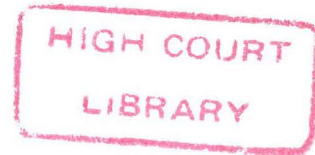


**IN THE HIGH COURT OF MALAWI**

**LILONGWE DISTRICT REGISTRY**

**CIVIL APPEAL NO 37 OF 2015**



**BETWEEN**

**JTI LEAF (MALAWI) LIMITED-----APPELLANT**

**AND**

**KAD KAPACHIKA-----RESPONDENT**

**CORAM: HON. JUSTICE M.C.C. MKANDAWIRE**

**Ngunde, for Appellant**

**Kaphamtengo, for Respondent**

**Itai, Court Interpreter**

**JUDGMENT**

This is an appeal following the decision of the Industrial Relations Court delivered on the 7<sup>th</sup> of November 2014 in favour of the respondent. In that decision, the Industrial Relations Court found that the respondent was unfairly dismissed by the respondent in that the procedure followed was unfair and that the reasons for the dismissal were not valid. Following this finding, the court ordered that the respondent should be paid damages for unfair dismissal, severance allowance and three months notice pay. The court also ordered that the respondent should be paid his pension benefits in accordance with Section 65 of the Pensions Act.

In its appeal to this court, the appellant has raised five grounds of appeal. In a nutshell, the appellant says that the Industrial Relations Court erred in law in holding that the appellant did not follow requisite procedure and that the appellant had no valid reasons to dismiss the respondent. They further contend that the Industrial Relations Court erred in law in holding that the respondent was entitled to damages for unfair dismissal, severance pay, 3 months notice pay and pension dues.

It is imperative at this point in time to remind ourselves on the law governing appeals from the Industrial Relations Court to the High Court of Malawi. The Industrial Relations Court is established in Section 110(2) of the Constitution as a subordinate court. But unlike other subordinate Courts, the Industrial Relations Court has some peculiar characteristics. One such peculiar characteristic is the issue of appeals. Section 65 of the Labour Relations Act which governs the operations of the Industrial Relations Court provides:

- (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.

This provision is extremely fundamental when it comes to appeals from the Industrial Relations Court to the High Court. It is therefore imperative that before the High Court can delve into the matter, it has to be satisfied that the issues being raised on appeal are grounded on questions of law. I am aware that there is at times a thin line between these two issues and the High Court is at liberty to listen to the parties

and decide whether what is at stake is really a question of law or jurisdiction. The duty is on the appellant to clearly point out on the outset which law or jurisdiction is in issue.

Having listened to the appellant in this appeal and going through the submissions herein, it is clear that the appellant is focusing on factual and evidential issues that led the Industrial Relations Court come to the decision that we have today. The appellant is focusing on the internal processes on the disciplinary mechanisms of the appellant. Certainly, this is not a question of law or jurisdiction. The Industrial Relations Court decision on those issues is final and binding. The appellants are also raising the issue that the consequential orders that the Industrial relations Court had made were legally not sound. It would appear that there is slowly developing in these courts a culture whereby appellants are couching their grounds of appeal in such a way so that they appear as if they are based on law yet when the veil is lifted, there is nothing of that sort.

I therefore find that this appeal does not fall within the scope of Section 65(2) of the Labour Relations Act as I can not see the question of law or jurisdiction which the Industrial Relations Court had erred on as stated in the appeal. I therefore dismiss this appeal in its entirety.

Each party to meet its own costs.

**DELIVERED THIS                      DAY OF SEPTEMBER 2015 AT LILONGWE**

**M.C.C. MKANDAWIRE**

**JUDGE**