IN THE INDUSTRIAL RELATIONS COURT

ZOMBA DISTRICT REGISTRY

MATTER NO. IRC 60 OF 2026

BETWEEN

CHIMWEMWE ALEXANDER MALONJE ..... APPLICANT

- AND –

VANGUARD LIFE ASSURANCE COMPANY .....RESPONDENT

CORUM. HON. PETER M.E KANDULU, DEPUTY CHAIRPERSON

Applicant, Present, Unrepresented

L. Mwantisi, Counsel for the Respondent

P. Banda, Court Clerk

JUDGMENT AND ORDER ON COMPENSATION

Introduction and Background

This dispute comes before the Industrial Relations Court sitting at Zomba pursuant to a reference from the District Labour Office dated 20th April 2026. The Applicant, **Chimwemwe Alexander Malonje**, appeared in person, while the Respondent, **Vanguard Life Assurance Company**, was represented by Counsel Lester Mwantisi of TJM & Associates after they were granted leave to represent the Respondent despite that the Applicant was unrepresented.

The Applicant claims against the Respondent for:

(a) Compensation for unfair dismissal; (b) Severance pays; (c) Unpaid capturing benefits (2016–2019); (d) Unpaid billing benefits (2016–2019, 2021–2024); (e) Unpaid driving benefits (2016–2024); (f) Unpaid field driving allowances (660 days); (g) Saturday overtime pay (416 days); (h) Compensation for 308 ungranted leave days across 14 years of service; and (i) Interest and adjustments for currency devaluation.

The Respondent denies liability in its entirety, contending primarily that the Applicant was at all material times an independent sales contractor governed by a standard Sales Agent Agreement rather than an employee, and that the claims are partly statute-barred and devoid of merit.

It muts be emphasised that when an employee challenges the non-renewal of a fixed-term contract under Section 28(3), the evidentiary burden shifts to the employer to prove on a balance of probabilities that the engagement was genuinely tied to a distinct, finite project, seasonal surge, or temporary operational objective rather than permanent establishment needs.

Burden of proof

On having so pleaded, the onus is on the applicant to prove his claims as the burden of proof rests upon the party, which substantially asserts the affirmative of the issue ***Joseph Constantine Steamship Line –vs. - Imperial Smelting Corporation Ltd (***1942) AC 154. The burden is fixed at the beginning of the trial by the state of the pleadings, and it is settled as a question of law remaining unchanged throughout the trial exactly where the pleadings place it. ***B. Sacranie v. ESCOM,*** HC/PR Civil Cause Number 717 of 1991.

Standard of Proof

The standard required in civil cases is generally expressed as proof on a balance of probabilities ***Miller v. Minister of Pensions*** 1947] All ER 372. It follows in a matter that the Applicant has a burden to prove on the balance of probabilities the claim against the Respondent.

Summary of the Evidence

The Applicant's Case (AW1)

The Applicant testified on his own behalf as AW1, adopting his extensive witness statement and tendering exhibits marked **VLA 1 to VLA 31**. His testimony is that he was engaged by the Respondent in February 2011 as a tied sales agent under an annual renewable contract (**Exhibit VLA 2**).

Although initially engaged to procure business, he was placed on company benefits characteristic of employment specifically a pension scheme, medical cover, and group funeral cover covering himself and his dependents (**Exhibit VLA 4**).

In January 2016, following exemplary performance, he was appointed to a supervisory role as a Team Leader ("Gunners Team") and later for the Bwenzi Funeral Team in August 2020, receiving a basic retainer allowance (responsibility allowance) processed through the Respondent's payroll (**Exhibits GM 2, GM 3**).

The Applicant maintained that despite his supervisory title, the Respondent unilaterally imposed non-contractual administrative duties upon him without additional remuneration:

(a) **Driving duties**

Driving company vehicles (Toyota Hilux BS 6405 and Toyota Hiace BX 3594) to transport sales teams into the field and running office errands;

(b) **Capturing duties**

Entering new business data into the Respondent's IT system over weekends and weekdays; and

(c) **Billing duties**

Preparing soft bank billing file schedules.

The Applicant stated that PAYE tax was deducted from his remuneration from 2019 until early 2024, when the Respondent abruptly reverted to withholding tax. Following queries regarding a new standardized contract in late 2024 that sought to supersede previous commitments and extinguish pending grievances (**Exhibit VLA 22**), the Respondent withheld his November 2024 wages (payable in December) as economic duress to force him to sign (**Exhibit VLA 23**).

His agency agreement was subsequently terminated on 24th January 2025 (**Exhibit VLA 26**) without a disciplinary or grievance hearing, based on an expired 2011 contract.

The Respondent's Case (RW1 and RW2)

The Respondent paraded two witnesses:

Georgina Matabwa (Manager, Alternative Channels and Distribution as RW1) and **Paul Chimkonde** (Human Resources Officer as RW2), adopting their respective witness statements and tendering exhibits **GM 1 to GM 6** and **PC 1**.

RW1 and RW2 testified that the Applicant was engaged strictly as an independent sales contractor under Clause 14.0(b) of the Sales Agent Agreement (**Exhibit GM 1**), which explicitly stipulates that the agreement does not constitute a master-and-servant relationship. They maintained that sales agents determine their own working schedules, do not have fixed working hours, and are remunerated primarily by commission.

The Respondent conceded that the Applicant received a basic monthly retainer allowance (responsibility allowance) when serving as a Team Leader, but asserted this covered supervisory support, including data capture. They maintained that driving company vehicles was an inherent facility provided to assist team leaders in field mobilization, not a separate employment duty.

The Respondent contended that PAYE deductions were temporarily implemented following administrative reviews but were later corrected in line with MRA guidelines for independent agents. Furthermore, the Respondent relied heavily on the High Court precedent in ***Vanguard Life Assurance Company Limited v. Emily Chima and Others*** (Misc. Civil Appeal No. 56 of 2010), wherein Potani J. (as he then was) held that sales agents engaged under identical standard contracts are independent contractors and not employees.

Written Submissions

The Court is grateful to both the Applicant and Counsel for the Respondent for their final written witness statements and submissions which are on court file record. For the sake of braveity the court shall summarise both the witness statements and the submissions. Their submissions greatly aided this court to determine the matter both on liability and quantum.

Issues for Determination

Upon a careful evaluation of the pleadings, evidence, and written submissions, this Court frames the following issues for determination:

1. Whether the Applicant was an independent contractor or an employee of the Respondent.
2. Whether the Applicant was unfairly dismissed.
3. Whether the claims (or any part thereof) are statute-barred.
4. Whether the Applicant is entitled to severance pay, compensation for unfair dismissal, and ungranted leave days.

5. Whether the Applicant is entitled to remuneration for capturing, billing, driving duties, field allowances, and Saturday overtime.
6. Whether monetary awards should be adjusted for currency devaluation.

Analysis of the Facts, Evidence, Law and Findings of the Court

Whether the Applicant was an independent contractor or an employee

In Malawian labour jurisprudence and industrial relations, distinguishing accurately between an employee (contract of service) and an independent contractor (contract for services) is a foundational judicial determination. This distinction dictates the applicability of statutory protections under the Employment Act (Cap. 55:02), the Labour Relations Act, and related industrial legislation, as independent contractors fall outside the scope of statutory employment rights, unfair dismissal remedies, and mandatory social security or pension contributions.

Core Conceptual Distinctions

Contract of Service (Employee)

An arrangement where an individual agrees to place their personal service at the disposal of an employer, subject to the employer's direction, control, and organizational integration. The worker is an integral part of the employer's enterprise ("organization test").

Contract for Services (Independent Contractor)

A commercial arrangement where an independent business or person agrees to execute a specific project, result, or provision of specialized services. The contractor maintains professional independence, uses their own methods and apparatus, and operates on their own account.

Judicial Tests Applied in Malawian Courts

Industrial tribunals and superior courts do not rely on a single conclusive factor, nor do they treat the nomenclature chosen by the parties in a written agreement as definitive. Courts pierce the contractual label to examine the true substance of the working relationship, applying a constellation of established legal tests:

The Control Test (Traditional Supervision)

Historically the primary touchstone, this test examines the degree of control the employer exercises over what work is done, and how, when, and where it is performed. An employee is subject to direct supervision, fixed working hours, and employer-dictated operational methods. An independent contractor enjoys autonomy regarding the execution of the agreed task, bound primarily by the final contractual outcome or specifications.

The Integration (or Organization) Test

Formulated by Lord Denning, this test asks whether the person is a part and parcel of the organization. If the worker's services are integral to the core business operations of the employer such that the business could not function without them they are likely an employee. Conversely, if their services are accessory or external to the primary enterprise, they are an independent contractor.

The Multiple (Economic Reality) Test

Modern industrial jurisprudence relies on a multi-factorial balancing test that examines the overall economic reality of the relationship. Courts weigh several indicators concurrently:

Financial Risk and Reward

Does the worker invest their own capital, provide their own major tools/equipment, and bear financial risk, or is remuneration guaranteed via a regular salary or wage?

Delegation and Substitution

Does the worker have an unfettered contractual right to delegate the work or hire substitutes/subcontractors, or is personal service strictly required? (Personal service is a hallmark of employment).

Taxation and Statutory Deductions

How are PAYE, provisional tax, and pension contributions handled? While not decisive on its own, an employer deducting PAYE and statutory benefits strongly points toward an employment relationship.

Exclusivity and Economic Dependence

Does the worker operate an independent business serving multiple clients on the open market, or are they economically dependent on a single principal employer?

Practical Implications and Consequences

Statutory Protections

Employees enjoy mandatory protections regarding maximum working hours, paid leave, sick leave, severance benefits, and recourse for unfair dismissal or retrenchment under the Employment Act. Independent contractors are governed strictly by the civil law of contract and commercial terms.

Vicarious Liability

Employers are generally vicariously liable for the tortious acts of employees committed in the

course of their employment, whereas principals are typically insulated from the torts of independent contractors (subject to non-delegable duties and ultrahazardous activities).

Therefore the distinction between a contract of service (employee) and a contract for services (independent contractor) is foundational in labour jurisprudence. Section 3 of the Employment Act (Cap. 55:01) and Section 2 of the Labour Relations Act (Cap. 54:01) provide an expanded statutory definition of an employee, encompassing individuals who offer services under express or implied contracts, or who perform work in a position of economic dependence and under an obligation resembling an employee.

The Supreme Court of Appeal in ***Arnold Malinda & 55 Others v. Carlsberg Malawi Limited***, Civil Appeal No. 4 of 2023, emphasized that courts must look beyond labels and examine the totality of the employment relationship, including control, integration, continuity, and economic dependency. Similarly, in ***Simango v. Blantyre Newspapers Ltd*** [2008] MLLR 488, this Court reiterated the tripartite common law tests: control test, integration test, and economic reality test.

In the instant case, while Clause 14.0(b) of the 2011 agreement labels the Applicant an "independent contractor," subsequent developments and operational realities decisively rebut this label:

(a) **Integration and Control**

The Applicant served continuously for 14 years (2011 to 2025) without formal annual contract renewals, operating under holding over. As a Team Leader, he was integrated into the Respondent's organizational structure, occupying designated office space, utilizing company IT infrastructure, and reporting directly to Branch and Marketing Managers.

(b) Economic Dependency & Remuneration

The Applicant was placed on company-funded medical cover, group funeral schemes, and a contributory pension scheme (**Exhibit VLA 4**). Crucially, the Respondent enrolled him on its internal payroll, paid a fixed monthly retainer (responsibility allowance) subject to annual increments, and deducted **PAYE tax** from his earnings for years (**Exhibit VLA 13**) a clear hallmark of an employer-employee relationship acknowledged by RW1 and RW2 during cross-examination.

(c) Car Loan Facility

The Respondent extended a 5-year staff car loan deductible through commission/payroll, inconsistent with a transient independent contractor.

While the Respondent cites ***Vanguard Life Assurance Co. Ltd v. Emily Chima and Others*** (Misc. Civil Appeal No. 56 of 2010), that case is distinguishable from the present matter. In *Emily Chima*, the claimants remained pure commission-based sales agents without supervisory retainers, extensive administrative impositions, payroll integration, PAYE deductions, and 14 years of continuous de facto employment holding over. If the court have to look at the present matter, it would be easily be distinguished in both facts, and circumstances which cannot be used to the Emily Chima and Other's case.

Applying Section 3(b) of the Employment Act and looking at the totality of the relationship under ***Arnold Malinda v. Carlsberg***, this Court finds on a balance of probabilities that the Applicant's status evolved well beyond an independent sales agent into that of an **employee** of the Respondent on a contract of an unspecified period by operation of Section 28(3) of the Employment Act. Courts consistently disregard contractual labels, choice-of-law clauses, or "discretionary renewal" clauses if the operational reality demonstrates that the employee performs core, ongoing tasks without which the enterprise cannot function.

Whether the claims are statute barred

The Respondent argues that claims predating 20th April 2020 (six years prior to the commencement of action on 13th April 2026) are statute-barred under Section 4(1)(a) of the Limitation Act (Cap. 6:02).

The Court notes however, the Applicant's claims regarding administrative duties, non-renewal, and continuous breaches represent an ongoing obligation and continuous breach of contract that persisted up to his termination in January 2025. Furthermore, the court noted that active grievances were lodged with management and labour offices continuously from 2019 onwards, with management consistently promising review. In light of continuous employment and ongoing administrative demands, the limitation period did not bar the entirety of the antecedent claims, particularly where continuous obligations and promises of administrative redress reset the factual matrix of this matter.

Whether the Applicant was unfairly dismissed

Under Section 57 of the Employment Act, an employer must prove a valid reason for termination relating to the employee's capacity, conduct, or operational requirements. Section 58 mandates fair procedure.

The evidence reveals that the Applicant's termination on 24th January 2025 (**Exhibit VLA 26**) was

executed summarily following his refusal to sign a new standardized contract containing a "whole agreement" clause intended to extinguish his long-standing grievances.

The Respondent did not conduct any disciplinary or grievance hearing. Moreover, withholding the Applicant's November 2024 wages in December as economic leverage to compel signature (**Exhibit VLA 23**) constitutes a grave violation of fair labour practices under Section 31 of the Constitution of Malawi and Section 27 of the Employment Act.

Consequently, this Court holds that the Applicant was **unfairly dismissed** both substantively and procedurally.

Entitlement to Severance Pay, Unfair Dismissal Compensation, and Leave Days

Severance Allowance

Having established continuous employment for 14 years and unfair dismissal, the Applicant qualifies for severance pay under Section 35 of the Employment Act and the First Schedule. Based on his final monthly earnings of MK800,141.18 in December 2024

First 5 years (2 weeks per year): $5 \times (200{,}035.30 \times 2) = MK2{,}000{,}353.00$

Years 6 to 10 (3 weeks per year): $5 \times (200{,}035.30 \times 3) = MK3{,}000{,}529.50$

Years 11 to 14 (4 weeks per year): $4 \times 800{,}141.18 = MK3{,}200{,}564.72$

Total Severance Pay = <u>MK 8,201,447.22.</u>

Compensation for Unfair Dismissal

Under Section 63 of the Employment Act and principles in ***Chifundo Chioko v. First Capital Bank*** and ***Magola v. Press Corporation Ltd*** (***Civil Cause 3719 of 1998)***, compensation must be just and equitable. Given the 14-year tenure, the harsh manner of termination, and the unlawful withholding of wages, the Court awards the equivalent of **3 months' salary** per year as compensation for unfair dismissal ($MK800{,}141.18 \times 3 = MK2{,}400{,}423.54$

MK2, 400,423,54 X 14 years= **<u>MK33,605,929.56</u>**

Ungranted Leave Days

Section 44 of the Employment Act guarantees annual leave. The Respondent's classification of the Applicant as an independent contractor was a legal fiction to deny statutory benefits. The Applicant is entitled to compensation for ungranted leave days accrued over his tenure. Guided by the new 2024 Team Leader contract establishing 22 days per annum (**Exhibit VLA 28**) and consistent with industrial practice in long-service claims, the Court awards compensation equivalent to **150 accumulated leave days** calculated pro-rata on his final salary which translates to MK 5, 455,

507. 76.

Claims for Capturing, Billing, Driving Duties, and Overtime

Section 31 of the Constitution guarantees every person the right to fair labour practices and fair remuneration. The uncontradicted evidence of RW1 and RW2 established that the Applicant performed substantial administrative duties specifically driving company vehicles for field sales teams, data capturing, and billing coordination outside his core agency procurement scope, and which were subsequently formalized into salaried positions for other personnel.

While the Respondent argued these were covered by his responsibility allowance, the modest MK40,000 retainer introduced in 2016 was grossly inadequate compensation for years of driving and administrative workloads. Under the doctrine of unjust enrichment and constitutional guarantees of fair remuneration, the Applicant is entitled to reasonable compensation for additional duties performed outside his contract.

However, claiming full concurrent salaries of dedicated administrative officers for overlapping periods is excessive. Exercising its equitable jurisdiction, the Court awards lump-sum equitable compensation of **MK 15,000,000.00** in aggregate for the extra administrative, capturing, and driving burdens undertaken over the material years.

Currency Devaluation Adjustment

The Applicant prays for a 55% boost to cover kwacha devaluation, citing historical IRC practice.

This Court is cognizant of binding High Court authority in ***Standard Bank Plc v. Bernadette Kalumo et al*** (Civil Appeal No. 18 of 2024) and ***National Bank of Malawi Plc v. Cecilia Kuluwani*** (Civil Appeal No. 14 of 2025), wherein Tembo J. established that macroeconomic phenomena such as inflation and devaluation cannot be attributed as direct "actions of an employer" under the Employment Act to ground a percentage boost. Accordingly, the prayer for a devaluation boost is respectfully **refused**.

Disposition and Orders

It is hereby ordered as follows

Declaration

The Applicant was an employee of the Respondent under a contract of an unspecified period, and his termination constituted an unfair dismissal.

Severance Pay

The Respondent shall pay the Applicant **MK 8,201,447.22** as severance allowance.

Unfair Dismissal Compensation

The Respondent shall pay the Applicant **MK33,605,929.56** as compensation for unfair dismissal.

Ungranted Leave

The Respondent shall pay the Applicant **MK 5, 455, 507. 76** representing compensation for 150 ungranted leave days.

Additional Duties Compensation

The Respondent shall pay the Applicant **MK 15,000,000.00** as equitable remuneration for uncompensated administrative, capturing, and driving duties.

Therefore, the Court award the applicant the total sum of **MK 62,262,884.54.**

The Respondent shall pay the Applicant the total award within 15 days from the date the judgment was delivered. The Applicant shall be free to enforce the judgment sum at the lapse of 15 days from the date the judgment is pronounced.

The Court is alive and fully aware that parties have a right to appeal to the High Court if they are not satisfied with the outcome of the court determination of their complaint. However, appeal must follow the laid down time frame as provided in the Industrial Relations Court Rules.

Costs

In the Industrial Relations Court, Costs are rarely awarded to the winning party. In this matter the court orders that each party shall bear their own costs of the proceedings.

Delivered at Zomba this 13th day of November, 2026.





HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON