



THE MALAWI JUDICIARY

IN THE INDUSTRIAL RELATIONS COURT

PRINCIPAL REGISTRY

MATTER NO. IRC 152 OF 2026

In the dispute between:

DAUD ELVIN SULEMAN.....APPLICANT

-AND-

**MALAWI COMMUNICATIONS REGULATORY
AUTHORITY (MACRA).....RESPONDENT**

CORAM:	TAMANDA C. NYIMBA	: Acting Chairperson
	Khumbo Bonzoe Soko	: Counsel for the Applicant
	Chirwa & Matola	: Counsel for the Respondent
	Mike Chipembere	: Court Clerk

RULING

1 PRELIMINARIES

- 1.1 Before this Court is the applicant's Notice of Motion seeking the disposal of this matter on points of law pursuant to section 67(2) of the Labour Relations Act (as amended) and Rules 5A(1)(c), 16(1) and 25(4) of the Industrial Relations Court (Procedure) Rules.
- 1.2 The applicant has moved this Court to determine the following points of law: (a) whether, based on the totality of the uncontested facts, the respondent afforded the applicant the opportunity to be heard prior to his dismissal; (b) whether, in the circumstances of this case, the applicant was unfairly dismissed; and (c) whether, contingent upon the Court's findings on the preceding questions, judgment should be entered in favour of the applicant, thereby limiting any subsequent trial solely to the assessment of quantum for the various heads of claimed.
- 1.3 According to the applicant's amended IRC Form 1, the specific heads of claim are as follows: (a) an order for compensation for unfair dismissal representing remuneration that the applicant would have earned up to the end of the contract

period (3 February 2026 to 31 October 2027) for unfair dismissal or such amount as the Court shall deem just and equitable in the circumstances; (b) an order for damages for violation of the applicant's rights under section 31 of the Constitution; (c) an order compensating the applicant for the respondent's failure to allocate a new official vehicle for him after the right to procure the official vehicle had accrued; (d) an order compensating the applicant for the underpayment of his fuel entitlement from November 2023 to the date of his dismissal on 3 February 2026; (e) an order for payment of outstanding leave days (f) severance allowance; and (g) an order for costs on an indemnity scale.

- 1.4 In support of the motion, the applicant relies on his affidavit sworn on 8 February 2026 alongside a supplementary affidavit sworn on 26 March 2026. The respondent opposes the motion and relies on an affidavit in opposition sworn on 18 May 2026 by its Head of Human Resources and Administration, Mr. Henry Macheso. Counsel for the respective parties also filed written arguments. All written submissions were formally adopted during the hearing of the motion on 22 May 2026 at which time Counsel further fortified their positions with oral arguments and submissions.

2 THE FACTUAL MATRIX

- 2.1 Under the summary procedure invoked by the applicant, it is a well-established principle that this Court must proceed upon uncontested facts, namely, those proven, admitted or agreed upon by the parties. Crucially, these facts must be materially relevant to the disposition of the present motion.
- 2.2 Drawn from the papers filed by the parties, I now set out the core chronological timeline of the material facts as follows:
- 2.3 On 1 November 2021, the applicant was appointed by the respondent as its Director General under a three-year written contract of employment which was subsequently renewed for a further three-year term running from 1 November 2024 to 31 October 2027.
- 2.4 On 17 November 2023, the Secretary to the President and Cabinet (the SPC, also referred to in places as the Chief Secretary to the Government) issued a circular directing a 50% reduction in fuel entitlements across public institutions as an

austerity measure. The respondent subsequently implemented this reduction against the applicant.

- 2.5 On 7 October 2025, the Government announced the dissolution of all boards of statutory corporations including the respondent's Board. Thereafter, on 14 October 2025, the Chief Secretary to the Government issued a letter purporting to suspend the applicant from his position as Director General pending a disciplinary inquiry.
- 2.6 On 16 January 2026, the respondent's Acting Director General wrote to the applicant, requesting his written comments by 23 January 2026 on an Internal Audit Report regarding queries over a corporate charge card¹.
- 2.7 On 21 January 2026, the applicant sent an email requesting access to specific institutional records, his access having been restricted due to his suspension and seeking an extension of time to respond to the audit queries.
- 2.8 On 29 and 30 January 2026, the respondent supplied partial documentation to the applicant but did not explicitly address or grant the request for an extension of time.
- 2.9 On 3 February 2026, without issuing a charge sheet, appointing an Investigation Team under clause 14.6.2.1.4 or convening a hearing before the Legal and Administration Committee of the Board under clause 14.8 of its Terms and Conditions of Service, the respondent issued a letter summarily dismissing the applicant. The dismissal letter introduced additional grounds (such as gross misconduct, fraud, dereliction of duty and insubordination) that were not part of the initial audit query.
- 2.10 The foregoing constitutes the material factual matrix.
- 2.11 While the respondent points to disputes surrounding the justification for the fuel reduction, the exact tally of the applicant's unexpended leave days and the substantive merits of the queries set out in the Internal Audit Report, these matters do not touch upon the threshold issue of the dismissal's alleged procedural illegality. As I shall demonstrate, these collateral issues are best dealt with during

¹ Exhibits DES 7 & DES 8.

a remedy hearing and do not preclude the determination of liability on points of law.

- 2.12 It is imperative to note that on 18 May 2026, the respondent filed and served an Amended Statement of Defence and Counterclaim seeking K33,681,080.00 for financial losses purportedly resulting from the applicant's alleged misconduct. Subsequently, the applicant filed a Defence to the Counterclaim and lodged a Notice of Motion for the disposal of that counterclaim on a point of law which is currently awaiting a hearing date.

3 SUMMARY OF THE PARTIES' ARGUMENTS

- 3.1 In support of the motion, Counsel Khumbo Bonzoe Soko advanced a comprehensive three-pronged submission anchored on procedural justice, the legal nature of summary disposal deployed by the applicant and the independence of counterclaims.
- 3.2 Firstly, regarding the allegation of unfair dismissal, Counsel submitted that the uncontroverted evidence demonstrates a complete, total and high-handed failure of due process. He stressed that section 57(2) of the Employment Act strictly prohibits the termination of an employee for conduct or capacity without providing an opportunity to defend oneself. This statutory mandate is elevated to an absolute statutory prohibition under section 20(3) of the Communications Act which expressly decrees that the Director General of MACRA shall not be removed from office without being afforded an opportunity to be heard.
- 3.3 Counsel further pointed out that clause 14 of the respondent's own Terms and Conditions of Service² prescribes a mandatory, step-by-step disciplinary framework for executive officers. This framework requires formal complaint forms³, a notice of disciplinary hearing⁴, an investigation team and a formal hearing before a tribunal constituted by the Board's Legal and Administration Committee. Counsel argued that inviting an employee to comment on an internal audit report during an investigation constitutes an administrative inquiry which is not synonymous with a disciplinary hearing. He contended that bypassing all

² Exhibit DES 3.

³ Forms 11 & 12.

⁴ Form 13.

contractual and statutory hearing mechanisms to summarily dismiss the applicant on 3 February 2026 rendered the dismissal unlawful and procedurally unfair *ab initio*.

- 3.4 Secondly, on the propriety of disposing of the matter on a point of law, Counsel Soko submitted that under the governing test in *Charles Nsaliwa v. Malawi Communications Regulatory Authority*⁵ and *Council of the University of Malawi v. Benjamin Chirwa and Others*⁶, summary disposal is proper where all facts material to liability are admitted or uncontroverted. Counsel contended that the respondent cannot defeat a summary disposal application by inventing collateral disputes regarding fuel calculations, leave encashment details or the merits of the audit queries as those issues pertain strictly to quantum or background context.
- 3.5 Thirdly, addressing the respondent’s counterclaim, Counsel Soko placed heavy reliance on the High Court decision in *Allied Freight Agencies v Roselyn Mandala*⁷. Counsel submitted that a claim and a counterclaim maintain separate, independent legal existences. He argued that a monetary counterclaim for alleged financial loss cannot operate as a defence to, nor sanitize, a procedurally illegal dismissal. Counsel emphasized that the counterclaim could cleanly be severed from the principal claim. As earlier alluded to, the applicant has, in the intervening period, filed a Defence to the Counterclaim and lodged a Notice of Motion for its disposal on a point of law which is currently awaiting a hearing date.
- 3.6 Finally, on costs, Counsel Soko argued that section 72(2) of the Labour Relations Act must be interpreted purposively. He submitted that defending an open-and-shut, admitted procedural illegality with “guns blazing” renders the respondent’s defence frivolous and vexatious. Citing *Chithila v CEAR*⁸, *Rombani Londwa v Standard Bank*⁹ and *Mpinganjira v Registrar of Financial Institutions*¹⁰, Counsel urged this Court to condemn the respondent in costs on an indemnity scale to denounce its egregious conduct.

⁵ Civil Appeal No. 30 of 2015 [Unreported]

⁶ Civil Appeal Number 12 of 2016 (Being IRC Matter No. 195 of 2014) [Unreported].

⁷ Commercial Case No. 5 of 2019.

⁸ Miscellaneous Civil Application Number 53 of 2023.

⁹ Commercial Case No 32 of 2022.

¹⁰ Civil Appeal No. 1 of 2022.

- 3.7 In opposition to the motion, Counsel Chirwa and Counsel Matola mounted a vigorous defence premised on the existence of disputed material facts, compliance with the principle of *audi alteram partem*, the intertwinement of the counterclaim with the main action and statutory restrictions on cost awards in this Court.
- 3.8 First, Counsel for the respondent submitted that the application for disposal on a point of law is incompetent and premature. Citing ***Charles Nsaliwa***¹¹ and ***Graham Carr and Company v Tembo and Others***¹², Counsel argued that summary disposal is only permissible where there is a total absence of any factual dispute. Counsel asserted that material facts in this matter remain heavily contested, including whether the applicant engaged in gross misconduct and fraud regarding corporate charge cards, whether the fuel reduction was a valid government austerity measure under the SPC circular and whether the applicant was entitled to encash 114 leave days. Counsel contended that these disputes necessitate a full trial with *viva voce* evidence.
- 3.9 Second, regarding procedural justice, Counsel submitted that the respondent fully complied with the principles of natural justice. Counsel argued that by sending the Internal Audit Report to the applicant on 16 January 2026 and requesting his written response, the respondent afforded him an adequate opportunity to present his defence. Counsel submitted that *audi alteram partem* does not rigidly require an oral hearing in every case and that the applicant's written comments were considered before termination. Alternatively, Counsel submitted that clause 3(c) of the applicant's employment contract and clause 14.7 of the Terms and Conditions of Service empowered the respondent to summarily dismiss the applicant for gross misconduct without notice or formal disciplinary proceedings.
- 3.10 Third, regarding the counterclaim, Counsel argued that the respondent seeks the recovery of MK33,681,080.00 for financial losses directly caused by the applicant's alleged breach of fiduciary duties and financial impropriety. Counsel submitted that the main claim and the counterclaim are inextricably linked and that disposing of the main claim summarily would prejudice the respondent's right to prove its counterclaim at a full trial.

¹¹ n.5 above.

¹² [2000–2001] MLR 134 (HC).

3.11 Finally, on the issue of costs, Counsel submitted that under section 72(2) of the Labour Relations Act, the Industrial Relations Court is a no-cost forum by default. Counsel argued that cost orders are strictly restricted to instances where a party fails to attend conciliation without good cause or where a matter is frivolous or vexatious. Counsel maintained that the respondent is legitimately exercising its right to defend a substantial lawsuit and prosecute a *bona fide* counterclaim neither of which can be categorized as frivolous or vexatious, thereby precluding any order for costs.

3.12 I commend learned Counsel for both sides for their arguments and submissions. I assure the parties that I have meticulously evaluated all arguments and authorities ventilated before me. Accordingly, the absence of an express reference to any specific submission or authority in this ruling should by no means be construed as a failure by this Court to have considered it.

4 ISSUES FOR DETERMINATION

4.1 Having carefully evaluated the motion, affidavits, written arguments and oral submissions of learned Counsel for both parties, the issues this Court must resolve are:

(a) Whether this matter is suitable to be disposed of on points or questions of law;

(b) Whether, based on the material uncontroverted facts, the applicant was unfairly dismissed by reason of not being afforded an opportunity to be heard in accordance with statutory and contractual mandates;

(c) Whether the existence of the respondent's Counterclaim bars the summary disposal of the applicant's main claim on a point of law; and

(d) Whether, in the circumstances of this case, the respondent should be condemned in costs on an indemnity scale under section 72(2) of the Labour Relations Act.

5 THE APPLICABLE LAW

- 5.1 This being a civil action, the burden of proof is on the party who asserts the affirmative,¹³ namely the applicant. As regards the standard of proof in civil cases, the same is on a balance of probabilities.
- 5.2 Rule 16 of the Industrial Relations Court (Procedure) Rules makes provision for the procedure to be followed respecting applications or motions not fully covered by the said rules. Section 67(2) of the Labour Relations (Amendment) Act, 2021 grants power to this Court to determine matters of law and fact. Rule 5A (1) (c) of the Industrial Relations Court (Procedure) Rules also provides for disposal of a matter on a point of law.
- 5.3 In *Charles Nsaliwa*¹⁴, the Court emphasized that the decisive consideration is whether there are material factual disputes requiring resolution through evidence. In *Council of the University of Malawi*¹⁵, the Court similarly affirmed that the jurisdiction to dispose of a matter on a point of law should only be exercised where no factual disputes exist and a legal determination will fully dispose of the matter.
- 5.4 Section 57(1) of the Employment Act mandates that an employee's employment shall not be terminated unless there is a valid reason connected with capacity or conduct while section 57(2) strictly prohibits termination for conduct or capacity before providing the employee an opportunity to defend himself. Furthermore, section 20(3) of the Communications Act explicitly decrees that the Director General of the respondent shall not be removed from office without an opportunity to be heard. Sections 31(1) and 43 of the Constitution guarantee every person the right to fair labour practices and procedurally fair administrative action in that order.
- 5.5 Regarding costs, section 72(2) of the Labour Relations Act provides that the Industrial Relations Court may make an order as to costs where a party fails to attend, without good cause, any conciliation meeting convened under the Act or where the matter is vexatious or frivolous.

¹³ *Chipiliro Banda v Southern Bottlers Ltd* [2012] MLR 53 (HC).

¹⁴ n.5 above at pp. 5-6.

¹⁵ n.6 above.

- 5.6 In the interests of brevity, I undertake to cite, where relevant, the remainder of the applicable statutory provisions and case law at appropriate junctures in the “*Analysis and Disposal*” segment of this ruling.

6 ANALYSIS AND DISPOSAL

- 6.1 This Court avoids placing parties in what it terms “gratuitous suspense” regarding its decision. Consequently, for the reasons set out below, the applicant’s motion succeeds.

(1) Whether this matter is suitable to be disposed of on points or questions of law;

- 6.2 Learned Counsel for the respondent strongly contended that this motion is unsuited to the machinery of summary disposal invoked by the applicant on the basis that the record contains disputed factual assertions regarding the validity of the austerity measures, whether the applicant requested leave and allegations of financial misconduct.
- 6.3 I must unequivocally reject the respondent’s reasoning. In advancing this argument, the respondent fails to appreciate the critical distinction between a dispute of material fact regarding liability and a dispute regarding quantum or collateral circumstances. For a matter to be barred from summary disposal under the *Charles Nsaliwa*¹⁶ test, the unresolved factual disputes must be strictly material to the determination of liability itself.
- 6.4 As I held in *Alex Malikebu & 3281 Others v ADMARC Limited*¹⁷, *Flora Jelenje Makata v South Atlantic Asset Management Ltd*¹⁸ and *Gladson Msyali v Malawi Housing Corporation*¹⁹, where the material facts governing procedural liability are admitted or uncontroverted on the documentary record, the Court will not allow a party to manufacture collateral disputes to force an indefensible case to trial.

¹⁶ n. 5.

¹⁷ IRC Matter No. 554 of 2023.

¹⁸ IRC Matter No. 619 of 2023.

¹⁹ IRC Matter No. 1749 of 2021.

- 6.5 In the instant matter, the primary liability question is whether the respondent complied with section 57(2) of the Employment Act, section 20(3) of the Communications Act and clause 14 of its Terms and Conditions of Service before dismissing the applicant. The timeline surrounding the audit query, the applicant's request for time and the total absence of a charge sheet, investigation team or disciplinary tribunal are completely admitted and uncontroverted. In my considered view, the disputes regarding fuel calculations, leave tallies or austerity motivations go strictly to quantum or background context.
- 6.6 Because all material facts governing liability are firmly established on the record, this matter is eminently ripe for disposal on points of law. I so hold.

(2) Whether, based on the material uncontroverted facts, the applicant was unfairly dismissed without being afforded an opportunity to be heard in accordance with statutory and contractual mandates;

- 6.7 The respondent submits that by asking the applicant to comment on an Internal Audit Report, it satisfied the requirement to afford him a hearing. Alternatively, the respondent contends that clause 3(c) of his contract and clause 14.7 of its Terms and Conditions of Service empowered it to summarily dismiss him for gross misconduct without a hearing. I find the respondent's position legally untenable and profoundly misconceived.
- 6.8 Firstly, I agree with Counsel for the applicant that an internal audit query requesting written comments during an ongoing investigation is an investigatory step, not a disciplinary hearing. An audit exit process solicits management's reactions to tentative financial findings; it does not constitute the formulation of formal disciplinary charges or the convening of an *ad hoc* tribunal.
- 6.9 Secondly, under Employment Act, summary dismissal means termination without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term²⁰. Summary dismissal certainly does *not* entail termination without due process or without a hearing. Section 57(2) of the Employment Act and section 20(3) of the Communications Act contain mandatory

²⁰ Section 59(2) of the Employment Act.

statutory prohibitions against removing an employee, and specifically the Director General of the respondent, without providing an opportunity to defend oneself.

6.10 Thirdly, the respondent's own contractual framework under clauses 14.6 and 14.8 of its Terms and Conditions of Service²¹ prescribes a mandatory, multi-stage disciplinary process for executive management, encompassing the following:

- (1) The issuance of formal complaint forms (Form 11 & Form 12);
- (2) The constitution of an investigation team by the Chairperson of the Legal and Administration Committee;
- (3) The issuance of a formal notice of disciplinary hearing (Form 13) giving at least 3 working days' notice; and
- (4) A formal hearing before a tribunal constituted by the Board's Legal and Administration Committee with the right to call and cross-examine witnesses.

6.11 It is an uncontested fact that none of these steps was taken by the respondent. Instead, three days after supplying partial audit records, the respondent abruptly issued a dismissal letter introducing new grounds that were never raised in the audit report. To bypass all statutory and contractual safeguards and summarily oust an executive officer without a charge sheet or tribunal is a quintessential instance of procedural illegality and impunity.

6.12 Inescapably, I hold that the applicant was unfairly dismissed within the meaning of section 57 of the Employment Act read with section 20(3) of the Communications Act. Similarly, the respondent's actions or inactions cannot, in all fairness, be described as conduct that is even handed, reasonable, acceptable and expected from the standpoint of employer, employee and all fair-minded persons looking at the unique relationship between employee and employer and good industrial and labour relations²² The respondent's conduct constitutes an unfair labour practice in contravention of section 31(1) of the Constitution of the Republic of Malawi. Judgment on liability is accordingly entered for the applicant.

²¹ Exhibit DES 3.

²² *Kalinda v Limbe Leaf tobacco Ltd* Civil Cause No. 542 of 1995 [Unreported].

(3) Whether the existence of the respondent's Counterclaim bars the summary disposal of the applicant's main claim on a point of law;

- 6.13 The respondent argued that its counterclaim, seeking MK33,681,080.00 for alleged financial losses, is wholly factual in nature and should thus force the entire suit to a full trial.
- 6.14 I am entirely persuaded by the submissions of Counsel Soko on this point, which are premised on the authority of *Allied Freight Agencies*²³. In that decision, Mtalimanja J. reaffirmed the foundational principle that a claim and a counterclaim maintain separate and independent legal existences. They are joined under procedural rules purely for administrative convenience. In the matter at hand, the counterclaim does not alter or cure the indefensibility of the main claim as lodged by the applicant.
- 6.15 In *Allied Freight Agencies*, the High Court granted summary judgment on the claimant's main claim while staying execution and severing the counterclaim for independent determination.
- 6.16 Clearly, an employer cannot shield an unprocedural and illegal dismissal from what is effectively summary judgment merely by lodging a monetary counterclaim against the employee. Whether the respondent has a valid monetary claim against the applicant herein for alleged financial impropriety is an independent cause of action to be tried on its own merits. As Counsel Soko convincingly argued, the counterclaim cannot operate as a defence to, nor does it sanitize, the respondent's total failure to observe due process.
- 6.17 Crucially, the record reflects that the applicant has already filed a Defence to the Counterclaim and lodged a Notice of Motion for the disposal of the counterclaim on a point of law which is currently awaiting a hearing date. Severing the main claim from the counterclaim guarantees that justice on the primary grievance is not delayed while simultaneously preserving the respondent's right to prosecute its counterclaim under the pending motion.

²³ n.7 above.

(4) *Whether, in the circumstances of this case, the respondent should be condemned in costs on an indemnity scale under section 72(2) of the Labour Relations Act;*

6.18 Learned Counsel for the respondent submitted that this Court is strictly restricted in awarding costs and that section 72(2) of the Labour Relations Act only permits cost orders against applicants who bring frivolous or vexatious claims thereby leaving employers immune from cost sanctions.

6.19 I respectfully, but emphatically, reject this asymmetric and narrow interpretation. Section 72(2) of the Labour Relations Act explicitly provides that: *“the Industrial Relations Court may make an order as to costs where a party fails to attend, without good cause, any conciliation meeting convened under this Act or where the matter is vexatious or frivolous.”*

6.20 A superficial reading of the statutory phrase *“where the matter is vexatious or frivolous”* might lead one to naively assume that cost orders target only initiating applicants who prosecute hopeless claims. However, as Counsel Soko cogently argued, Parliament could never have intended such a grotesque absurdity. To hold that section 72(2) exposes only necessitous and vulnerable workers to financial penalties while granting absolute immunity to powerful corporate and public employers who commit high-handed violations of the law and drag workers through litigation, would turn the statutory purpose on its head. The law demands complete parity of treatment between litigants.

6.21 A “matter” before this Court does not consist solely of the applicant’s initiating claim; it encompasses the entirety of the action including the defence raised to resist it. It is obvious that where an employer advances a defence that is a complete sham, legally unmaintainable and raised in defiance of admitted statutory nullities, the defence itself renders the respondent’s resistance to the suit necessarily a “vexatious or frivolous matter” within the express contemplation and spirit of section 72(2) of the Labour Relations Act.

- 6.22 As established in the English Court of Appeal cases of *Att.-Gen. of Duchy of Lancaster v. L. & N. W. Ry*²⁴ and *Day v. William Hill (Park Lane) Ltd*²⁵, a matter is “frivolous or vexatious” where it is obviously unsustainable, hopeless or raised without any legitimate legal basis. In the matter under consideration, the respondent effected a summary dismissal in blatant disregard of section 20(3) of the Communications Act, section 57 of the Employment Act and Clause 14 of its own Terms and Conditions of Service. To thereafter come to court “with guns blazing”, mounting a full-throttle defence to defend an open-and-shut procedural illegality, constitutes, in my firm view, the prosecution of an obviously frivolous and vexatious defence.
- 6.23 As the Supreme Court of Appeal affirmed in *Chithila*²⁶, this Court retains full statutory discretion under section 72(2) to make orders as to costs. Furthermore, as held by the High Court Commercial Division in *Rombani Londwa*²⁷ and *Mpinganjira v Registrar of Financial Institutions*²⁸, where a party’s conduct in litigation or underlying actions takes the case “out of the norm” and displays high-handedness or unreasonable obstinacy, the Court will exercise its discretion to condemn that party in costs on an indemnity scale.
- 6.24 The respondent’s total bypass of statutory safeguards, coupled with its obstinate defence of an indefensible dismissal, has subjected the applicant to unnecessary expense and clogged the limited resources of this Court. I therefore find it just and necessary to denounce this frivolous and vexatious defence by condemning the respondent in the costs of this claim to be taxed on an indemnity scale if not agreed.

7 CONCLUSION

- 7.1 In light of the material uncontroverted facts and the applicable law, the applicant’s motion succeeds and judgment on liability is hereby entered in favour of the applicant. I further order and direct as follows:

(1) The parties are at liberty to amicably agree on quantum of the reliefs as earlier set out;

²⁴ [1892] 3 Ch. 274.

²⁵ [1949] 1 K.B. 632.

²⁶ n.8 above.

²⁷ n.9 above.

²⁸ n.10 above.

(2) *Failing such agreement, this Court shall convene a remedy hearing on a date and at a time to be fixed following the filing of the requisite assessment papers by both parties and a notice of hearing by the applicant.*

(3) *The respondent is condemned in costs of these proceedings on an indemnity scale to be agreed upon by the parties or taxed by the Registrar of this Court.*

7.2 Determination of the liability question concludes the first part of the applicant's suit. Under the authority of *JTI Leaf (Malawi) Limited v. Kad Kapachika*²⁹, this decision remains inchoate for appeal purposes. It may only be appealed to the High Court once this Court has rendered its order on the assessment of remedies or upon the parties registering a consent order settling the same. For the avoidance of doubt, while the right of appeal under section 65(2) of the Labour Relations Act subsists, it is effectively stayed pending the conclusion of the remedies phase or the parties reaching a mutually binding agreement on the same.

7.3 It is so ordered.

Pronounced this 25th September 2026 at IRC, **PRINCIPAL REGISTRY**



Tamanda Chris Nyimba
ACTING CHAIRPERSON

²⁹ MSCA Civil Appeal No. 52 of 2016 [unreported].