REPUBLIC OF MALAWI

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

ZOMBA REGISTRY

IRC MATTER NO. 114 OF 2024

BETWEEN

JIMMY KATEKESA……..APPLICANT

AND

ELECTRICITY SUPPLY CORPORATION OF MALAWI……RESPONDENT

CORUM: HON PETER M.E KANDULU, DEPUTY CHAIRPERSON

Makawa, Counsel for the Applicant

Mwenda, Counsel for the Respondent

JUDGMENT

Introduction and Procedural Preliminaries

The Applicant commenced these proceedings against the Respondent via an amended IRC Form 1, claiming:

1. A declaration of Unfair Dismissal under Sections 57 and 58 of the Employment Act (Cap. 55:02);

2. Salary arrears for underpayment arising from alleged acting duties/promotion to the position of Planning Technician;

3. Damages and compensation for Unfair and Unsafe Labour Practices pursuant to Section 31(1) of the Constitution of the Republic of Malawi;

4. Damages for alleged discrimination;

5. Severance pay, loss of employment benefits, payment for 40 accrued leave days, and unpaid salary for October 2023; and

6. Any other relief the Court deems fit.

At the close of trial, the Court directed both parties to file their final soft written witness statements and written submissions by 4th November 2026. At the close of the stipulated date, the Applicant failed to comply with the directions of the Court and failed to submit his soft witness statement or written submissions. Conversely, the Respondent fully complied and filed its written submissions.

While an applicant's failure to file written submissions does not automatically result in a default judgment against them, the court is bound to evaluate the evidence presented on record during trial, cross-examination, and the unrefuted legal arguments submitted by the Respondent.

Summary of Evidence and Facts

The Applicant's Case

The Applicant was employed by the Respondent in 2010 as a Power Linesman following a competitive advertisement and interview process. He held an MSCE qualification. He was

deployed to work within the Planning Department under the direct supervision of a Planning Technician (Mr. Freeman Chisale).

During cross-examination, the Applicant made crucial admissions: He conceded that he was never formally interviewed, offered, or issued a letter of promotion to the post of Planning Technician. He acknowledged that he remained a Power Linesman throughout his tenure.

He admitted that his duties in the Planning Department included conducting site investigations for prospective customer connections and inputting technical data into the Respondent's NDM system.

Regarding the disputed site inspection at Namadzi, he admitted that the overhead electrical supply line was within the property's wayleave corridor and that proper technical procedure required recommending a rerouting of the line. He admitted he failed to make such a recommendation.

He produced a public notice concerning wayleave corridors to justify his measurements, but conceded under cross-examination that the document was merely a general encroachment advert and not the official engineering standard for site planning.

The Respondent's Case

The Respondent paraded three witnesses:

RW1 (Maurice Lingomanje)

Demonstrated through system audit screenshots that the Applicant personally entered false data into the NDM system. The Applicant classified a commercial premises as a domestic supply, resulting in significant undercharging (charging domestic rates instead of the required MK 110,000.00 commercial rate). Furthermore, the connection was cleared despite flouting statutory wayleave clearance rules. RW1 testified that had the Applicant actually visited the site or conducted a proper assessment, he would have rejected the connection.

RW2 (Robert Mgunda)

Confirmed that low-voltage (230V) overhead lines are governed by specific safety standards under the Electricity By-Laws, 2012. He testified that the public notice relied upon by the

Applicant was an encroachment advisory and was never the basis for ESCOM's site planning standards.

RW3 (Gilbert Nyimbiri)

Testified regarding the disciplinary process. He confirmed that the Applicant was served with a formal charge sheet (GN 1) under Clause 14.2.7 of the Respondent's Terms and Conditions of Service (providing false information/flouting wayleave procedures). The Applicant was provided with the internal audit report prior to the hearing, attended the hearing accompanied by an investigator, participated in a physical site visit, and presented an oral and written defense. RW3 confirmed that the physical customer application form was not relied upon by the panel in reaching its verdict; rather, the decision rested entirely on the false technical entries made directly into the NDM system by the Applicant.

Issues for Determination

The main issues for determination before this Court are

1. Whether the Applicant was unfairly dismissed by the Respondent within the meaning of Sections 57 and 58 of the Employment Act.

2. Whether the Respondent's conduct constituted unfair and unsafe labour practices under Section 31(1) of the Constitution.

3. Whether the Applicant is entitled to the reliefs sought in the amended IRC Form 1.

LAW AND ANALYSIS

Unfair Dismissal

A. Substantive Fairness (The Reason for Dismissal)

Under Section 57(1) of the Employment Act, an employer must establish a valid reason for termination connected with the capacity or conduct of the employee. Under Section 61(1) of the Act, the burden of proving that a dismissal was for a valid reason rest squarely on the employer.

In ***Mahowe v. Malawi Housing Corporation*** (Civil Cause No. 3687 of 2000), the High Court established that the court must examine the reasons given for termination and determine whether the misconduct is supported by evidence.

Here, the Respondent charged the Applicant with supplying false information on the system, undercharging a customer, and approving an illegal connection within a statutory wayleave corridor without recommending a line reroute. During trial, the Applicant explicitly conceded that the premises required a line reroute which he failed to recommend, and that the public notice he produced was not an operational planning standard.

Given the volatile nature of electricity distribution, inputting inaccurate data that compromises public safety and creates financial loss constitutes serious misconduct under Clause 14.2.7 of the Respondent's Conditions of Service and the Electricity By-Laws, 2012. The Respondent has comfortably discharged its burden of proving a valid reason for dismissal based on conduct.

B. Procedural Fairness & Natural Justice

Section 57(2) of the Employment Act mandates that an employee must be afforded an opportunity to defend himself against allegations before termination. Section 61(2) requires the employer to prove that in all circumstances it acted with justice and equity.

The Applicant contended that he was prejudiced because the physical paper application form filled out by the customer was not presented at the disciplinary hearing, and because hearing minutes were not provided prior to his internal appeal.

In evaluating procedural fairness, this Court re-states the principle laid down in ***Isaac Nkonga v. Michiru View Private Primary School*** (IRC Matter No. 726 of 2021):

"The law does not prescribe the formality of a judicial trial in workplace hearings. What it requires is that the employee be made aware of the charges, be invited to give his explanation, and that the decision-makers consider that explanation before reaching a verdict... perfection is not the test."

Furthermore, in ***Sugar Corporation of Malawi Ltd v. Ron Manda*** (MSCA Civil Appeal No. 7 of 2007), the Supreme Court of Appeal held that minor procedural irregularities do not

invalidate a dismissal where the substantive evidence of gross misconduct is overwhelming and undisputed.

The evidence shows that the Applicant was served with detailed charges, provided with the audit report, participated in a joint site inspection, and presented a full defence. The non-production of the physical customer application form was irrelevant because the disciplinary panel relied on the digital entries inputted by the Applicant into the NDM system, not the customer's paper submission. The absence of the physical document caused zero prejudice to his defence.

C. Summary Dismissal for Serious Misconduct

In ***Moyo v. National Bank of Malawi*** (MSCA Appeal No. 19 of 2009), the Supreme Court of Appeal held that where an employee commits acts of grave misconduct, the employer retains the right to dismiss them summarily under Section 59 of the Employment Act.

Falsifying system logs and creating unsafe, illegal power connections threatens public safety and causes financial loss to a public utility. The Respondent acted well within its statutory rights in summarily dismissing the Applicant.

Accordingly, the Court finds that the dismissal was both substantively and procedurally fair.

Unfair and Unsafe Labour Practices

Section 31(1) of the Constitution guarantees the right to fair and safe labour practices. In ***Kalinda v. Limbe Leaf Tobacco Ltd*** (Civil Cause No. 542 of 1995) and ***Kachinjika v. Portland Cement Company*** [2008] MLLR 161, fair labour practices were defined as conduct that is even-handed, reasonable, and expected from fair-minded employers and employees.

The Applicant claimed that being deployed to perform duties in the Planning Department while retaining the substantive title and salary of a Power Linesman constituted an unfair labour practice.

However, during cross-examination, the Applicant candidly admitted that: He was employed as a Power Linesman and signed terms of service allowing management to deploy him anywhere within the organization;

He never sat for interviews, nor received any letter of promotion to Planning Technician; and He remained a Linesman under supervision.

An employer exercising its contractual right to assign tasks within an employee's general operational sphere does not amount to an unfair labour practice. The Applicant failed to adduce any evidence showing discrimination, unsafe working conditions, or unreasonableness on the part of the Respondent. This claim fails in its entirety.

Reliefs Sought

Compensation for Unfair Dismissal & Severance Pay

Having been fairly dismissed for gross misconduct, the Applicant is disqualified from recovering compensation or severance pay pursuant to Section 35(1) of the Employment Act.

Salary Arrears for Planning Technician Post: Dismissed. The Applicant admitted he was never promoted to this position.

Damages for Unfair Labour Practices & Discrimination: Dismissed for lack of evidence.

Accrued Leave Days & Unpaid October Salary

The parties indicated during trial that these two items were agreed to be resolved via an out-of-court settlement. The Court accordingly makes no adverse order on these two heads, save to direct that the Respondent pay any verified, outstanding accrued leave and work days up to the date of dismissal, if not already settled.

Determination and Disposition

The Applicant’s claim for unfair dismissal is hereby **DISMISSED**.

The Applicant’s claim for unfair labour practices, salary arrears, and damages is hereby **DISMISSED.**

Each party shall bear their own costs.

Pronounced in Chamber this 6th day of November 2026 at Zomba, Malawi.

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON