



THE MALAWI JUDICIARY
IN THE INDUSTRIAL RELATIONS COURT
PRINCIPAL REGISTRY
MATTER NO. IRC 99 OF 2024

In the dispute between:

GLADSON MSYALI.....APPLICANT

-AND-

MALAWI HOUSING CORPORATION.....RESPONDENT

CORAM: **TAMANDA C. NYIMBA** : Deputy Chairperson
 A. Ndhlovu : Counsel for the Applicant
 L. Mwantisi : Counsel for the Respondent
 M. Chipembere : Court Clerk

ORDER ON ASSESSMENT

- 1 This is the Court's order on assessment regarding the accrued annual leave payable to the applicant. The remedy hearing follows this Court's ruling on liability, delivered on 25 April 2025. In that ruling, I determined as a matter of law that the applicant is entitled to compensation for all earned and untaken annual leave days not granted by the respondent prior to the termination of his employment.
- 2 The underlying factual matrix of the applicant's cause of action is comprehensively set out in the liability ruling. I therefore find it unnecessary to cover those facts again in this order. Furthermore, for the sake of judicial economy, I will advert to the parties' evidence and submissions only where directly pertinent to the assessment of this remedy. The parties may, however, be assured that the entirety of the record has been fully and carefully considered.
- 3 I am grateful to Counsel for both parties for the valuable assistance rendered through their well-crafted written submissions.
- 4 Having evaluated the evidence and the submissions on record, the issues for determination are as follows:

- (a) *What is the exact number of accrued annual leave days due to the applicant?*
- (b) *What is the quantum payable in lieu of those accrued leave days?*
- (c) *Whether the sum payable should be subject to a 100% uplift to account for inflation and the depreciation of currency?*
- (d) *Whether the payment in lieu of accrued leave is subject to taxation under the Taxation Act?*

- 5 I shall address the first two issues concurrently, namely, the number of accrued leave days and the resulting quantum.
- 6 It is common cause that the respondent employed the applicant as Director of Technical Services on two consecutive fixed-term contracts of three years each, spanning from April 2015 to March 2021. Clause 3(d) of both contracts entitled the applicant to 36 working days of annual leave per year (accruing at 3 days per completed month). This translates to a total entitlement of 216 leave days over his six-year tenure.
- 7 The primary dispute lies in the number of leave days the applicant actually utilized. The applicant testified that, owing to the exigencies of his office and the demands of ongoing corporate projects requiring his continuous supervision, he took only 16 leave days, leaving an accrued balance of 200 days¹.
- 8 Conversely, the respondent, through its Human Resources Manager, Miss Linda Mbewe, adduced evidence asserting that the applicant took a total of 55 leave days, leaving a balance of 161 days².
- 9 I have carefully evaluated the evidence adduced particularly during cross-examination. Crucially, the respondent's sole witness, Miss Mbewe, made key concessions that materially undermine the reliability of the respondent's leave schedule. Firstly, she conceded that Exhibit LM 1, which recorded 21 leave days taken by the applicant, lacked an underlying signed leave application form.

¹ Exhibits GM 3 to GM 7.

² Exhibits LM 1 to LM 8.

Secondly, she admitted that Exhibit LM 3 did not bear the applicant's signature, rendering it uncertain whether those days were actually utilized by him. Thirdly, she acknowledged that Exhibits LM 7 and LM 8 were signed not by the applicant, but by his secretary, Miss Shabina Banda, and no corroborative evidence was led to establish that the applicant authorized or actually proceeded on leave for the days indicated therein.

10 In civil proceedings, the burden of proof rests upon the party asserting the affirmative on a balance of probabilities³. As the custodian of the employment records, the respondent bore the evidential burden to substantiate its claims with cogent, authenticated documentation. Having failed to prove that the contested leave days were in fact taken by the applicant, I find as a fact that the applicant utilized only 16 leave days during his tenure. Consequently, I hold that the applicant has an outstanding balance of 200 accrued leave days due and payable by the respondent.

11 Turning to the daily wage calculation, the applicant's last monthly salary prior to termination in March 2021 was MK1,724,902.08. In accordance with section 45(3) of the Employment Act, the daily wage is calculated as follows:

$$[(MK1,724,902.08 \times 12 \text{ months}) / 52 \text{ weeks}] / 5 \text{ working days} = \textbf{MK79,610.87 per day.}$$

12 Multiplying the daily wage of MK79,610.87 by 200 accrued leave days yields **MK15,922,174.00**.

13 I now turn to the issue that has generated considerable contention, namely, whether the base sum of MK15,922,174.00 should be subject to a 100% uplift to account for currency devaluation and inflationary pressures accrued since the termination of employment in March 2021.

14 Learned Counsel for the applicant vigorously argued that, to ensure an effective remedy as envisioned by section 41(3) of the Constitution, the award ought to attract a 100% uplift. In support of this proposition, Counsel relied on *Violette*

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

*Santhe v Malawi Housing Corporation*⁴, *Frackson Chitheka v Attorney General*⁵ and *Charles Mwasi and Others v Malawi Revenue Authority*⁶.

- 15 On the other hand, learned Counsel for the respondent opposed any such uplift, submitting that an adjustment for devaluation falls outside the statutory framework of the Employment Act. To buttress this position, Counsel cited a line of recent High Court authorities, including *Standard Bank PLC v Bernadette Kalumo & Ors*⁷, *National Bank of Malawi PLC v Kuluwani*⁸, *Vanguard Life Assurance Ltd v Kamphonje*⁹, *Finca Malawi Ltd v Mtsekwe*¹⁰ and *Loveness Chalera & Anor v Reserve Bank of Malawi*¹¹.
- 16 The subject of elevating or uplifting awards in employment matters is a subject of considerable judicial divergence. This Court has previously expressed its concern over the conflicting signals emerging from appellate decisions¹². Nevertheless, as a tribunal of first instance, this Court is strictly bound by the doctrine of *stare decisis* and must defer to the binding judgments of the High Court.
- 17 In *Kalumo*¹³, Tembo J. lucidly articulated the legal position regarding such inflationary adjustments as follows:

“It is extremely doubtful that the legislator intended or implied that loss to an employee due to inflation or devaluation, that is now sought to be addressed by a boost, is to be treated as loss attributed to action taken by the employer. Devaluation and inflation are independent of actions of an employer. These macroeconomic phenomena cannot be actions of an employer.”

- 18 Guided by the binding principles enunciated in *Kalumo*¹⁴, while this Court is not unsympathetic to the applicant regarding the macroeconomic erosion of purchasing power over time, devaluation and inflation are independent economic phenomena not legally attributable to the respondent as an employer. To arbitrarily apply a

⁴ IRC Matter No. 25 of 2021.

⁵ Civil Appeal No. 67 of 2008.

⁶ Civil Appeal No. 13 of 2015.

⁷ Civil Appeal No. 18 of 2024.

⁸ Civil Appeal No. 14 of 2025.

⁹ Miscellaneous Civil Cause No. 64 of 2024.

¹⁰ Civil Appeal No. 13 of 2024.

¹¹ Civil Appeal No. 1 of 2021.

¹² *Davie Misinkhu v. Rab Processors Limited* IRC Matter No.338 of 2013.

¹³ n.7 above.

¹⁴ As above.

percentage multiplier to double the award would constitute a stark departure from binding High Court precedent.

- 19 Accordingly, I am bound in law to decline the applicant's prayer for a 100% uplift. The award shall remain at the base assessed figure of **MK15,922,174.00**.
- 20 Finally, I address the issue whether the sum payable is subject to statutory tax deductions by the respondent under the Taxation Act.
- 21 Learned Counsel for the applicant submitted that the payment is exempt from tax deduction as it is made in satisfaction of a judgment debt, relying on section 171 of the Constitution and the *locus classicus* of ***George Namandwa v National Bank of Malawi***¹⁵. Contrastingly, the respondent contended that the applicant's remuneration was a gross figure and therefore subject to P.A.Y.E. deductions.
- 22 In *Namandwa*¹⁶, Katsala J. (as he then was) illuminated the position of the law as follows:

“There is no doubt in my mind that on a true interpretation of these provisions employment terminal benefits are subject to tax. And the plaintiff does not dispute this... However, the point is that had the defendant paid the sums due as terminal benefits before coming to Court and asking for judgment to be recorded on the agreed sums, maybe the defendant's argument would have carried some weight. The defendant would have been paying the plaintiff terminal benefits and in terms of section 17 of the Act, would have been subject to tax – the same having been classified as ‘income’. But the defendant having disputed the plaintiff's claims and the plaintiff having commenced the action herein and judgment having been duly entered in favour of the plaintiff, the defendant is obliged under law to satisfy the judgment in full without any deductions. In my view since the money is being paid in satisfaction of a judgment debt, it cannot be said to be income in terms of section 16 or 17 of the Act.”

¹⁵ Commercial Cause No. 294 of 2016.

¹⁶ As above.

- 23 It is a settled principle of statutory interpretation that tax statutes are strictly construed¹⁷. In the present matter, because the respondent resisted the applicant's legitimate claim upon termination, thereby forcing the applicant to seek judicial enforcement, the sum decreed herein constitutes a judgment debt ordered by this Court. Applying the *ratio decidendi* in *Namandwa*, the respondent is obliged in law to satisfy this judgment debt in full without deducting income tax at source. I so hold.
- 24 In the final analysis, this Court orders as follows:
- (a) *The applicant is awarded the sum of **MK15,922,174.00** as payment in lieu of 200 accrued annual leave days.*
 - (b) *The applicant's prayer for a 100% uplift of the award is declined.*
- 25 The decreed sum shall be paid by the respondent to the applicant in full, free of any tax deductions at source, within 7 days from the date of this Order.
- 26 As this tribunal is a court of first instance, any party aggrieved by the earlier finding on liability, which is now finalized by the assessment herein, is at liberty to exercise their right of appeal to the High Court in accordance with section 65(2) of the Labour Relations Act.
- 27 It is so ordered.

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



Tamanda Chris Nyimba
ACTING CHAIRPERSON

¹⁷ *Commissioners for Special Purposes Income Tax v Pemsel* [1891] A.C 531.