

**IN THE INDUSTRIAL RELATIONS COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MATTER NO. IRC 36 OF 2004**

**BETWEEN**

**MTEGHA & OTHERS.....APPLICANT**

**-and-**

**SHOPRITE TRADING (MW) LTD.....RESPONDENT**

**CORAM: R. ZIBELU BANDA (MS.); CHAIRPERSON**  
**M. CHILENGA; EMPLOYERS' PANELIST**  
**PADAMBO; EMPLOYEES' PANELIST**  
Chizuma (Ms.) Ag. Deputy Chairperson  
Applicant; Present  
Respondent; Absent without excuse  
Ngalauka; Official Interpreter

**JUDGMENT**

1. *Dismissal- Reason-Misconduct-Dishonesty-Consuming Stork-Without authority*
2. *Procedure-Right to be heard-Disciplinary hearing- Fair*

**Facts**

The applicants were employed by the respondent. They were working in a take away food outlet. They were accused of consuming stork without authority. They were invited to a hearing. They denied the allegations. The respondent was not convinced and they proceeded to dismiss the applicants. The applicants challenged the dismissal hence this action. The respondent contended that the dismissal was fair.

**The Law**

Section 57(1) of the Employment Act provides that before dismissal a person must be provided with a valid reason. While section 57(2) of the act provides that where the reason is connected with a person's conduct, he must be given an opportunity to be heard. Several cases have held that in all cases of dismissal, an employee must be given a valid reason and an opportunity to state his case and defend himself. See for example: *Beseni v Education Department of Nkhoma Synod* [Matter Number IRC 320 of 2002 (unreported)] IRC.

Misconduct involving misuse of company property including consuming company stork without authority has been held in this court to constitute valid ground for dismissal, see: generally, *Hamuza & another v Dwangwa Sugar Corporation* [Matter Number IRC 169 of 2004 (unreported)] IRC. In this case it was clear to the court that applicants had indeed acted dishonestly. They misused company property, i.e. eating company stork without authority.

**Finding**

The court finds that the reason for dismissal was valid and that the applicants were accorded an opportunity to state their case before dismissal. The respondent complied with the requirements of the law. This action is therefore dismissed in its entirety.

Any party aggrieved by this decision has the right of appeal to the High Court within 30 days of this decision. Appeal lies only on matters of law and jurisdiction and not facts: Section 65 (2) of the Labour Relations Act.

**Made** this 15<sup>th</sup> day of November 2007 at **BLANTYRE**.

**Rachel Zibelu Banda**  
**CHAIRPERSON**

**Joel Evalisto Chilenga**  
**EMPLOYERS' PANELIST**

**Padambo**  
**EMPLOYEES' PANELIST**