

IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NO 59 OF 2015

(Being IRC Matter No (LL) 492 of 2013)

BETWEEN:

IPYANA KALOLOKESYA AND 341 OTHERS-----APPELLANTS

AND

OLD MUTUAL LIFE ASSURANCE (mw) LTD-----RESPONDENT

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

Salima for Appellants

D.M. Banda for Respondent

Mrs Mbewe, Court Reporter

Mr Itai, Court Interpreter

JUDGMENT

This is an appeal brought by the appellants against the decision of the Industrial Relations Court (IRC) delivered on the 30th of January 2015. It is clear from the onset that the appellants were and are not dissatisfied with the whole decision of the IRC. The only point of dissatisfaction is with regards to the order that the IRC had made transferring the appellants' funds from the old pension scheme to the new pension scheme called Mudzi Fund managed by NICO General Insurance. According to the appellants' submissions, the Learned Deputy Chairperson of the IRC should have been guided by the General Rules of contract and statutory provisions if they were any applicable in the circumstances. The appellants'

counsel conceded in his submissions that there was no specific Act of Parliament or Rules which could have guided the IRC after the fund was dissolved. Although the respondent had attempted to apply the Pensions Act of 2011, the IRC ruled that this Act was not applicable to this case a position the appellants' counsel totally agrees with.

The appellants' counsel passionately submitted that this old fund was governed by the Pensions Fund Rules. These Rules governed the relationship between the appellants (employees) and the employer- Water Board. That the respondent was just a third party who came in as a guarantor of the payment of the Fund. It is therefore the appellants' submission that the IRC should have been guided by the Rules of engagement relating to this contract. Focus should therefore have been on Pension Rules which relevant Rules were those of 1987 as ordered by the IRC.

The respondent's counsel made a response to the submissions. I noticed that there were no matters of law or jurisdiction being raised by both parties in their submissions. Both parties just concentrated on the Pension Rules of this old Pension Funds and it was the respondent's submission that the IRC had come to the right decision by ordering for the transfer of the funds to the Mudzi Fund.

As I have said it on times without numbers, appeals from the IRC to the High Court are governed by section 65(2) of the Labour Relations Act (LRA) which provides:

“ 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”.

In his submissions, counsel for the appellants struggled to point at any question of law or jurisdiction that was at stake. In actual fact, counsel admitted that there was no issue of law or jurisdiction that this court was being called upon to look at on appeal. I have gone through the grounds of appeal, the submissions made and the skeleton arguments submitted in this court. I found that there was not even a single piece of law or jurisdiction matter that the High Court was being invited to address. The focus in this appeal has been on the Pension Rules. With due

respect, these Pension Rules cannot be equated to questions of law or jurisdiction as envisaged in section 65(2) of the LRA. The High Court has to be particularly careful and vigilant when it is entertaining appeals from the IRC. At the appellate stage, the High Court should not be dragged into factual issues which are supposed to be the domain of the IRC as per section 65(!) of the LRA. The High Court should not be enticed to be sympathetic to any party even where there are no matters of law or jurisdiction being appealed on. I am aware that in their amended grounds of appeal, the appellants had tried to bring in the issue of the Pensions Act being indirectly applied by the Deputy Chairperson of the IRC as well as infringement of the right to fair labour practice and economic activity as enshrined in the Republic Constitution. I however hasten to point it out on the outset that these were not issues before the IRC so they cannot be smuggled in on appeal through the backdoor.

I therefore find that this appeal does not fall within section 65(2) of the LRA. It is accordingly dismissed. Each party to meet its own costs.

DELIVERED THIS 7TH DAY OF DECEMBER 2015 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE