



THE MALAWI JUDICIARY

IN THE INDUSTRIAL RELATIONS COURT

PRINCIPAL REGISTRY

MATTER NO. IRC 516 OF 2021

In the dispute between:

FELIX BENNET.....APPLICANT

-AND-

LUJERI TEA ESTATES LIMITED.....RESPONDENT

CORAM: **TAMANDA C. NYIMBA** : Acting Chairperson
 Brenda Khwale : Counsel for the Applicant
 Louis Ulaya : Counsel for the Respondent
 Mike Chipembere : Court Clerk

JUDGMENT

1. In this action, the applicant alleges unfair dismissal and unfair labour practices, claims which the respondent vigorously contests. By his originating process, the applicant seeks the following reliefs: compensation for unfair dismissal, damages for unfair labour practices, severance allowance, one month's pay in lieu of notice, overtime pay, accrued leave pay, pension entitlements and the costs of this action.
2. As the parties were unable to settle the dispute at the pre-hearing conference stage, the matter proceeded to a full trial. The applicant testified on his own behalf. The respondent called a single witness, Ms. Miriam Lubanga, its Group Human Resource and Administration Manager.
3. While substantial evidence was adduced during the hearing, it is unnecessary to recount it in its entirety. The following summary distils the salient evidence presented by the parties.
4. The applicant avers that he was employed by the respondent on 1 July 2012 as a Divisional Manager. He served in this capacity without incident until 21 December 2020 when the respondent suspended him pending an investigation into allegations of sexual harassment. Subsequently, he was summoned to a disciplinary hearing scheduled for 16 March 2021. The applicant contends that upon attending the

hearing, no evidence was adduced against him nor were his accusers or any complainants present to testify or face cross-examination. He asserts that this complete absence of complainants and evidentiary support fundamentally vitiated the lawfulness of the proceedings effectively depriving him of his right to defend himself. Following this hearing, the respondent summarily dismissed him from its employ.

5. Aggrieved by the decision of the Disciplinary Committee, the applicant lodged an appeal. At the appeal hearing on 12 May 2021, he was directed merely to present his case; once again, neither the complainants nor any accusers were in attendance. On 15 May 2021, the Appeal Committee dismissed his appeal thereby upholding the summary dismissal. The applicant contends that the respondent's persistent failure to afford him the opportunity to confront and cross-examine his accusers constitutes a flagrant breach of fair labour practices and offends procedural justice in employment law.
6. Under cross-examination, the applicant conceded that in his capacity as Divisional Manager, he exercised direct and final authority over the recruitment of personnel, including female employees. He admitted that the allegations of sexual harassment emanated from multiple women and were not confined to a single individual or division. Furthermore, he acknowledged the extreme sensitivity of sexual harassment matters and conceded that the respondent maintained clear, institutionalized policies and procedures for reporting such grievances notably through a designated complaint box and a Gender Committee.
7. He further confirmed his awareness that certification bodies treat sexual harassment with the utmost gravity, that stringent audits precede certification and that non-compliance inevitably results in the denial or revocation of such certification. Consequently, he agreed that an employer is duty-bound to take decisive action when allegations of sexual harassment surface. He maintained, however, that he was uniquely targeted by these accusations owing to managerial jealousy over his close professional proximity to senior executives and that the claims were orchestrated by individuals he had previously excluded during recruitment exercises.
8. During re-examination, the applicant elaborated that individuals unsuccessful in securing employment frequently harbor baseless suspicions of bribery. He clarified

that, as a Divisional Manager, he lacked direct knowledge regarding the withdrawal of the respondent's certification as such strategic matters were beyond his purview; his mandate was strictly to enforce procedures to ensure the estate passed external audits. He reiterated that his defence of "managerial jealousy" was rooted in the resentment his peers felt toward a young manager enjoying a close and favoured working relationship with senior executive management.

9. Turning to the respondent's case, Ms. Miriam Lubanga, the Group Human Resource and Administration Manager, testified that the applicant served as a Divisional Manager from 1 July 2012 until the date of his dismissal. She stated that an independent audit had uncovered rampant sexual harassment against female workers at the Nchima Estate. As a direct consequence of these adverse findings, the respondent suffered the withdrawal of its international certification. Furthermore, she testified that civil litigation had been instituted against the respondent in the United Kingdom, seeking compensation on behalf of the victims.
10. Ms. Lubanga averred that during the ensuing investigations, several female employees explicitly identified the applicant as their harasser, though they strictly insisted upon anonymity. Consequently, the applicant was suspended pending further inquiry and subsequently summoned to a disciplinary hearing to answer charges of sexual harassment. At the hearing, the applicant was advised that, owing to the highly sensitive nature of the allegations, the identities of his accusers would be withheld. He was nonetheless tasked with explaining why multiple women had specifically implicated him. The Disciplinary Committee deemed his defence of "managerial jealousy" wholly unsatisfactory and recommended his summary dismissal, a decision later upheld by a four-member Appeal Committee.
11. Under cross-examination, Ms. Lubanga made several material concessions. She admitted that her witness statement neither quantified the exact number of complainants nor disclosed their identities. Crucially, she conceded that the Independent Audit Report, the very genesis of the allegations, was never furnished to the applicant nor was it tendered as evidence before this Court. She confirmed that both the disciplinary and appeal hearings were conducted *in camera*; that the alleged victims were never called to testify; and that the applicant was entirely denied the opportunity to cross-examine his accusers. Ms. Lubanga further conceded that the production of the Independent Audit Report would have been

instrumental in substantiating the veracity of the allegations levelled against the applicant.

12. In re-examination, Ms. Lubanga sought to justify these procedural anomalies by explaining that the respondent was under strict instructions to conceal the victims' identities to safeguard their employment. Moreover, she cited an overriding obligation to protect their privacy in light of the pending litigation in the United Kingdom. She testified that she had personally interacted with four of the victims and was privy to their identities but their names were withheld in compliance with human rights and witness protection specifications outlined in the Audit Report. She maintained that the Disciplinary Committee adjudged the applicant guilty because his exculpatory responses defied logic; the panel could fathom no plausible reason why several women would collude to fabricate allegations specifically against him while sparing other male managers.
13. This concludes a summary of the evidence relevant to the determination of this matter.
14. I must commend learned Counsel for both parties for their comprehensive written submissions. The parties are assured that I have meticulously evaluated all arguments and legal authorities canvassed therein. Accordingly, the absence of an express reference to any specific submission within this judgment must by no means be construed as a failure by this Court to have considered it.
15. Having considered the evidential matrix and the submissions of learned Counsel, the issues formulated for this Court's determination are: (a) whether the applicant was unfairly dismissed by the respondent; (b) whether the respondent's conduct amounted to an unfair labour practice; and (c) whether the applicant is entitled to the remedies sought.
16. As this is a civil action, the burden of proof rests upon the party asserting the affirmative, in this instance, the applicant¹. The applicable standard of proof is on a balance of probabilities. The essence of this standard is perhaps best articulated by Denning J in *Miller v. Minister of Pensions*², where he stated:

¹*Chipiliro Banda v. Southern Bottlers Ltd* [2012] MLR 53 (HC).

²[1947] 2 All ER 372.

“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.”

17. This Court maintains a tradition of eschewing what I term “gratuitous suspense” regarding its final determination following the evaluation of evidence against the applicable law. Accordingly, for the reasons set out hereunder, it is my finding that, on a preponderance of probabilities, the applicant’s action must succeed and his claims be upheld. My reasoning is as follows.
18. I turn first to the primary issue: *whether the applicant was unfairly dismissed by the respondent*.
19. It is instructive to first outline the core legal principles. For the termination of employment to be deemed fair in law, it must satisfy the dual requirements of substantive and procedural fairness. A failure on either front is invariably fatal, rendering the dismissal legally indefensible and unfair. Substantive justice concerns the validity of the reason for dismissal, whereas procedural justice governs the manner in which the dismissal was effected.
20. Section 57(1) of the Employment Act provides that the employment of an employee shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirement of the undertaking. The burden of showing that the reasons for dismissal are valid is on the employer³.
21. Section 57(2) of the Employment Act provides that the employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide the opportunity.
22. Complementing this framework, section 61(2) of the Act stipulates that, in addition to proving a valid reason for dismissal under section 57(1), an employer must demonstrate that in all the circumstances of the case, it acted with justice and equity in dismissing the employee.

³ Section 61(1) of the Employment Act; *Mangulama v. Raiply Malawi Limited* Matter No. IRC 254 of 2003 [Unreported].

23. In the present matter, the respondent dismissed the applicant based on grave allegations of sexual harassment against female workers. Evidently, the dismissal was grounded on conduct. Bearing the nature of this dismissal in mind, the Court must now determine whether the respondent accorded the applicant both procedural and substantive justice.
24. I shall examine the first limb, procedural justice, which scrutinizes the manner and process leading to the dismissal.
25. Upon a careful appraisal of the testimony extracted from the witnesses, it is glaringly evident that the respondent failed to afford procedural justice to the applicant. The crux of this procedural failure lies in the complete withholding of the Independent Audit Report and the strict anonymity granted to the accusers. These fatal omissions unequivocally prevented the applicant from knowing the precise case against him and wholly deprived him of any opportunity to cross-examine his accusers.
26. The respondent argues that under section 57(2) of the Employment Act, the right to defend oneself is suspended where an employer “cannot reasonably be expected” to provide such an opportunity. The respondent submits that, in light of its statutory obligations under section 7(1) of the Gender Equality Act, which mandates that employers handle sexual harassment claims sensitively and confidentially, coupled with the strictures of international certification audits and the privacy requirements of the pending UK litigation, it could not reasonably be expected to produce the complainants at the hearing or disclose their identities.
27. While this Court is acutely cognizant of the egregious nature of sexual harassment and fully endorses an employer’s statutory duty under the Gender Equality Act to protect victims and maintain confidentiality, this duty cannot be weaponized as a blanket license to entirely deprive an accused employee of the opportunity to face their accusers. A delicate balance must be struck. As Chikopa J. (as he then was) aptly stated in *Illovo Sugar Company Ltd v. Phiri*⁴:

“...what matters in our view is whether or not the party to be heard was made sufficiently aware of the charge against him and was given a decent chance to put across their side of the story.”

⁴ HC Civil Appeal No. 60 of 2008.

28. Admittedly, a workplace disciplinary hearing is not a court of law and is not strictly bound by judicial rules of evidence, a principle well established in *Stanley Bandawe & Others v. Blantyre Water Board*⁵. However, the irreducible minimum of procedural justice dictates that an accused employee must be afforded a meaningful opportunity to answer specific allegations. In *R v. Board of Visitors of Hull Prison, Ex parte St Germaine (No. 2)*⁶, it was established that where credibility is the central issue, fairness dictates that the person affected must be allowed to challenge the witnesses against them.
29. In the present matter, the respondent had an array of procedural mechanisms at its disposal to balance the privacy of the victims against the applicant's right to procedural fairness. The disciplinary hearings were conducted *in camera*. The applicant was already on suspension and stripped of his managerial authority, neutralizing any capacity to retaliate against or dismiss subordinate employees. The respondent could have provided redacted summaries of the allegations, permitted witness testimony from behind screens or facilitated written interrogatories to protect the victims' identities. Instead, the respondent did absolutely nothing to reconcile these competing interests. It maintained the absolute anonymity of the accusers, failed to disclose even a redacted version of the Independent Audit Report and called no witnesses at either the disciplinary or appeal hearings. The applicant was, in essence, asked to defend himself against a void.
30. This Court respectfully adopts the posture taken in *Khoswe v. National Bank of Malawi*⁷, which held that a compromise of natural justice, including the failure to make critical documentation available and the denial of an opportunity to cross-examine, renders a dismissal procedurally unfair. By depriving the applicant of the Independent Audit Report and entirely denying him the opportunity to confront or question his accusers, the respondent's disciplinary process amounted to a procedural sham. The statutory exception under section 57(2) of the Employment Act cannot be stretched to sanitize a complete denial of due process where reasonable balancing measures were readily available. I therefore find that the dismissal was procedurally unfair.

⁵ HC Civil Appeal No. 5 of 2021.

⁶ [1979] 1 WLR 1401.

⁷ Civil Cause number 718 of 2002.

31. I turn now to the second limb, to wit, substantive justice, which interrogates the validity of the underlying reason for dismissal. Under section 61(1) of the Employment Act, the burden of proving that a dismissal was substantively fair rests squarely upon the employer. Should the employer fail to prove a valid reason, the law imposes a conclusive presumption that the dismissal was unfair.
32. As established in *Mahowe v. Malawi Housing Corporation*⁸, the Court must scrutinize the alleged misconduct to determine whether the termination was justified. In this particular case, in assessing validity, the Court shall as well weigh the gravity of the conduct against the duration of employment. Sexual harassment is indisputably an exceptionally grave species of misconduct that strikes at the very core of human dignity. In my considered view, if proven, it constitutes a valid and substantial basis for immediate summary dismissal regardless of an employee's long and unblemished service.
33. However, the critical question before this Court is whether the allegations of sexual harassment in this specific instance are supported by admissible and sufficient evidence. The respondent failed to call any of the alleged victims to testify before this Court and failed to tender the Independent Audit Report into evidence. The respondent's entire substantive case rests upon the testimony of Ms. Lubanga, the Group Human Resources Manager, who possessed no direct personal knowledge of the alleged harassment and could only relay what she was told by others or what she read in the undisclosed audit report. Her evidence is, in law, multi-layered hearsay.
34. Ms. Lubanga herself candidly conceded under cross-examination that the Independent Audit Report "would have gone a long way in proving the truthfulness of the allegations against the applicant." Yet, the respondent elected not to produce it citing UK court restrictions. While the respondent may have navigated complex external legal constraints, those constraints do not absolve it of its strict statutory burden of proof under the Employment Act. This Court cannot find an employee guilty of gross misconduct based solely on an employer's subjective impression that the employee's exculpatory explanations during a disciplinary hearing "did not make sense" or were "jealousy-driven." As earlier stated, the burden of proof before this Court is on a balance of probabilities. By failing to lead any primary or documentary evidence to substantiate the allegations of sexual harassment, the

⁸ Civil Cause No. 3687 of 2000 (HC) [Unreported].

respondent has wholly failed to discharge its burden. Consequently, there is no proof of a valid reason for dismissal before this Court.

35. All things considered, in terminating the applicant's contract of employment, the respondent failed to treat him with justice and equity, contrary to the mandatory dictates of section 61(2) of the Employment Act. This Court, therefore, makes an emphatic finding that the respondent unfairly dismissed the applicant.
36. I now shift attention to the applicant's claim for damages for unfair labour practices. Section 31(1) of the Constitution of the Republic of Malawi guarantees every person the right to fair and safe labour practices. As Chikopa J. (as he then was) noted in *Kachinjika v. Portland Cement Ltd*⁹, a failure to provide a fair hearing or a justifiable reason for dismissal is tantamount to an unfair labour practice.
37. In the instant case, the respondent suspended the applicant, kept him entirely in the dark regarding the contents of the audit report, subjected him to a disciplinary process stripped of the most basic tenets of procedural justice and forced him into an appeal process where his primary ground of appeal, the lack of opportunity to confront his accusers, was wholly ignored.
38. The respondent's actions and omissions in this regard cannot be described as 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 relations. The respondent's conduct definitively crossed the threshold into an unfair labour practice, in direct contravention of section 31(1) of the Constitution.
39. Having established that the termination of the applicant's employment was both procedurally and substantively unfair and that the respondent committed unfair labour practices, the applicant is entitled to compensation for unfair dismissal¹⁰, damages for unfair labour practices¹¹, severance allowance¹², notice pay¹³, overtime¹⁴, accrued leave pay¹⁵ and pension entitlements¹⁶. Given the

⁹ [2008] MLLR 161 (HC).

¹⁰ See section 63 of the Employment Act.

¹¹ See section 31(1) as read with sections 46(2)(a) and 46(4) of the Constitution of the Republic of Malawi.

¹² See section 35(1) of the Employment Act.

¹³ See section 30(2) of the Employment Act.

¹⁴ See section 39 of the Employment Act.

¹⁵ See section 45(2) of the Employment Act.

¹⁶ See section 10 of the Pension Act.

circumstances of this matter, however, the applicant's claim for the costs of the action lacks merit and is therefore summarily dismissed¹⁷.

40. Regarding the reckoning of these reliefs, this Court notes that neither party specifically addressed the Court on the quantum of damages during the trial. While it is generally efficient to determine liability and assessment in a consolidated, omnibus fashion, the parties were not heard on the precise arithmetic of the remedies. Given that the right to be heard is a foundational tenet of our justice system, the parties would be unfairly prejudiced were I to proceed to assess the reliefs without affording them the opportunity to adduce evidence or make specific submissions on quantum. Accordingly, I shall defer the assessment of the reliefs. In the interim, I direct as follows:

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

(b) Failing such agreement, this Court shall preside over a remedy hearing to assess the reliefs on a date and at a time to be fixed following the filing of assessment papers by both parties and a notice of hearing by the applicant.

41. This was a modularized trial, with the determination of liability concluding this first instalment. Pursuant to the authority of *JTI Leaf (Malawi) Limited v. Kad Kapachika*¹⁸, this decision remains inchoate for the purposes of appeal. It may only be escalated to the High Court once this Court renders its final order on the assessment of reliefs, or if the parties settle the quantum as directed. For the avoidance of doubt, while the right of appeal subsists under Section 65(2) of the Labour Relations Act, it is currently stayed pending the conclusion of the relief proceedings or the parties reaching a mutual agreement on the same.

42. It is so ordered.

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



Tamanda Chris Nyimba
ACTING CHAIRPERSON

¹⁷ See section 72 of the Labour Relations Act.

¹⁸ MSCA Civil Appeal No. 52 of 2016 [unreported].