



THE MALAWI JUDICIARY

IN THE INDUSTRIAL RELATIONS COURT

PRINCIPAL REGISTRY

MATTER NO. IRC 517 OF 2017

In the dispute between:

DUNCAN SALIMU & 18 OTHERS.....APPLICANTS

-AND-

BLANTYRE WATER BOARD.....RESPONDENT

CORAM: **TAMANDA C. NYIMBA** : Acting Chairperson
 M. Msuku : Counsel for the Applicants
 K. Chakuwawa : Counsel for the Respondent
 M. Chipembere : Court Clerk

JUDGMENT

1 INTRODUCTION

1.1 The applicants in this action seek various reliefs arising from the termination of their employment by the respondent. Specifically, the applicants claim compensation for unfair dismissal, damages for unfair labour practices, notice pay, accrued leave days, severance pay and any other relief this Court deems just and proper.

1.2 The respondent vigorously contests the action in its entirety asserting that the applicants were temporary employees engaged for a specific project. It is the respondent's case that the applicants' contracts expired automatically by effluxion of time and upon the completion of the specific task for which they were engaged. On the pleadings, the respondent maintains that there was no unilateral dismissal; consequently, no procedural or substantive statutory duties were triggered upon the conclusion of the applicants' engagements.

2 CURTAILMENT OF THE RESPONDENT'S CASE

2.1 Prior to delving into the substantive merits of the dispute herein, it is necessary to formally record and provide the rationale for this Court's preliminary ruling,

wherein I rejected the respondent's application for an adjournment and ordered the closure of its case.

- 2.2 The circumstances were that on the date scheduled for the hearing of the respondent's defence, Counsel for the respondent appeared without the respondent's witness and sought to have the matter stood over. The explanation proffered was that the respondent's sole witness had attended an internal office meeting and, at the time the trial was scheduled to commence, was only just departing that meeting to travel to court.
- 2.3 This Court strongly condemns the conduct of the respondent's witness. It is an egregious misdirection of priorities to elevate a routine internal administrative meeting above the solemnity of court proceedings, especially where the respondent is exposed to severe legal and financial liability and the witness's presence is indispensable to the employer's defence. Litigants must realize that a court of law is not a subsidiary department of their business enterprises nor are its schedules subordinate to corporate convenience. The prioritization of an office meeting over a long-scheduled trial demonstrates a profound disregard for the administration of justice.
- 2.4 A decision as to whether proceedings should be adjourned is invariably a matter within the inherent discretion of the trial court, a discretion which must be exercised judicially. While an adjournment must be granted where a refusal would result in a denial of justice, applications for such relief must be subjected to rigorous scrutiny. In this Registry, case management constraints are acute. The Court is tasked with an immense volume of outstanding disputes and judicial time is a finite, scarce public resource that must be guarded with utmost vigilance. To allow adjournments on flimsy, unsubstantiated or negligent grounds, such as a witness electing to attend a routine corporate meeting, would render this Court irresponsibly complicit in the wastage of public resources and the compounding of case backlogs.
- 2.5 This Court was faced with a strikingly similar situation in the case of ***Susan Bizwick v Speedy's Food Industries Limited***¹ where the respondent's Counsel failed to prepare witnesses due to administrative negligence – specifically, a failure

¹ Matter No. IRC 196 of 2020.

to diarize the court date. In that matter, this Court refused the adjournment and closed the respondent's case holding that tolerating such inefficiency would compromise the Court's duty to manage its docket in the public interest. The same principle applies herein. The failure of the respondent's witness to punctually attend court was the result of deliberate and inexcusable remissness.

2.6 Furthermore, as established in this Court's ruling in *Alex Malikebu & 3281 Others v. Agricultural Development and Marketing Corporation Limited*², court time is not the exclusive preserve of the parties or their attorneys; there is a compelling public interest dimension to the efficient use, or misuse, of judicial time. A litigant owes a duty to be highly vigilant regarding their rights and the proceedings pending against them. They cannot cast the entirety of the blame onto their legal representatives nor can they plead business exigencies to escape the consequences of their own negligence. The blame for the witness's absence in this matter lies squarely at the doorstep of the respondent. It was precisely due to the foregoing circumstances that the prayer for an adjournment was denied and the respondent's case ordered closed.

2.7 Critically, it is this Court's conviction that the refusal of the adjournment and the subsequent closure of the case did not occasion a denial of justice or substantial unfairness. I state this because Counsel for the respondent was fully present in court during the applicants' trial session and was afforded an exhaustive and unhindered opportunity to thoroughly test the probative value of the applicants' case through the rigorous cross-examination of their sole witness. The respondent suffered no procedural prejudice on the question of liability as the evidence of the applicants was fully tested. Consequently, only the applicants' evidence remains on the record, subject to the scrutiny of this Court.

3 EVIDENTIAL BACKGROUND

3.1 The applicants adduced evidence in this matter through Mr. Steven Kaneka, who served as their sole witness and adopted his witness statement on behalf of himself and his co-applicants. His testimony established the following factual background regarding their engagement:

² Matter No. IRC 554 of 2023.

- 3.2 The applicants were originally employed by the respondent as Plumbers for an initial period of three (3) months, with effect from 1 July 2016. A sample of these temporary contracts was tendered into evidence and marked as exhibit **SK1**. Mr. Kaneka testified that at the time of their engagement, the applicants were assigned to a ‘meter validation project’ which involved inspecting meters within the respondent’s supply areas to ensure proper functionality.
- 3.3 He further testified that at the commencement of their duties, the applicants were verbally advised by a supervisor that upon completion of the meter validation exercise, the temporary staff pool would be reviewed with the prospect of some being absorbed into the respondent’s permanent establishment. The meter validation project concluded in January 2017. Following its completion, the wider cohort of temporary employees engaged for the project was discharged. However, twenty of them, the applicants herein, were retained and redeployed to the Networking Section.
- 3.4 Within the Networking Section, the applicants’ duties shifted from merely inspecting meters to performing core operational plumbing tasks, including prepaid meter installations, the uprooting of old pipes, and the disconnection and reconnection of water services. The applicants continued to work in this section without being issued any written contracts or formal renewals; rather, they were verbally instructed by their supervisors to carry on with their duties. In July 2017, the applicants were redeployed once more, this time from the Networking Section to the Revenue and Prepaid Sections. Specifically, applicants Godfrey Mwamadi and Jaqueline Paul were assigned to the Prepaid Section, while the remaining eighteen applicants, including Mr. Kaneka, were placed in the Revenue Section.
- 3.5 Mr. Kaneka testified, and this evidence remains uncontradicted on the record, that both the Revenue and Prepaid Sections constitute permanent, core administrative and operational departments within the respondent’s standard organizational establishment. He further stated that the applicants continued to render services in these permanent sections until 25 September 2017 when each received an individual letter terminating their services. A sample of these letters was marked as exhibit **SK2**. In these letters, the respondent indicated that the applicants would receive one month’s salary in lieu of notice. However, two days later, the applicants received subsequent correspondence from the respondent rescinding the offer of

the one month's salary in lieu of notice. This subsequent letter was marked as exhibit **SK3**.

3.6 During cross-examination by Counsel for the respondent, Mr. Kaneka reiterated that he was testifying on behalf of all the applicants, though he acknowledged having tendered the termination letters of only two applicants. He conceded that they did not complete formal application forms nor did they receive written offer letters confirming their status as permanent employees. However, Mr. Kaneka clarified that their belief in having attained permanent status was premised on their retention and redeployment to permanent sections after the rest of their temporary colleagues were released in January 2017 coupled with the verbal instructions to continue performing core, non-project duties. He further maintained that they had been assured at the inception of their engagement that a portion of the temporary workforce would be absorbed permanently.

3.7 Turning to the respondent's case, as previously noted, the respondent called no witnesses and adduced no evidence in rebuttal, its case having been ordered closed following the non-attendance of its witness at trial. Consequently, the respondent relies entirely on the evidence elicited during the cross-examination of Mr. Kaneka and the legal arguments advanced in its final written submissions.

4 ISSUES FOR DETERMINATION

4.1 To resolve the action herein, this Court must address and determine the following four central issues:

- *Whether the tendering of only two termination letters into evidence by Mr. Kaneka adversely affects the claims of the remaining eighteen applicants;*
- *Whether the respondent's failure to issue formal written offers of permanent employment affects the applicants' employment status;*
- *Whether, by virtue of the conduct of the parties and the operation of section 28(3) of the Employment Act, the applicants' engagements converted into contracts of employment for an unspecified period of time (permanent employment); and*

- *Whether the applicants were unfairly dismissed by the respondent.*

5 THE APPLICABLE LAW

5.1 This being a civil action the burden of proof is on the party who asserts the affirmative,³ namely the applicants. As regards the standard of proof in civil cases, the same is on a balance of probabilities. As to meaning of “balance of probabilities”, this is best exemplified by interrogating the difference between succeeding on the balance of probabilities and failing on the balance of probabilities. In *Miller v. Minister of Pensions*⁴ Denning J said:

“If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not.”

5.2 Section 25(2) of the Employment Act provides for three types of contracts namely, a contract for an unspecified period of time; a contract for a specified period of time and; a contract for a specific task.

5.3 Section 28(1) of the Employment Act provides that subject to sections 29 and 57 of the Employment Act, a contract of employment for an unspecified period of time may be terminated by either party. Section 28(2) of the Employment Act states that a contract of employment for a specified period of time shall automatically terminate on the date specified for its termination and, unless it is expressly or tacitly renewed or prolonged, no notice shall be required for its termination.

5.4 Section 28 (3) of the Employment Act stipulates that where the purpose or effect of a contract of employment that is purported to be for a specified period of time or a specific task is the filling on a lasting basis of a post connected with the normal and permanent activity of an undertaking, it shall be deemed to be a contract of employment for an unspecified period of time.

5.5 I will cite, where relevant, the remainder of the applicable statutory and case law within the “*Analysis-and-Disposal*” segment of this judgment.

6 ANALYSIS AND DISPOSAL

³*Chipiliro Banda v Southern Bottlers Ltd* [2012] MLR 53 (HC).

⁴[1947] 2 All ER 372.

- 6.1 This Court has a tradition of not holding parties in what I term “gratuitous suspense” regarding the final determination reached upon an evaluation of the evidence in light of the applicable law. Accordingly, for the reasons I shall set forth below, it is my judgment that, on a balance of probabilities, the applicants’ claims are well-founded and must be upheld. I now proceed to set out my detailed reasoning and the disposal of each issue.
- 6.2 Before doing so, however, in evaluating the asymmetrical evidential matrix in this matter, this Court is fully cognizant that the closure of the respondent’s case does not automatically entitle the applicants to a favourable judgment. The Court is bound to maintain strict neutrality and safeguard the interests of the absent party by closely scrutinizing the evidence on record. As eloquently articulated by Kamwambe J. in the High Court decision of ***John Maulidi v. Enock Malindi and Prime Insurance Company Limited***⁵:

“There is nothing to consider as evidence from the [respondent’s] side. The Court does not argue on behalf of any party. It must play its neutral role so that there is no smell or appearance of bias just because one party is not there. However, the interests of the [party who has tendered no evidence] [... ..] shall be safeguarded. The [applicants] should prove each and every averment [they make] on a balance of probabilities. The Court should convince itself that this position is reached. It is not automatic that [the applicants have] the day, just like that, just because the other party has tendered no evidence... The Court should closely consider and scrutinise [applicants’] evidence in case there are some material contradictions. There could also be material omissions.”

- 6.3 This Court has meticulously subjected the testimony of Mr. Kaneka to this exacting standard of scrutiny, analysing the cross-examination and evaluating the record for any potential material contradictions, omissions or inconsistencies before arriving at its final determination.

- *Whether the tendering of only two termination letters into evidence by Mr. Kaneka adversely affects the claims of the remaining eighteen applicants;*

⁵ Civil Cause No. 3687 of 2000.

- 6.4 At the outset, during cross-examination, learned Counsel for the respondent raised a procedural challenge regarding the fact that Mr. Kaneka, who testified on behalf of all the applicants, tendered physical termination letters only for himself and one other applicant, leaving the remaining applicants without documentary proof of their letters of termination. The respondent contends that this omission is fatal to the claims of the non-tendering applicants.
- 6.5 This argument is fundamentally flawed and is definitively answered by the trite law governing the role of pleadings in our adversarial system of litigation. Pleadings are designed to define and limit the issues for trial, to inform each side of the nature of the case they must meet and to prevent any party from being taken by surprise. As the Supreme Court of Appeal held in *Malawi Telecommunications Limited v. SR Nicholas Limited*⁶ and restated in *Nseula v. Attorney-General and another*⁷, the court cannot adjudicate on matters that have not been raised as an issue nor can a party require proof of facts that have been admitted in the pleadings.
- 6.6 In the matter under consideration, a review of the respondent's own pleadings (IRC Form 2) reveals a clear and unambiguous admission. At paragraph 3.1 of its response, the respondent explicitly pleaded:
- "The respondent avers that the applicants were among many other people who were engaged by the respondent as temporary employees to work under its meter validation project for a period of 3 months effective 1st July 2016."*
- 6.7 By this pleading, the respondent formally admitted that all the applicants herein were employed by the respondent with effect from 1 July 2016. Furthermore, the pleadings and the evidence as a whole make it clear that the applicants were treated as a single cohesive class of employees. They were hired together, redeployed together and discharged together. Since the fact of their employment and subsequent joint discharge on 25 September 2017 was admitted in the pleadings, it is a fact that requires no further proof. The failure of the applicants' sole witness to physically tender all of the individual termination letters is therefore legally immaterial and does not prejudice the claims of the applicants whose letters were

⁶ [2014] MLR 218 (SCA).

⁷ [1999] MLR 313 (SCA).

not tendered. Consequently, this issue is resolved in favour of the applicants. I so hold.

- *Whether the respondent's failure to issue formal written offers of permanent employment affects the applicants' employment status;*

6.8 The respondent has argued that because the applicants never received formal written letters of offer or confirmation for permanent roles and because they never completed any standard permanent employment forms, they could not have lawfully acquired the status of permanent employees. In advancing this position, the respondent relies on its status as a statutory corporation contending that strict written formalities are a prerequisite to any valid appointment within its permanent establishment.

6.9 This argument must fail. Section 2 of the Employment Act defines an “employee” as:

“...a person who offers his services under an oral or written contract of employment, whether express or implied...”

6.10 The law in our jurisdiction does not demand strict, formal written instruments to establish or modify an employer-employee relationship. A contract of employment may be oral, written or implied by conduct. As was held in ***Chiwembu & Others v. Dairiboard (Malawi) Ltd***⁸, an employment relationship can be established through the performance of work and the receipt of remuneration, regardless of formal written agreements. This principle applies with equal force to public bodies and statutory corporations. Pursuant to section 2 of the Employment Act, the statute binds both the private sector and the Government, including any public authority or enterprise.

6.11 The courts have consistently held that changes in employment status or promotions can be validly effected through the conduct of the parties and the nature of the tasks performed, even where formal written documents are withheld. In ***Benjamin***

⁸ [2008] MLLR 145.

*Manjolo & Others v. Unilever South East Africa Limited*⁹, the Court found that the applicants had been promoted by conduct because they performed the duties of senior positions despite the employer withholding formal written promotion letters. Similarly, in *Fred Makonde v. The Malawi Polytechnic*¹⁰, the Court held that an employer's conduct in allowing an employee to work continuously in a core role after the expiry of a temporary contract converted the engagement to full-time status despite the absence of written formalities. The Court aptly remarked that an employer cannot deliberately 'coil away' from issuing a formal contract in order to evade the legal consequences of the work being performed.

6.12 In sum, regarding the present matter, the lack of formal written permanent offer letters or application forms does not preclude the applicants from establishing that their status converted to permanent employment. The law looks to the substance of the relationship and the conduct of the parties rather than merely the presence or absence of a formal paper trail. This issue is equally resolved in favour of the applicants. I so hold.

- *Whether, by virtue of the conduct of the parties and the operation of section 28(3) of the Employment Act, the applicants' engagements converted into contracts of employment for an unspecified period of time (permanent employment);*

6.13 The central point of contention in this matter is whether the applicants' employment contracts, which were initially fixed-term for three months, converted into contracts of unspecified duration (permanent status). The applicants rely on section 28(3) of the Employment Act. The respondent, in contrast, argues that the applicants remained temporary employees whose contracts expired by effluxion of time and the completion of the project, relying upon the Supreme Court of Appeal decision in *Kalovekamo v. Malawi Environmental Endowment Trust*¹¹.

6.14 To determine this issue, the Court must examine section 28(3) of the Employment Act, which provides:

⁹ Matter No. IRC 463 of 2016.

¹⁰ IRC Matter No. 968 of 2020.

¹¹ [2008] MLLR 21 (SCA).

“Where the purpose or effect of a contract of employment that is purported to be for a specified period of time or a specific task is the filling on a lasting basis of a post connected with the normal and permanent activity of an undertaking, it shall be deemed to be a contract of employment for an unspecified period of time.”

6.15 It is trite that the legislative intent behind this provision is to prevent employers from exploiting short-term, temporary or fixed-term contracts to fulfil permanent operational needs thereby depriving workers of their constitutional right to fair labour practices under section 31 of the Constitution as well as security of employment. To apply this provision, this Court must examine whether the posts filled by the applicants herein were connected to the ‘normal and permanent activity’ of the respondent and whether the ‘purpose or effect’ of their continued engagement was the filling of those posts on a ‘lasting basis’.

6.16 In undertaking this exercise, this Court must carefully distinguish the present matter from two of its own previous decisions, namely, *Nelson Milonde & Anor v. Blantyre Malaria Project*¹² and *Benjamin Watch & 6 Ors v. Electricity Supply Corporation of Malawi Ltd*¹³. A rigorous comparative analysis reveals that the factual matrix of the present case is materially distinguishable from those two authorities.

6.17 In *Nelson Milonde*¹⁴, this Court dismissed the applicants’ claims that their successive fixed-term contracts had converted into permanent employment. The reasoning was twofold. First, the Blantyre Malaria Project is fundamentally a research-driven institution whose core, normal and permanent activities are concentrated within its Clinic and Laboratory departments. The Administration Department, where the applicants were engaged as a driver and a clerk, was a mere support department subject to constant structural reorganization. Second, and crucially, the employer proved through documentary evidence that the applicants’ salaries were funded entirely by specific, external, time-bound research grants (such as the CQ, IPT and TS studies). Because research grants are inherently sporadic, unpredictable and finite, this Court held that an employer who relies

¹² Matter No. IRC 1180 of 2022.

¹³ Matter No. IRC 966 of 2020.

¹⁴ n.12 above.

entirely on external grant funding cannot reasonably be expected to offer permanent contracts of unspecified duration.

6.18 Similarly, in *Benjamin Watch*¹⁵, this Court dismissed the claims of temporary general labourers who argued that their status had converted to permanent after years of service. The evidence in that matter established that the labourers were engaged on fixed-term contracts tied directly to specific, periodic phases of the Malawi Rural Electrification Programme (MAREP). MAREP is a phased national project funded by ad-hoc government and World Bank grants, meaning that ESCOM's labour requirements were highly variable. The labourers performed non-technical, manual tasks (such as pole erection and excavation) which were seasonal and demand-driven. If ESCOM had been compelled to absorb them permanently, it would have borne the financial burden of paying salaries during idle months when no active projects were underway. Furthermore, the labourers' service records were heavily fragmented, featuring a substantial five-year hiatus during which no service was rendered.

6.19 The facts of the present case stand in stark contrast. First, the respondent herein is a statutory public utility corporation whose very *raison d'être* and core, normal and permanent activities encompass the supply of water, the maintenance of the distribution network and revenue collection. Unlike a research project, its operations do not hinge upon sporadic external grants or finite studies. Water distribution and revenue collection are continuous, permanent activities that will not cease in the foreseeable future.

6.20 In the second place, the nature of the applicants' work and their subsequent redeployment is highly probative. They were initially hired for a 3-month 'meter validation project' which concluded in January 2017. Had their employment been genuinely project-bound, they would have been released along with the rest of their temporary colleagues. Instead, the applicants herein were retained and redeployed to the Networking Section and subsequently to the Revenue and Prepaid Sections. In these departments, they performed permanent, core plumbing and maintenance tasks, namely, installing prepaid meters, uprooting pipes and undertaking the disconnection and reconnection of water services. Mr. Kaneka's testimony that these sections constitute permanent departments within the respondent's

¹⁵ n.13 above.

establishment remains entirely uncontradicted. The applicants worked continuously in these core sections for nearly a year beyond the expiration of their initial 3-month temporary contracts without any written renewals or project-bound limitations being imposed.

6.21 This case falls squarely within the principles enunciated in *Joana Mtalika & Others v. Attorney General*¹⁶ and *Z. Nkolokosa & Others v. ESCOM Limited*¹⁷. In both authorities, employers engaged workers on temporary contracts but permitted them to continue working in permanent roles after the contracts expired without communicating any definitive end dates. The Court held that the employers' tacit acceptance of the workers' continuous services in permanent sections converted their contracts into contracts of unspecified duration by conduct. Just as in the *Nkolokosa* case, where ESCOM was bound by its conduct despite being a statutory body, the respondent herein is equally bound.

6.22 By retaining the applicants, redeploying them to core permanent sections (Networking, Revenue and Prepaid) and accepting their continuous services for nearly a year after the temporary project had ended, the 'purpose and effect' of the applicants' employment was the filling, on a lasting basis of posts connected with the normal and permanent activity of the respondent. Consequently, pursuant to section 28(3) of the Employment Act, their contracts are deemed to be contracts of employment for an unspecified period of time (permanent employment). This issue is therefore resolved in favour of the applicants. I so find.

- *Whether the applicants were unfairly dismissed by the respondent.*

6.23 Having established that the applicants' engagements had converted into contracts of employment for an unspecified duration (permanent status), the termination of their employment is strictly governed by the protective provisions of the Employment Act. The respondent's defence, that no dismissal occurred because the temporary contracts simply expired by effluxion of time, is legally untenable as their temporary status had already been extinguished and converted by operation of law and conduct.

¹⁶ Matter No. IRC 390 of 2020.

¹⁷ Matter No. 265 of 2012.

- 6.24 The governing law under section 57(1) of the Employment Act stipulates that the employment of an employee shall not be terminated unless there is a valid reason connected with their capacity or conduct or based on the operational requirements of the undertaking. In any claim arising out of a dismissal, section 61(1) of the Employment Act places the burden of proof strictly upon the employer to establish the reason for the dismissal.
- 6.25 Consequently, because the respondent called no witnesses and adduced no evidence, it has wholly failed to prove any valid reason for terminating the applicants' employment. The assertion in its pleadings that the 'project was completed' cannot avail the respondent. It is a trite principle of law that averments in pleadings do not constitute evidence and bear no probative value unless substantiated by proof. Under section 61(2) of the Employment Act, this failure to discharge the evidentiary burden triggers a conclusive statutory presumption that the dismissal was substantively unfair.
- 6.26 Procedurally, section 57(2) of the Employment Act, read alongside section 43 of the Constitution of the Republic of Malawi, imposes a strict imperative upon an employer to provide an employee with an opportunity to be heard prior to termination. The applicants' evidence that they were never summoned to any disciplinary or consultative hearing but were simply handed termination letters, remains entirely uncontradicted. As held in *Ernest Mtingwi v. Malawi Revenue Authority*¹⁸ and *Chakhaza v. Portland Cement Co. (1974) Ltd*¹⁹, a failure to accord procedural justice is fatal and renders any termination legally indefensible and unfair. Accordingly, I find that the respondent's unilateral termination of the applicants' employment on 25 September 2017 was both substantively and procedurally unfair in flagrant violation of sections 57(1) and 57(2) of the Employment Act. This issue is likewise resolved in favour of the applicants. I so hold.

7 CONCLUSION

- 7.1 Accordingly, this Court finds the respondent liable for the unfair dismissal of all the applicants and further finds that the respondent has subjected them to unfair

¹⁸ Civil Cause No. 3389 of 2004.

¹⁹ [2008] MLLR 118.

labour practices. The applicants are consequently entitled to the remedies sought in respect of these violations.

7.2 Turning to the specific quantum of the awards, this Court notes that neither party addressed the Court on the exact computation of the remedies during the trial on liability. As the right to be heard is a fundamental tenet of our justice system, the parties would be unfairly prejudiced were this Court to proceed to an assessment without affording them the opportunity to adduce evidence and make detailed submissions on quantum. I therefore defer the assessment of the remedies and issue the following directives:

(1) The parties are at liberty to amicably agree on the quantum of the remedies within fourteen (14) days from the date hereof;

(2) Failing such agreement, this Court shall convene an assessment 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 applicants.

7.3 This determination on liability concludes the first phase of the applicants' action. Pursuant to the authority of the Supreme Court of Appeal in **JTI Leaf (Malawi) Limited v. Kad Kapachika**²⁰, this judgment remains inchoate for the purposes of appeal. 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.

7.4 It is so ordered.

²⁰ MSCA Civil Appeal No. 52 of 2016 [unreported].

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



Tamanda Chris Nyimba
ACTING CHAIRPERSON