



THE MALAWI JUDICIARY
IN THE INDUSTRIAL RELATIONS COURT
PRINCIPAL REGISTRY
MATTER NO. IRC 643 OF 2018

In the dispute between:

WITHANAGE RUWANSIRI WEERASINGHE.....APPLICANT

-AND-

POLYPACK LIMITED.....RESPONDENT

CORAM: **TAMANDA C. NYIMBA** : Acting Chairperson
 J. Banda : Counsel for the Applicant
 M. Msuku : Counsel for the Respondent
 Mike Chipembere : Court Clerk

JUDGMENT

1 INTRODUCTION

1.1 This judgment resolves the claim brought by the applicant against the respondent for the recovery of terminal benefits, specifically severance allowance and gratuity. The respondent disputes liability in its entirety, save for a limited concession that the applicant is entitled to statutory gratuity confined to a specific portion of his tenure with the respondent company.

1.2 The matter proceeded to a full hearing following the parties' inability to reach a settlement or otherwise find common ground during the pre-hearing conference stage.

2 THE EVIDENTIAL BACKGROUND

2.1 At the hearing, the applicant testified on his own behalf. The respondent called its Managing Director, Mr. Vijay Kumar, as its sole witness.

2.2 While extensive evidence was adduced during the proceedings, it is unnecessary to reproduce the testimony in its entirety. The following summary distills the salient

factual matrices elicited from the witnesses during examination-in-chief, cross-examination and re-examination.

- 2.3 The applicant testified that he was engaged by the respondent (which he referred to as the “Polypack Group of Companies”) on 1 December 2000 in the capacity of Production Manager. He averred that this engagement was founded upon a renewable two-year contract, which was successively renewed on identical terms, save for periodic salary adjustments, until his ultimate resignation in 2018. His final contract was stipulated to run from 1 February 2017 to 31 January 2019.
- 2.4 The applicant stated that throughout his tenure under the umbrella of the “Polypack Group of Companies,” he served in various capacities. Initially, he served as Production Manager at Crown Fashions from 2001 to 2009. From 2010 to 2015, he claimed to have been transferred to Polypack to serve as a Maintenance Engineer. In 2017, he was purportedly transferred once more, this time to the Polypack Container Division. Although his final contract designated him as Factory Manager for a term of two years, he ultimately served only 13 months before tendering his resignation, a premature departure he attributed to alleged ill-treatment by the employer.
- 2.5 The applicant further testified that he discharged his duties without grievance for fifteen years until 2016, at which juncture he alleged the respondent began subjecting him to harsh treatment, prominently including the withholding of his remuneration. He stated that in March 2018, upon receiving news of his father’s grave illness in Sri Lanka, he requested the respondent to release a portion of his outstanding salary, an entreaty that elicited no response. He subsequently authored emails¹ demanding his unpaid wages and intimating that he would resign upon receipt of the said payment. He formally resigned on 31 May 2018. According to the applicant, immediately following his resignation, the respondent remitted 18 months’ salary in arrears.
- 2.6 Under cross-examination, the applicant made several material concessions. He confirmed that his initial contract of 1 December 2000² was executed between himself and Crown Fashions Limited, a distinct and separate corporate entity, and not with Polypack Limited, the respondent in these proceedings. He further

¹ Exhibit **WRW3**.

² Exhibit **WR1**.

conceded that the 2017 contract³ was entered into directly with the respondent in February 2017 and contained terms that were materially distinct from those of the 2000 contract with Crown Fashions Limited. These variations included a new designation (Factory Manager) and the introduction of several supplementary benefits, namely, transport (clause 6), medical (clause 7), education allowance (clause 9) and insurance (clause 11), all of which were conspicuously absent from the 2000 contract.

