IN THE REPUBLIC OF MALAWI

IN THE INDUSTRIAL RELATIONS

SITTING AT ZOMBA

Matter No. IRC 09 OF 2018

In the dispute between:

PETER PELEKAMOYO……………………………………………………….APPLICANT

-and-

COUNCIL OF THE UNIVERSITY OF MALAWI…………………………RESPONDENT

CORUM: HON PETER M.E KANDULU, DEPUTY CHAIRPERSON

Khwale, Counsel for the Applicant

Theu, Counsel for the Respondent

Kakhobwe, Court Clerk

JUDGMENT ON LIABILITY

Introduction

The Applicant, Peter Pelekamoyo, approached this Court seeking relief for unfair dismissal and unfair labour practices against his former employer, the Council of the University of Malawi (the Respondent). The Applicant had diligently served the Respondent as a driver for approximately 18 years, commencing his employment on December 5, 1999, until his summary dismissal on May 20, 2017.

The catalyst for the disciplinary actions stemmed from an incident where a motor vehicle in the Applicant's lawful custody was damaged during an attempted theft at his residence overnight. The Applicant was on standby duties on the material day and had knocked off late around 6:00 p.m. after dropping off a secretary.

The Respondent maintains that the dismissal was substantively and procedurally fair, asserting that the Applicant committed various disciplinary infractions, including the unauthorised use of a motor vehicle.

Conversely, the Applicant contends that his dismissal was a pre-determined, disproportionate reaction to an unfortunate criminal incident at his house, achieved by aggregating stale, unproven, and structurally tolerated workplace practices.

Issues For Determination

To resolve this dispute, this Court must determine the following issues:
Whether the Respondent engaged in unfair labour practices against the Applicant. Whether the Respondent unfairly dismissed the Applicant. Whether the Applicant is entitled to compensation for unfair labour practice and unfair dismissal. Whether the Applicant is entitled to pension and severance pay.

The Law

The statutory architecture governing termination of employment in Malawi is anchored on equity, transparency, and the strict requirement of justification.

The Burden of Proof

Under Section 61(1) of the Employment Act, the statutory onus of proof rests squarely on the employer to provide and substantiate the reason for dismissal. As held in ***David Mbalangwe & 8 Others v Attorney General (Ministry of Agriculture)***, Matter No. IRC 126 of 2017, where an employer fails to validate the reasons advanced for a dismissal, a legal presumption arises that the dismissal was unfair. Furthermore, Section 61(2) requires the employer to demonstrate that, in all the circumstances of the case, it acted justly and equitably.

Unfair Labor Practice

Section 31(1) of the Constitution of the Republic of Malawi guarantees every person the right to fair labour practices. In ***Christopher Makileni v The Attorney General,*** Matter No. IRC 55 of 2015, the Court defined fair labour practices as those that are even-handed, reasonable, and expected from the standpoint of all fair-minded persons. Section 56(5) of the Employment Act guides the court to balance the nature of the violation against the employee's duties, the equity of the chosen penalty, and the employee's prior conduct.

Substantive and Procedural Fairness

Section 57(1) of the Employment Act explicitly bars the termination of an employee unless there is a valid and substantial reason connected to their capacity, conduct, or operational requirements. Section 57(2) explicitly mandates a disciplinary hearing before dismissal, ensuring the constitutional right to be heard (Section 43 of the Constitution) is preserved. As noted by the Supreme Court of Appeal in ***Dr B S Chawani v The Attorney General*** (MSCA No. 18 of 2000), the purpose of a hearing is to allow an employee an effective, informed opportunity to defend themselves.

Court's Analysis & Findings

Whether the Respondent Engaged in Unfair Labour Practices

This Court finds that the Respondent subjected the Applicant to a clear pattern of unfair labour practices.

First, the record reveals that the Applicant was deliberately sidelined from work assignments. The Respondent's witness, Mr Douglas Kunkeyani, admitted that he stopped assigning duties to the Applicant simply because senior officers whimsically stated they did not wish to be driven by him. To starve a driver of duties without assigning misconduct or conducting a hearing is structurally unfair.

Second, when the Applicant naturally inquired about being sidelined, using the expression:
"A dagalasi, Kodi mukuona ngati zimene mukuchita sitikuziona? Chouluka chizatera?"
("Douglas, do you think we don't see what you are doing? Whatever flies must eventually land?")

The Respondent chose to view this as an unproven threat of intimidation. If the Respondent genuinely felt intimidated, the minimum standard of fair administrative action required them to formalise a charge and hear the Applicant. Instead, the Respondent weaponised these unadjudicated allegations, even falsely writing in the dismissal letter that a disciplinary hearing regarding threats took place on July 20, 2016. The Respondent's own witness, Ms Mupu Chonzi, admitted under cross-examination that no such hearing ever occurred.

Subjecting an employee to an adverse employment outcome based on unproven, unheard, and manufactured hearing histories directly violates Section 43 of the Constitution and constitutes an unfair labour practice.

Whether the Respondent Unfairly Dismissed the Applicant

The standard for evaluating dismissal requires assessing whether the employer acted reasonably and whether the reason for dismissal was substantial (***Smith v Hayle Town Council*** [1978]). This Court finds the dismissal both substantively and procedurally unfair for three primary reasons:

Reliance on Stale and Remedied Conduct

The Applicant had worked for the Respondent since 1999. Ms Chonzi confirmed that the Applicant served for over a decade without a single disciplinary infraction. To build a case for summary dismissal in 2017, the Respondent resurrected a 2012 suspension and a 2013 parking warning. While ***Kachingwe v Shire Bus Lines*** (IRC Matter No. 18 of 2000) permits an employer to check previous conduct, stale fractions from five years prior cannot serve as a synthetic substitute for a lack of current, valid misconduct. The Applicant had effectively redeemed himself through years of subsequent unblemished service.

Disregard of the Disciplinary Committee's Recommendation

The most glaring subversion of justice lies within the Respondent's own internal machinery. Following the incident with the overnight standby vehicle, the Respondent's internal disciplinary committee convened on March 14, 2017.

Upon hearing the facts, the committee did not recommend dismissal. Instead, evaluating the aggregate circumstances, the committee recommended that the Applicant be given a ***"serious warning."***

The management's decision to bypass its own committee's findings and implement the capital punishment of employment summary dismissal indicates a pre-determined outcome. It lacks the justice, equity, and proportionality demanded by Section 61(2) of the Employment Act.

The Overnight Vehicle Practice

The Respondent failed to prove that a strict, clear policy prohibiting drivers on late-night standby from taking vehicles home was in place or actively enforced. In fact, Ms Chonzi conceded that the disciplinary committee later recommended that management formally inform drivers that taking vehicles home was prohibited and make alternative accommodation arrangements for late-working staff.

This admission confirms that no robust mechanism existed, and the Applicant was operating under an accepted, common workplace practice designed to mitigate the lack of overnight institutional facilities.

The Applicant was essentially punished for an unpredictable criminal act (attempted theft) occurring at his home, rather than an actual breach of a known, clear employment rule.

Procedural Unfairness at Appellate Level

The appeal process was flawed. The appeals committee arrived at its decision without affording the Applicant an oral hearing to contest the findings.

Worse still, the appeal documentation recorded that the Applicant had "pleaded guilty" to the offences. The minutes of the disciplinary hearing completely contradict this; the Applicant robustly disputed and provided logical operational explanations for every single allegation raised against him (ranging from truck blockages causing lateness to common communication styles among drivers).

To falsely record a plea of guilty on appeal and deny an employee the right to be heard undermines the procedural integrity of the disciplinary process (***Kachingwe v Shire Bus Lines,*** supra, distinguished). Furthermore, the appeal minutes presented to this Court were unsigned, casting doubt on their authenticity and legal validity.

Remedies & Relief

Having found that the Applicant was both unfairly dismissed and subjected to unfair labour practices, he is entitled to statutory and compensatory remedies.

Severance Allowance

Pursuant to Section 35(1)(ii) of the Employment Act, an employee whose contract is terminated as a result of an unfair dismissal is unconditionally entitled to a severance allowance. The Respondent is ordered to compute and pay the Applicant's severance allowance based on his 18 years of continuous service, utilising the statutory formula outlined in the Second Schedule of the Employment Act.

Pension Benefits

Under Sections 9 and 10 of the Pension Act, the Respondent was required to maintain and contribute to the Applicant's pension scheme during his employment. Because the unfair dismissal prematurely severed his employment and disrupted his retirement security, the Respondent is ordered to calculate and remit all outstanding pension contributions (both employer portions and any withheld employee portions) up to the date of his unlawful termination, ensuring the funds are fully reconciled with his pension administrator.

Compensation for Unfair Dismissal and Unfair Labour Practice

Taking into account the Applicant's long tenure of service (18 years), the severe procedural lapses by the Respondent, the manufacturing of a fake hearing date, the distortion of his plea on appeal, and the financial trauma of losing employment abruptly, this Court awards the Applicant compensation.

The matter is referred to the Registrar for the assessment of specific compensatory damages for both unfair labour practices and unfair dismissal, taking into consideration the statutory caps and the mitigating/aggravating variables surrounding his loss of livelihood.

Orders

Declared that the Respondent subjected the Applicant to unfair labour practices contrary to Section 31(1) of the Constitution.

Declared that the Applicant was substantively and procedurally unfairly dismissed by the Respondent contrary to Sections 57 and 58 of the Employment Act.

Ordered that the Respondent pay the Applicant a Severance Allowance for 18 years of service, to be calculated by the office of the Registrar if not agreed.

Ordered that the Respondent accounts for and pays all outstanding pension benefits due to the Applicant up to May 20, 2017.

Ordered that the matter be scheduled before the Registrar for the assessment of Compensation for Unfair Dismissal and Unfair Labour Practices within 21 days of this Judgment.

It was delivered in chambers on the 20th day of August 2026 at Zomba.

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON