

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. IRC 195 OF 2005

BETWEEN

MEDI APPLICANT

-and-

JAKUKUMA RESPONDENT

CORAM: R. ZIBELU BANDA – CHAIRPERSON

Malijani; Employers’ Panellist
Padambo; Employees’ Panellist
Applicant; Present
Respondent; Absent no excuse
Chinkudzu; Official Interpreter

JUDGMENT

1. *Specific claims-Leave pay-Overtime pay-To be specifically proved*
2. *Burden of proof-Employee-To prove that money was earned and is owed*
3. *Severance allowance-Follows termination-Nature of termination determines whether severance allowance is payable*

Facts

The applicant was employed on unknown date in 2003. He was suspended in November pending criminal investigations and trial. In March 2005 he was dismissed from employment. The applicant claimed that he was not paid leave grant, overtime, severance allowance, wages for some months and that he was not given certificate of termination.

The respondent did not attend court. A notice of hearing was sent to them. In the absence any reason for failure to attend court, the court invoked the provisions of section 74 of the Labour Relations Act and proceeded to hear the applicant.

The Law

In this claim it is clear that the applicant had his services terminated. Section 35 of the Employment Act provides that an employee whose services are terminated unilaterally by the employer is entitled to severance allowance unless he is disqualified under section 35((6) of the Act. It is the duty of the employer to show court whether an employee is disqualified from receiving severance allowance or not. In this case no evidence was given to preclude the applicant from claiming severance allowance. The court orders that

the applicant be paid severance allowance representing two weeks wages calculated based on the monthly wage at time of termination. This amounts to **MK 2 499.36**.

The applicant claimed that he was not paid leave grant. The court found that this claim was not substantiated. It therefore fails for lack of proof.

The applicant also claimed that he worked overtime but was not paid. The applicant did not produce any evidence to prove that he earned overtime and that he was not paid. This claim fails.

There was contradicting evidence relating to unpaid wages for some months. The applicant seemed to suggest that after he was suspended from duty he was not paid wages. Yet in his pleadings in IRC Form 1 which is the Statement of Claim the applicant indicated that he was paid all his wages. This claim fails on the basis that there was no proof that the applicant was not paid during the period that he was on suspension. The onus was on the applicant to show that he was not paid wages. In this instance the applicant's evidence was unreliable.

The applicant is entitled under section 31 of the Employment Act to a Certificate of Termination. The respondent is ordered to make available to the applicant a Certificate of Termination immediately.

Finding

The court finds that the applicant succeeds in his claim for severance allowance. He also succeeds in his claim for certificate of termination but he fails in the specific claims of leave pay, overtime and unpaid wages for lack of proof. The orders made in this judgment are with immediate effect.

Any party dissatisfied with this decision is at liberty to appeal to the High Court in accordance with the provisions of section 65 of the Labour Relations Act.

Pronounced this day 30th day of January, 2008 at **BLANTYRE**.

Rachel Zibelu Banda
CHAIRPERSON

Aiman Malijani
EMPLOYERS' PANELIST

Maxwell R Padambo
EMPLOYEES' PANELIST