REPUBLIC OF MALAWI

IN THE INDUSTRIAL RELATIONS COURT

ZOMBA REGISTRY

IRC MATTER NUMBER ZA 166 OF 2025

BETWEEN

ALLAN KASONGO.....APPLICANT

AND

FIRST CAPITAL BANK…….....RESPONDENT

CORAM:

HON. PETER M.E. KANDULU, DEPUTY CHAIRPERSON

Ismael Allan, Counsel for the Applicant

Given Phiri, Counsel for the Respondent

Mr Patrick Banda: Court Clerk

JUDGMENT AND ORDER

Introduction

The Applicant, Mr. Allan Kasongo, commenced this action against his former employer, First Capital Bank plc (the Respondent), challenging the termination of his employment by way of summary dismissal on 4th November 2020.

By his Statement of Claim (IRC Form 1), the Applicant claims the following reliefs against the Respondent:

1. Damages for unfair dismissal
2. Damages for unfair labour practice
3. Payment of notice pay
4. Payment of normal overtime (to be assessed)
5. Payment for unpaid accrued annual leave
6. Payment for public holiday overtime
7. Pension benefits or, in the alternative, gratuity (to be assessed)
8. Severance allowance (to be assessed)
9. Compound interest on pension benefits or gratuity at 5% above the ruling bank lending rate from 4th November 2020 to date of payment
10. Compensation for breach of employment contract
11. Any other order or relief the Court deems just and equitable

The Respondent filed its Answer (IRC Form 2), denying having dismissed the Applicant unfairly, and asserting that the dismissal was both substantively and procedurally justified under the Employment Act (Cap. 55:02) following acts of gross negligence, dishonesty, and fraud.

Synopsis Of Evidence

The Applicant's Case

The Applicant testified as the sole witness (CW1). He was employed by the Respondent in December 2014 as a Bank Teller (Customer Consultant) under an unwritten/unspecified duration contract, receiving a final monthly basic salary of MK275,000.00.

He alleged that on or about 7th January 2020, he processed a Southern Region Water Board (SRWB) transaction for customer Mr. C. Nyalugwe (Account No. ZZA09799). The Respondent accused him of collecting MK12,000.00 but posting only MK1,200.00 into the system.

The Applicant asserted that any discrepancy was a clerical error. However, upon checking the bank and SRWB systems, he claimed no transaction existed for that date. He admitted depositing MK10,800.00 into the SRWB account on 3rd October 2020, but stated he did so solely upon verbal instructions from his supervisor, Mr. Gomezgani Saka (RW1), to quell customer pressure.

He was summoned to a disciplinary hearing on 19th October 2020. He contended that the hearing was adjourned and never concluded because the complainant (Nyalugwe) and his supervisor (Saka) were absent, and the Respondent lacked original receipts. He was served with a dismissal letter dated 4th November 2020 (Exhibit AK3) while awaiting a continuation date. He appealed, but maintained his appeal was never heard.

Under cross-examination, CW1 admitted that:

1. He was fully trained in cashiering and cash-handling procedures.
2. He made the MK10,800.00 deposit without written authorization, without completing internal correction forms, and without notifying Operations.
3. He did not mention supervisor Saka's alleged verbal instruction in his written response to the Show Cause letter.
4. His assertion that his appeal was "not heard" meant that the appeal was unsuccessful, conceding he had received the written outcome of his appeal.
5. He did not submit any overtime authorization forms or written logs to support his overtime claim.

The Respondent's Case

The Respondent paraded four (4) witnesses:

RW1 (**Gomezgani Saka** - Branch Sales & Service Manager, Zomba): Testified that on 2nd October 2020, customer C. Nyalugwe presented a receipt for MK12,000.00, but system checks showed only MK1,200.00 had been posted by the Applicant on 7th January 2020. He categorically denied ever instructing or authorizing the Applicant to deposit MK10,800.00 to cover the shortfall. He stated the deposit was an unauthorized, retrospective act by the Applicant after being caught.

RW2 (**Vincent Veruwa** - IT Manager): Tendered system electronic audit trails (Exhibits VV1 & VV2). He confirmed that system records show the Applicant posted MK1,200.00 on 7th January 2020 and that a separate posting of MK10,800.00 was made on 3rd October 2020. He explained that bank postings log immediately in internal bank systems even if external utility reconciliations sync later.

RW3 (**Evans Chitsanthi** - Disciplinary Panel Member): Testified that the disciplinary hearing on 19th October 2020 was fully concluded after the Applicant was given ample opportunity to present his defense. He stated that internal deliberative consultations with IT did not constitute an adjournment of the hearing itself.

RW4 (**Davie Botie** - Group Head of HR Technology, Data & Operations): Confirmed the administrative chain: Show Cause letter dated 6th October 2020, Applicant's response on 8th October 2020, Hearing Notice on 14th October 2020, Summary Dismissal on 4th November 2020, and Appeal rejection issued by the CEO.

Issues for Determination

1. Whether the Respondent had a valid and fair reason to summarily dismiss the Applicant (Substantive Fairness).
2. Whether the Applicant was afforded a fair opportunity to defend himself in compliance with rules of natural justice and statutory procedure (Procedural Fairness).
3. Whether the Applicant is entitled to the reliefs and monetary remedies claimed.

Applicable Legal Principles

Statutory Provisions

Under Section 57(1) of the Employment Act (Cap. 55:02), an employer is prohibited from terminating an employee's services unless there is a valid reason connected with the capacity or conduct of the employee, or operational requirements.

Under Section 57(2), an employee must be provided an opportunity to defend himself against allegations before termination occurs.

Under Section 61(1) & (2), the statutory burden of proof rests squarely on the employer to prove the reason for dismissal on a balance of probabilities and to show that in all circumstances it acted with justice and equity (***Katawa v Warpack (Private) Ltd***, IRC 284 of 2002).

Judicial Precedents & Standards

Substantive Standard

An employer is not required to establish criminal guilt beyond reasonable doubt; it suffices to demonstrate a genuine, reasonable belief founded on compelling evidence at the time of dismissal (***Kachingwe v Shire Bus Lines,*** IRC 18 of 2000; ***Mahowe v Malawi Housing Corporation***, Civil Cause 3687 of 2000).

Adverse Inferences

Failure to call an available material witness whose evidence is central to a dispute may entitle the court to draw an adverse inference that their testimony would have contradicted the party's case (***Maonga & Ors v Blantyre Print & Publishing Co. Ltd*** (1991) 14 MLR 240; ***NBS Bank Ltd v BP Malawi Ltd,*** Comm. Case 12 of 2007).

Procedural Requirements

Procedural fairness does not require a rigid, court-like trial, but demands aggregate fairness: advance notice of specific charges, access to adverse materials, and a genuine opportunity to respond (***Lameck Moyo v National Bank of Malawi***, MSCA Civil Appeal 19 of 2009; ***Banda v UNITRANS (Mw) Ltd***, IRC 27 of 2001).

Analysis of the Facts, Evidence and Law

Substantive Fairness (Valid Reason)

The core allegation against the Applicant was gross negligence and/or dishonesty involving customer funds. The documentary evidence presented by the Respondent specifically the core banking system audit trails produced by RW2 (Exhibits VV1 and VV2) establishes that on 7th January 2020, an input of MK1,200.00 was captured under the Applicant's teller credentials for SRWB Account No. ZZA09799.

The Applicant's defense shifted materially between his pleadings and his oral evidence:

In IRC Form 1 (Paragraph 5.4), he explicitly admitted receiving MK12,000.00 and making a posting error of MK1,200.00.

In his Witness Statement, he departed from this, claiming system checks revealed no transaction occurred at all on 7th January 2020.

A party is bound by its pleadings. The Applicant cannot contend on one hand that no transaction occurred, while simultaneously admitting under cross-examination that he personally deposited MK10,800.00 into the exact same account on 3rd October 2020.

The mathematical alignment between the variance (MK12,000.00 - MK1,200.00 = MK10,800.00) and the exact sum deposited by the Applicant nine months later immediately after the customer lodged a formal complaint is damaging. The Applicant's assertion that he made this deposit on verbal instructions from RW1 (Saka) is unsupported:

RW1 explicitly denied giving any such instruction. The Applicant conceded that no written note, email, or witness exists to substantiate the instruction. Crucially, the Applicant omitted this critical defense from his initial written response to the Show Cause letter.

As a trained bank teller, making an unauthorized, unrecorded retrospective cash deposit into a customer account outside internal control procedures constitutes gross operational misconduct and a fundamental breach of the trust inherent in employment contracts within the financial sector (***Kachingwe v Shire Bus Lines,*** supra).

Consequently, the Court finds that the Respondent successfully discharged its burden under Section 61 of the Employment Act. The Respondent possessed a valid, substantial, and fair reason to discipline and summarily dismiss the Applicant.

Procedural Fairness

The Applicant contended that his dismissal was procedurally defective because:

1. The complainant (Nyalugwe) was not called to testify.
2. The disciplinary hearing was adjourned and never reconvened.
3. His internal appeal was never heard.

On the issue of the complainant's absence

Internal workplace disciplinary hearings are not criminal trials. An employer is entitled to base its disciplinary charges on internal audit reports, transaction logs, and business records rather than parading external customers (***Lameck Moyo v National Bank of Malawi,*** supra). The Applicant conceded in cross-examination that he never objected to the hearing proceeding without Mr. Nyalugwe, nor did he request an adjournment to call him.

On the alleged adjournment of the hearing

While the Applicant argued that panel member Mr. Kelvin Karim noted a need for further IT verification, RW3 (panel member) clarified under oath that the hearing was formally concluded on 19th October 2020 after the Applicant delivered his closing remarks. Internal panel verifications post-hearing form part of private panel deliberations. The Applicant tendered no documentary evidence demonstrating a formal order of adjournment.

On the internal appeal

The Applicant's claim that his appeal was "not heard" collapsed under cross-examination when he admitted receiving the CEO's written appeal determination and clarified that he meant his appeal was unsuccessful.

Taking all circumstances in the aggregate (***Banda v UNITRANS***, supra), the Applicant received a written Show Cause letter, submitted a written response, received formal notice of hearing, attended and actively participated in the hearing, and exercised his right of appeal. The Respondent met the requirements of procedural fairness under Section 57(2) of the Employment Act.

Assessment of Claims & Reliefs

Unfair Dismissal & Unfair Labour Practice Claims

Having established that the summary dismissal was both substantively and procedurally fair, the claims for damages for unfair dismissal, unfair labour practice, and contractual compensation fail and are hereby dismissed.

Notice Pay

Under Section 59(1) of the Employment Act, an employer is entitled to dismiss an employee summarily without notice where the employee is guilty of gross misconduct. The claim for notice pay is dismissed.

Severance Allowance

Under Section 35(1) of the Employment Act, severance allowance is not payable where an employee is fairly dismissed for gross misconduct. This claim is dismissed.

Overtime Claims (Normal & Public Holiday)

Under cross-examination, the Applicant conceded he had no written overtime authorizations, log sheets, or prior written demands as required by Clause 8.3 of the Respondent's Terms and Conditions of Service. In the absence of proof, these claims fail.

Pension Benefits / Gratuity

Pension contributions are governed by the Pension Act (Cap. 55:03). Any accrued vested pension rights held in the Applicant's pension scheme account remain his statutory entitlement and must be processed in accordance with the Pension Act by the designated pension scheme administrator.

Unpaid Accrued Annual Leave

Where an employee has earned statutory annual leave prior to termination, Section 44 of the Employment Act mandates payment in lieu of unused leave. If any verified, unutilized accrued annual leave remains unpaid for the year 2020 prior to 4th November 2020, the Respondent shall pay the same.

Verification of Statutory Accruals

Action required within 14 days of judgment. The Respondent's Human Resources department shall reconcile the Applicant's leave records up to 4th November 2020 to verify any outstanding accrued annual leave days.

Settlement of Verified Leave (If Applicable)

Action required within 30 days of judgment. If unutilized leave days are verified, the Respondent shall compute and disburse payment in lieu of accrued leave calculated at the Applicant's final basic monthly rate of MK275,000.00.

Pension Scheme Release:Statutory compliance under Pension Act.

The Respondent shall issue the necessary employer discharge documentation to the relevant Pension Scheme Administrator to enable the Applicant to access or transfer his vested pension funds in accordance with the Pension Act (Cap. 55:03).

Final Order & Decision

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Applicant's claims for Unfair Dismissal, Unfair Labour Practice, Notice Pay, Severance Allowance, Overtime, Gratuity, and Damages are DISMISSED in their entirety.
2. The Respondent acted with substantive and procedural fairness under Sections 57 and 61 of the Employment Act.
3. The Respondent shall facilitate the release of the Applicant's accrued pension benefits directly through the relevant Pension Fund Administrator as required by the Pension Act.

Each party shall bear their own costs.

Pronounced in Chamber this 4th day of November 2026 at Zomba, Malawi.

INDUSTRIAL RELATIONS COURT OF MALAWI

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON