explicitly listing duties (a) through (g). He further conceded that Exhibits DC2 to DC4 (the screenshots) did not, on their face, directly prove that the Respondent formally removed his duties. He acknowledged awareness that Candlex Limited (the holding company) and the Respondent had been acquired by AVC from the Vamara Group, and confirmed that no employee was retrenched immediately upon the takeover. He also admitted that while he signed the follow-up letter of 13 October 2025, his personal signature was missing from the initial joint letter of 28 August 2025 (Exhibit DC5 / MM3), though he relied on it in his witness statement.

### **The Respondent's Evidence**

The Respondent called two witnesses: Ms. Mwayang'ana (Human Resources Manager for Candlex Limited) and Mr. Macheso (a supervisor at Candlex Limited who worked alongside the Applicant). Ms. Mwayang'ana (RW1) testified that prior to April 2024, Candlex Limited was owned by the Vamara Group, with the Respondent operating as a subsidiary producing plastic containers. Around June 2024, AVC acquired Candlex Limited. To curb operating losses, the new owners sought to optimize business operations by integrating the Respondent's operations as a specialized department within Candlex Limited.

RW1 testified that management engaged employees early in the process and assured them that employment contracts and benefits would remain intact. Following the staff letter of 28 August 2025

(Exhibit MM3), management convened a consultative meeting on 29 August 2025, attended by employee representatives including the Applicant. Minutes of this meeting (Exhibit MM4) demonstrate that management assured staff that the merger would strictly adhere to employment laws and that benefits were fully secure.

RW1 further stated that upon receiving the follow-up letter dated 13 October 2025, management met informally with employee representatives to re-assure them that formal integration was still in preliminary stages. She tendered WhatsApp exchanges between the Applicant and Mr. Rajneesh Dabral (Business Head) (Exhibits MM5 and MM7(a)), showing that when the Applicant raised individual concerns and later tendered his resignation on 30 October 2025, Mr. Rajneesh explicitly advised him that his resignation was premature as the transition was yet to be finalized.

RW1 testified that on 24 January 2026, management held another formal general meeting addressing outstanding staff concerns (Exhibit MM7(b)). On 17 February 2026, management formally commenced the integration process in full consultation with the Ministry of Labour (Exhibit MM8). All remaining employees of the Respondent were paid their full terminal benefits under their open-ended contracts and transitioned to new fixed-term contracts with Candlex Limited effective 1 April 2026. None lost employment.

Mr. Macheso (RW2) corroborated RW1's testimony in all material respects. He confirmed attending the initial briefing in May 2024, the consultative meeting on 29 August 2025 (Exhibit BM2), and subsequent engagements. He stated that the staff concerns were driven by general anxiety regarding corporate changes, but management consistently acted transparently. He affirmed that on 17 February 2026, all employees were paid their contractual dues (Exhibit BM4) and re-engaged. He expressed the view that the Applicant voluntarily resigned due to a misapprehension of the restructuring process. RW2's testimony remained unchallenged under cross-examination.

### **Issues for Determination**

Having evaluated the pleadings, evidence, and rival submissions of Counsel, the issues for determination are:

1. Whether the Applicant was constructively dismissed by the Respondent.
2. Whether the Applicant was subjected to unfair labour practices.
3. Whether the Applicant is entitled to the remedies claimed.

## **Analysis of the Law, Facts, and Evidence**

### **Whether the Applicant was Constructively Dismissed**

Constructive dismissal is governed by Section 60 of the Employment Act (Cap. 55:02), which provides:

*"An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship."*

Under Section 61(3) of the Employment Act, the burden of proof in constructive dismissal claims rests squarely on the employee to establish the reasons that rendered the continuation of the employment relationship unreasonable. (See also Rachael Sophie Sikwese, *Labour Law in Malawi*, pp. 104–105). The authoritative test for constructive dismissal in Malawi was articulated in ***Banda v Dimon (Malawi) Ltd*** [2008] MLLR 92, where the Court held that the employer's conduct must amount to a significant breach going to the root of the contract, or demonstrate an intention no longer to be bound by essential terms. While a substantial, unilateral alteration of an employee's key contractual duties can constitute a fundamental breach, the employee must prove such a breach on a balance of probabilities (***Miller v Minister of Pensions*** [1947] 2 All ER 372).

Furthermore, as laid down in ***The State v Ex Parte Mpinganjira*** (Misc. Civil Cause No. 63 of 2003) and affirmed in ***FINCA Malawi Limited v Sellah Kambilinya Mtsekwe*** (Civil Appeal Case No. 13 of 2024; [2025] MWHC 28), an employee claiming constructive dismissal must act promptly in response to the alleged repudiatory breach. Conversely, where an employee resigns precipitately before an employer has committed a fundamental breach, a claim for constructive dismissal must fail (***Steven Chitsamba v Builders Base***, Matter No. IRC 542 of 2020; ***Betty Caroline Mahuka v ESCOM***, Matter No. IRC 284 of 2017).

In analyzing the evidence on record, this Court finds that the Applicant failed to discharge the burden imposed by Section 61(3):

### **Failure to Prove Unilateral Removal of Duties**

The Applicant claimed that his core duties (a)–(g) were progressively stripped between October 2024 and September 2025. However, during cross-examination, the Applicant explicitly admitted that he brought no documentary proof or job description establishing that these were his exclusive contractual duties, nor did Exhibits DC2–DC4 establish that the Respondent had stripped these roles from him.

### **Discrepancy Between Alleged Breach and Contemporaneous Resignation Grounds**

Crucially, the contemporaneous documentary evidence contradicts the Applicant's trial assertion that he resigned because his accounting duties were removed. Neither the staff letters (Exhibits DC5 & DC6) nor the Applicant's own letter of resignation dated 30 October 2025 (Exhibit DC7) mention the stripping of his specific individual accounting duties. Instead, Exhibit DC7 explicitly grounds his resignation on "ongoing organizational and operational changes... which have created significant uncertainty and confusion among employees" and "lack of transparency surrounding the apparent integration."

### **Premature Resignation**

The record shows that the staff wrote a follow-up inquiry on 13 October 2025, and the Applicant resigned barely 17 days later on 30 October 2025. As demonstrated by Exhibits MM5 and MM7(a), the Business Head expressly informed the Applicant prior to and upon his resignation that formal transition plans were still under formulation and had not been finalized.

The Respondent's witnesses established that management engaged employees continuously, held consultative meetings on 29 August 2025 (Exhibit MM4) and 24 January 2026 (Exhibit MM7(b)), involved the Ministry of Labour (Exhibit MM8), and ultimately paid all employees their full entitlements before re-engaging them under new terms. No employee was unlawfully terminated or stripped of status.

The Court finds that the Respondent's conduct in managing an ongoing corporate restructuring did not amount to a repudiatory breach of the Applicant's contract. The Applicant resigned out of apprehension and impatience regarding the pending merger before any fundamental breach occurred. Consequently, the claim for constructive dismissal fails.

### **Whether the Applicant was Subjected to Unfair Labour Practices**

Section 31 of the Constitution of the Republic of Malawi guarantees every person the right to fair labour practices. As held in *S. Kalinda v Limbe Leaf Tobacco Ltd* (Civil Cause No. 542 of 1995), *Chakhaza v Portland Cement Co* [2008] MLLR 118, and *Kachinjika v Portland Cement Co* [2008] MLLR 161, fair labour practices require an employer to act reasonably, transparently, and even-handedly.

What constitutes an unfair labour practice depends on the specific facts of each case (*Makileni v Attorney General*, Matter No. IRC 55 of 2015; *Chilala & Others v Petroleum Services Ltd* [2008] MLLR 152).

The Applicant argued that the Respondent violated Section 31 by failing to give prompt, formal individual responses to restructuring inquiries and by reassigning tasks during the transition.

Looking at the totality of the circumstances, the Court finds no evidence of unfair labour practices:

- A. The Respondent acted transparently by holding management-employee consultative meetings to address integration concerns.
- B. The Respondent sought guidance from and involved the Ministry of Labour to ensure statutory compliance (Exhibit MM8).
- C. The restructuring was dictated by legitimate operational considerations following a change in corporate ownership.
- D. All employees who remained during the transition were fully paid their terminal entitlements and transitioned without loss of employment.

Integrating a subsidiary into a parent structure in accordance with established statutory procedures and holding consultative dialogues with staff does not constitute an unfair labour practice. The Applicant's claim under this head is accordingly dismissed.

### **Entitlement to Remedies**

Having determined that the Applicant was neither constructively dismissed nor subjected to unfair labour practices, it follows that the Applicant voluntarily resigned from his employment.

An employee who voluntarily terminates their open-ended contract of employment by resignation is not entitled to damages for constructive dismissal, unfair dismissal remedies, or statutory severance pay under the Employment Act.

The claims for severance pay, damages for constructive dismissal, and compensation for unfair labour practices are hereby dismissed in their entirety. (If there are any earned, accrued but unpaid statutory benefits such as prorated leave allowance up to the date of resignation, 30 October 2025, the **Respondent shall verify and liquidate the same within 30 days of this Judgment, if not already settled**).

### **Order**

The Applicant's action is hereby dismissed.

### **Costs**

In accordance with the practice of this Court in labour matters, each party shall bear their own costs.

### **Right to Appeal**

Any party dissatisfied with the judgment is free to appeal to the High Court within the period as prescribed the IRC Rules.

It was delivered in chambers on the 2<sup>nd</sup> day of October 2026 at Zomba.



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

**HON. PETER M.E KANDULU**

**DEPUTY CHAIRPERSON**