



REPUBLIC OF MALAWI
IN THE INDUSTRIAL RELATIONS COURT
ZOMBA REGISTRY
IRC MATTER NUMBER ZA 190 OF 2025
BETWEEN

PATRICK KAMBALAME.....APPLICANT

AND

ELECTRICITY SUPPLY CORPORATION OF MALAWI.....RESPONDENT

CORAM:

HON. PETER M.E. KANDULU, DEPUTY CHAIRPERSON

Kafere, Counsel for the Applicant

Chirwa & Sadala counsel for the Respondent

Mr Patrick Banda: Court Clerk

JUDGMENT

Introduction

The Applicant, Patrick Kambalame, commenced these proceedings against the Respondent, Electricity Supply Corporation of Malawi (ESCOM), by filing an IRC Form 1 on 5th December 2025. The Applicant claims compensation for unfair dismissal from employment, damages for unfair labour practices, severance pay, and leave allowance.

The Respondent filed an IRC Form 2 on 19th December 2025, denying all allegations. The Respondent moved this Court to declare that the termination of the Applicant's employment contract was lawful, fair, and compliant with the Employment Act; to dismiss the Applicant's claim in its entirety for lack of merit; and to award costs of the action to the Respondent.

The Applicant's Case

The Applicant adopted his written witness statement as his evidence-in-chief and tendered exhibits marked PK1 to PK8, comprising:

PK1: Offer of temporary employment

PK2: Offer of employment as a driver

PK3: Confirmation of appointment as a driver

PK4: Disciplinary and Grievance Policy

PK5: Disciplinary Charge Sheet

PK6: Notice of Disciplinary Hearing

PK7: Letter of Dismissal

PK8: ESCOM reflector jacket

The Applicant testified that in October 2022, while on sick leave, he visited his cousin in Chigumula Newlines. While walking through the area, he observed exposed electrical wires and apparent illegal electricity connections. He approached the occupants, warned them of the dangers, and identified himself as an ESCOM employee. He testified that three individuals assaulted him and that he was subsequently taken to Limbe Police Station, where he was released without charge.

The Applicant stated that he was later formally charged with allegedly soliciting and pocketing money from customers in Chigumula who were contravening electricity regulations. He denied the allegations and attended disciplinary sittings on 1st November 2022 and 21st March 2023. He asserted that he received only one day's notice for the second sitting, where he discovered upon arrival that witnesses were testifying against him. He was summarily dismissed on 18th April 2023.

Under cross-examination, the Applicant admitted that he was employed as a driver, not an electrician or linesman, and was off duty on sick leave on the material date. ESCOM had not instructed him to inspect wiring, approach occupants, or offer electrical advice. He carried an ESCOM reflector and identification card while off duty and left his contact details with members of the public to advise them on electricity matters. He did not file an internal appeal against his dismissal, explaining in re-examination that he was awaiting the signed minutes / report of the disciplinary hearing from the Human Resources Department, which were never provided to him despite repeated requests over eight days.

The Respondent's Case

The Respondent called four witnesses

RW1 (Chiona Mkwate), Chairperson of the Disciplinary Panel, tendered CM1 (Disciplinary Hearing Report). He testified that the panel heard evidence from internal and external witnesses alleging that the Applicant collected K10,000.00 from Henry Masiku, K12,000.00 from Bester Misi, and K2,000.00 from Martin Pahuwa. He confirmed that the panel unanimously found the Applicant guilty and recommended summary dismissal. On cross-examination, RW1 conceded that he could not produce written invitations, postponement notices, or records of the first sitting, nor did he produce bail records or proof of police clearing.

RW2 (Richard Samba), Acting Human Resources Manager, tendered RS1 to RS6 (internal memo, suspension letter, charge sheet, response, disciplinary record, and dismissal letter). He testified that the Applicant was suspended on 12th October 2022 and summarily dismissed on 18th April 2023 for committing a criminal offence contrary to the Respondent's Terms and Conditions of Service. In cross-examination, RW2 acknowledged that the 2018 Terms and Conditions of Service (specifically section 14.2.27 relied upon) were not exhibited before the Court, and admitted that no written invitation for the second sitting was produced.

RW3 (Kelvin Ndoya), an ESCOM employee, tendered KN1 (Security Report). He testified that on 8th October 2022, he received reports that the Applicant was soliciting money in Chigumula. Upon arriving at the scene with Kondwani Gonani, he found a crowd surrounding and assaulting the Applicant, who was wearing an ESCOM reflector. RW3 intervened and testified that he directly observed the Applicant returning money to Bester Misi, Martin Pahuwa, and Henry Masiku at the scene before taking him to safety.

RW4 (Sergeant MacHerbert Mhango), ESCOM Security Officer, tendered MVM1 to MVM5 (customer statements and investigation memo). He testified that he interviewed the affected customers and compiled an investigation report. Under cross-examination, RW4 admitted that he was not present when any money allegedly changed hands and acknowledged that at the second disciplinary sitting, he presented his evidence to the panel before the Applicant was brought into the room.

Issues for Determination

The key issues falling for determination are

1. Whether the Respondent had a valid reason for dismissing the Applicant pursuant to Section 57(1) of the Employment Act.
2. Whether the Applicant was afforded procedural fairness and a right to be heard pursuant to Section 57(2) of the Employment Act.
3. Whether the Respondent acted with justice and equity in dismissing the Applicant pursuant to Section 61(2) of the Employment Act.
4. Whether the Applicant was subjected to unfair labour practices under Section 31 of the Constitution of the Republic of Malawi.
5. Whether the Applicant is entitled to the remedies claimed.

Analysis of Facts, Evidence and the Law

Substantive Fairness: Valid Reason for Termination

Under Section 57(1) of the Employment Act, an employer must establish a valid reason for termination connected with the capacity or conduct of the employee. Section 61(1) places the burden of proof squarely on the employer

"In any claim or complaint arising out of the dismissal of an employee, it shall be for the employer to provide the reason for dismissal, and if the employer fails to do so, there shall be a conclusive presumption that the dismissal was unfair."

As held in ***Khoswe v. National Bank of Malawi Ltd*** (2008) MLLR 201 and ***Mahowe v. Malawi Housing Corporation*** (Civil Cause No. 3687 of 2000), mere allegations do not constitute evidence. An employer must place cogent, reliable, and factually sustainable evidence before the Court to prove the alleged misconduct.

Upon evaluating the evidence, the Court notes severe evidential defects and material inconsistencies in the Respondent's case

Failure to Call Material Witnesses

The alleged victims Bester Misi, Martin Pahuwa, and Henry Masiku were not called to testify before this Court, despite their full contact details being available in exhibits MVM1 to MVM4. As established in ***Maonga & Others v. Blantyre Print & Publishing Co. Ltd***, the failure to call primary material witnesses who directly allegedly paid money fatally weakens the employer's case when the employee consistently denies the assertion.

Material Discrepancies

The Respondent's records present unresolved contradictions regarding dates and amounts. The Disciplinary Report records the incident as occurring on 5th October 2022, whereas RW3 and RW4 insisted on 8th October 2022. RW1 claimed the Applicant collected K10,000 from Henry Masiku, K12,000 from Bester Misi, and K2,000 from Martin Pahuwa; RW4's report referred to K14,000 from Bester Misi and Martin Pahuwa; and RW3 claimed money was returned to four customers.

Non-Production of Applicable Conditions of Service

RW2 testified that the Applicant was dismissed under Section 14.2.27 of the 2018 Terms and Conditions of Service. However, the Respondent failed to produce or exhibit this document in Court. Without the contractual provisions, the Court is left to speculate on the explicit contractual rules governing the alleged violation.

Lack of Criminal Records

Although the charge sheet accused the Applicant of committing a "criminal offence," the Respondent produced no police charge sheet, court record, or formal finding of criminal liability.

While the Applicant admitted to improper conduct, specifically acting outside his scope as a driver by wearing an ESCOM reflector while off duty on sick leave and offering unsolicited advice, this does not automatically prove extortion or bribery. The Respondent bore the onus of establishing extortion on a balance of probabilities and failed to do so with reliable evidence before this Court.

Consequently, pursuant to Section 61(1) of the Employment Act, there is a statutory presumption that the dismissal was substantively unfair for lack of a proven valid reason.

Procedural Fairness: Right to be Heard

Section 57(2) of the Employment Act mandates that prior to termination for misconduct, an employee must be afforded an opportunity to defend himself. In *H.C. Kasambala v. SOBO* (Mw) Ltd (Matter No. IRC 305 of 2002) and *Kagwa v. People's Trading Centre Limited* (Matter No. IRC 161 of 2016), it was established that procedural fairness requires

1. Clear and specific charges identifying the rule breached.
2. Reasonable prior notice to allow adequate preparation of a defence (*R v. Thames Magistrates Court, Ex parte Polemis* [1949] 2 All ER 1220).
3. The right to be present, hear the evidence against oneself, and cross-examine adverse witnesses (*Republic v. Jailosi* [1966-68] 4 ALR Mal 496).

The evidence demonstrates fatal procedural flaws in the Respondent's disciplinary process

Inadequate Notice

The Applicant attended an initial sitting on 1st November 2022. Nearly five months later, on 20th March 2023, he received a verbal phone call instructing him to attend Mpemba Training Centre the following day (21st March 2023). He was given less than 24 hours' notice, was not informed that a full hearing with external witnesses would take place, and was denied reasonable time to prepare his defence or secure representation.

Denial of Confrontation and Cross-Examination

RW4 explicitly admitted under cross-examination that he entered the disciplinary panel room, gave his evidence against the Applicant, and exited before the Applicant was ushered into the room. The Applicant was thus deprived of the opportunity to hear RW4's testimony or cross-examine him.

Improper Gathering of Post-Hearing Evidence

Exhibits MVM1 to MVM4 were dated 11th November 2022, and KN1 was dated 12th December 2022, both generated after the initial November 1st disciplinary sitting. Sourcing and relying on ex parte evidence after an initial hearing without disclosing it in advance violates natural justice. Accordingly, the Court finds that the dismissal was procedurally unfair.

Section 61(2): Justice and Equity

Section 61(2) of the Employment Act requires an employer to prove that, in all the circumstances of the case, it acted with justice and equity in imposing dismissal. As affirmed by the Supreme Court of Appeal in *The Sugar Corporation of Malawi v. Ron Manda* (MSCA Civil Appeal No. 07 of 2007), Section 61(2) obliges an employer to consider mitigating factors, such as length of service and past disciplinary record, before resorting to summary dismissal.

The Applicant had served the Respondent for over 13 years (since 2009) with no record of prior disciplinary infractions. The disciplinary panel failed to consider progressive discipline or lesser sanctions. Imposing summary dismissal following a procedurally flawed and delayed process spanning over six months breached the duty of justice and equity.

Unfair Labour Practices

Section 31 of the Constitution guarantees every person the right to fair labour practices. As held in *S. Kalinda v. Limbe Leaf Tobacco Limited* (Civil Cause No. 542 of 1995) and *Kachinjika v. Portland Cement Co.* (2008) MLLR 161, fair labour practices require even-handed, reasonable, and equitable treatment that goes beyond mere contractual form.

Securing ex parte statements after a first hearing, summoning an employee on 24 hours' verbal notice, receiving witness testimony behind closed doors in the employee's absence, and

withholding disciplinary minutes required for an appeal constitute a clear violation of Section 31 of the Constitution.

Ruling and Remedies

On the totality of the evidence and applicable law, this Court finds that

1. The Applicant was substantively unfairly dismissed contrary to Section 57(1) of the Employment Act.
2. The Applicant was procedurally unfairly dismissed contrary to Section 57(2) of the Employment Act.
3. The Respondent failed to act with justice and equity contrary to Section 61(2) of the Employment Act.
4. The Respondent subjected the Applicant to unfair labour practices contrary to Section 31 of the Constitution.

Consequently, judgment is entered in favour of the Applicant. The Court orders as follows

1. The Applicant is entitled to compensation for unfair dismissal pursuant to Section 63 (4) (5) of the Employment Act bearing in mind that he contributed to his dismissal.
2. The Applicant is entitled to severance pay and outstanding leave allowance.
3. The matter is referred to the Assistant Registrar for assessment of damages and compensation on a date to be scheduled.

Cost of the Proceedings

Each party shall bear their own costs.

Delivered in Open Court at the Industrial Relations Court, Zomba Registry, this 2nd day of October 2026.



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

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON