

Employment



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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 686 OF 2001



BETWEEN :

DAVIE KANJERWA..... PLAINTIFF

AND

L. M. DZINYEMBA t/a TIRZA ENTERPRISES..... DEFENDANT

CORAM : Hon Justice M.C.C. Mkandawire

Mr. Salima of Counsel for the Plaintiff

Mr. Kanyenda of Counsel for the Defendant

Ben Luckson Official Interpreter

J U D G M E N T

Mkandawire J

INTRODUCTION:

The plaintiff began this action by writ of summons on the 11th of February, 2004. The Plaintiff claims for damages for defamation of character, damages for unlawful dismissal/wrongful withholding of wages, and reimbursement of travel expenses to and from Mulanje

7

Police Station. A default judgment was entered in favour of the Plaintiff on the 26th of April, 2004. Thereafter, the defendant applied for stay of execution and a defence was later on filed with the Court on the 6th of October 2004. On the 14th of January, 2005, the default judgment was set aside. On the 1st of March, 2005, the Court granted directions for trial. At this point in time therefore, all is done in making the case ready for hearing.

Before the matter could proceed for hearing, the defendant filed a summons applying for leave to transfer proceedings from the High Court to the Industrial Relations Court. As per the available evidence on record, the summons seeking leave to transfer the matter to the IRC was filed on the 11th of July, 2005. The defendant has filed both an affidavit and skeleton arguments in support of this application. On their part, the Plaintiff's Counsel did not file any affidavit neither any skeleton arguments. Counsel for the Plaintiff said that he saw no reason for filing these documents as the matter herein was a straight forward issue. With due respect, I thought that Counsel over relaxed. The matter was not as straight forward as he would like the Court to believe. Counsel should always come prepared and no case should be taken lightly. Be that as it may, I proceeded to hear Counsel based on his oral submissions.

SURVEY OF THE APPLICATION:

Basically, the defendant's Counsel has deponed that the Plaintiff's action is largely a labour dispute; and that the remedies which the Plaintiff wants to enforce are found in the Labour Relations Act and the Employment Act. The defendant therefore say that the Plaintiff has chosen the wrong forum. It is his prayer that the Industrial Relation Court has the competence to handle the claims herein as is only cases that can not be handled by it that can be brought to the High Court. He finally depones that this is a proper case whereby the High Court should decline jurisdiction by referring this matter to the Industrial Relations Court. Counsel goes on to caution this Court that if such matters are allowed, then this Court shall be inundated with a lot of these labour disputes. In his skeleton arguments, Counsel has cited several case authorities whereby the High Court has on times without numbers referred Labour related Matters to the Industrial Relation Court.

In his submission, Counsel for the Plaintiff said that although he appreciates that the matter herein is labour related, but the other claims such as defamation and transport expenses to the Police can not be addressed by the Industrial Relation Court as it has no jurisdiction over such issues. Counsel also wondered as to how the defendant came to the conclusion that the Plaintiff should be condemned to pay costs of this action up to this stage.

THE LAW:

The Law is very clear that the High Court of Malawi has got unlimited original jurisdiction pursuant to section 108 of the constitution. This therefore means that the High Court can entertain any matter, be it a Labour Related Matter such as this one.

The same constitution in section 110 (2) has established the Industrial Relations Court which is conferred with original jurisdiction over labour disputes and such other issues relating to employment. The Labour Relations Act has also given powers to the Industrial Relations Court in Section 64 to have jurisdiction to hear and determine all labour disputes and disputes assigned to it under this Act or any other Law.

It is therefore very clear that the Industrial Relations Court does not have exclusive jurisdiction over Labour Related Matters. Be that as it may, the policy at the High Court is now well settled that most Judges prefer to refer these Labour Related Matters to the Industrial Relations Court as a Court of first instance. The various case authorities from this Court are a manifestation of this Policy. The cases of Hyghten Lemani Mungoni vs The Registered Trustees of Development of Malawi Traders Trust (DEMATT) PR Civil cause No. 686 of 2001, Mary Kaunde vs Malawi Telecommunications Ltd PR cause No. 687 of 2001, Dick Chikwekwe vs Banja La Mtsogolo Civil Cause No. 285 of 2002 have elaborated this policy of referring labour related disputes to the Industrial Relations Court.

Indeed as recent as this year, I also had the opportunity to refer a labour related case to the Industrial Relations Court in the Case of Leonard Chitate and Another vs Avery Berkel Private Ltd PR,

Civil cause No. 2799 of 2004. This is what I had to say on page 5 of my judgement: R

"When one looks at the nature of the Counter claims as well as the interlocutory applications, it is very clear that they are both premised on labour and employment dispute. Thus the outcome of this labour dispute or this employment dispute shall have a bearing on the claims made by the defendant. As such, I do not see any merit as to why this matter can not be heard by the Industrial Relations Court. Coming to the issue of the High Court having unlimited original jurisdiction, I would like to say that we at the High Court should be very careful in the way we look at this Section. I take it that although we have unlimited original jurisdiction, this should not be construed to mean that we have limitless jurisdiction. Where the same constitution has established a particular judicial institution to deal with a particular species of cases, we should first pause and ask ourselves as to what were the objectives of the legislature, I am very confident that Parliament in its wisdom knew very well that the High Court has unlimited original jurisdiction. But having realized how bogged we are at the High Court with all sorts of cases, the Constitution created a different avenue for labour related cases and those involving employment related issues."

Today, I still stand by my observations in the above case.

Although there is a policy to refer labour related cases to the Industrial Relations Court, there are however sporadic instances whereby the High Court has still held that it has powers to hear these cases. There is thus no real uniformed approach. This was also noted by my learned brother Justice Chipeta in the case of Harry Bakasi – vs Sugar Corporation of Malawi PR, Civil Cause Number 559 of 2000 (unreported) as well as in the case of Paul Chimenya vs Old Mutual Life Assurance Co (Malawi) Limited Civil Cause Number 2559 of 2002. Since these cases were decided in the early 2000 when the Industrial Relations Court had just started hearing cases, an institutional audit in the mid 2000 will show that the policy is now more uniformed. R
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Analysis of Facts:

As a general approach, I would advocate that labour related cases should certainly be transferred to the Industrial Relations Court. This Court as a Court of first instance is best placed to adjudicate over them. The High Court should be spared for appeals pursuant to Section 65 (2) of the Labour Relations Act. Let me however throw in a word of caution. The transferring of Labour related matters from the High Court to the Industrial Relations Court should be approached on a case by case basis. There should be guidelines which the High Court should follow in order to avoid injustice to the parties. I would therefore herein under list some of these guidelines:

- (1) The Nature of the claim before the Court. Is the claim comprising other issues beyond the jurisdiction of the Industrial Relations Court?*
- (2) Would the separation of these claims not occasion injustice to any of the parties.*
- (3) At what stage of the trial is the application for transfer made?*
- (4) How much time has elapsed between the date of filing of the claim to the date the application to transfer the case is made.*

These are a few of the guidelines which may be of help to the High Court if we are to attain uniformity in approach.


Having said that, let me look at the facts of this application. Apart from the claim of unlawful dismissal, the plaintiff is also claiming for defamation of character and other special damages.

I am aware however that from the detailed statement of claim attached to the writ of summons, the plaintiff is basically relying on the claim of unlawful dismissal. The plaintiff has deliberately drafted the statement of claim in such a way as if the claim of defamation is a core claim yet it is not. Therefore on the nature of the claim, I find that this is a purely labour related issue. I have also taken into account that the case has not yet been set down for hearing at this Court. If it is transferred to the IRC, very little shall be lost. I also observe on the case file that there is not too much time lost.

ORDER

I therefore order that the matter herein be transferred to the IRC which is best placed to deal with it as a Court of first instance. As for costs, each party shall bear its own costs.

MADE IN CHAMBERS this 25th day of October, 2005 at Blantyre


M. C. C. Mkandawire
JUDGE

