



THE MALAWI JUDICIARY
IN THE INDUSTRIAL RELATIONS COURT
PRINCIPAL REGISTRY
MATTER NO. IRC 448 OF 2019

In the dispute between:

WILSON SOCHERA.....APPLICANT

-AND-

CASTEL MALAWI BREWERY LIMITED.....RESPONDENT

CORAM: **TAMANDA C. NYIMBA** : Acting Chairperson
 John Suzi-Banda : Counsel for the Applicant
 Caroline Chita : Counsel for the Respondent
 M. Chipembere : Court Clerk

JUDGMENT

1 INTRODUCTION

- 1.1 In this action, the applicant alleges unfair dismissal and unfair labour practices, claims which the respondent vehemently contests. By his Statement of Claim (IRC Form 1), the applicant seeks, among other reliefs, compensation for unfair dismissal and damages for unfair labour practices.
- 1.2 In resisting the suit, the respondent contends that the applicant was lawfully and fairly dismissed for gross negligence and dishonest conduct. The matter proceeded to a full hearing following the failure of the parties to reach a compromise or settle the dispute during the pre-hearing conference stage.
- 1.3 The applicant testified on his own behalf. The respondent called a single witness, Mr. Thomas Mafuli, who serves as its Senior Human Resource Partner.
- 1.4 While a substantial amount of evidence was adduced, it is unnecessary to recount the testimony exhaustively. However, before setting out the salient evidence, it is imperative that I formally record and substantiate this Court's ruling rejecting the respondent's application for an adjournment. That application sought to restore and call a witness whom the respondent had previously elected to withdraw. I

summarily dismissed the application at trial and I now furnish the reasoned ruling affirming that decision.

2 PRELIMINARY RULING ON RESPONDENT'S APPLICATION FOR AN ADJOURNMENT TO RESTORE AND CALL A WITHDRAWN WITNESS

- 2.1 By way of background, at the close of the applicant's case, Counsel for the respondent sought an adjournment, indicating that the respondent's intended witness was unavailable and that necessary exhibits had not been appended to the pertinent witness statement. Evaluating the explanation tendered, this Court found the reasons cogent and accordingly exercised its discretion to grant the adjournment, allowing the respondent the opportunity to put its house in order.
- 2.2 However, when the Court reconvened to hear the respondent's defence, learned Counsel for the respondent raised a preliminary issue before parading its witness. Counsel informed the Court that while the respondent had originally intended to rely on two witnesses, it had subsequently resolved to proceed with only one, as the second witness could not be located. This position had been formally communicated to the applicant. Counsel then disclosed that the respondent had since successfully located the second witness and consequently prayed for a further adjournment to enable this witness to testify virtually on a subsequent date.
- 2.3 Counsel for the applicant vehemently opposed the application, advancing five formidable grounds: first, the inordinate age of the suit which was instituted in March 2019 and has been pending before this Court for over seven years; second, that the respondent had been the primary architect of all previous adjournments; third, that the respondent had previously defaulted on court-ordered filing timelines; fourth, that the respondent had formally communicated its binding election to abandon the second witness upon which the applicant had directly relied to finalize his trial strategy and cross-examination plan; and fifth, that granting an adjournment for virtual testimony mid-stream would severely compound the delays already afflicting these proceedings.
- 2.4 Having weighed the competing submissions, this Court, in its judicious discretion, declined the respondent's prayer for an adjournment to call the second witness virtually, reserving its full reasons to be articulated in this judgment on liability.

- 2.5 In arriving at this decision, the Court found the grounds advanced by learned Counsel for the applicant highly compelling and anchored its ruling on the following reasoning.
- 2.6 Firstly, a core tenet outlined in the preamble to the Labour Relations Act, under which this Court is constituted, is the promotion of orderly and expeditious dispute settlement. It is axiomatic that this Court bears a solemn statutory duty to hear and dispose of labour disputes expeditiously, eschewing unnecessary technical delays. In this particular Registry, case management constraints are acute. The Court is burdened with an immense volume of outstanding disputes. At the same time, judicial time is a finite, scarce public resource that must be guarded with utmost vigilance. As this Court firmly articulated in *Duncan Salimu & 18 Others v. Blantyre Water Board*¹ and reiterated in *Susan Bizwick v. Speedy's Food Industries Limited*², to allow adjournments on flimsy and avoidable grounds, or to pander to a party that repeatedly occasions delay, would render this Court irresponsibly complicit in the wastage of public resources and the compounding of case backlogs.
- 2.7 Secondly, the respondent herein willingly elected to withdraw one of its witnesses. Unquestionably, when a party explicitly chooses on the record to forego calling a particular witness, the opposing party shapes its litigation strategy in direct reliance upon that representation. In my considered view, and given the circumstances of the instant matter, the respondent cannot be permitted to blow hot and cold by reopening a discarded witness list mid-trial after the applicant had already adjusted his strategy. Crucially, the refusal to grant the adjournment occasioned no denial of justice to the respondent. Counsel for the respondent was fully present in court throughout the applicant's trial session and was afforded an exhaustive, unhindered opportunity to rigorously test the probative value of the applicant's case through searching cross-examination.
- 2.8 It was upon these grounds that the respondent's oral application for an adjournment was refused and the trial was ordered to proceed.

3 EVIDENTIAL BACKGROUND

¹ Matter No. IRC 517 of 2017.

² Matter No. IRC 196 of 2020.

- 3.1 The following summary distils the salient evidence adduced by the applicant and the respondent's witness.
- 3.2 The applicant testified that he was employed by the respondent in September 1996 as a messenger, steadily rising through the ranks over twenty-two years of unblemished service to the position of Inventory Controller. At the time of his summary dismissal, he was earning a gross monthly salary of MK341,000.00, a comprehensive medical health allowance, a daily food allowance of MK4,000.00, a monthly beverage allowance of MK23,450.00 and a performance allowance calculated at 25% of his earnings. He was simultaneously serving as the General Secretary of the Castel Malawi Workers' Union.
- 3.3 Elaborating on the operational procedures governing inventory management at the respondent company, the applicant stated that inventory controllers do not possess unilateral authority to alter stock figures in the company's Navision accounting software. He testified that whenever warehouse workers completed a physical count, a count sheet accompanied by an email was submitted to the inventory department for validation. Upon validation, the inventory controller was required to seek written approval via email from his immediate supervisor, Mr. Edward Khonje (Stock Supply Controller). It was only upon receipt of Mr. Khonje's explicit written authorization that an entry could be posted into the system. Crucially, the applicant emphasized that inventory controllers possessed no system rights to backdate postings. In instances where backdating was necessary, the supervisor was required to address an official email request to the IT Department, which would temporarily grant backdating access and immediately revoke it once the specific entry was completed.
- 3.4 The events precipitating this dispute unfolded on 26 November 2018. Upon returning from official leave, the applicant was summoned by Mr. Edward Khonje and informed that an unauthorized positive stock adjustment of 2,147,508 bottles, valued at MK155,824,560.00, had been posted into the Navision system on 3 October 2018. He was instructed to submit an explanatory report immediately. Although denied access to his workstation to inspect the transaction logs, the applicant submitted a preliminary report³. On the very same day, he was served

³ Exhibit WS1.

with a letter of suspension with pay⁴ which alleged dishonest conduct on the premise that he had posted the impugned stock adjustment on 3 October 2018 using his assigned laptop and IP address.

- 3.5 The applicant vehemently denied the charge, testifying that on 3 October 2018, he was entirely absent from the respondent's Blantyre premises having travelled to Mangochi for five days to attend the Annual General Meeting of the union alongside the respondent's Director of Human Resources, Ms. Naomi Chira. During his suspension, the respondent withheld his performance allowances and his formal written grievance addressed to the Human Resources Director⁵ was entirely ignored.
- 3.6 The applicant adduced an email trail⁶ revealing that prior to his return from leave, prior to any preliminary investigation and prior to the release of an internal audit report, Mr. Pierre Bell (an agent of the respondent's management) had issued explicit instructions that the applicant be suspended and subjected to a disciplinary hearing to face termination. Following an internal audit investigation, the applicant received a notice on 2 January 2019 to attend a disciplinary hearing scheduled for 8 January 2019, accompanied by the Internal Audit Report⁷.
- 3.7 The applicant highlighted severe procedural defects in the ensuing disciplinary process. Granted barely three business days to prepare his defence, his request for an extension of time was summarily rejected. At the initial sitting on 8 January 2019, the applicant discovered that the respondent had unilaterally altered the charges. Whereas the suspension letter accused him of posting the transaction on 3 October 2018, the amended charge alleged that on 8 October 2018, he posted the adjustment and backdated it to 3 October 2018. The applicant objected to the presence of the panel chairman, Mr. Manondo Msefula, whom he perceived as harbouring bias given his reputed involvement in the recent dismissal of the Union President and the alleged targeting of trade union leaders. Although the panel agreed to adjourn and replace the chairman, they reneged on this undertaking when the hearing reconvened on 9 January 2019 compelling the applicant to proceed under protest.

⁴ Exhibit WS2.

⁵ Exhibit WS3.

⁶ Exhibit WS4.

⁷ Exhibit WS6.

- 3.8 Throughout the disciplinary sittings, the applicant repeatedly requested critical exculpatory evidence, including CCTV footage covering his office access corridor and biometric log-in records. He explained that company laptops were strictly prohibited from being taken off-site and remained secured in designated offices equipped with biometric doors and 24-hour CCTV surveillance. This electronic trail would have conclusively established his physical presence, or lack thereof, in his office when the posting occurred. The respondent refused to produce these records, citing system outages. Furthermore, the applicant's line manager, Mr. Edward Khonje, refused to appear as a witness, informing the applicant that management had expressly barred him from testifying.
- 3.9 The applicant testified that during the hearing, the IT department representative, Mr. Innocent Kaseko, admitted that he retained administrative rights over backdating and accepted responsibility for failing to revoke those privileges following the closure of the September 2018 accounts. The applicant further testified that on the morning of 8 October 2018, upon arriving at his desk, he found his computer password locked, indicating an incorrect password entry. He immediately reported the anomaly to the IT department. He explained to the Court that IT personnel possessed remote access rights to user accounts and could alter passwords without requiring physical access to workstations.
- 3.10 The applicant contended that he derived absolutely no personal financial or material benefit from an internal stock adjustment involving empty bottles between sister corporate entities. He maintained that the entire disciplinary exercise was a predetermined witch-hunt, orchestrated to purge him from employment on account of his active trade union leadership.
- 3.11 Following his summary dismissal on 11 February 2019, the applicant lodged a prompt internal appeal on 12 February 2019⁸. The respondent convened no appeal hearing, merely rubber-stamping the dismissal decision via written notification⁹.
- 3.12 Under cross-examination, the applicant maintained that while he was familiar with Navision and possessed user credentials, he never performed the impugned transaction, never possessed backdating authority and was never provided management approval for any such posting.

⁸ Exhibit WS9.

⁹ Exhibit WS10.

- 3.13 Re-examination clarified that his workstation could be accessed remotely by IT administrators; that he immediately reported his locked password on 8 October 2018; and that the suppression of CCTV and biometric data deprived him of definitive proof of his innocence.
- 3.14 I now turn to the respondent's evidence, adduced through its Senior Human Resource Partner, Mr. Thomas Mafuli. In his testimony, Mr. Mafuli asserted that the applicant was lawfully and fairly dismissed for gross misconduct, specifically gross negligence and dishonest conduct. He stated that an internal audit established that on 8 October 2018, an unauthorized stock adjustment of 2,147,508 empty bottles worth MK155,824,560.00 was posted into the Navision system and backdated to 3 October 2018 using the applicant's user credentials and assigned workstation. He maintained that the applicant was given adequate notice of the disciplinary hearing, that the panel properly evaluated the evidence and that the dismissal was lawfully upheld on appeal.
- 3.15 However, under cross-examination, Mr. Mafuli's testimony was materially discredited. He conceded that at the time of the applicant's dismissal, he served as Compensation and Employee Benefits Manager and had no personal involvement in the matter. He admitted that he was not involved in initiating the audit, did not participate in drafting the audit report, took no part in framing the disciplinary charges, did not attend the disciplinary hearings and played no role in the appeal review. Strikingly, Mr. Mafuli admitted under oath that he had not even read the Internal Audit Report upon which the respondent relied to dismiss the applicant, conceding that his testimony was based entirely on a review of documents in preparation for trial.
- 3.16 Mr. Mafuli further conceded that the respondent failed to call any of the primary witnesses directly involved in the transaction and disciplinary process, namely, Mr. Edward Khonje (the applicant's immediate supervisor), Mr. Innocent Kaseko (the IT administrator holding system control), the internal auditor who authored the investigation report and Mr. Manondo Msefula (the chairman of the disciplinary panel). While initially asserting that the applicant was provided with all requested evidence, Mr. Mafuli was ultimately forced to admit under searching questioning that the applicant was, in fact, denied both CCTV footage and biometric access records.

3.17 When probed on why these records were withheld, Mr. Mafuli claimed system server outages but subsequently admitted that the respondent maintains a fully functional automated backup server designed to preserve all system data during network failures. He offered no explanation as to why the backup server logs were not retrieved. Furthermore, he acknowledged that the CCTV and biometric systems operate on independent servers, rendering a simultaneous failure highly improbable. He further admitted that Exhibit WS4 corroborated the applicant's assertion that Mr. Pierre Bell had issued instructions for the applicant's suspension and discipline prior to the conclusion of any audit or investigation. Finally, he confirmed that the applicant had served the respondent for 22 years without a single disciplinary infraction and had derived no personal financial benefit whatsoever from the alleged stock adjustment.

3.18 The foregoing constitutes the abridged and relevant evidential background to this dispute.

4 THE PARTIES' ARGUMENTS AND SUBMISSIONS

4.1 I 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 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.

5 ISSUES FOR DETERMINATION

5.1 Having considered the evidential matrix and the submissions of learned Counsel, the core issues for this Court's determination are:

- (a) whether the applicant was unfairly dismissed by the respondent;*
- (b) whether the respondent's conduct amounted to unfair labour practices;
and*
- (c) whether the applicant is entitled to the remedies sought.*

6 THE APPLICABLE LAW

6.1 As this is a civil action, the general burden of proof rests upon the party asserting the affirmative, in this instance, the applicant¹⁰. The applicable standard of proof is on a balance of probabilities. The essence of this standard was elegantly articulated by Denning J in *Miller v. Minister of Pensions*¹¹, where he stated:

“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.”

6.2 Distilling this principle, the law requires the tribunal to be satisfied that the asserting party’s account is more likely true than not. If the scales of probability tip, however slightly, in favour of the applicant’s assertions, the burden is discharged. Conversely, if the scales remain evenly balanced, the claim must fail.

6.3 Furthermore, it is instructive that in employment disputes arising out of dismissal, Parliament enacted a statutory framework that specifically dictates the burden of proof regarding the reason for the dismissal. Section 61(1) of the Employment Act prescribes:

“(1) 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.”

6.4 I shall cite, where relevant, the remainder of the applicable statutory provisions and case law in their appropriate context within the “*Analysis and Disposal*” segment of this judgment.

7 ANALYSIS AND DISPOSAL

7.1 This Court maintains a tradition of not holding parties in what I term “gratuitous suspense” regarding the final determination of a matter once the evidence and applicable law have been evaluated. Accordingly, for the reasons I shall set out hereunder, it is my decision that, on a preponderance of probabilities, the applicant’s action must succeed and his claims be upheld. My reasoning is as follows.

¹⁰*Chipiliro Banda v. Southern Bottlers Ltd* [2012] MLR 53 (HC).

¹¹[1947] 2 All ER 372.

- 7.2 I turn first to the primary issue for determination: *whether the applicant was unfairly dismissed by the respondent*.
- 7.3 As a starting point, I must outline the core legal principles. For the termination of employment to pass the test of fairness, it must satisfy the dual imperatives of both substantive and procedural justice. A failure in either respect is invariably fatal, rendering the dismissal legally indefensible or unfair. Substantive justice pertains to the validity of the reason for dismissal while procedural justice governs the manner in which the dismissal was effected.
- 7.4 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. As previously noted, the burden of proving the validity of the reason for dismissal rests squarely on the employer.
- 7.5 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.
- 7.6 Complementing this framework, section 61(2) of the Employment Act prescribes that, in addition to proving the existence of a valid reason under section 57(1), the employer must demonstrate that in all the circumstances of the case, it acted with justice and equity in dismissing the employee.
- 7.7 In the matter at hand, the respondent dismissed the applicant based on allegations of gross negligence and dishonest conduct arising from an unauthorized physical stock adjustment. Evidently, the dismissal was grounded on conduct. Bearing the nature of this dismissal in mind, the Court must proceed to determine whether the respondent accorded the applicant both procedural and substantive justice.
- 7.8 I shall address the first limb, procedural justice, which interrogates the manner in which the dismissal was executed. Evaluating the testimony extracted from the witnesses, it is manifestly clear that the respondent failed profoundly to accord the applicant procedural fairness.

- 7.9 Foremost, exhibit WS4 constitutes an indelible “smoking gun”, establishing that the disciplinary process was a predetermined sham. On 26 November 2018 (prior to confronting the applicant, prior to initiating an audit investigation and prior to the generation of any audit report) Mr. Pierre Bell issued written management directives instructing that the applicant be suspended and subjected to a disciplinary hearing to face dismissal. To drag an employee through a disciplinary hearing after his fate has already been sealed by executive fiat is to cloak a *fait accompli* with a hollow veneer of institutional regularity. As the Supreme Court of Appeal affirmed in ***Chawani v. Attorney General***¹², section 43 of the Constitution guarantees procedurally fair administrative action which demands transparent, unbiased and objective decision-making. Pre-judging an employee’s guilt offends the very core tenets of natural justice.
- 7.10 Furthermore, the respondent committed grave procedural infractions by providing woefully truncated notice (barely three business days), arbitrarily altering the charges on the day of the hearing from “posting on 3 October” to “backdating on 8 October” without prior notice and refusing the applicant’s legitimate request for the panel chairman’s recusal after reneging on an agreement to replace Mr. Msefula. The right to defend oneself, as enunciated in ***The State vs. Nurses and Midwives Council of Malawi ex parte Rhoda Jamu***¹³ and ***Chakhaza v. Portland Cement Co. Ltd***¹⁴, intrinsically requires reasonable notice, full disclosure of specific allegations and an uncompromised, impartial tribunal.
- 7.11 A particularly fatal flaw in the respondent’s procedural conduct was the active suppression of critical exculpatory evidence. The applicant repeatedly requested CCTV footage covering his office door and biometric log-in records. Because company laptops were secured on-site and accessible only via biometric entry, this electronic trail was pivotal to establishing whether the applicant was physically present when the impugned transaction occurred. The respondent’s convenient excuse of “system server outages” was thoroughly exposed during Mr. Mafuli’s cross-examination. Mr. Mafuli conceded that the respondent maintains an automated backup server system specifically designed to store all data during such outages. The deliberate failure to retrieve and produce these backup records

¹² MSCA Civil Appeal No. 18 of 2000.

¹³ Civil Cause No. 51 of 2009.

¹⁴ [2008] MLR 118.

triggers the long-established evidentiary doctrine rooted in *Armory v. Delamirie*¹⁵. Under this doctrine, where a party deliberately fails to produce material evidence in its custody, the Court must draw an adverse inference that the withheld evidence would have exonerated the opposing party.

7.12 Compounding this evidentiary failure, the respondent elected not to call a single primary witness to testify, either before the disciplinary panel or before this Court. The respondent called neither Mr. Edward Khonje (the applicant's supervisor), nor Mr. Innocent Kaseko (the IT officer holding backdating rights), nor the internal auditor, nor the disciplinary panel chairman. Instead, the respondent paraded Mr. Mafuli, who admitted to playing no role whatsoever in the investigation or disciplinary process and who astonishingly conceded under oath that he had not even read the audit report. Mr. Mafuli's testimony was hopelessly hearsay. Under the settled jurisprudence of *Mpungulira Trading Ltd v. Marketing Services Division*¹⁶ and *Maonga v. Blantyre Print & Packaging Co. Ltd*¹⁷, the deliberate failure to call material witnesses compels this Court to draw the adverse inference that their evidence would have contradicted the respondent's case and vindicated the applicant.

7.13 Finally, the respondent's internal appeal process was a complete farce. By rubber-stamping the dismissal without an oral hearing or an independent review, the respondent breached Rule 8.2.2 of its own Disciplinary Code and violated the principles of administrative fairness articulated in *Khoswe v. National Bank of Malawi*¹⁸. By depriving the applicant of exculpatory records, material witnesses and an unbiased tribunal, the respondent comprehensively failed to extend procedural justice. I therefore find, without hesitation, that the applicant was unfairly dismissed on procedural grounds.

7.14 I now address the second limb, to wit, substantive justice, which concerns the validity of the reason for dismissal. In determining whether an employer's reason for dismissal is fair and valid, the Court must examine the cited misconduct against the facts known at the time to ascertain if the termination was legally justified. If

¹⁵ (1722) 1 Str 505 (approved in *Gulati v. MHN Ltd* [2015] EWHC 1482 (Ch))

¹⁶ [1993] 16(1) MLR 346.

¹⁷ [1993] 16(2) MLR 760.

¹⁸ [2008] MLLR 201.

the reason is unsupported by cogent evidence, the Court is bound to conclude that the dismissal lacked justification¹⁹.

- 7.15 The respondent asserts that the applicant was summarily dismissed for gross misconduct pursuant to section 59(1)(a) of the Employment Act alleging that he posted an unauthorized, backdated stock adjustment. The pertinent question is whether this allegation is sufficiently corroborated by evidence to enable this Court to conclude that the dismissal was justified.
- 7.16 The evidence reveals that the respondent's charge collapses entirely under the weight of factual scrutiny. The applicant possessed an airtight *alibi* for 3 October 2018, having been in Mangochi at a function attended by the respondent's own HR Director. When the respondent subsequently shifted its charge to allege that the backdating occurred on 8 October 2018, it failed to produce a single shred of evidence establishing that the applicant executed the command. On the contrary, the IT representative, Mr. Innocent Kaseko, admitted during the internal hearing that he held system administrative rights over backdating and had omitted to revoke those privileges. Moreover, the applicant established that on the morning of 8 October 2018, his computer password was locked following an unauthorized modification while he was away from the office. It must be recalled that such a password change could only be executed by IT personnel possessing administrative rights.
- 7.17 Crucially, witnesses for both parties agreed that an internal stock adjustment of empty bottles between sister corporate entities could not yield any personal financial benefit or material gain to the applicant or to any individual officer. In this Court's considered opinion, where evidence as to who executed an irregular transaction is conflicting or speculative and where no improper motive or personal benefit exists, an employer cannot discharge its statutory burden under section 57(1) of the Employment Act. Dismissing an employee on the basis of unproven assumptions and hearsay falls drastically short of establishing a valid reason. This Court accordingly finds that the respondent lacked a valid reason to dismiss the applicant and, thus, the requirements of substantive justice were not satisfied.

¹⁹ *Mahowe v. Malawi Housing Corporation* Civil Cause No. 3687 of 2000 (HC) [Unreported].

- 7.18 Furthermore, under section 61(2) of the Employment Act, an employer is required to show that in all the circumstances of the case, it acted with justice and equity. As the Supreme Court of Appeal held in *Sugar Corporation of Malawi v. Ron Manda*²⁰ and *Shoprite Trading Ltd v. Jokings Cement*²¹, section 61(2) imports equitable principles designed to prevent an employer from summarily discarding a long-serving employee with an unblemished record over an unproven or technical anomaly. The applicant dedicated 22 years of exemplary and faithful service to the respondent without a single disciplinary blemish. To summarily dismiss such a dedicated officer without notice or leniency over an unproven stock reconciliation anomaly is completely bereft of justice and equity. As was famously observed in *Ron Manda*, an employer must not use a sledgehammer to kill a mosquito.
- 7.19 All things considered, in terminating the applicant's contract of employment, the respondent comprehensively failed to treat him with justice and equity, contrary to the dictates of Section 61(2) of the Employment Act. Collectively, the sum of the foregoing considerations fortifies this Court's determination that the respondent unfairly dismissed the applicant.
- 7.20 I now shift my attention to the applicant's claim for damages for unfair labour practices.
- 7.21 Section 31(1) of the Constitution of the Republic of Malawi guarantees every employee the right to fair labour practices. The evidence before this Court demonstrates that the respondent engaged in a pattern of oppressive conduct specifically targeting the applicant due to his leadership role as the Union General Secretary. Predetermining his dismissal before an investigation had concluded, withholding his contractually entitled performance allowances during his suspension despite formal written complaints, actively suppressing exculpatory CCTV and biometric records, arbitrarily altering disciplinary charges without notice and subjecting him to a rubber-stamped appeal process cannot, in all fairness, be described as conduct that is 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 relations²². The respondent's conduct manifestly crosses the

²⁰ MSCA Civil Appeal No. 07 of 2007.

²¹ Civil Appeal No. 20 of 2012.

²² *Kalinda v Limbe Leaf tobacco Ltd* Civil Cause No. 542 of 1995 [Unreported].

threshold into unfair labour practices in contravention of section 31(1) of the Constitution. I so hold.

7.22 Finally, regarding the claim for costs, the applicant advanced no legal or factual grounds to compel this Court to award him the costs of the action. For what it is worth, had he done so in the manner successfully argued by the applicants in *Daud Elvin Suleman v MACRA*²³ and *Hatchson Rusk Mkwapatira & 15 Others v MACRA*²⁴, this Court would have readily granted costs.

8 CONCLUSION

8.1 In light of the totality of the evidence, the applicable statutory provisions and binding jurisprudence, the applicant's action carries the day. Judgment is hereby entered in favour of the applicant and against the respondent. Having established that the termination of his employment was both procedurally and substantively unfair and that the respondent committed unfair labour practices, the applicant is declared entitled to all the reliefs prayed for, save for costs, as earlier explained.

8.2 Regarding the computation of remedies, I note that neither party addressed the Court during the trial on the specific quantum of the reliefs sought. While it is often expeditious to deal with liability and assessment in an omnibus fashion, the parties were not heard on the precise reckoning of the awards. Given that the right to be heard is an indispensable tenet of our justice system, the parties would be unduly prejudiced were I to proceed to assess quantum without affording them the opportunity to adduce evidence and make targeted submissions. Accordingly, I defer the assessment of the reliefs and issue the following directives:

- (a) *The parties are at liberty to reach an amicable agreement on the quantum of the reliefs within fourteen (14) days from the date hereof;*
- (b) *Failing such agreement, this Court shall convene a remedy hearing to quantify the reliefs on a date and at a time to be fixed, following the filing of requisite assessment papers by both parties and a notice of hearing by the applicant.*

²³ Matter No. IRC 152 of 2026.

²⁴ Matter No. IRC 274 of 2026.

8.3 The determination of the liability question concludes the first phase of the applicant's action. Guided by the authority of *JTI Leaf (Malawi) Limited v. Kad Kapachika*²⁵, this decision on liability 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 upon the parties reaching a settlement on the same as directed. For the avoidance of doubt, while the statutory right of appeal subsists under Section 65(2) of the Labour Relations Act, its exercise is hereby stayed pending the final conclusion of the assessment proceedings or the parties' mutual agreement on quantum.

8.4 It is so ordered.

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



Tamanda Chris Nyimba
ACTING CHAIRPERSON

²⁵ MSCA Civil Appeal No. 52 of 2016 [unreported].