



REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION
IRC APPEAL NO. 11 OF 2011

Between

RONALD MBEWE AND OTHERS..... APPELLANTS

-and-

SHIRE BUS LINES LIMITED.....RESPONDENT

Coram: Honourable Mr. Justice J. M. Chirwa

C. Gondwe of the Counsel for the Appellants

H. Msisha of the Counsel for the Respondent

Mr O. Chitatu Official Court Interpreter

JUDGMENT

1. Introduction:

This is an appeal by the Appellants, **Ronald Mbewe** and others, against the Judgment of the Industrial Relations Court, Principal Registry, delivered on the 24th day of January, 2011. The grounds of appeal are as follows:

1. That the Industrial Relations Court erred in finding that there was no unfair dismissal;
2. That the Industrial Relations Court erred in law in finding that proper severance allowance had been paid to the Appellants;
3. That the industrial Relations Court erred in refusing to order disclosure of information relating to pension payments.

The reliefs which the Appellants seek from this Court are as follows:

- (1) A reversal of the findings of the Industrial Relations Court;
- (2) An order of payment of compensation for unfair dismissal and severance allowance; and
- (3) An order of disclosure of information relating to pension calculations.

2. Background: -

The Appellants were at all material times employees of the Respondent, until they were retrenched on or about the 31st of July, 2007. Following their retrenchment, as aforesaid, the liquidator of the Respondent, after several consultations with the employees' union and the Privatisation Commission, agreed on the terminal benefits payable to the Appellants.

Dissatisfied with the payments made to them, the Appellants commenced proceedings in the Industrial Relations Court. And being further dissatisfied with the decision of the said Court, the Appellants have appealed to this Court.

3. The Law: -

It is trite that an appeal from the court below to this Court is dealt with by way of an actual re-hearing of the matter which led to the decision under appeal and that the judge must treat the matter as though it came before him for the first time. The judge has to give the weight it deserves to the previous decision, but is not in any way bound by it (**see: Mulava vs Republic** [1997]2 MLR 60 at p 63).

Section 65 of the Labour Relations Act which deals with appeals from the Industrial Relations Court, provides as follows: -

"(1) Subject to subsection (2) decisions of the Industrial Relations Court shall be final and binding.

(2) A decision of the Industrial Relations Court may be appealed to the High Court on a question of law or jurisdiction within thirty days of the decision being rendered.

(3) The lodging of an appeal under subsection (2) shall not stay the execution of an order or award of the Industrial Relations Court, unless the Industrial Relations Court or the High Court directs otherwise."

This being the law this Court is thus precluded from entertaining an appeal from the Industrial Relations Court on a finding of fact by that Court. It is the position at law that such a finding is final and cannot be appealed against (**see: Magalasi vs National Bank of Malawi** [2008] MLLR 45 (MSCA) **and Malawi Revenue Authority vs Milanzi** [2008] MLLR 243).

4. Determination: -

At the hearing of this appeal Counsel for the Appellants opted to proceed to argue only two grounds of appeal, which are:

(a) That the lower court erred in law in finding that the severance allowance had been paid to the Appellants; and

(b) That the lower Court erred in refusing to order disclosure of information relating to pension payments.

The ground relating to unfair dismissal was intentionally abandoned. In the premises, this Court will proceed to determine only those grounds which were argued by the parties themselves.

The first ground is:

(a) was proper severance allowance paid to the Appellants?

It is here the intention of this Court to reproduce what the lower Court in its judgement at pages 5 and 6 said as regards the payment of severance allowance as follows:

"Coming to the other claims, we begin with the issue of severance allowance. The applicants say they were underpaid severance allowance. On the totality of the evidence before us, initially, the parties made an agreement which provided for a higher or a lower severance allowance than that what the law provided for.... Perhaps, it was a gentleman's agreement. This led to some anomalies of overpayments and underpayments. Later, the payments were made in accordance with the law. Furthermore, we are told, the respondent also took into account a Supreme Court decision on what severance allowance had to constitute. This led to the correction of the said anomalies. Yet others were still overpaid under the aforementioned agreement. The ones underpaid collected the difference. Those overpaid were not requested to pay back. On a balance of probabilities, we find that the evidence of the respondent is steadfast that they fulfilled the obligation to pay severance pay. The applicants' claims, that they were underpaid, is not supported and it lacks merit. We feel the claim is misplaced and we dismiss it accordingly."

The foregoing findings of the lower court are, no doubt, findings of fact based on the evidence adduced before it. This being the case, no right of appeal can be made against the same to this Court per the authorities cited above.

But even if the same were not findings of fact, which this Court is not inclined to hold, it is clear from the evidence before the lower court that the severance allowance paid to the Appellants was after the Respondent had taken into account the decision of the Supreme Court of Appeal on what severance allowance had to constitute which led to the correction of the anomalies previously made. It is noteworthy that the Appellants have not demonstrated to this Court by figures how different the severance allowance paid to them are different from what they deem to be proper.

In the premises, this Court finds that the lower court was justified in finding that the Appellants were duly paid their severance allowances as per Section 35 (1) of the Employment Act and the Supreme Court of Appeal decision in the case of **Stanbic Bank Limited vs Mtukule**, MSCA Court Appeal No. 34 of 2006 (unreported). This ground of appeal is thus without merit. It thus ought to be dismissed.

The second ground argued is:

(b) Are the Appellants entitled to an order of disclosure of information relating to pension payments?

Again, this Court prefers to reproduce what the lower court in its judgment at page 6, said in relation to the Appellants' claims on pension and provident fund as follows:

"On pension and provident fund, the respondent's witness told the Court that they duly remitted to the applicants what the funds managers released to them. In respect of pension, this was even after the managers had asked the Respondent to make up for the period the [respondent] was not making its contributions due to financial woes. The applicants' claims on this aspect are windy and unsubstantiated. The

applicants' witness did not isolate a single case where an employee was underpaid. Again, the Respondent's witness stated that he knew not a single person who was underpaid. No one came up to make that claim.

The applicants, in the alternative, ask for discovery of the calculations of pension. We are at the loss if at all the applicants have a claim or they are still looking for a claim. It might perhaps be a fishing expedition. However, this far the claim is without merit and we dismiss it".

It is again, the considered view of this Court that the foregoing findings of the lower court being findings of fact, no appeal would thus lie against the same to this Court.

Indeed, if the Appellants' witness in the lower court was not able to single out any of the Appellants who had been underpaid on pension or provident fund what purpose would an order of disclosure thus serve? This Court finds none whatsoever.

It is, in the premises, this Court's finding that the Appellants are not entitled to an order of disclosure of information relating to the pension payments. This ground of appeal is thus also without merit. It thus also ought to be dismissed.

5. Conclusion: -

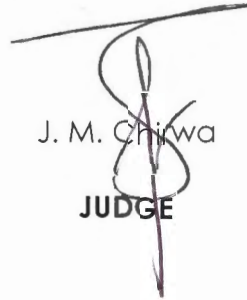
For the reasons given above, it is the finding of this Court that the Appellants' within appeal is without merit. It is consequently, dismissed in its entirety.

6. Costs: -

The costs of any proceedings are in the discretion of the Court (vide: Order 31 Rule 3(1) of the Courts (High Court) (Civil Procedure) Rules. The unsuccessful party pays the costs of the successful party (vide: Rule 3(2) of the said Order).

In the exercise of its discretion on costs, it is now the order of this Court that the Appellants do pay the Respondent's costs of these proceedings. The same are to be assessed by the Registrar of this Court, in the event that the parties hereto are unable to reach an amicable settlement on the same. It is so ordered.

Dated this 2nd day of November 2018.



J. M. Chiwa
JUDGE