

REPUBLIC OF MALAWI

IN THE INDUSTRIAL RELATIONS COURT

ZOMBA REGISTRY

MATTER NO. IRC 121 OF 2026

BETWEEN:

HUMPHREYS BELLO……..……..APPLICANT

-AND-

MALAWI INSTITUTE OF EDUCATION…….…….…….…….RESPONDENT

CORUM: HON. PETER M.E KANDULU, DEPUTY CHAIRPERSON

Jimmy Masamba, Counsel for the Applicant

Chaula and Zikalinga, Counsels for the Respondent

RULING ON AN APPLICATION FOR URGENT INTERIM RELIEF

Introduction

Before this Court is an urgent inter-partes application for interim relief filed by the Applicant, Humphreys Bello, on 17th day of September 2026.

The Applicant seeks the following interim orders pending the final determination of the substantive matter:

1. An order restraining the Respondent from implementing its decision contained in a letter dated 10th September 2026 terminating/dismissing the employment of the Applicant;

2. An order allowing the Applicant to continue working as an employee of the Respondent until final determination of this matter or further order of this Court.

The application is premised on Sections 41(3) and 46(2) of the Constitution of the Republic of Malawi, and Rule 25(1)(m)(i) & Rule 25(4) of the Industrial Relations Court (Procedure) Rules.

The application is supported by an Affidavit sworn by the Applicant, Humphreys Bello, on 14th day of September 2026, along with sworn exhibits marked HB1 to HB15, and Skeleton Arguments.

The Respondent, Malawi Institute of Education, opposes the application through a sworn Affidavit in Opposition by Maulidi Imani Chinyama, the Respondent's Internal Auditor, filed together with exhibits marked MIC1 to MIC13, and Skeleton Arguments.

Summary of Facts and Evidence

The Applicant's Case

Employment History

The Applicant was employed by the Respondent on 1st July 2008 on a permanent basis as a Finance Officer and served for 18 years prior to his dismissal (Exhibit HB1).

Disciplinary Process & Dismissal

On 27th July 2026, the Applicant was invited to a disciplinary hearing following allegations of financial irregularities and misconduct (Exhibit HB2). The disciplinary hearing took place on 10th August 2026, culminating in a letter dated 10th September 2026 terminating/dismissing his contract of employment (Exhibit HB3).

Thunzi Lodge Activity

In October 2025, during a curriculum activity at Thunzi Executive Lodge budgeted at MK110,000,000.00 (Exhibit HB4), the Applicant authorized a part-payment of MK40,000,000.00

endorsed by the then Executive Director, Dr. Mteman'gombe (Exhibit HB5). Following online news reports alleging political funding (Exhibit HB6), management engaged external auditors, Crowe J&W (Public Accounts), who found no fraudulent transactions (Exhibit HB7). The final balance of MK70,000,000.00 was subsequently paid upon approval (Exhibit HB8). The Applicant contends that the Respondent's newly appointed Board rejected this audit and improperly engaged AMG Global to find fault in bad faith (Exhibit HB9).

Gordner Trading & Warehouse Rentals

The Applicant states that a committee comprising senior management oversaw the storage of USAID UPREAD project materials at Liwonde (Exhibit HB10 & HB11). He asserts that payments were duly authorized, and he did not act unilaterally or conceal any warehouses (Exhibits HB13, HB14 & HB15).

Keys & Documentation

The Applicant contends that holding keys and documentation prior to formal stock reconciliation was standard operating practice under working capital management.

Unfair Labour Practice & Urgency

The Applicant asserts that the Board acted on political motives and pre-judged his dismissal. He contends that he has raised triable issues, faces severe economic hardship, and that if interim relief is refused, his 18-year post may be filled before trial, rendering reinstatement impractical.

The Respondent's Case

Whistleblower & Audit Findings

Following online allegations (Exhibit MIC1) and a whistleblower letter (Exhibit MIC3), the Board commissioned AMG Global to conduct forensic audits. The forensic report (Exhibit MIC4) uncovered systemic financial irregularities, diversion of 175.52 metric tons of materials, unauthorized storage arrangements, inflated rentals, and non-compliant procurement causing potential losses exceeding MK101,000,000.00.

Alleged Misconduct

The Respondent alleges that the Applicant, together with co-officers (Messrs. Austin Kalambo and Alex Chiumia), improperly engaged a non-employee (Mr. Alexander Kalambo) to rent unauthorized warehouses in Liwonde, concealing them from official Stores controls for 7 months (Exhibit MIC7). Further, on 12th March 2026, the Applicant processed MK10,200,000.00 to

Gordner Trading which owned none of the warehouses causing a loss of MK7.5 million (Exhibit MIC8).

Compliance with Procedural and Substantive Due Process

The Respondent issued a suspension letter (Exhibit MIC9), formal charges (Exhibit MIC10), received written representations (Exhibit MIC11), and invited the Applicant to a disciplinary hearing on 10th August 2026 (Exhibit MIC12). The Appointments and Disciplinary Committee (ADC) afforded the Applicant full rights of defense and cross-examination. He was found guilty of 3 serious counts and subsequently dismissed with written valid reasons on 12th September 2026 (Exhibit MIC13).

Failure of Triable Issues

The Respondent contends that the Applicant's claim lacks triable issues, that full natural justice was accorded pursuant to Section 57 of the Employment Act, and that the interim application is frivolous, vexatious, and an abuse of court process.

Issues for Determination

1. Whether this Court has jurisdiction and proper legal basis under the Constitution and the Industrial Relations Court (Procedure) Rules to grant urgent interim relief in employment termination disputes.

2. What are the applicable legal thresholds for granting an interim order/interdict restraining an employer from implementing a decision of dismissal or re-instating an employee pending trial?

3. Whether, on the facts, evidence, and arguments presented, the Applicant has satisfied the legal criteria for the grant of the interim relief sought.

Applicable Law and Judicial Precedents

Statutory & Constitutional Framework

Section 31(1) of the Constitution of the Republic of Malawi Guarantees every person the right to fair labour practices.

Section 41(3) & 46(2) of the Constitution Grants the right to an effective remedy by a court of law for violations of constitutional rights.

Rule 25(1)(m)(i) of the Industrial Relations Court (Procedure) Rules Empowers the Court to grant urgent interim relief pending a decision after a full hearing.

Section 57(1) & (2) of the Employment Act (Cap. 55:02) Mandates that an employment contract shall not be terminated unless there is a valid reason connected with capacity/conduct or operational requirements, and that the employee is provided an opportunity to defend himself against allegations.

Section 58 of the Employment Act Stipulates that a dismissal in contravention of Section 57 is unfair.

Judicial Precedents on Interim Reliefs in Employment & Interdicts

Triable Issues / Good Chance of Success Standard

In ***Madise v Electricity Supply Corporation of Malawi (ESCOM)*** [2000] MLLR 450, it was established that an applicant seeking urgent interim relief restraining termination or preserving employment must show a strong prima facie case or a good chance of succeeding at the main trial on the claim of unfair dismissal.

Restraining Dismissal / Reinstatement as Interim Relief (The Exceptional Remedy Rule)

Under common law and Malawian jurisprudence, an interim injunction/interdict restraining an employer from terminating a contract of employment or compelling an employer to keep an employee in service is rarely granted, save in very exceptional circumstances.

Principles in Employment Related Contracts

Employment contracts depend on mutual trust and confidence (fiduciary relationships). Courts will not force an employer to retain an employee in whom trust has been broken pending trial unless there is overwhelming proof of bad faith, nullity of procedure, or clear lack of jurisdiction. (See ***National Bank of Malawi v Earthmoving Terrain Ltd***; ***Ridge v Baldwin*** [1964] AC 40).

Interests of Justice and Compensability by Damages

In The State (***On the Application of Malawi Revenue Authority) v Chairperson of the Industrial Relations Court & Kettie Mukamba***, MSCA Civil Appeal No. 56 of 2021, the Supreme Court of Appeal emphasized that the grant of interim relief rests on judicial discretion guided by the interests of justice, evaluating what parties stand to lose, hardship to third parties, and whether monetary damages would provide an adequate remedy at trial.

In standard employment termination cases, where monetary compensation/statutory remedies (severance pay, indemnity, damages for unfair dismissal under Section 63 of the Employment Act) can fully remedy the breach at final judgment, interim reinstatement or anti-dismissal interdicts are disfavored.

Role of the Court at Interim Stage

At the interim relief stage, the Court does not sit as an appellate tribunal to try the merits of the disciplinary charges; it merely assesses whether there is a viable, serious issue to be tried and where the balance of convenience lies. (See ***American Cyanamid Co v Ethicon Ltd*** [1975] AC 396; ***Ernest Mtingwi v Malawi Revenue Authority,*** Civil Cause No. 3389 of 2004).

Analysis of the Facts, Evidence, Law and Court's Findings

Jurisdiction and Power to Grant Interim Relief

This Court reaffirms its jurisdiction under Rule 25(1)(m)(i) of the IRC (Procedure) Rules read with Section 41(3) of the Constitution to grant urgent interim relief where appropriate. However, the exercise of this discretion must align with settled equitable and employment law principles.

Assessment of the Merits for Interim Relief

(a) Substantive and Procedural Compliance under Section 57 of the Employment Act

The Respondent has produced prima facie documentary evidence showing that the dismissal followed a comprehensive internal process:

1. Formal charges were served (Exhibit MIC10);
2. The Applicant provided a written reply (Exhibit MIC11);
3. A formal disciplinary hearing was convened by the Appointments and Disciplinary Committee (ADC) on 10th August 2026 (Exhibit MIC12), where the Applicant attended and cross-examined witnesses;
4. The ADC rendered findings of guilt on specific counts (concealment/diversion, key withholding, non-diligence in Gordner Trading payments);
5. A formal termination letter setting out reasons was issued on 10th September 2026 (Exhibit MIC3 / HB3).

Prima facie, the Respondent complied with procedural natural justice (Section 57(2) Employment Act; ***Ngwenya and Gondwe v Automotive Products Ltd,*** IRC 180 of 2000). While the Applicant alleges political bias and improper audit motives by AMG Global, these are disputed questions of fact that require thorough testing at trial through oral cross-examination and full disclosure.

Restoration of Employment / Interdict Restraining Dismissal

The Applicant prays that the Respondent be restrained from implementing its dismissal decision of 10th September 2026 and that he be allowed to continue working.

It is well-established that an order forcing an employer to continue employing an officer accused of gross financial irregularities, fraud, and breach of fiduciary trust destroys the fundamental prerequisite of mutual trust and confidence.

Granting an interim order forcing the Respondent to keep the Applicant in a senior Finance Officer role pending full trial would severely prejudice the operational integrity and financial governance of the institution.

Adequacy of Damages and Balance of Convenience

While the Court notes the personal financial hardship expressed by the Applicant regarding his family and length of service (18 years), economic hardship following termination is an unfortunate fallout in almost all dismissal disputes.

Under the Employment Act (Cap. 55:02), if the Applicant ultimately succeeds at trial in proving that his dismissal was substantively or procedurally unfair, this Court is fully empowered under Section 63 to grant comprehensive remedies, including reinstatement, re-engagement, statutory severance, and award of damages for lost emoluments.

Therefore, monetary damages and statutory remedies represent an adequate remedy should the Applicant prevail at the main trial. The balance of convenience strongly favors allowing the Respondent's management structure to function while expediting the matter for full trial.

Triable Issues

The Court finds that while the Applicant has raised triable issues regarding the validity of the forensic audit reports, authorization of rentals, and political victimization arguments, these issues do not justify the extraordinary remedy of an interim interdict forcing his continued employment prior to full trial.

Determination and Orders

In light of the foregoing findings, the Court orders as follows:

Refusal of Interim Relief

The Applicant’s application for an urgent interim order restraining the Respondent from implementing its decision of 10th September 2026 and allowing the Applicant to continue working pending final determination is hereby REFUSED AND DISMISSED.

Expedited Hearing

To ensure that the Applicant is not prejudiced by delay, the substantive cause for unfair dismissal shall be placed on an expedited trial schedule.

Directions for Trial

1. The Applicant shall file and serve his Statement of Claim within 14 days of this Ruling.
2. The Respondent shall file and serve its Response to the Claim within 14 days of service.
3. Pre-trial disclosures and witness statements shall be filed within 14 days thereafter.
4. The Registrar shall set the matter down for early trial.

Costs of these Proceedings

Pursuant to Section 72(1) of the Labour Relations Act, costs in the Industrial Relations Court are ordinarily not awarded unless a matter is vexatious or frivolous. Although the application has been dismissed, the Court does not find the Applicant's motion to be wholly frivolous so as to depart from the statutory rule. Accordingly, there shall be no order as to costs.

Pronounced in Chambers this 5th day of November, 2026 at Zomba Registry, Malawi.



HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON