IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

BETWEEN:

DANIEL CHITSEKO----------1ST APPELLANT

VERSON JOSSAM----------2ND APPELLANT

AND

GAME STORES----------RESPONDENT

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

Appellants, Present (unrepresented)

Ng'omba, Counsel for the Respondent

Mrs Namagonya, Court Reporter

Itai, Court Interpreter

JUDGMENT

This is an appeal by Daniel Chitseko the 1st appellant and Verson Jossam the 2nd appellant against Game Stores the respondent. The appeal is against the decision of the Industrial Relations Court delivered on 25th August 2016 at Lilongwe. There are three grounds of appeal which are as follows:

1. The Deputy Chairperson misdirected herself by failing to apply section 27 of the Employment Act 1999 which obligates the employer to provide the nature of work that an employee is expected to perform and how the lower court observed this provision and took into account the fact that even the employer being the respondent herein accepted that the appellants were not involved in handling cash, the dismissal ought not to have been found to be fair as the issue of handling cash was outside the appellants' job description.
2. The Deputy Chairperson failed to observe the weight of the evidence against the allegations made and ought to have decided in favour of the appellants that the dismissal was unfair.
3. The Deputy Chairperson misdirected herself when she expressly indicated in the judgment that an invitation to a disciplinary hearing was done telephonically yet she

decided that the dismissal was fair procedurally and substantially contrary to section 57(1)(2) of the Employment Act which requires validity of the reasons and fairness of procedures.

Let me put it on record that appeals from the Industrial Relations Court to the High Court are only on matters of law or jurisdiction. With regards to matters of fact, decisions of the Industrial Relations Court are final and binding pursuant to section 65(2) of the Labour Relations Act. What this therefore entail is that the High Court should not reopen matters of fact.

When I look at the grounds of appeal herein, I find that they are a mixed bag. The appellants are attacking the findings of the lower court on both matters of law and fact. I therefore decided to proceed to look at all the three grounds so that no stone is left unturned.

I have looked at the entire court record which had two witnesses from the appellants' side and two witnesses from the respondent's side. I have also gone through all the documents that were tendered in court by both sides.

It is settled as a fact that both appellants were employed as stock controllers. Their main responsibilities were therefore to deal with issues relating to stock. They were not cashiers in other words, they were not at the till where money would exchange hands. However, as stock controllers, the appellants would be involved in the chain when a customer walks into the shop to purchase goods. In the instant case, on 9th May 2013, a customer arrived at the respondent's shop to purchase goods. The customer approached the 2nd appellant who according to the evidence on record was very busy as this was a promotional day. The 2nd appellant referred the customer to the 1st appellant. The customer had a cheque of Mk1.6 million. According to the procedure, the 1st appellant had to prepare a Customer Delivery Document (CDD). This entails that a customer does not immediately collect the goods until the cheque is cleared. According to the evidence from the respondent, the stock controller in this case the 1st appellant had the responsibility to record all the details of the customer on the CDD. The CDD was tendered in evidence as D Ext 13. These would include residential address, contact details such as telephone and any necessary detail that would assist to trace the customer. The 1st appellant was also supposed to indicate the salesman number in this case his number. On this CDD, the 1st appellant entered the salesman number of the 2nd appellant. The 1st appellant later had to take the CDD to the sales manager who would in turn verify that the CDD was 100% completed. Once that is done, the customer would be released and when the cheque is cleared, the customer would be invited to come and collect the goods. In this case, the 1st appellant who confirmed that each one of them had a special number for identification, decided to put the number of the 2nd appellant on the CDD. In his explanation, he said that this was so because the customer had been referred to him by the 2nd appellant and since this was a promotional week, the bonus that would be due was supposed to be given to the 2nd appellant hence the use of his number. It is

however interesting to note that the 2nd appellant in his own evidence said that he did not tell the 1st appellant to use his number and does not remember having seen his number used. The same 2nd appellant in the other breadth sounded that he was aware that his number had been used on this CDD. The respondent on their side were very consistent that it is not allowed for one stock controller to use the number of another stock controller.

The evidence on record is that after 7 days, it was discovered that the MK1.6 million cheque was not cleared by the bank. When enquiries were done, it was actually discovered that the said customer instead of getting a shopping voucher had been given cash as change since the goods he ordered using the uncleared cheque were less than Mk1.6 million. Thus the change given at the till was Mk747,250. The respondent found this to have been an anomaly because the customer was supposed to have been given a cash voucher and not cash. This meant that the respondent had lost that cash because the cheque of Mk1.6 million was referred to drawer. It is thereafter that an intensive investigation was launched by the respondent which led to a disciplinary hearing against the appellants. The investigation actually disclosed that the appellants were not alone in this dubious transaction. There were about six persons involved and this led to the dismissal of not only the appellants but other employees who were also involved in this chain transaction.

As I have pointed out before, on appeal, this court is only interested in matters of law or jurisdiction which the Industrial Relations Court may not have interpreted rightly. The factual decisions are the domain of the lower court. When I went through all the exhibits that were tendered in this court, I appreciated the fact that the Industrial Relations Court had looked at the factual perspective very well. The appellants were charged with a misconduct of dishonesty in which it was alleged that they had colluded with other employees whereby the customer ended up receiving liquid cash of Mk74,350 instead of a cash voucher. The evidence on record did not implicate the appellants that they were involved in this dubious transaction by handling the cash or receiving the cash. Their role was the facilitation of the process where salesman number 18043 for the 2nd appellant was used on a CDD prepared by the 1st appellant. Not only that, the customer telephone number was not even recorded on this CDD. There was evidence that both appellants were actively involved in directing the customer to the strategic persons in this dubious deal. It is therefore not amazing that the lower court found that the two appellants were not innocent in this chain transaction. That they were part of the orchestra that led to the loss of the cash amounting to Mk747, 350 when the cheque had bounced and the customer was nowhere to be traced due to the grave omission by the appellants of not recording the phone number of the customer. The issue of section 27 of the Employment Act as raised by the appellants in their appeal is not relevant here. This section indeed makes it mandatory for the employer to provide particulars of employment to the employee. As stock officers, the appellants were indeed not handling cash and there was no allegation by the respondent that the appellants were handling cash. The allegation against the appellants

during the disciplinary case was that they had acted in a dishonest manner by colluding with the other employees and that this collusion led to the loss of the cash. I therefore see no merit in saying that the Industrial Relations Court had misdirected itself because section 27 of the Employment Act was not in issue here. On the weight of the evidence, and whether there were valid reasons for dismissal and fair procedure before dismissal as required under section 57 of the Emloyment Act, I find that the Industrial Relations Court was justified to come to the conclusion which it did. The fact that the appellants were invited to a hearing telephonically does not mean that the procedure of hearing is unfair. One has to look at the entire hearing mechanism.

I had the opportunity to go through all the disciplinary record that led to the dismissal of the appellants. I should actually commend the respondent that they have a very robust industrial relations department. What I have observed in the record that was tendered in this court is very commendable. The appellants were properly charged. They were given an opportunity to defend themselves. There were several witnesses invited to give evidence. The appellants were given an opportunity to ask questions which they did. There was an excellent evaluation of the evidence and reasoning for coming to the conclusion that the respondent had taken. The hearing had an initiator Mr Vincent Phiri and there was a Union Representative Mr Joe Nyondo. In other words, there was a lot of transparency in the way this hearing was conducted. I really commend Mr Steven Chiwaya in the way he navigated the proceedings.

I therefore failed to appreciate the appellants' lamentation when they were attacking the findings of the Industrial Relations Court when it held that the dismissal was fair. This dismissal was indeed fair because there were valid reasons for dishonesty on the part of the appellants and the procedure that led to the dismissal was indeed fair. It is therefore without any hesitation that I dismiss this appeal. Each party should meet its own costs.

DELIVERED THIS DAY OF NOVEMBER 2017 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE