

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. IRC 459 OF 2002

BETWEEN

MMANGENI.....APPLICANT

-and-

CARLSBERG (MW) BREWERY LTD.....RESPONDENT

**CORAM: R. ZIBELU BANDA (MS.); CHAIRPERSON
A MALIJANI; EMPLOYERS' PANELIST
M PADAMBO; EMPLOYEES' PANELIST
Respondent; Absent without excuse
Applicant; Present
Chimkudzu; Official Interpreter**

JUDGMENT

Facts

The respondent employed the applicant on 12 January 1992 as General Worker. He was dismissed on 7 September 2001. The reason for dismissal was dishonesty. It was alleged that the applicant attempted to steal a carton of soft drinks from the respondent. He was found with a carton containing five cans of soft drinks at the gate without authority. The applicant was invited to a disciplinary hearing to answer to the charge. The applicant was asked to explain but his explanation was not convincing. He was dismissed. He challenged the dismissal in this court. The respondent did not attend court.

The court heard evidence from the applicant. He explained what happened on the material day. He admitted that soft drinks were found in the vehicle in which he was riding home after his shift. He however denied that the drinks belonged to him. The court considered the applicant's testimony and the documents on record. The court concluded as a fact that the applicant attempted to take soft drinks out of the respondent's premises without authority. The reason for termination was therefore valid as it involved dishonesty.

The Law

Misconduct involving theft has been held to constitute valid ground for dismissal, see: *Ibrahim v Suncrest Creameries Ltd* [Matter Number IRC 73 of 2003 (unreported)] IRC.

In this matter the applicant admitted that soft drinks that were not accounted for were found in the vehicle in which he was riding home after his shift. He admitted that no authority was given to him or any of the occupants in the vehicle to take out the drinks. He however blamed someone else for the drinks. He did not call this person to confirm that the drinks were indeed his and how he had come to possess them. The court therefore found as a fact that the applicant was responsible for taking out soft drinks from the respondent without authority.

The applicant admitted that he had attended a disciplinary hearing. He was given a notice of hearing to answer the above charge. He appeared before the disciplinary committee where he was asked to explain his side of the story. The court found as a fact that the applicant was given a fair hearing before termination.

Finding

The court finds that the reason for dismissal was valid and that the applicant was accorded an opportunity to state his 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 5th day of March 2008 at **BLANTYRE**.

Rachel Zibelu Banda
CHAIRPERSON

Aiman Malijani
EMPLOYERS' PANELIST

Maxwell R Padambo
EMPLOYEES' PANELIST