



THE MALAWI JUDICIARY

IN THE INDUSTRIAL RELATIONS COURT

PRINCIPAL REGISTRY

MATTER NO. IRC 395 OF 2022

IN THE DISPUTE BETWEEN:

SANDFORD WHISKY DOKA & 6 OTHERS.....APPLICANTS

-AND-

THYOLO DISTRICT COUNCIL.....RESPONDENT

IN CONSOLIDATION WITH MATTER NO. IRC 1198 OF 2022

BETWEEN:

LASTON JOSAM.....APPLICANTS

-AND-

THYOLO DISTRICT COUNCIL.....RESPONDENT

CORAM:	TAMANDA C. NYIMBA	: Acting Chairperson
	Nthembako Banda	: Counsel for the Applicants
	Maxwell Dausi	: Counsel for the Respondent
	Mike Chipembere	: Court Clerk

ORDER ON ASSESSMENT OF DAMAGES AND INTEREST

- 1 This Order determines the assessment of damages for unfair labour practices and the interest payable to the applicants. The present proceedings follow a consent order, executed by the parties and endorsed by this Court on 11 August 2026, which conclusively settled the principal pension sums accruing to each of the seven applicants herein.
- 2 The factual background underpinning the applicants' cause of action against the respondent is comprehensively detailed in this Court's ruling pronounced on 28 November 2025. Consequently, I do not consider it necessary to recount the grounding facts in this Order. For the sake of brevity, I shall refer to the parties' respective arguments and submissions only where appropriate as I evaluate the

applicable law governing the remedies in question. The parties may rest assured, however, that the Court has fully considered all arguments and written submissions advanced, and no point loses its force by virtue of this concise approach.

3 The Court is indebted to Counsel for both parties for their valuable assistance and well-crafted written submissions.

4 By virtue of the consent order, the gross principal pension benefits due to the applicants were established at a total sum of MK30,334,859.34 (less an advance payment of MK2,000,000.00 previously disbursed to the 2nd applicant, Dorothy Mpando, leaving a net principal pension balance of MK28,334,859.34). Consequently, the outstanding issues reserved for determination by this Court are twofold, namely:

(a) The appropriate quantum of damages for the unfair labour practices to which the applicants were subjected by the respondent; and

(b) Whether the applicants are entitled to interest on their delayed pension benefits and damages, and if so, the applicable rate, scope and method of computation.

5 Regarding the assessment of damages for unfair labour practices, it is recalled that in its prior determination on liability, this Court held that the applicants were subjected to unfair labour practices in violation of section 31(1) of the Constitution of the Republic of Malawi. Specifically, the respondent unlawfully excluded the applicants from pension benefits solely on the basis that they were over 35 years of age. Furthermore, the Court found that the directives contained in “Circular A” lacked legal foundation and could not override the statutory mandate set out in section 9(1)¹ of the Pension Act.

6 Section 31(1) of the Constitution guarantees that every person shall have the right to fair and safe labour practices and to fair remuneration. As a fundamental constitutional right, it accrues directly to the individual and does not owe its existence to, nor is it restricted by, the Labour Relations Act or the Employment Act. The pertinent question, therefore, is how a Court ought to assess compensation

¹ Now section 10(1)(a) of the current Pension Act. It must be noted that the applicants’ cause of action commenced prior to the enactment of the present Pension Act.

for the violation of a constitutionally enshrined right. In this regard, section 46(2)(a) of the Constitution is highly instructive, providing as follows:

“Any person who claims that a right or freedom guaranteed by this constitution has been infringed or threatened shall be entitled:

To make application to a competent court to enforce or protect such a right or freedom.”

- 7 Furthermore, section 46(4) of the Constitution vests this Court with the express authority to award compensation in the following terms:

“A court referred to in subsection 2(a) shall have the power to award compensation to any person whose rights or freedoms have been unlawfully denied or violated where it considers it to be appropriate in the circumstances of a particular case.”

- 8 The High Court in ***Nicholas Treva Malunga v. Attorney General***² reinforced the principle that a person whose constitutional rights have been infringed must be afforded an effective remedy. The Court observed:

“In this case the plaintiff seeks a specific public law, constitutional remedy of damages, separate and distinct from any common law remedy that he may be entitled to. In essence the competency or otherwise of the relief sought by the plaintiff turns on a proper construction of section 46 (2) (a) of the Constitution.”

- 9 Significantly, the Constitution does not prescribe a rigid mathematical formula for calculating compensation for the violation of its provisions. Nevertheless, the Court in ***Kachinjika v. Portland Cement Company***³ provided valuable guidance at page 181 of the report, stating:

“We, much like the Court in the Nkhwazi and Magola cases, are of the view that in so far as the Constitution never gave much guidance in respect of levels of

² Civil Cause No. 85 of 2018 [Unreported].

³ [2008] MLLR 161.

compensation beyond effective remedy such compensation should be what the court seized of the matter thinks just and equitable in that particular case guided, if need be, by jurisprudence from beyond our borders.”

- 10 Turning to jurisprudence from beyond our borders, the United Kingdom Supreme Court has elucidated that the assessment of compensation for constitutional or human rights violations serves fundamentally to uphold minimum protected standards. In ***Commissioner of Police of the Metropolis v. DSD and Another***⁴, the Court underscored this distinction:

“It is a well settled principle that the award of compensation for the breach of a convention right is different from an award for civil damages. The compensation for the breach of a convention right is to uphold the minimum standard of human rights, whereas in a civil action it is to compensate the individual for loss.”

- 11 Similarly, in the South African case of ***Fose v. Minister of Safety and Security***⁵, Ackermann J. emphasized at paragraph 69:

“I have no doubt that this Court has a particular duty to ensure that, within the bounds of the Constitution, effective relief be granted for the infringement of any of the rights entrenched in it. In our context an appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying the rights entrenched in the Constitution cannot properly be upheld or enhanced.”

- 12 The African Commission on Human and Peoples’ Rights provided illuminating guidance on this point in ***Open Society Initiative v. Cote d'Ivoire***⁶, observing:

“...the main aim of redress of human rights violation is founded on the restitution intergrum principle, which requires that the victim is reinstated in the situation prior to the violation. Where it is impossible to reinstate him, any violation will be resolved through compensation. The compensation should be

⁴ [2018] UKSC 11 (21 February 2018).

⁵ 1997 (7) BCLR 851.

⁶ 318/06.

fair, adequate, effective, sufficient, appropriate and proportionate to the prejudice suffered.”

- 13 The Botswana Court of Appeal echoed these sentiments in ***Oatile v. The Attorney General***⁷, where Justice Dingake stated at paragraph 19:

“An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches.”

- 14 Furthermore, pursuant to sections 46(2)(a) and 46(4) of the Constitution, it is unequivocally clear that the award of compensation for constitutional violations is discretionary and must be determined by the specific circumstances of each case. On the exercise of such discretion, the observations of Sir John Donaldson in ***Norton Tool Co. Ltd v. Tewson***⁸, though made within a traditional labour law context, are highly apposite:

“The amount has a discretionary element and is not to be assessed by adopting the approach of conscientious and skilled cost accountant or actuary. Nevertheless, that discretion is to be exercised judicially and on the basis of principle.”

- 15 It is a further settled principle of law that in assessing damages, a court is bound to consider comparable awards in similar cases⁹. Accordingly, I shall now review the relevant precedents that will guide the exercise of my discretion in quantifying the appropriate damages due to the applicants for the respondent’s breach of section 31(1) of the Constitution.

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⁷ 2011 2 BLR 209 CA.

⁸ [1973] WLR 45.

⁹ ***Malamulo Hospital (The Registered Trustees) v. Mangani*** [1996] MLR 486.

- 17 In *The State v. Inspector General of Police & 2 Ors Ex-parte MM & 18 Ors*¹⁰, the Court, upon being moved to assess damages for the violation of constitutional rights, awarded sums of up to MK10,000,000.00 on 9 March 2021.
- 18 In *Patrick Mumba v. Opportunity International Bank of Malawi*¹¹, the High Court considered a breach of the claimant's constitutional right to privacy, occasioned when the defendant wrongfully advertised his house for sale and forcibly permitted potential buyers to inspect the property, including the private bedrooms. On 17 November 2023, the Court awarded the claimant MK5,000,000.00 under this head.
- 19 In *Brian Banda v. Attorney General (State Residences)*¹², this Court awarded the applicant MK5,000,000.00 in damages for unfair labour practices in a decision handed down on 22 December 2023.
- 20 Similarly, in *Gabriel Kamanga & Others v. Council of the Malawi University of Business and Applied Sciences*¹³, this Court awarded each of the 14 applicants the sum of MK5,000,000.00 as damages for unfair labour practices on 22 October 2024.
- 21 In the matter of *Alex Malikebu & 3281 Ors v ADMARC Limited*¹⁴, damages for unfair labour practices were assessed and awarded at MK5,500,000.00 for each applicant in an order delivered on 15 November 2024.
- 22 More recently, in *Gomezga Nkhwazi v. FDH Bank Limited*¹⁵, this Court awarded the applicant the sum of MK12,000,000.00 as damages for unfair labour practices on 3 August 2026.
- 23 In the present matter, Counsel for the applicants prays for an award of MK8,000,000.00 per applicant as damages for unfair labour practices. In support of this proposed sum, Counsel has cited several authorities, including the decision in *Gomezga Nkhwazi*¹⁶.

¹⁰ Judicial Review Cause No 7 of 2020 [Unreported].

¹¹ Civil Cause Number 49 of 2016 [Unreported].

¹² Matter No. IRC 1001 of 2022 [Unreported].

¹³ IRC Matter No. 1036 of 2022 [Unreported].

¹⁴ Matter No. IRC 554 of 2023 [Unreported].

¹⁵ Matter IRC 165 of 2020 [Unreported].

¹⁶ As above.

- 24 Conversely, Counsel for the respondent contends that the applicants’ proposed quantum is excessive, unreasonable, and unsupported by evidence of actual financial loss. The respondent submits that any award should be restricted to a range of MK400,000.00 to MK500,000.00 per applicant. In support of this contention—and arguing further that damages should be aligned with prevailing minimum wage levels whilst accounting for the respondent’s public sector financial constraints—reliance is placed on *Finca Malawi Limited v Mtsekwe*¹⁷ and *Davie Misinkhu v. Rab Processors Limited*¹⁸. The respondent also cited a case styled *Soko v Mama Mudzi* without providing any citation. As my independent and exhaustive searches across available law reports and online databases yielded no trace of this authority, I am unable to rely upon it.
- 25 It must be emphasized that the award this Court ultimately makes for unfair labour practices is pre-eminently discretionary, a discretion I am bound to exercise judiciously. This Court is not beholden to the figures proposed by the parties; it remains at liberty to scale the quantum up or down to reflect the unique circumstances of the case at hand. Furthermore, I shall take judicial notice of the changing value of the currency and the inflationary trends that have occurred since the comparable awards were handed down, as is the established norm in assessments of this nature – which are, notably, distinct from the statutory computation of compensation for unfair dismissal.
- 26 At this juncture, I must address the respondent’s submissions on the applicable legal principles. In my judgment, and with the greatest respect to learned Counsel for the respondent, the reliance placed on *Finca Malawi Limited*¹⁹ and *Davie Misinkhu*²⁰ is fundamentally misconceived. Those decisions addressed the statutory assessment of compensation for unfair dismissal under section 63 of the Employment Act, specifically proscribing the practice of arbitrarily “boosting” or escalating compensation beyond statutory parameters. Consequently, those authorities have no direct application to the assessment of independent constitutional remedies awarded under section 46(4) for the infringement of rights enshrined in section 31 of the Constitution.

¹⁷ [2025] MWHC 28 (2 October 2025).

¹⁸ IRC Matter No. 338 of 2013.

¹⁹ [2025] MWHC 28 (2 October 2025).

²⁰ IRC Matter No. 338 of 2013.

- 27 To restrict a constitutional award for a manifest violation of a fundamental right to a mere fraction of the prevailing monthly minimum wage would render the protections of section 31 an empty platitude. Indeed, such a paltry award would trivialize the severe prejudice inflicted upon vulnerable retirees who dedicated decades of their working lives to public service.
- 28 Turning to the factual realities of the present case, the evidence demonstrates that the respondent's conduct toward the applicants was characterized by deep-seated, systemic unfairness and unlawful discrimination. First, the respondent arbitrarily excluded the applicants from the statutory pension scheme based on capricious age thresholds and their status as existing rather than newly recruited employees under "Circular B." This exclusion was effected in total disregard of the applicants' loyal and extended service to the respondent, which, for some applicants, spanned up to four decades.
- 29 In the second place, as a direct consequence of this arbitrary exclusion, the applicants received significantly diminished gratuity sums upon their retirement. In the third place, despite ultimately acknowledging the applicants' entitlement to pension benefits upon their reaching the mandatory retirement age in 2021, the respondent failed to disburse their terminal benefits, unconscionably withholding these vested funds for a period in excess of five years.
- 30 The cumulative impact of these actions subjected the applicants – vulnerable elderly retirees entering the twilight of their lives – to immense financial distress, loss of dignity and prolonged uncertainty. For a public sector employer to perpetrate such egregious unfair labour practices against its long-serving staff constitutes a profound breach of section 31 of the Constitution.
- 31 In light of the foregoing, and taking into account the gravity of the constitutional breach, the prolonged period of deprivation, the macroeconomic erosion of the local currency's purchasing power and the guidance derived from the comparable authorities cited above, I award each applicant the sum of MK8,000,000.00 as damages for unfair labour practices. For the seven applicants, this amounts to a cumulative total award of **MK56,000,000.00** under this head.

- 32 I now turn to the second issue reserved for determination, to wit, whether interest is payable on the applicants’ principal pension benefits and damages, and if so, at what rate and employing what method of computation.
- 33 The applicants pray for interest at the commercial bank lending rate of 23.4% per annum, plus a 4% premium above that base rate (yielding a total of 27.4% per annum) compounded annually from 1 April 2021 until the date of full and final settlement. Counsel for the applicants submits that the applicants were unjustly deprived of the use of their pension funds upon retirement, while the respondent enjoyed the financial benefit of retaining those funds over the intervening years.
- 34 Conversely, the respondent submits that no interest ought to be awarded. Citing *Standard Bank PLC v. Kalumo and 3 Others*²¹, the respondent contends that the relationship between the parties is purely an employment relationship, not a commercial transaction. The respondent further submits that compounding interest at a rate of 27.4% over a five-year period constitutes an impermissible “boost” designed to artificially inflate the award, contrary to the principles established in *Finca Malawi Ltd*²².
- 35 Before addressing the substantive merits of the interest claim, it is imperative to resolve a threshold procedural requirement regarding the pleading of interest in this Court. In *Lemson Chitawo and Monica Dzanjalimodzi v. MPICO PLC*²³, the Supreme Court of Appeal decisively held that the Industrial Relations Court lacks jurisdiction to grant an award of interest unless the claim for such interest has been specifically, precisely and fully particularized in the original pleadings, pursuant to Rule 11 of the Industrial Relations Court (Procedure) Rules.
- 36 Upon scrutinizing the record in the present matter, I am satisfied that the applicants fully complied with this mandatory procedural stricture. Under relief 6.6 of their Statement of Claim filed on 25 April 2022, the applicants explicitly pleaded and claimed “*interest at the basic commercial bank lending rate of 23.4% plus 4% above the lending rate from 1 April 2021 to date of full payment.*” Consequently, the jurisdictional bar identified in *Lemson Chitawo*²⁴ does not arise in this case.

²¹ (Civil Appeal Case No. 18 of 2024) (HC, PR) [Unreported].

²² Civil Appeal Case Number 13 of 2024 (Being IRC Matter No. 16 of 2019) [Unreported].

²³ MSCA Civil Appeal No. 05 of 2023.

²⁴ MSCA Civil Appeal No. 05 of 2023.

- 37 Regarding the respondent’s argument that interest cannot apply to employment disputes, this proposition must be emphatically rejected. In this Court’s considered view, while an employment relationship is indeed distinct from a commercial transaction, pension benefits represent an earned, vested debt – specifically, *debita in praesenti, solvenda in futuro* (debts existing in the present, to be paid in the future). Here, the respondent unlawfully retained the applicants’ vested pension funds thereby wrongfully depriving them of the time-value of that money during their retirement. Indeed, the authorities of ***Gwembere v. Malawi Railways Limited***²⁵ and ***Madinga v. Nedbank***²⁶ firmly establish that interest is awardable on money that is rightfully due but wrongfully withheld by another party. This principle is further bolstered by the decision in ***Jeremiah Kazunguza v. Malawi Airline Limited***²⁷, where Sikwese J. ordered that interest, based on the prevailing National Bank of Malawi flat lending rate of 29.7%, be paid to the applicant on the sums withheld by the respondent.
- 38 Notwithstanding this entitlement, while the applicants are legitimately entitled to interest on their delayed principal pension funds, I am unable to accede to their prayer for annual compound interest at 27.4% applied indiscriminately across both the pension sums and the damages for unfair labour practices.
- 39 First, damages for unfair labour practices are inherently unliquidated damages, only assessed and quantified by this Court as of the date of this Order. It is a trite principle of law that interest does not attach to unliquidated constitutional damages prior to judgment. To apply interest retroactively to an unliquidated sum that has only just been assessed would result in double compensation and an impermissible windfall for the applicants.
- 40 Second, calculating commercial interest at a compounded rate of 27.4% per annum retroactively over a five-year period would multiply the underlying principal sums exponentially. Such an approach violates the established principles proscribing the arbitrary inflation and “boosting” of compensatory awards.
- 41 In my judgment, the fair and legally sound resolution is to strictly apply interest to the agreed net principal pension sums which constituted liquidated debts due and

²⁵ [1978–80] 9 MLR 369.

²⁶ [2009] MLR 386.

²⁷ IRC Appeal No. 31 of 2022 (Being Matter No. IRC 723 of 2018, Blantyre Registry) [Unreported].

payable as of 1 April 2021. The applicable rate shall be simple, not compound, interest at the commercial bank base lending rate of 23.4% per annum calculated from 1 April 2021 to the date of this Order representing a period of 5.47 years.

42 For the avoidance of doubt, interest shall not attach to the award of damages for unfair labour practices nor shall interest apply to the MK2,000,000.00 advance previously disbursed to the 2nd applicant.

43 For the sake of absolute clarity and precision, the mathematical computation of the awards accruing to each of the seven applicants herein, comprising the net principal pension and simple interest at 23.4% per annum from 1 April 2021 to the date of this Order as well as damages for unfair labour practices, is summarized in the table below:

Applicant Name	Net Principal Pension (MK)	Interest (23.4% p.a.) (MK)	Damages for Unfair Labour Practices (MK)	Total Award Payable (MK)
1. Sandford Whisky Doka	6,088,610.86	7,793,299.73	8,000,000.00	21,881,910.59
2. Dorothy Mpando	3,576,694.37	6,543,715.23	8,000,000.00	18,120,409.60
3. Henry James	2,403,933.00	3,076,986.16	8,000,000.00	13,480,919.16
4. Waiti Mawindo	4,131,351.33	5,288,047.07	8,000,000.00	17,419,398.40
5. Ali Umali	1,138,705.56	1,457,520.34	8,000,000.00	10,596,225.90
6. Christina Namuru	6,058,381.20	7,754,606.77	8,000,000.00	21,812,987.97
7. Laston Jossam	4,937,183.02	6,319,495.52	8,000,000.00	19,256,678.54
TOTALS	28,334,859.34	38,233,670.82	56,000,000.00	122,568,530.16

44 As itemized in the table above, the aggregate award entered in favour of the seven applicants herein totals **MK122,568,530.16**.

45 In the result, I hereby make the following orders:

(a) *The respondent is ordered to pay each of the seven applicants the sum of MK8,000,000.00 as damages for unfair labour practices;*

- (b) *The respondent is ordered to pay simple interest at the commercial bank base lending rate of 23.4% per annum on each applicant's net principal pension balance, calculated from 1 April 2021 to the date of this Order;*
- (c) *The respondent shall disburse the aggregate sum of **MK94,233,670.82** to the applicants within fourteen (14) days from the date of this Order. This sum represents the total award of MK122,568,530.16 less the MK28,334,859.34 gross pension principal which is subject to the specific payment terms of the Consent Order executed by the parties herein on 12th August 2026.*

46 The rationale for bifurcating these payments is twofold. First, as previously stated, the payment of the MK28,334,859.34 is exclusively governed by the terms of the Consent Order. Second, this Court is acutely mindful that the applicants are vulnerable, elderly retirees who exited the service in 2021 and have endured an inordinate delay in receiving their lawful entitlements which have been withheld for over five (5) years.

47 I am a Court of first instance. As such, any party aggrieved by the orders herein, being final in this Court, is at liberty to bring to bear their right of appeal to the High Court within the dictates of section 65 (2) of the Labour Relations Act.

48 It is so ordered.

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



Tamanda Chris Nyimba
ACTING CHAIRPERSON