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REPUBLIC OF MALAWI  
MALAWI JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL DIVISION  
IRC APPEAL CAUSE NO. 10 OF 2013

BETWEEN

KINGSTONE LAPUKENI..... APPELLANT

-and-

MALAWI REVENUE AUTHORITY.....RESPONDENT

Coram: **The Honourable Mr. Justice D.T.K. Madise**  
Mr Chisanga of the Counsel for the Appellant  
Mr. Likomwa of the Counsel for the Respondent  
Mr. M. Mbekeani Official Court Interpreter

**Madise, J**

JUDGEMENT

## **1.0 Introduction**

1.1 This is an appeal from the decision of the Industrial Relations Court sitting at Blantyre under Industrial Relations Court matter No. 27 of 2006 before the Chairperson of that Court, delivered on 10<sup>th</sup> June 2013. The Appellant went to the Industrial Relations Court claiming loss of salary, gratuity and various other allowances against the Respondent following termination of his contract. The Respondent opposed the Claim stating that the Appellant's contract expired and was not renewed.

1.2 The court below found that the Appellant's contract was not wrongfully and unlawfully or unfairly terminated. The court then dismissed the Appellant's prayer. Being unhappy with that decision he now appeals to this court against the whole judgment.

1.3 I'm mindful that the appeals in this Court from courts below are by way of rehearing of all the evidence, the law applied and the reasons for the decision and generally all that which took place during trial. The aim is to ensure that the court below was within the aim of the law and procedure when it arrived at its decision.

## **2.0 The Grounds of Appeal**

- (1) The lower court erred in holding that there was no valid contract between the Respondent and the Appellant after the expiry of his first contract in April 2003.
- (2) The lower court erred in holding that the Appellant continued to work wrongly on the same terms of the expired contract.
- (3) The lower court erred in failing to infer a contract of employment based on the conduct of the parties.
- (4) The lower at erred in holding that the Appellant employment contract was not unfairly terminated.

2.1 The Appellant having filed the above grounds of appeal now wants this court to reverse the decision of the Industrial Relations Court and told that he was unfairly and unlawfully dismissed.

### **3.0 The Facts**

3.1 The Appellant was employed on a three (3) year contract which expired in April 2003. Prior to the expiry of his contract he had written a letter to seek renewal of his contract. He continued working while waiting for the renewal of the new contract. The Chief Executive Officer was to sign the final copy of the new contract.

3.2 However, the Appellant only received a draft copy of the same which stipulated the revised salary which the Appellant signed. In February 2005 he received a letter of termination as his contract had not being renewed and he was paid his benefits. The Appellant told the court below that he was psychologically affected by this termination as he was hopeful that his contract will be renewed. He was paid 3 months' notice pay and gratuity. He had worked for 22 months.

3.3 The Respondent opposed the claim but did not call any witness and at the time judgement was being written in the IRC, the Respondent had not filed their final submissions.

3.4 In its judgment the court below stated that wrongful or unlawful termination of contract only occurs where the employer terminates without following the terms and conditions in the contract of employment.

3.5 In conclusion the Industrial Relations Court found that the Appellant was wrong to infer his continued drawing of a salary as a renewal of the new contract, and that he was at liberty to stop working if his contract was not being renewed.

### **4.0 The Issues**

4.1 There are two issues for determination before are;

- (1) Whether there was a valid contract between the Appellant and the Respondent after the expiry of the first contract.
- (2) Whether there was wrongful termination of contract.

## **5.0 The Arguments**

5.1 The Appellant argued that his new contract was renewed not by letter but by conduct. He stated that the facts that he was still receiving a revised salary after the termination of his contract the Respondent, by action and conduct renewed the contract as they allowed him to work for 22 months.

5.2 Furthermore at the termination of the alleged second contract the Appellant was paid benefit from figures in the new contract and not the expired contract. The Appellant based his argument on the following premises.

(a) The Appellant continued to work after the expiry of the first contract.

(b) The Appellant was given a draft contract to sign after he had applied for renewal.

(c) The Appellant was being paid salary benefit from the new contract.

(d) The Appellant was paid terminal benefits from the new contract having working for 22 months.

5.3 The Appellant argued that by signing the draft copy of the new contract he had made an offer which was accepted by the Respondent by allowing him to continue working and draw a revised salary and benefits.

5.4 In conclusion the Appellant argued that the law provides that an employee's contract can only be terminated based on valid reasons



and the employee must be allowed an opportunity to make presentations against allegations levelled.

- 5.5 As stated earlier on the Respondent did not call any witness in the court of first instance and they did not file any written submission in opposition to the claim.
- 5.6 In their submissions on appeal the Respondent argued that the Appellant did not produce the alleged draft copy of the contract which he allegedly signed or the copy of the letter he wrote seeking renewal of his contract. It was their submission that these two documents did not exist. The Respondent further argued that the 22 months the Appellant worked was an extension of the old contract notwithstanding the revision on the salary and benefits.
- 5.7 The Respondent cited clause 12.1 of the contract which mandated the MRA to terminate a contract by giving 3 months notice in writing or paying 3 months salary in lieu of notice.

## **6.0 Finding**

- 6.1 There is no dispute that the Appellant finished his first contract and was paid his terminal benefits. There is no dispute in my considered view that he expressed interest to continue working and he applied for renewal of a fresh contract. Where this document is at the moment is best known by the Respondent and the Appellant cannot be expected to produce it.
- 6.2 The Respondent handed him a draft contract and I find this as a fact which had a revised salary and benefits. The Appellant signed this draft contract and gave it to the Respondent. Where this document is at the moment is best known by the Respondent and the Appellant cannot be expected to produce it.
- 6.3 The Respondent never gave the Appellant a final and signed copy of the new contract but they instead allowed him to continue working for

22 months which is close to 2 years. Additionally, the Respondent was paying the Appellant the revised salary and benefits as they appeared in the new contract. This went on for 22 months. After 22 months, the Respondent terminated the second contract on the basis that it had not been renewed.

- 6.4 In my considered opinion I find that the Respondent had accepted the offer the Appellant made by signing the draft contract. I find that by allowing the Appellant to continue working for 22 months, the Respondent had accepted the offer. I find that by paying him the revised salary and benefits, the Respondent had accepted the offer. Finally I find that by paying him benefits in the new contract at termination of contract the Respondent had accepted the offer.
- 6.5 Now the Respondent cannot be allowed in broad day light to deny that a contract of employment existed between them and the Appellant. I therefore find that there was a contract between the parties and by terminating the said contract without giving valid reasons, the Respondent had violated the law.
- 6.6 I therefore, find that the Industrial Relations Court erred in holding that there was no contract between the parties. The Industrial Relations Court had misdirected itself on the facts and the law as presented during trial.
- 6.7 I therefore, reverse that decision and I make an order which has the effect that there was a new contract between the parties and that the Respondent had unlawfully terminated the same. The Respondent must pay damages for unlawful termination of the contract which will be assessed by the Registrar within 14 days.

6.7 The Respondent must pay the costs of the appeal.

I so order

Pronounced in open court at Blantyre in the Republic on 17<sup>th</sup> January 2019.



Dingiswayo Madise

**Judge**