

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

THYOLO REGISTRY

MATTER NO. 01 OF 2006

BETWEEN

MUNLO AND ANOTHER.....APPLICANTS

-and-

CHIWALE ESTATE LTD..... RESPONDENT

CORAM: R Zibelu Banda (Ms); Chairperson

Malijani; Employers' Panelist

Kajombo; Employees' Panelist

Bwanausi; For Respondent

Applicants; Present

Nyabanga; Official Interpreter

JUDGMENT

- 1. Dismissal-Complaints of unfair dismissal-Section 62 Employment Act-Jurisdiction-District Labour Officer-Section 64 Employment Act-Disputes and Complaints-Labour Officer to attempt to resolve-Court-Jurisdiction on referral or Appeal from Labour Officer-Section 62*
- 2. Labour Officer-Role of Labour Officer-Conciliation-Where Labour Officer secures an agreement parties to comply*
- 3. Matter not to be entertained in court where a party refuses re-instatement or reengagement without good cause*
- 4. Where reinstatement or reengagement is offered there can not be a claim for unfair dismissal*

Back ground

The two applicants, Munlo and Makabuli were employees of the Respondent. They were suspended on 7 March 2005 on allegations of theft of cattle. They complained to the District Labour Officer for Thyolo. After discussions the respondent offered to re-engage the applicants on 7 December 2005 and pay them salaries for the period that they were on suspension. The applicants refused offer of re-engagement and instead came to this court to claim compensation.

In their evidence in this court the applicants did not show why they refused the offer of re-engagement. The court found that the matter was frivolous, vexatious and an abuse of

court process and accordingly dismissed the action for unfair dismissal on the following reasons:

The legal position is that where the law sets down procedures and steps to be taken in addressing a labour dispute, all parties are legally obliged to adhere to such procedural steps; carrying on otherwise would create jurisdictional problems and render the object of the law nugatory. The courts must be the first to enforce such processes so that the rule of law prevails over anarchy.

In all cases of unfair dismissal as provided by the law, the complaint comes to the Industrial Relations Court by way of referral from the Labour Officer. H/se refers unresolved matter to the Industrial Relations Court stating the reasons why the matter could not be resolved at the Labour Office. Section 62 of the Employment Act provides that:

- (1) Within three months of the date of dismissal, an employee shall have the right to complain to the District Labour Officer that he has been unfairly dismissed irrespective of whether notice was given or not.*
- (2) The right of an employee to make a complaint under this section shall be without prejudice to any right that he may enjoy under a collective agreement.*
- (3) Where the District Labour Officer fails to settle the matter within one month the matter may be referred to the Court in accordance with section 64(2) and (3).*

Section 64(1) of the Employment Act provides that:

any person having a question, difference or dispute as to the rights or liabilities of any person, employer or employee under this Act or a contract of employment may bring the matter to the attention of a labour officer who shall attempt to resolve the matter.

In this matter the parties appeared before the District Labour Officer where a conciliation process resulted in the respondent re-engaging the applicants. Having reached that understanding the parties had no dispute before this court relating to termination.

Order

The court orders the respondent to pay the applicants salary arrears from the date of suspension on 7 March 2005 to 7 December 2005 when they were offered re-engagement. The respondent may re-engage the applicants if the respondent's operational requirements so demand.

Any party aggrieved by this decision is at liberty to appeal to the High Court in terms of section 65 (2) of the Labour Relations Act.

Made this 4th day of March 2008 at THYOLO

Rachel Zibelu Banda
CHAIRPERSON

Aiman Malijani
EMPLOYERS' PANELIST

Nick Chifundo Kajombo
EMPLOYEES' PANELIST