REPUBLIC OF MALAWI

IN THE INDUSTRIAL RELATIONS COURT

ZOMBA REGISTRY

IRC MATTER NO. 143 OF 2025

BETWEEN

SANDERSON SIKWEYA……..APPLICANT

AND

MR. HERALD SAMSON……...……RESPONDENT

CORUM: HON PETER M.E KANDULU, DEPUTY CHAIRPERSON

Ismael, Counsel for the Applicant,

The Respondent, Present, Unrepresented

Patrick Banda, Court Clerk

JUDGMENT

Introduction

The Applicant, Sanderson Sikweya, commenced these proceedings against the Respondent, Mr. Herald Samson, by way of IRC Form 1, claiming compensation for unfair dismissal, salary arrears for 36 months spanning April 2020 to December 2023, off-duty allowances, leave pay, gratuity, and notice pay.

The Respondent stoutly denied all claims through IRC Form 2. During the pre-hearing conference, the parties properly distilled and referred the following core issues for this Court's determination:

1. Whether or not the Applicant was dismissed, and whether the same amounted to an unfair dismissal and an unfair labour practice;
2. Whether or not the Applicant is entitled to terminal benefits as pleaded; and
3. Whether or not the Applicant is entitled to salary arrears as pleaded.

Summary of Evidence

The Applicant's Case

The Applicant testified that he was engaged by the Respondent in March 2018 as a security guard on a starting monthly salary of MK18,000.00, which was later adjusted to MK35,000.00 until his eventual termination. He asserted that he worked continuously through 2022, 2022 [sic], and 2023 while residing on the premises, performing piecework alongside. He maintains that he was supposed to receive a regular salary during this period, which he now claims as arrears. He further contended that his working hours were grueling 7 days a week from 4:00 p.m. to 6:00 a.m., including public holidays. In September 2025, upon raising a demand for a salary increment, he was summarily disengaged without being furnished with any reasons or terminal justification.

The Respondent's Case

Shammugapriya Samson testified on behalf of the Respondent. The defense is that the Respondent purchased a piece of land in 2018 with partial payments to run a maize mill business. Upon taking possession, the Applicant and his family were already found residing on the land. The Applicant sought employment, and they engaged him in August 2018. However, due to failure to secure an electrical connection from ESCOM, the business did not take off, and the Respondent discharged the Applicant in 2019, settling his gratuity at that time.

The Respondent stated further that in 2020, the Applicant pleaded for humanitarian shelter on the premises since he had no home in his village. The Respondent permitted him to stay. In June 2021, the Respondent again asked him to vacate, paying him MK55,000.00 as a final ex-

gratia/gratuity sum, which the Applicant signed for. The Applicant continued to plead for shelter on humanitarian grounds and lived there doing other piecework up to 2023.

According to the Respondent, it was only in 2024 that the Respondent engaged the Applicant for a single month at a salary of MK35,000.00 to assist with site clearance. When the Applicant demanded a salary adjustment after just one month, the Respondent declined and disengaged him, subsequently withdrawing the maize mill project to rehabilitate the residential structure. Under cross-examination, the Respondent maintained that the formal employment window ran strictly from 18th August 2018 to October 2020 (at MK18,000.00 per month), and that the subsequent years involved mere permissive occupancy/shelter rather than an employment relationship.

Evaluation of Evidence and the Law

In adjudicating industrial disputes, this Court is guided by the Constitution of the Republic of Malawi, the Employment Act (Cap 55:01 of the Laws of Malawi), and established common law principles governing master-servant relations. Under Section 4 of the Employment Act, the burden rests on the claimant to establish the existence of an employment contract and the actionable breach or unfair termination thereof, while under Section 57, once a dismissal is established, the employer bears the legal onus of proving that the dismissal was valid, fair, and in accordance with substantive and procedural justice.

Existence of Employment Relationship and Salary Arrears (2020–2023)

The Applicant claims salary arrears for 36 months (April 2020 to December 2023). However, the evidence reveals a stark contradiction. The Applicant admits that during this period he was residing on the premises while undertaking "piecework with another organisation." Conversely, the Respondent established that the initial maize mill project collapsed in 2019/2020 due to lack of electricity, leading to a severance and payment of gratuity, and that the Applicant remained on the premises purely out of humanitarian grace because he lacked a home in his village.

An employment contract requires mutuality of obligations specifically, the provision of work by the employer in exchange for remuneration by the employee. A person cannot claim wages as an employee while simultaneously admitting they were staying on premises engaging in independent piecework for third parties, absent any contract of service or proof of a subsisting employer-employee relationship during those years. The contemporaneous documentation and the context of the aborted maize mill project support the Respondent's assertion that no active employment existed between October 2020 and 2024, save for a brief one-month engagement

in 2024. Consequently, the claim for 36 months of salary arrears lacks factual and legal foundation and is hereby dismissed.

The Termination in 2025 and Unfair Dismissal

The Respondent admitted that the Applicant was re-engaged or engaged briefly in 2024 for one month at MK35,000.00, and that a dispute arose when the Applicant requested a salary adjustment in September 2025, culminating in his disengagement. Section 57(1) of the Employment Act provides that an employee's employment shall not be terminated by an employer without valid reasons connected with the capacity, conduct, or operational requirements of the undertaking. Furthermore, Section 57(2) explicitly states that the race, sex, marital status, family responsibilities, pregnancy, religion, political opinion, or the filing of a complaint or participation in proceedings against an employer (or in this case, asking for a salary review or raising industrial grievances) does not constitute a valid reason for dismissal. The manner in which the Applicant was disengaged in September 2025 falls foul of both substantive and procedural fairness. No disciplinary hearing was conducted, no warnings were issued, and no valid operational or disciplinary reason under Section 57 was established. The termination was reactionary following the Applicant's demand for a salary increment. Therefore, this Court finds that the Applicant was unfairly dismissed within the meaning of the Employment Act.

Terminal Benefits and Remedies

Having found that the dismissal was unfair, the Court turns to the reliefs sought:

Compensation for Unfair Dismissal

In light of the short and intermittent nature of the employment history, the Court exercises its discretion under the Employment Act to award reasonable compensation equivalent to 2 months' salary at the prevailing rate of MK35,000.00, totalling MK70,000.00.

Notice Pay

Since the termination was abrupt and without procedural compliance or notice, the Applicant is entitled to 1 months' notice pay in lieu of notice amounting to MK35,000.00, pursuant to Section 60 of the Employment Act.

Gratuity and Leave Pay

The Respondent provided evidence of past settlements and gratuity payments (such as the MK55,000.00 receipted in 2021). However, for the final tenure leading up to the 2025 termination, pro-rata terminal benefits are due. The claims for off-duty allowances and 36 months' arrears fail for want of proof of continuous active service during those disputed years.

Disposal and Orders

Accordingly, and for the reasons set out above, judgment is entered for the Applicant in part upon the following terms:

DECLARATION

It is hereby declared that the termination of the Applicant's employment in September 2025 was procedurally and substantively unfair.

SALARY ARREARS

The claim for salary arrears from April 2020 to December 2023 is dismissed for lack of merit and absence of an employment contract during that period.

COMPENSATION

The Respondent shall pay to the Applicant compensation for unfair dismissal in the sum of MK70,000.00.

NOTICE PAY

The Respondent shall pay to the Applicant MK35,000.00 representing one month's salary in lieu of notice.

TOTAL AWARD

The total sum of MK105,000.00 is payable by the Respondent to the Applicant within thirty (15) days from the date of delivery of this judgment.

Each party shall bear its own costs.

Pronounced this 9th day of November, 2026 at the Industrial Relations Court, Zomba Registry.

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON