

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

MZUZU REGISTRY

MATTER NO. IRC 279 OF 2003

BETWEEN

KAMANGA.....APPLICANT

-and-

MALAWI REVENUE AUTHORITY (MRA).....RESPONDENT

CORAM: R. Zibelu Banda (Ms); Chairperson
Kapezi (Ms); Representing the Applicant
Respondent; Absent without valid excuse
Namponya (Ms); Official Interpreter

JUDGMENT

- 1. Dismissal- Reason-Negligence*
- 2. Employer to show reason-Burden of proof lies of employer-Where employer fails to give reason-presumption that dismissal was unfair*
- 3. Court procedure-Parties to attend hearing-Failure to attend for no good reason matter to proceed-Attending a meeting is not valid reason for failure to attend court*
- 4. Procedure- Right to be heard-Hearing-It is a legal obligation to afford a hearing*

Background

When the matter was called for hearing the court was informed that the two legal counsel for MRA were in Zomba attending a seminar. The court found that this was not a valid reason for failure to attend to court matters. There is a tendency in some quarters to take court process lightly. In labour matters unnecessary adjournments are not entertained as the court deals with people's livelihood guaranteed under the Constitution. The matter proceeded to disposal pursuant to section 74 of the Labour Relations Act.

The applicant was dismissed for negligence after performing certain transactions. The transactions were normal procedure. There was no irregularity. However the respondent thought the applicant was negligent. They did not explain the nature of the negligence as the applicant was never called for a hearing to explain himself on this allegation.

In any reason for dismissal the burden is on the employer to show and justify it. In this case the applicant did not attend a hearing for the respondent to show and prove the reason. Further the respondent did not attend court to prove on a balance of probabilities

that they had a valid reason for terminating the services of the applicant. See; section 61(1) of the Employment Act. The court finds that the respondent did not comply with the law in this termination.

Finding

The respondent violated the law in section 57 of the Employment Act, section 61 of the same Act and the Constitution in section 31 which provides for fair labour practices. This action therefore succeeds.

Assessment of Remedies

The matter shall be set down on a date to be fixed for assessment of an appropriate remedy. Both parties shall be required to attend the assessment.

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.

Pronounced this 30th day of January 2007 at BLANTYRE.

**Rachel Zibelu Banda
CHAIRPERSON.**