REPUBLIC OF MALAWI

IN THE INDUSTRIAL RELATIONS COURT

ZOMBA DISTRICT REGISTRY

IRC MATTER NO. 129 OF 2025

BETWEEN

SAUJET GAZA ....**1ST APPLICANT**

BRIGHT ANDERSON ....**2ND APPLICANT**

DEBORA MBEWE ....**3RD APPLICANT**

MAUREEN MPONDA ....**4TH APPLICANT**

AND

ONE ACRE FUND ....**RESPONDENT**

CORAM:

HON. PETER M.E. KANDULU, DEPUTY CHAIRPERSON

Chidothi, Counsel for the Applicants

Soko, Counsel for the Respondent

Kakhobwe, Court Clerk

JUDGMENT AND ORDER ON COMPENSATION

PERFECTED JUDGMENT NOTE

This is a perfected judgment replacing the original judgment delivered on 21st July 2026.

The Court noted *suo motu* (on its own motion) that the original compensation order contained clerical, typographical, and mathematical calculation errors, which were identified while preparing the record for appeal to the High Court of Malawi. This error was initially communicated to counsel for both the Applicants and the Respondent via email, advising them to consent to the adjusted calculations.

Specifically, the Court erred by entering:

- 8 months instead of 3 months, and
- MK 7,000,000.00 instead of MK 4,000,000.00.

Due to these copy-and-paste and calculation errors, the total award for the four (4) Applicants was erroneously inflated to MK 193,560,551.68 instead of the correct sum of MK 78,553,955.80. Consequently, this order formally replaces the award of MK 193,560,551.68 with the corrected amount of MK 78,553,955.80.

This correction of clerical and calculation errors is made pursuant to Rules 25(1) and 25(4) of the Industrial Relations Court (Procedure) Rules, 1999 and Order 23, Rule 10 of the High Court (Civil Procedure) Rules.

Rule 25(4) provides:

"The Court, in the exercise of its powers and discretion and in the performance of its functions, may act in such manner as it may consider expedient in the circumstances in order to achieve the objectives of the Act and in so doing it shall have regard to substance rather than form, save as is otherwise provided in the Act."

Introduction

The Applicants were employed by the Respondent on various dates and in various capacities. Throughout their employment, the Applicants signed fixed-term employment contracts of one-year duration, which were continuously and systematically renewed upon expiry.

In July 2024, the Applicants signed their final one-year contracts of employment, designated for the period running from 28th July 2024 to 27th July 2025.

By letters dated 1st July 2025, issued to the 2nd, 3rd, and 4th Applicants, the Respondent informed them that their contracts would not be renewed upon expiry due to "business considerations." They were advised that their employment would terminate on 26th July 2025.

By a letter dated 31st July 2025, the Respondent similarly informed the 1st Applicant that her contract of employment would not be renewed based on the same generic "business considerations."

Following the termination of their employment, the Applicants moved this Court seeking the following reliefs:

1. Unpaid remuneration and terminal benefits;
2. Compensation for unfair dismissal;
3. Compensation for unfair labour practices; and
4. Any other relief(s) the Court may deem just and fit in the circumstances.

The Applicants contend that the true nature of their employment relationship was that of an unspecified period of time (permanent employment), and that the non-renewal mechanism was a sham, rendering their separation an unfair dismissal. Conversely, the Respondent contends that the Applicants were strictly bound by fixed-term contracts that regularly lapsed through the effluxion of time, and that management merely exercised its contractually protected discretion not to renew them.

Evidence of the Parties

Two witnesses testified on behalf of the Applicants, while one witness testified on behalf of the Respondent.

Applicants' Evidence

AW1: SAUJET GAZA adopted her sworn witness statement and testified that the Respondent is an international non-governmental organisation providing agricultural input loans and training to smallholder farmers across nine districts in Malawi. She was employed alongside the 2nd and 3rd Applicants on 9th June 2016 as a Field Officer, while the 4th Applicant joined on 8th September 2016.

She stated that their one-year contracts were continuously renewed for nine consecutive years without any break in service. Over this period, they received promotions based on exemplary performance; she and the 3rd Applicant rose to become Assistant Field Directors, while the 2nd and 4th Applicants were promoted to Field Managers.

On 11th July 2025, while the Applicants were still actively working, the Respondent internally advertised vacancies for the very positions they occupied. Believing this was an institutional expansion, they did not apply. On 24th July 2025, she received her regular salary alongside a loan repayment performance bonus of MK162,000.00, proving her section had fully recovered its outstanding agricultural loans.

On 31st July 2025, she was abruptly summoned to an online meeting where Human Resources informed her to cease work immediately because management had decided not to renew her contract. No operational or performance reasons were assigned for this decision. She was subsequently replaced by an internal candidate promoted from another region. She stated that upon termination, the Respondent failed to pay allowances covering airtime, tablet charging, fuel, and motorcycle maintenance, totalling MK193,000.00.

AW2: MAUREEN MPONDA corroborated the testimony of AW1 in all material respects. She confirmed that she had worked continuously since September 2016 and tendered past contract copies for the periods 2017–2018 and 2022–2023 to demonstrate the historical continuity of service. She stated that no terminal benefits were ever paid out at the end of each intervening one-year cycle, as both parties understood the relationship to be ongoing.

She testified that she and the 2nd Applicant underwent identical sudden termination processes via online meetings in July 2025. She stated that her position was immediately backfilled by another officer, indicating that the vacancy remained active and lasting within the Respondent's organogram. She claimed unpaid operational allowances totalling MK182,000.00.

Respondent's Evidence

RW1: ELLEWLYN THAWALE testified as the Human Resources Coordinator for the Respondent. He confirmed the respective employment dates and the nine-year tenure of the Applicants. He maintained that the nature of the contracts was strictly fixed-term, renewing exclusively at the absolute discretion of management.

He stated that upon the expiry of the contracts in July 2025, management exercised its lawful right not to renew the relationships due to "business considerations." He testified that final payouts were prepared and accepted, which included severance allowance, notice pay, leave pay, and a relocation stipend.

Under cross-examination, RW1 conceded that he could not explain the specific nature of the "business considerations" that prompted the separations, nor did he bring any documentary evidence to show that the positions had become redundant. He further admitted that the term "business considerations" was used interchangeably with management's raw "discretion."

Issues for Determination

The court identifies the following issues for final determination:

1. Whether the Applicants' employment contracts should be deemed contracts for an

unspecified period of time.

2. Whether the termination of the Applicants' employment constitutes unfair dismissal.
3. Whether the Respondent's conduct amounts to an unfair labour practice.
4. Whether the Applicants are entitled to the reliefs sought.

Burden and Standard of Proof

The legal burden of proof in civil and employment matters rests upon the party who substantially asserts the affirmative of an issue (**Joseph Constantine Steamship Line v Imperial Smelting Corporation Limited** *[1942] A.C. 154*).

The standard of proof is on a balance of probabilities. As poetically articulated by Denning J. in **Miller v Minister of Pensions** *[1947] 1 All E.R. 372*, if the evidence is such that the tribunal can say *"we think it more probable than not,"* the burden is discharged.

In matters of employment dismissal, **Section 61(1) of the Employment Act** shifts the evidential burden to the employer to establish the reason for the dismissal. Failure to showcase a valid reason creates a conclusive statutory presumption that the dismissal was substantively unfair (***Gawani v Malawi Posts Corporation*** IRC Matter No. 275 of 2004).

Analysis of Facts and Law

The True Nature of the Employment Relationship

The Respondent argues that the contracts were automatically terminated by the effluxion of time under Section 28(2) of the Employment Act. However, this Court is mandated to look at the true substance and effect of the arrangement rather than its mere form or label. **Section 28(3) of the Employment Act** clearly provides:

"Where the purpose or effect of a contract of employment that is purported to be for a specified period of time or a specific task is the filling on a lasting basis of a post connected with the normal and permanent activity of an undertaking, it shall be deemed to be a contract of employment for an unspecified period of time."

The undisputed evidence shows that the Applicants served the Respondent continuously for nine (9) years without any artificial break in service. Their roles as Field Managers and Assistant Field Directors were deeply embedded in the organisational organogram of the Respondent. The core business of the Respondent, the distribution and recovery of agricultural loans, is a permanent, year-on-year activity.

The permanent nature of these roles is further verified by two critical facts:
First, the Respondent did not pay terminal or gratuity benefits at the end of each one-year cycle, choosing instead to aggregate their service. Second, upon the Applicants' termination, the Respondent immediately backfilled their exact positions with alternative personnel.

Following the established principles in ***Heiner v Giant Clothing Limited*** (IRC Matter No. 292 of 2003) and ***Mbidzi and Others v ESCOM*** (IRC Matter No. 841 of 2021), where an employee is repeatedly and seamlessly renewed to fill a lasting institutional need, the contract is a sham fixed-term arrangement. It is legally deemed a contract for an unspecified period of time. The Court finds that the Applicants were permanent employees.

Substantive and Procedural Fairness of the Dismissal

Because the Applicants were permanent employees, the non-renewal letters operated as a structural termination of employment. Under **Section 57(1) of the Employment Act**, an employer must show a valid reason for termination connected either to the capacity/conduct of the employee or the operational requirements of the undertaking.

The Respondent failed to show any valid reason. In the termination letters, the reason cited was "business considerations," which suggests an operational restructuring or redundancy. However, the Respondent's sole witness (RW1) admitted under cross-examination that he had no evidence of any operational changes, nor could he define what these "business considerations" were. Instead, he stated that the termination was an exercise of absolute management "discretion."

It is a trite law that arbitrary discretion cannot override the statutory protections against arbitrary dismissal. Since the positions were kept active and immediately filled by other people, no redundancy or valid operational requirement existed. The Respondent has failed to displace the statutory presumption under Section 61(1) of the Employment Act, rendering the dismissals substantively unfair.

Furthermore, the dismissals were procedurally deficient. As noted in ***Chifundo Chioko & 59 Others v First Capital Bank*** **(**IRC Matter No. 10 of 2020), even in structural or "fault-free" dismissals like retrenchments, an employer is bound to consult with employees and apply transparent, fair selection criteria (***Alex Malikebu & 3281 Others v ADMARC Limited***). The Applicants were never consulted, given no opportunity to be heard, and were blindsided by sudden online terminations while carrying out their duties. The dismissals are therefore held to be both substantively and procedurally unfair.

Unfair Labour Practices

Section 31 of the Constitution of the Republic of Malawi guarantees every person the right to fair labour practices. As observed by Mwaungulu J. (as he then was) in ***Kalinde v Limbe Leaf Tobacco Limited*** **(**Civil Cause No. 542 of 1995), an employer's actions, even if technically permitted by the strict text of a contract, may still violate the constitutional standards of fair labour practices if they lack transparency and fair play.

The Applicants were dedicated, long-serving employees with pristine disciplinary and performance records. They had just received performance bonuses for successful loan collections. Terminating them abruptly without reasons, utilising an internal recruitment drive to clandestinely replace them while they were actively at work, and cutting off contractual operational allowances constitutes high-handed, arbitrary, and bad-faith treatment. This Court finds that the Respondent flagrantly breached its duty to act with justice and equity, entitling the Applicants to compensation for unfair labour practices.

Remedies and Assessment of Compensation

A. Unpaid Operational Allowances

The court finds that the operational allowances (fuel, tablet charging, and motorcycle maintenance) were paid consistently every month, irrespective of separate invoices and formed a regular part of the Applicants' remuneration package. They are fully recoverable as unpaid terminal components:

1st Applicant: MK193,000.00
2nd Applicant: MK182,000.00
3rd Applicant: MK193,000.00
4th Applicant: MK182,000.00

B. Compensation for Unfair Dismissal

Under **Section 63(4) of the Employment Act**, the Court is empowered to award compensation that is just and equitable, factoring in the loss of earnings and the severity of the employer's conduct, without being strictly restricted to the statutory floor outlined in Section 63(5) (***Terrastone Construction Limited v Solomon Chatuntha*** MSCA Civil Appeal No. 60 of 2011).

Given the absolute lack of statutory compliance, the bad faith surrounding the false reasons provided in the termination notices, and the lengthy nine-year tenure of service lost, this Court deems it fit to award **eight (3) months' gross salary for each completed year of service** as fair compensation.

Itemised Remuneration Profile & Computations:

1st & 3rd Applicants (Assistant Field Directors):
Basic Salary: MK378,034.00
House Allowance: MK56,705.00
Location Adjustment: MK37,303.40
Airtime Allowance: MK20,000.00
Tablet Charging Fee: MK5,000.00
Fuel Allowance: MK98,000.00

Medical Scheme (MASM Executive): MK21,000.00

Motorcycle Maintenance: MK70,000.00

Total Monthly Gross Remuneration: MK686,042.40

Computation: MK686,042.40 X 3 months X 9 years

Total Unfair Dismissal Compensation: MK18,523,144.80 each

2nd & 4th Applicants (Field Managers):

Basic Salary: MK215,630.00

House Allowance: MK32,344.50

Location Adjustment: MK21,563.00

Child Benefit: MK12,937.80

Airtime Allowance: MK20,000.00

Tablet Charging Fee: MK5,000.00

Medical Scheme (MASM Econoplan): MK6,000.00

Fuel Allowance: MK75,000.00

Motorcycle Maintenance: MK70,000.00

Total Monthly Gross Remuneration: MK458,475.30

Computation: MK458,475.30 X 3 months X 9 years

Total Unfair Dismissal Compensation: MK12,378,833.10 each

C. Compensation for Unfair Labour Practices

Guided by comparable industrial awards for arbitrary, unprocedural dismissals (***Harrison Kamsuli v ESCOM*** and ***Andrew Mondeya v One Acre Fund*****),** and taking into consideration the sudden, non-transparent nature of the replacement process, the Court awards a global sum of **MK4,000,000.00** to each of the four Applicants.

Final Order and Summation of Awards

Judgment is hereby entered in favour of the Applicants. The Respondent is ordered to pay the specific itemised cumulative sums to each Applicant as set out below:

1st Applicant (SAUJET GAZA)

Remedy component	**Amount (MK)**
(a) Unpaid Operational Allowances	193,000.00
(b) Compensation for Unfair Dismissal	18,523,144.80
(c) Compensation for Unfair Labour Practices	4,000,000.00
TOTAL AWARD	**MK18,720,144.80**

2nd Applicant (BRIGHT ANDERSON)

Remedy component	**Amount (MK)**
(a) Unpaid Operational Allowances	182,000.00
(b) Compensation for Unfair Dismissal	12,378,833.10
(c) Compensation for Unfair Labour Practices	4,000,000.00
TOTAL AWARD	**MK12,560,833.10**

3rd Applicant (DEBORA MBEWE)

Remedy component	**Amount (MK)**
(a) Unpaid Operational Allowances	193,000.00
(b) Compensation for Unfair Dismissal	18,523,144.80
(c) Compensation for Unfair Labour Practices	4,000,000.00
TOTAL AWARD	**MK18,716,144.80**

4th

Applicant (MAUREEN MPONDA)

Remedy component	**Amount (MK)**
(a) Unpaid Operational Allowances	182,000.00
(b) Compensation for Unfair Dismissal	12,378,833.10
(c) Compensation for Unfair Labour Practices	4,000,000.00
TOTAL AWARD	**MK12,560,833.10**

Grand Cumulative Judgment Debt: MK78,553,955.80

IT IS HEREBY ORDERED that the Respondent shall pay the total sum of **MK78,553,955.8**0 (Seventy-Eight *Million, Five Hundred and Fifty-Three Thousand, Nine Hundred and Fifty-Five Kwacha, and Eight Tambala*) to the Applicants within thirty (15) days from the date of this Judgment.

Any party dissatisfied with the judgment on liability and order on compensation is free to appeal to the High Court.

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

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON