



REPUBLIC OF MALAWI
IN THE INDUSTRIAL RELATIONS COURT
ZOMBA REGISTRY
IRC MATTER NUMBER ZA 05 OF 2015
BETWEEN

JUDTH MUHOSHA.....APPLICANT

AND

H. PARKER SHARP CLINIC.....RESPONDENT

CORAM: HON. PETER M.E. KANDULU, DEPUTY CHAIRPERSON

Masamba, Counsel for the Applicant

Hanjahanja, Counsel for the Respondent

Mr Patrick Banda: Court Clerk

JUDGMENT AND ORDER ON DIRECTION

Introduction

The Applicant, Judith Muhosha, instituted these proceedings against the Respondent, H. Parker Sharp Clinic, via IRC Form 1 filed on 23rd March 2015. The Applicant claims compensation for unfair dismissal (to be assessed by the Court), severance pay calculated at MK475,856.25, notice pay of MK46,425.00, pension balance, and payment for accrued leave days.

The matter originated from the District Labour Office and was duly referred to this Court pursuant to Section 64(3) of the Employment Act (Cap. 55:02). The Respondent filed its Notice of Intention to Defend and Form 2 Defence.

Brief Background

The Applicant was employed by the Respondent in 2007 as a patient attendant at its clinic. In January 2015, the Applicant was served with a notice inviting her to attend a disciplinary hearing. Following the hearing, her employment was terminated via a dismissal letter dated 30th January 2015.

The Applicant contends that her dismissal was both procedurally and substantively unfair. Specifically, she argues that she was served with the invitation letter only one day prior to the hearing, depriving her of adequate time to consult and prepare a defence. Furthermore, she asserts that the disciplinary panel was improperly constituted because Mr. Mweiwa the Clinic's officer-in-charge, who was her direct accuser regarding allegations of insubordination chaired the panel and authored the eventual termination letter.

The Respondent contends that the Applicant was lawfully dismissed for fraudulent acts, insubordination, and unauthorized absence from work, and that she did not raise any procedural objections during the hearing.

Burden and Standard of Proof

The legal burden of proof rests on the Applicant to establish her claims, in accordance with the established principle that the onus lies on the party who substantially asserts the affirmative of an issue (*Joseph Constantine Steamship Line v. Imperial Smelting Corporation Ltd* [1942] AC

154). This burden is fixed at the outset by the state of the pleadings and remains unchanged throughout the trial (**B. Sacranie v. ESCOM**, HC/PR Civil Cause No. 717 of 1991).

The standard of proof required in civil and industrial proceedings is proof on a balance of probabilities (**Miller v. Minister of Pensions** [1947] 2 All ER 372).

The Applicant's Case

The Applicant adopted her filed witness statement as her evidence-in-chief. She testified that on 27th January 2015, she was served with an invitation letter charging her with fraudulent acts, display of insubordination, and unauthorized absence from work. She explained that her three-day absence from work occurred because Mr. Mweiwa, the officer-in-charge, had verbally suspended her following an alleged incident of insubordination directed at him.

The disciplinary hearing took place on 28th January 2015 the day immediately following the notice. Mr. Mweiwa chaired the panel. On 30th January 2015, Mr. Mweiwa signed and issued the letter dismissing the Applicant from service.

Under cross-examination, the Applicant admitted that she did not formally object to the composition of the panel or the short notice at the time of the hearing. On re-examination, she clarified that as a layperson handed an invitation just one day prior, she was not given adequate time or opportunity to seek advice or prepare a formal objection.

The Respondent's Case

The Respondent paraded a single witness, Mr. Alfred Banda, who serves as the Administrator and Human Resource Manager at the Respondent Clinic.

Mr. Banda testified that he joined the Respondent's employment in 2017 two years after the Applicant's dismissal. His testimony was based entirely on administrative records retrieved from the clinic's archives. He asserted that the Applicant was properly invited to a hearing, failed to object to the panel, and was lawfully dismissed. He further noted that the Applicant received a portion of her pension benefits processed through Old Mutual in 2022.

During cross-examination, Mr. Banda conceded critical facts:

1. He was not present during the events of January 2015.
2. The letter inviting the Applicant was delivered on 27th January 2015 for a hearing on 28th January 2015.
3. Both the invitation letter and the dismissal letter were written and signed by Mr. Mweiwa.
4. From the written records, Mr. Mweiwa was indeed a complainant and sat on the disciplinary panel that decided the Applicant's fate.

While Counsel for the Applicant submitted final written arguments as directed by the Court, the Respondent failed to lodge written submissions.

Issues for Determination

Whether or not the Applicant was unfairly dismissed by the Respondent. Whether or not the Applicant was subjected to unfair labour practices entitling her to compensation.

Whether the Applicant was Unfairly Dismissed

Section 57 of the Employment Act (Cap. 55:02) provides:

- "(1) 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 requirements of the undertaking.
- (2) 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."

Section 57(2) mandates procedural fairness. For a disciplinary hearing to satisfy the requirements of natural justice, an employee must be afforded reasonable notice and sufficient particulars of the charges to prepare a defence (*Illovo Sugar Company Limited v. Phiri*, High Court Civil Appeal No. 60 of 2008).

As observed in *The State v. Council of the University of Malawi, Ex-Parte Msukimwa*:

"If one is to answer any charge, particulars of the same should be given to afford the accused a clear outline of the nature of the charge so that he, or she can defend himself or herself ably... It is not enough to give someone the right to be heard or to defend himself if he or she was deprived of adequate notice to ably defend oneself."

Giving an employee a single day's notice as occurred here when the invitation dated 27th January was served for a hearing on 28th January is manifestly inadequate (*Matope v. Old Mutual Life Insurance Ltd*, IRC Matter No. 189 of 2007; *Nkhwazi v. Commercial Bank of Malawi Ltd*, Civil Cause No. 233 of 1999). A 24-hour window deprives an employee of any meaningful opportunity to seek advice, gather evidence, or prepare a defence.

Furthermore, the proceedings violated the fundamental rule of natural justice: *nemo judex in causa sua* (no one should be a judge in their own cause). The charge of insubordination directly involved Mr. Mweiwa. Uncontroverted evidence demonstrates that Mr. Mweiwa issued the charges, chaired the disciplinary panel, and signed the dismissal letter. By acting as accuser, witness, and judge, Mr. Mweiwa compromised the neutrality of the panel (*John Tembo & Gwanda Chakuamba v. Malawi Congress Party*, Civil Cause No. 2509 of 2001).

Finally, regarding substantive fairness, the Respondent failed to present competent direct evidence. Mr. Alfred Banda joined the clinic in 2017 and had no personal knowledge of the events. His testimony constituted uncorroborated hearsay. The Respondent offered no explanation for failing to call Mr. Mweiwa or any other participant in the 2015 proceedings. An employer must support its reason for dismissal with objective, credible evidence (*Mahowe v. Malawi Housing Corporation*, Civil Cause No. 3687 of 2000). The Respondent failed to meet this threshold. Consequently, this Court finds that the Applicant's dismissal was both procedurally and substantively unfair.

Whether the Conduct Amounts to an Unfair Labour Practice

Section 31(1) of the Constitution of the Republic of Malawi guarantees every person the right to fair labour practices.

In ***Kalinde v. Limbe Leaf Tobacco Ltd*** (Civil Cause No. 542 of 1995), the High Court observed that fair labour practices entail conduct that is "even-handed, reasonable, acceptable and expected from the standpoint of the employer, employee and all fair-minded persons." (See also ***Kachinjika v. Portland Cement Co.*** [2008] MLLR 161; ***Gwemba v. Namiwawa Hotels***, Matter No. 132 of 2003).

Denying an employee adequate notice, subjecting her to a biased tribunal chaired by her direct accuser, and summarily terminating her employment without objective evidence falls far short of even-handed and reasonable industrial practices. The Respondent's conduct constitutes an unfair labour practice under Section 31 of the Constitution.

Decision and Order

Having found that the Applicant was unfairly dismissed and subjected to unfair labour practices, judgment is entered in favor of the Applicant against the Respondent for the following remedies:

Unfair Dismissal & Unfair Labour Practice

The Applicant is entitled to compensation for unfair dismissal and breach of constitutional rights to fair labour practices.

Statutory & Contractual Claims

The Applicant is entitled to notice pay, severance pay, accrued leave pay, and any outstanding pension due under the law.

Order on Assessment

To ensure an accurate financial determination of all remedies the matter is hereby referred to the Assistant Registrar for a formal Assessment of Damages and Severance Pay.

Court Directives

The Applicant shall file and serve an Itemized Statement of Claim for Assessment, supported by a supporting affidavit and updated salary / pension calculations, within 14 days of this Judgment. The Respondent shall have 14 days from the date of service to file and serve any response or counter calculations. The Court will issue a hearing date for the formal assessment upon receipt of the parties' filings.

Pronounced in Chamber this 2nd day of October 2026 at Zomba, Malawi.



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

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON