



THE REPUBLIC OF MALAWI
IN THE INDUSTRIAL RELATIONS COURT
ZOMBA REGISTRY
IRC CAUSE NO. 15 of 2005
BETWEEN:

ALEXIOUS EMMANUEL SILOMBERA KAMANGILA..... APPLICANT

AND

COUNCIL FOR THE UNIVERSITY OF MALAWI.....RESPONDENT

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

Kawalewale, Counsel in the Ritz Attorneys Chambers

Kakhobwe, Court Clerk

ORDER ON RECUSAL

Introduction

This matter was scheduled for trial on the 26th day of August, 2026 at 9.30 am.

Prior to entering upon the merits of the dispute or taking further steps in the proceedings, this Court considers it necessary to address a preliminary matter concerning its own constitution and impartiality. While the Court initially noted the issue suo motu (on its own motion), the matter now comes before me following a formal application for recusal filed on the 16th day of August, 2026 by Ritz Attorneys Chambers (through Counsel Yankho Kawalewale) on behalf of the Applicant.

Background and Factual Basis

It has come to the personal knowledge and attention of the Presiding Officer that he shares a personal relationship with the Applicant, Mr. Alexious Kamangila. Specifically, the Presiding Officer regards the Applicant as a distant relative, both having previously lived together in the same residence while pursuing postgraduate studies in the Republic of Ireland. The Presiding Officer personally invited the Applicant to reside with him during that period.

Consequently, the Applicant is a person known to the Presiding Officer in a personal and familiar capacity.

The Court initially communicated to Counsel Wanangwa Hara, Managing Partner at Ritz Attorneys Chambers, its intention to recuse itself. Subsequently, for proper file management and court record purposes, Counsel Yankho Kawalewale formally moved the Court on the 16th day of August, 2026 for recusal. In any event, the fundamental requirement of judicial impartiality places an absolute duty upon the Court to proactively address such matters and ensure that the integrity of the proceedings remains uncompromised.

Applicable Legal Principles

The legal framework governing judicial recusal in Malawi is rooted in the fundamental right to a fair trial, as enshrined under Section 42(2)(f) of the Constitution of the Republic of Malawi, which guarantees a hearing before an independent and impartial court or tribunal.

The governing test for judicial bias is well-established in common law jurisdictions and firmly adopted in Malawian jurisprudence see *President of the Republic of South Africa and Others v. South African Rugby Football Union and Others 1999* (4) SA 147; *Porter v. Magill* [2001] UKHL 67). The test is framed as follows:

"Whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

It is well settled that actual bias need not be established. The cornerstone of judicial integrity is that justice must not only be done, but must manifestly and undoubtedly be seen to be done *R v. Sussex Justices, ex parte McCarthy* [1924] 1 KB 256).

In the context of employment disputes, where speed, equity, and public trust in the adjudication process are paramount, it is imperative that both the employee and the employer retain absolute confidence in the complete neutrality of the Industrial Relations Court.

Determination and Application to the Case

While this Court maintains absolute confidence in its personal subjective ability to decide the underlying employment dispute strictly on the evidence and applicable labor law, the subjective view of the judge is not the controlling factor.

The personal and historic living arrangements between the Presiding Officer and the Applicant, Mr. Alexious Kamangila, are of such a nature that an objective, fair-minded, and informed observer could reasonably entertain apprehension or doubt regarding the Court's detachment.

Where such a reasonable apprehension exists, the only proper and honorable course of action is for the Presiding Officer to step aside voluntarily, ensuring that the administration of justice remains unblemished and beyond reproach.

Order

Accordingly, I hereby make the following orders:

(a) I hereby recuse myself from presiding over, hearing, or further adjudicating IRC Cause No. 15 of 2025.

(b) The court file shall forthwith be remitted to the Hon. Registrar of the Industrial Relations Court Principal Registry in Blantyre for reassignment to another judicial officer for hearing and determination.

(c) There shall be no order as to costs arising from this application.

PRONOUNCED IN OPEN CHAMBERS this 16th day of August, 2026 at Zomba, Malawi.



A handwritten signature in purple ink, appearing to read "Peter M.E. Kandulu".

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON