

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NUMBER IRC 328 OF 2004

BETWEEN

NAMALOMBA..... APPLICANT

-and-

SECURICOR MALAWI LTD.....RESPONDENT

**CORAM: R. ZIBELU BANDA (MS); CHAIRPERSON
MRN PADAMBO; EMPLOYEES' PANELIST
JE CHILENGA; EMPLOYERS' PANELIST
Makalani; For the Respondent
Applicant; Present
Ngalauka; Official Interpreter**

JUDGMENT

- 1. Dismissal-Reason for dismissal- Misconduct- Willful disobedience of company regulations and procedures-Flouting company procedures-Insubordination*
- 2. Procedure- Opportunity to be heard- and defend oneself-Interference with employer's decision.*

Facts

The applicant was employed as Security Guard. He was dismissed for insubordination. On the material day, the applicant attended a meeting called by management. The applicant in the course of the meeting disrupted the proceedings and beat up one of his colleagues also attending the meeting. The respondent invited the applicant for a hearing. He defended himself. The respondent was not convinced and they proceeded to dismiss him. He challenged the dismissal in court.

Upon hearing the applicant and upon hearing the respondent the court finds that applicant indeed violated conditions of employment by conduct that was disruptive and violent. He was supposed to abide by instructions and regulations prevailing at the meeting.

Willful disobedience of company rules and regulations is serious misconduct warranting summary dismissal; see *Mussa V Securicor (Mw) Ltd* [Matter No. IRC 2/2000 (unreported)] and *Mendulo V Malawi Revenue Authority* [Matter No. IRC 161/ 2003 (unreported)].

Flouting company procedures has been held in this court to constitute valid ground for dismissal, see *Nzangaya V Unitrans Malawi Ltd*_[Matter Number IRC 32 of 2003 (unreported)].

Interference with Employer's Decision

It has been held in this Court that decisions of employers should not be tampered with if there is no allegation that the process to arrive at the decision was not fair. See the case of *Kachingwe & others V Southern Bottlers Mw Ltd* [Matter No.162 of 2003(unreported)]. In that case the Court quoted with approval a holding of the Labour Appeal Court of South Africa in the case of *County Fair Foods (Pty) Ltd V CCMA & others* [1999]11BLLR 1117 (LAC), per Kroon JA:

“[interference] with the employer’s sanction “ is only justified in the case ofunfairness.”
However, the decision of the arbitrator as to the fairness or unfairness of the employer’s decision is not reached with reference to the evidential material that was before the employer at the time of its decision but on the basis of all evidential material before the arbitrator.”

It was heard in the instant case that the applicant had discussions with his employer, on his conduct. He also appeared before a disciplinary hearing prior to his dismissal. There is no compelling reason to interfere with the respondent’s decision.

Finding

The Court finds that the respondent complied with the law. The reason was valid and the procedure was fair. The dismissal was fair according to section 57 of the Employment Act. Action is dismissed in its entirety.

Any party aggrieved by this decision is at liberty to appeal to the High Court within 30 days of this judgment.

Made this 14th day of November 2007 at **BLANTYRE**.

Rachel Zibelu Banda
CHAIRPERSON

Maxwell RN Padambo
EMPLOYEES' PANELIST

Joel Evalisto Chilenga
EMPLOYERS' PANELIST