

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NUMBER IRC 122 OF 2004

BETWEEN

ZINGWA..... APPLICANT

-and-

LINK BUILDING PRODUCTS.....RESPONDENT

CORAM: R ZIBELU BANDA (MS); CHAIRPERSON
MRM PADAMBO; EMPLOYEES' PANELIST
JE CHILENGA; EMPLOYERS' PANELIST
Applicant; Present
Salimu; Finance & Administration Manager; for the Respondent
Chinkudzu; Official Interpreter

ORDER IN ASSESSMENT OF COMPENSATION

Background

Judgment in favour of the applicant was delivered on 8th day of November 2007 at Blantyre. The court found that the dismissal was unfair on grounds that the reason was not justified. The matter came for assessment of compensation. The applicant gave evidence. The respondent was in attendance. The court found that the applicant is entitled to compensation.

The relevant law in assessment of compensation is section 63 of the Employment Act. Subsection 4 provides that: An award of compensation shall be such amount as the court considers just and equitable in the circumstances having regard to the loss sustained by the employee in consequence of the dismissal in so far as the loss is attributable to action taken by the employer and the extent, if any, to which the employee caused or contributed to the dismissal, see *Mwafulirwa v Manic Malawi Ltd* [Matter Number IRC 34 of 2004 (unreported)]IRC. The burden of proving loss is on the employee; see *Chiume v SS Rent A Car* [Matter Number IRC 149 of 2000 (unreported)] IRC.

Just and Equitable

The key factor to consider when assessing compensation is that it must be just and equitable. It must be just and equitable to the employee as well as to the employer. The court has wide discretion to determine what is just and equitable. However this discretion must be exercised judicially. In the instant case it is important to consider first whether

there was any loss caused to the applicant due to the dismissal. The answer is provided by the applicant who stated that since his termination he has lost an income. While employed he was entitled to a salary of MK2 900-00 per month and house allowance of MK200-00 per month. Since he has not secured any alternative employment the applicant has continued to experience this loss of income and benefits.

Contributory Fault

Secondly the court must consider whether the applicant contributed to the termination. The answer is to be found in the finding of the court of 8 November 2007. The court found that the applicant did not contribute in any way to the termination. Therefore the respondent takes full 100% contribution to the loss that the applicant has suffered.

Mitigation of Loss

Thirdly, the court has implied and it is trite law in assessment of damages cases that an aggrieved person will seek to mitigate his loss. In *Malawi Environmental Endowment Trust v Kalowekamo* [Civil Cause Number 49 of 2004 (unreported)] HC. The court alluded to the fact that an employee who loses his job must make attempts to mitigate his loss. In that case the court found that the applicant did not have anything to show as a way of mitigating loss.

In this instant case the burden was on the employee to show that he had tried in vain to seek alternative employment or any gainful enterprise to mitigate his loss. The court was informed that the applicant was in gainful employment where he was earning about MK5 000-00 per month.

Under the circumstances of this case and having considered the above factors, the court must determine the compensation to be awarded to the applicant. The Supreme Court of Appeal in *Stanbic Ltd v Mtukula* [MSCA Civil Appeal Number 34 of 2006 (unreported)] SCA, considered the equivalent of 57 months salary as adequate compensation for someone who had served his employer for 19 years.

In the instant case the applicant had worked for 3 years for the respondent. The court awards the applicant the equivalent of two weeks salary and two weeks house allowance for a period beginning the effective date of termination (after notice period) being 27 May 2004 to date of judgment being 8 November 2007. This is because the applicant has not completely lost out. He is in gainful business which is mitigating the loss caused by the loss of a job. The total award calculated is MK 62 000-00.

Order

The respondent is ordered to pay the applicant **MK62 000-00** representing compensation for equivalent of half pay for 20 months representing salary and house allowance. This order is effective within 14 days of this day.

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

Made this 28th day of May 2008 at **BLANTYRE**.

Rachel Zibelu Banda
CHAIRPERSON

Maxwell RN Padambo
EMPLOYEES' PANELIST

Joel Evalisto Chilenga
EMPLOYERS' PANELIST