- 2.7 He further confirmed that while his contract with Crown Fashions Limited contained a renewal clause, his contract with the respondent contained no such provision. Notably, the applicant conceded that although he claimed to have worked without pay for 18 months, and was purportedly paid 18 months' salary arrears upon resigning on 31 May 2018, his contractual tenure with the respondent spanned only 16 months (from 1 February 2017 to 31 May 2018). He was unable to reconcile how his period of service with the respondent could yield an 18-month arrearage when the operative contract had subsisted for a mere 16 months.
- 2.8 Finally, he conceded that throughout his 16-month tenure with the respondent, he lodged no formal written grievance regarding the withholding of his remuneration. The issue was formally ventilated for the first time in May 2018, the very month he tendered his resignation. He further admitted that his resignation was precipitated by personal exigencies, specifically, the distressing news received in March 2018 regarding his father's grave illness which necessitated his immediate return to Sri Lanka.
- 2.9 Turning to the respondent's case, its Managing Director, Mr. Vijay Kumar, testified that the applicant was initially employed by Crown Fashions Limited from 2001 to 2009 at a monthly salary of K67,290.00 and subsequently by the Crown Group of Companies from 2010 to 2015 at an identical salary. He categorically maintained that the applicant was engaged by the respondent solely in the capacity of Factory Manager, commencing on 1 February 2017 at a monthly salary of K440,866.56. To substantiate the delineation between these distinct periods of employment, Mr. Kumar tendered the applicant's pay slip⁴ for February 2018 and

³ Exhibit **WRW2**.

⁴ Exhibit marked **VJ1**.

relied upon the fixed-term contract, already exhibited by the applicant, which governed the period from 1 February 2017 to 31 January 2019.

- 2.10 Mr. Kumar further testified that the applicant resigned voluntarily on 31 May 2018 without any coercion or conduct attributable to the respondent that could be construed as prompting the departure. He submitted that the respondent is a separate and distinct corporate entity from both Crown Fashions Limited and the Crown Group of Companies and therefore cannot be held vicariously or directly liable for contracts executed between the applicant and those independent entities. Finally, he affirmed that the respondent was, and remains, ready and willing to remit the applicant's statutory gratuity based strictly on his actual 16 months of service with the respondent (from 1 February 2017 to 31 May 2018) calculated against his final monthly salary of K440,866.56.
- 2.11 Under cross-examination, Mr. Kumar confirmed that the applicant was paid his outstanding salary arrears upon resignation. However, he steadfastly maintained that the respondent shared no privity of contract or corporate nexus with Crown Fashions Limited or any of the applicant's prior employers.
- 2.12 This concludes the summary of the evidential matrix pertinent to the applicant's claims and the reliefs sought before this Court.

3 THE PARTIES' ARGUMENTS AND SUBMISSIONS

- 3.1 In his closing submissions, the applicant prayed for the payment of a severance allowance and gratuity spanning his entire purported service period from 2001 to 2018. He advanced the argument that, as an expatriate, he was exempt from the statutory pension scheme pursuant to the Pension (Salary Threshold and Exemptions) Order, 2011. Notably, while the applicant's submissions heavily canvassed allegations of constructive dismissal and unfair labour practices, these causes of action were entirely absent from his pleaded originating process.
- 3.2 In response, the respondent's closing submissions raised a fundamental threshold objection concerning the primacy of pleadings. The respondent contended that, as delineated in paragraph 6 of the applicant's IRC Form 1, the action was strictly circumscribed to two heads of relief: gratuity and severance allowance. Relying on the binding Supreme Court of Appeal authorities of *Malawi Telecommunications*

*Limited v. SR Nicholas Limited*⁵, *Nseula v. Attorney-General and another*⁶ and *Banja la Mtsogolo v. Harriet Chiomba*⁷, the respondent submitted that this Court is strictly bound by the pleadings and is, therefore, precluded from adjudicating upon or granting remedies for unpleaded claims such as constructive or unfair dismissal.

3.3 Turning to the substantive claims, the respondent submitted that the applicant was employed solely by Polypack Limited, the respondent herein, from 1 February 2017 to 31 May 2018. The respondent argued that the bedrock doctrines of separate corporate personality⁸ and privity of contract⁹ operate as absolute bars against importing liability from the applicant's prior employment with distinct legal entities. Regarding the severance allowance, the respondent contended that under section 35(1) of the Employment Act, severance is exclusively payable in instances of redundancy, retrenchment, operational requirements or unfair dismissal. Consequently, it was argued that an employee who resigns voluntarily, and who has not properly pleaded a claim for unfair dismissal, is statutorily precluded from claiming severance pay. Regarding gratuity, the respondent maintained its concession of liability, strictly limited to the actual 16-month period of the applicant's documented employment with Polypack Limited.

3.4 I am indebted to Counsel for the respective parties for their comprehensive and well-researched submissions which have greatly assisted the Court in synthesizing the issues at hand. For the avoidance of doubt, in arriving at my findings, I have carefully considered all arguments advanced by Counsel, even where express reference to a specific submission is not made in the body of this judgment.

4 ISSUES FOR DETERMINATION

4.1 At the commencement of the trial, the Court sought confirmation from the parties regarding the precise scope of the dispute as captured in the pre-hearing conference minutes. The parties mutually confirmed that the Court is called upon solely to determine whether the applicant is entitled to the terminal benefits of gratuity and severance allowance. As previously noted, a claim for unfair dismissal was not

⁵ [2014] MLR 218 (SCA).

⁶ [1999] MLR 313 (SCA).

⁷ MSCA Civil Appeal No. 33 of 2008.

⁸ *Salomon v. A. Salomon & Co. Ltd* [1897] AC 22; *Yanu-Yanu Company Limited v. Mbewe* ([1981-83] 10 MLR 377); *SC Yiannakis Ltd v. Tione Enterprises & Another* [1993] 16 (2) MLR 782.

⁹ *National Finance Company Limited vs. Royal Company Limited* (Civil Cause Number 2170 of 2001).

pleaded in the applicant's originating process and therefore falls strictly outside the scope of this inquiry. Accordingly, the specific issues that fall for determination before this Court are:

- *Whether the applicant's lawful period of employment with the respondent extends retroactively to 2001 under separate prior corporate entities or whether it is strictly limited to his contract with the respondent from 1 February 2017 to 31 May 2018; and*
- *Whether the applicant is entitled to the terminal benefits of severance allowance and gratuity, and if so, for what period and at what rate.*

5 THE APPLICABLE LAW

5.1 Given the posture of this matter, it is apposite to underscore the fundamental role of pleadings and the corresponding limitations they impose upon the scope of judicial inquiry. It is a bedrock principle of our adversarial judicial system that parties are strictly bound by their pleadings. Pleadings define the parameters of the dispute, provide the opposing party with fair notice of the case they are expected to meet and circumscribe the issues exclusively reserved for the Court's determination.

5.2 In *Malawi Telecommunications Limited v. SR Nicholas Limited*¹⁰, the Supreme Court of Appeal instructively summarized the function of pleadings as follows: to inform the opposing side of the nature of the case they have to meet; to prevent the opposing party from being taken by surprise; to enable the other side to know what evidence to prepare; to limit the generality of claims; to define the issues to be tried; and to tie the hands of the parties so that they cannot venture into unpleaded matters without the leave of the court. Reinforcing this position in *Nseula v. Attorney-General and another*¹¹ at 322, the Supreme Court emphatically stressed:

"In our judicial system, it is the parties themselves who set out the issues for determination by the court..."

¹⁰ n.5 above.

¹¹ n.6 above.

- 5.3 Summarizing the law with clarity, the Court held in ***Dudha v. North End Motors***¹² at 430:

“The court cannot give judgment upon matters that are not pleaded.”

- 5.4 This principle applies with equal force to employment matters before the Industrial Relations Court. In ***Banja la Mtsogolo v. Harriet Chiomba***¹³, where the Industrial Relations Court had granted a remedy not prayed for in the pleadings, the Supreme Court of Appeal reversed the award, stating:

“We are unable to believe that granting an effective remedy is to give a litigant a remedy which has not been requested. The requests of litigants are contained in their pleadings.”

- 5.5 As regards the standard of proof in civil litigation, the burden is discharged on a balance of probabilities. The essence of the “balance of probabilities” is best exemplified by interrogating the dividing line between success and failure under this standard. In ***Miller v. Minister of Pensions***¹⁴, Denning J instructively observed:

“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.”

- 5.6 To express this principle in conceptual terms, if a tribunal concludes that the evidentiary scales are in perfect equipoise, that is, the probability of the applicant’s version being true stands at exactly fifty percent, the applicant’s case must fail. Conversely, if the evidentiary weight tips the scales, however slightly, beyond that equilibrium to render the applicant’s account more probable than not, the burden is successfully discharged.

- 5.7 Concerning severance allowance, section 35(1) of the Employment Act governs the entitlement, providing as follows:

¹² [1984–1986] 11 MLR 425 (also cited as 11 A.L.R. Mal 425).

¹³ n.7 above.

¹⁴ [1947] 2 All ER 372.

“(1) On the termination of a contract as a result of redundancy or retrenchment, or due to economic difficulties, or technical, structural or operational requirements of the employer, or on the unfair dismissal of an employee by the employer, and not in any other circumstances, an employee shall be entitled to be paid by the employer, at the time of termination, a severance allowance to be calculated in accordance with Part I of the First Schedule.”

- 5.8 Regarding gratuity, the entitlement is governed by section 35A(1) of the Employment Act, which states:

“(1) Where, pursuant to the Pension Act, an employer has been exempted from providing pension benefits to employees, the employer shall, on the retirement, termination of employment or death of an employee, pay the employee gratuity in accordance with Part II of the First Schedule.”

- 5.9 Under Order 4 of the Pension (Salary Threshold and Exemptions) Order, 2011 (saved by section 149 of the Pension Act), expatriate employees are exempted from contributing to national pension schemes and are instead entitled to statutory gratuity upon the termination of their employment.

- 5.10 I undertake to cite, where relevant, the remainder of the applicable statutory and case law in the appropriate context within the “*Analysis and Disposal*” segment of this judgment.

6 ANALYSIS AND DISPOSAL

- 6.1 It is a salutary practice of this Court to relieve the parties of protracted suspense regarding the ultimate disposition of their dispute. Accordingly, for the reasons set out below, I find on a balance of probabilities that the applicant’s claim for severance allowance is devoid of legal merit and must be dismissed. Conversely, the claim for statutory gratuity is upheld, albeit strictly confined to the 16-month period of service actually rendered to the respondent. My reasoning is as follows:

- *Whether the applicant’s lawful period of employment with the respondent extends retroactively to 2001 under separate prior corporate entities or*

whether it is strictly limited to his contract with the respondent from 1 February 2017 to 31 May 2018;

- 6.2 The applicant contends that he was employed by the respondent in 2001 and that his contract was continuously renewed until his resignation in 2018. However, a meticulous evaluation of the evidence reveals that this assertion is both factually unfounded and legally untenable.
- 6.3 First, it is a well-settled canon of construction that a document speaks for itself. To ascertain the meaning and effect of a written instrument, the Court must look to the clear and unambiguous language contained therein¹⁵. In the present matter, the contract of 1 December 2000¹⁶ was entered into between the applicant and Crown Fashions Limited, a specific, registered corporate entity. Contrastingly, the contract of 1 February 2017¹⁷ was executed between the applicant and the respondent, Polypack Limited, an entirely separate corporate entity. The 2017 contract contains distinct terms, responsibilities and benefits (such as educational, transport and insurance allowances) that did not exist in the 2000 contract unequivocally confirming that the latter contract is a completely independent agreement rather than a mere renewal or continuation of the former.
- 6.4 Second, the doctrine of separate corporate personality dictates that upon incorporation, a company becomes an independent legal entity, distinct from its subscribers, shareholders or affiliated companies. As famously enunciated in *Salomon v. A. Salomon & Co. Ltd*¹⁸, a company is at law a different person altogether. This principle is deeply entrenched in our jurisprudence, as evidenced by the authorities of *Yanu-Yanu Company Limited v. Mbewe*¹⁹ and *SC Yiannakis Ltd v. Tione Enterprises & Another*²⁰. The ineluctable fact is that Polypack Limited, the respondent herein, is a separate registered company from Crown Fashions Limited. The applicant has entirely failed to lead any evidence demonstrating how the respondent could legally assume the liabilities of a prior, separately incorporated entity.

¹⁵ *K.S. Kamwendo v. Bata Shoe Company Malawi Limited* Civil Cause Number 2380 of 2003. See also *Zeyaur Rahman Hashni v. DHL Express* Civil Cause No. 423 of 2005. In fact, the *K.S. Kamwendo* case concerned an employment dispute.

¹⁶ Exhibit WR1.

¹⁷ Exhibit WRW2.

¹⁸ [1897] AC 22.

¹⁹ [1981-83] 10 MLR 377.

²⁰ [1993] 16 (2) MLR 782.

6.5 Third, the doctrine of privity of contract establishes that a contract cannot confer rights or impose obligations upon any person who is not a party to it²¹. The respondent, being a complete stranger to the 2000 contract executed between the applicant and Crown Fashions Limited, cannot incur obligations thereunder. Consequently, the applicant's cognizable period of employment with the respondent is strictly delimited to the duration of the contract executed on 1 February 2017, which terminated upon his voluntary resignation on 31 May 2018, representing a cumulative period of sixteen (16) months. I so find.

- *Whether the applicant is entitled to the terminal benefits of severance allowance and gratuity, and if so, for what period and at what rate.*

6.6 Having definitively established the applicant's period of service with the respondent, I now turn to the two specific terminal benefits claimed in the pleadings.

6.7 Regarding severance allowance, section 35(1) of the Employment Act explicitly restricts the entitlement to circumstances of redundancy, retrenchment, economic difficulties, technical, structural or operational requirements of the employer or unfair dismissal "and not in any other circumstance". As ruled earlier, under the strictures of the law on pleadings, unfair dismissal was not pleaded by the applicant in his IRC Form 1. Furthermore, the uncontroverted evidence establishes that the applicant resigned voluntarily on 31 May 2018. Where an employee resigns voluntarily and unfair dismissal is neither pleaded nor proven, the mandatory statutory preconditions set out in section 35(1) remain unmet. The statute is clear and unequivocal that severance allowance shall not be payable "in any other circumstance." Consequently, the claim for severance allowance fails and is dismissed in its entirety.

6.8 Regarding gratuity, section 35A(1) of the Employment Act provides that where an employer has been exempted from providing pension benefits to employees under the Pension Act, the employer shall, upon termination of employment, pay the employee gratuity. Expatriate employees are explicitly exempted from pension scheme contributions under Order 4 of the Pension (Salary Threshold and

²¹ *National Finance Company Limited vs. Royal Company Limited* Civil Cause Number 2170 of 2001.

Exemptions) Order, 2011²². It is common cause that the applicant, acting as an expatriate, is entitled to statutory gratuity. Indeed, the respondent has expressly conceded this entitlement and declared its readiness to disburse the applicant's gratuity provided it is calculated upon his correct period of service with the respondent and his correct final salary.

- 6.9 Having found that the applicant's period of employment with the respondent herein subsisted strictly from 1 February 2017 to 31 May 2018 (comprising 16 months) at a monthly salary of K440,866.56, his entitlement to gratuity is strictly circumscribed to this 16-month period. Mathematically, this translates to the sum of **K352,693.25**²³. Any claims for gratuity dating back to 2001 under corporate entities distinct from the respondent herein are entirely without merit and stand dismissed.

7 CONCLUSION

- 7.1 Based on the factual matrices conscientiously found and the legal principles elucidated above, this Court concludes that the applicant's claim for severance allowance must fail. It is accordingly dismissed, as unfair dismissal was not pleaded and the mandatory statutory preconditions stipulated under section 35(1) of the Employment Act have not been satisfied.
- 7.2 The respondent is, however, ordered to pay the applicant's statutory gratuity calculated strictly for the 16-month period of employment with the respondent (from 1 February 2017 to 31 May 2018) based on his final monthly salary of K440,866.56. This monetarily translates to the sum of **K352,693.25**. I hereby order the respondent to remit the said award no later than seven (7) days from the date of this judgment.
- 7.3 This being a Court of first instance, any party aggrieved by the final outcome of this matter may exercise their right of appeal to the High Court, in accordance with the dictates of section 65(2) of the Labour Relations Act.
- 7.4 It is so ordered.

²²It must be pointed out that the Pension (Salary Threshold and Exemptions) Order, 2011 was revoked by the Pension (Exemptions) Order, 2025 made on 15th day of April, 2025. Nevertheless, the former legal regime was applicable during the period of the events which engendered the applicant's cause of action herein.

²³ 5% x K440,866.56 x 16 months = **K352,693.25**.

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



Tamanda Chris Nyimba
ACTING CHAIRPERSON