



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

IRC APPEAL CASE NUMBER 2 OF 2017

(Being IRC Matter number 249 of 2009)

BETWEEN:

ELUBY MASAULI

APPELLANT

AND

MALAWI SAVINGS BANK

RESPONDENT

CORAM: JUSTICE M.A. TEMBO,

Gondwe, Counsel for the Appellant
Masanje, Counsel for the Respondent
Mpasu, Official Court Interpreter

JUDGMENT

This is this court's judgment following the hearing of the appellant's appeal in this matter.

The appellant appeals against the decision of the lower court, the Industrial Relations Court, made on 15th February 2017 at Blantyre.

By her claim in the lower court, the appellant sought the following reliefs:

1. Compensation for unfair dismissal.
2. Reinstatement.
3. Pension benefits

The appellant alleged that she was dismissed from her employment without a valid reason and without a fair hearing.

The facts as recorded by the lower court in its decision are as follows. That the appellant was an employee of the respondent. That the appellant claimed before the lower court that the respondent dismissed her for no valid reason and without hearing her.

The lower court noted the appellant's evidence that she was accused of authorizing a line of credit to the respondent's client beyond the limit allowed. Specifically, that the appellant authorized a further K500 000 credit to a client who had initially obtained a K500 000 loan which he was not servicing.

The lower Court noted that the appellant was called to a disciplinary hearing on the issue on three occasions. And that the appellant conceded that in all the three occasions she was aware of what the charges were.

The lower court also found that the respondent had a valid reason for dismissing the appellant in view of her improper loan authorization.

The lower court also noted that appellant complained that some of her colleagues similarly authorized loans to clients but were never punished by the respondent. The lower court noted that if that was the case then the respondent is guilty of selective application of its disciplinary rules but that however the validity of the reason for dismissal remains.

The appellant now appeals against the decision of the lower court that the termination of her employment by the respondent was fair and seeks reversal of the said decision. The appellant has four grounds of appeal namely that:

1. The Court below erred at law by failing to hold that the appellant was not accorded a fair hearing before the disciplinary panel.
2. The Court below erred at law by holding that there was a valid reason for dismissal.
3. The Court below erred at law by holding that the respondent's treatment of the appellant was not discriminatory and did not amount to an unfair labour practice.
4. The decision of the Court below was against the weight of the evidence.

The appellant is seeking compensation for unfair dismissal.

At the outset, this Court wishes to state that with respect to appeals against the decisions of the lower court, appeals can only be made to this Court on matters of law or jurisdiction and not matters of fact on which a decision of the lower court is final and binding.

This is in terms of section 65 of the Labour Relations Act which provides that

(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 Court agrees with the views of Justice Mwale in the case of *Kamanga v Mota Engil* Civil Appeal number 163 of 2016 (High Court) (unreported) referred to by the respondent which defined of questions of fact and questions of law as follows:

A question of law by its very nature, demands a response that is arrived at by applying relevant legal principles to interpretation of the law. The resulting response must be capable of expression in terms of broad legal principles that transcend the confines of the particular set of circumstances or factual situations so as to be capable of application to diverse situations. If the response can only be applied to the circumstances, factual situation, evidence at hand or inference resulting therefrom, the question is more likely of fact. To put it even more simply, a question of fact involves an inquiry into whether something happened or will happen.

This Court deals with the first ground of appeal which asserts that the lower court erred at law by failing to hold that the appellant was not accorded a fair hearing before the disciplinary panel.

The respondent contended that the first ground of appeal does not raise a question of law but of fact which is not appealable.

This Court appreciates the concern by the respondent but takes the view that the issue whether an employee has been heard may be a mixed question of fact and law. As such, this Court will not preclude consideration of the question whether what the appellant was subjected to in this matter amounted to a hearing as required by the law.

The law is as stated by both parties that an employer shall not dismiss an employee for misconduct unless the employer gives an employee an opportunity

to defend herself on the allegation. See section 57 (2) Employment Act and *Chakhaza v Portland Cement Company* [2008] MLLR 126.

The appellant conceded that she was called to a hearing three times and she was aware of the charges on each occasion. Her complaint is that the charges kept changing each time.

On its part, the respondent submitted that the appellant was called to the hearings three times and each time she was aware of the charges which she alleges kept changing. And that there is no authority that bars hearings as occurred in this case.

The record shows that she was accused of extending a line of credit without authorization. She was told to go on leave to allow for investigations. Later she was asked to give a plan on how to recover the loan. Later on she was accused of absconding from work. She was heard on all the occasions.

This Court does not find anything unfair with regard to the lower court's finding that the appellant was heard on the charges leading to her dismissal, namely, that she authorized a line of credit beyond the authorized limit. The three hearings were in a sequence in view of matters arising along the time line.

This Court therefore agrees with the respondent that the first ground of appeal should fail because the appellant was heard as envisaged by the law on the charges against her. The first ground of appeal therefore fails.

The second ground of appeal alleges that the Court below erred at law by holding that there was a valid reason for dismissal.

The respondent raised a similar issue that this relates to a question of fact. However, as observed by the respondent, whether a reason is valid has a legal dimension. The reason must be properly grounded and be supported by available evidence. This Court will have to see whether the reason for dismissal is valid at law. That is a question of law as it is factual.

The appellant conceded extending another credit facility to a customer after the first facility was not serviced. She however contended that the main issue was whether she had obtained security for the second credit facility that is the subject matter of her dismissal.

She submitted that the record shows that she secured the second credit facility being a registration of the client's motor vehicle. And that therefore there was no valid reason for dismissal.

The respondent submitted that the lower court considered the reason for dismissal and found that the same was justified by the evidence, namely, that the appellant had extended a line of credit beyond what was authorized.

The law is that for a reason to be valid it must be substantiated by the evidence. See *Mhowe v Malawi Housing Corporation* civil cause number 3687 of 2000 (High Court) (unreported).

This Court agrees with the respondent that the lower court actually considered the validity of the reason for dismissal, being the extending of the credit facility beyond the authorized limit, in view of the evidence available at the time of dismissal.

This Court does not find any fault with the lower court's finding. The issue whether there was security or not for the second credit facility is of no consequence at all.

The second ground of appeal alleges that the court below erred at law by holding that there was a valid reason for dismissal therefore fails.

The appellant abandoned the third ground of appeal.

The last ground of appeal was never argued. That ground of appeal cannot be sustained in view of the finding of the findings of this Court on the first two grounds of appeal.

In the circumstances, the appellant's appeal fails in its entirety.

Made in open court at Blantyre this 18th October 2018.



M.A. Tembo
JUDGE