



**REPUBLIC OF MALAWI**  
**IN THE INDUSTRIAL RELATIONS COURT OF MALAWI**  
**SITTING AT BLANTYRE**  
**IRC MATTER NO. 404 OF 2016**

**BETWEEN:**

**CHAPAMBALI AND OTHERS.....APPLICANT**

**-and-**

**G4S SECURITY SERVICES (Mw) LIMITED.....RESPONDENT**

**CORAM:   H/H PETER M.E KANDULU, AR**  
Mr. Masanje, Counsel for the Applicant,  
Mr. Mwandira, Counsel for the Respondent,  
Ms. Rose Msimuko , Court Clerk.

## **ORDER ON ASSESSMENT OF COMPENSATION**

### **Background**

1. This is an assessment of compensation that is payable to the applicant pursuant to the Judgement of Hon. the Deputy Chairperson dated the 17<sup>th</sup> day of May 2022. The said judgement on merit awarded the applicants severance pay for unfair dismissal, withheld wages from January 2016 to the date of their resignation and notice pay.
2. The said same Judgement ordered the matter to proceed for Assessment before the Registrar. Therefore, this court seats following the direction and order in the said Judgement on merit dated 17<sup>th</sup> May 2022 in which the court held the Respondent liable.
3. There is a consent order on file where the parties agreed that the applicants will not file further submissions but will rely on the skeleton arguments already filed, the respondent shall file their submission within 14 days from the 15<sup>th</sup> day of September and the court shall proceed to determine the matter whether the respondent do file their submissions or not and the date of the delivery of the ruling shall be advised by the court.
4. For the applicants, who filed a witness statement on the assessment of damages. The witness statement of Laurent Daula is on court records on behalf of James Chapambali, Enock Sawerengera, Justin Makwale, Jarruieson Litchowa and Limbani Chirambo.
5. He states that they were all former employees of the respondent having joined on different dates. He joined on 22<sup>nd</sup> April 2002 and resigned on 10<sup>th</sup> May 2016 on grounds of constructive dismissal. He had worked for the respondent in total and continuous employment for 14 years.
6. Justin Makwale worked for the respondent for 15 years having joined the respondent on the 11<sup>th</sup> day of May constructively dismissed on the 10<sup>th</sup> day of May 2016.
7. Mr. James Chapambali joined the respondent in July 2006 and resigned on the 10<sup>th</sup> day of May on the same grounds of constructive dismissal. He worked for the respondent for 9 years and 10 months.
8. Mr. Litchowa worked for 9 years and 3 months having joined the respondent on the 2<sup>nd</sup> day of February 2007 and left on the 10<sup>th</sup> day of May 2016

9. Mr. Sawelengela and Mr Chirambo joined the respondent in July 2004. They both worked for 11 years and 10 months.
10. They were all placed on suspension for so long and it was not possible to know what their salaries had been increased to since their suspension was without pay.
11. However, they know that their colleague Miss M. Ndawala with whom they were on the same grade had been moved to another department upon dissolution of their department and was prior to their resignation receiving MK65, 282.34 per month effective from 30<sup>th</sup> April 2015. A summary of increments given by the respondent's Human Resources Manager to the court on the 9<sup>th</sup> day of November 2015 is the one which they had used to calculate their withheld wages when the court earlier ordered payment of the same.
12. Since the policy of their company was increasing their salary yearly, they propose 5% yearly increase must be adopted for the purpose of calculation and they propose MK68, 546.45 as their last salary on the date of constructive dismissal.
13. He told the court that after the constructive dismissal, he secured a job with Kalibu Academy in November 2017, Mr Chirambo joined the Malawi Police Service in October 2017, and. Litchowa joined SFFRFM in July 2020. Mr Sawelengela started working for Chipiku in June 2018 while Mr Chapambali and |Mr. Makwale is working.
14. He stated that when they were working, they were entitled to one month's notice if they were to be terminated. The court awarded them notice pay, severance pay and damages for unfair dismissal.
15. During cross-examination the applicant confirmed that they joined the respondent on different dates. They were indeed each given letters of appointments. They had not tendered those letters. Since the matter has taken so long, they would need to check if they still have the letter. The matter arose in 2007. He was preparing and paying the wages of the respondent's employees. They were accused of giving overtime to people who did not work for the respondent. It was established by an audit. He is currently working at Karibu Academy. He was employed on 1<sup>st</sup> November 2017.
16. He told the court that he did not bring any evidence that the two who are not working were trying employment but they failed. They did try to upgrade their qualification.

Chances that they could secure another employment were very minimal because of their ages and qualification.

17. Increment of salary is at the discretion of the employer. The increment at the employer was effected yearly. For one to upgrade qualification, requires money. The two applicants who did not find alternative employment are doing nothing. Since the case has taken almost 11 years, it would be difficult to find their offer letters. Since they had changed and moved from one house to another in the process they might have lost some documents.
18. The respondent sought adjournment in order to invite their witness to testify. However, the respondent disclosed to the court later that they would not parade any witness but they would file their final written submissions on the assessment of damages.
19. Counsel for the applicants has submitted calculations for damage for unfair dismissal as follows; immediate loss has been said to be the period from the date of dismissal to the date of Judgement. The dismissal was accepted by the applicants on the 10<sup>th</sup> day of May 2016, Judgement was made on 17<sup>th</sup> May 2022. There were 72 months. By this day most of the applicants had secured employment but two. According to counsel for the applicants, assessment therefore will run from the date of dismissal to the date of securing employment for those who secure employment. The claimants are entitled to damages for immediate loss as follows;

Laurent Daula: 10<sup>th</sup> May 2016 to October 2017 which is 17<sup>th</sup> months X 68, 546.45 = **MK1, 165, 289.65**

Mr. Limbani Chirambo 10<sup>th</sup> May 2016 to September 2017 which is 15 months X Mk68, 546.45 = **MK1, 028, 196.75**

Mr Jarrieson Litchowa's 10<sup>th</sup> day of May 2016 to June 2020 which is 49 months MK68, 546. 45 = **MK 3, 358, 770. 06**

Mr Sawyerengera 10<sup>th</sup> May 2016 to May 2018 which is 24 months X MK68, 546.45 = **MK1, 645, 114.80**

Mr. James Chapambali remains unemployed from the 10<sup>th</sup> day of May to July 2022 which is 72 months X 68, 546.45 = **MK5, 003, 890.85**

Mr. Makwale remains unemployed from the 10<sup>th</sup> day of May 2016 to July 2022 which is 73 months X MK68, 546.45 = **MK5, 003, 890.85**

20. Counsel for the applicants has argued and given his opinion that future loss shall only apply to those who have not secured employment. Counsel has suggested that 24 months, in this case, would be reasonable. He has proposed MK1, 645, 114.80 each for Mr Chapambali and Mr. Makwale.
21. For Severance pay, counsel for the applicants has presented calculations for each of his clients starting with Mr Laurent Daula who had worked 14 years for the respondent.  
 For 1<sup>st</sup> five years he as presented  $68,546.45/2 \times 5 = \text{MK171, 366.13}$   
 From 6<sup>th</sup> to 10 years  $68,546.45 \times 5 \times \frac{3}{4} = \text{Mk257, 049.19}$   
 From the 11<sup>th</sup> year to the 14<sup>th</sup> year  $68,546.45 \times 4 = \text{MK274, 185.80}$   
 Total severance for Mr. Daula **MK702, 601.12**  
 Mr. Makwale's total severance for 15 years following the above formula gives is **MK771, 145. 57**  
 Mr Chapambali's total severance for 9 years is **MK 377, 005. 48**  
 Mr Litchowa's total severance for 9 years is **MK377, 005.48**  
 Mr. Sawerengela's total severance for 11 years is **MK496, 961.77**  
 Mr. Chirambo's total severance for 11 years is **MKMK496, 961.77**
22. Counsel for the applicants has indicated that each applicant is entitled to one month's pay which is **MK68, 546.45** pay in lieu of notice.
23. Withheld wages, counsel has reminded the assessment court that the court ordered that the applicants must be paid their withheld wages from the month of January 2016 to the date of resignation which is 4 months and 10 days.  
 $\text{MK68. 546.45} \times 4.333 = \text{MKMK297, 011. 77}$  for each applicant.
24. In conclusion, counsel has provided the table with calculated compensation for each head as ordered by the court.
- 25. Mr. Laurent Daula**
- |                              |                         |
|------------------------------|-------------------------|
| Damages for unfair dismissal | MK1, 165, 289.65        |
| Severance Pay                | MK702, 601.12           |
| Withheld wages               | MK297, 011.77           |
| Notice Pay                   | MK 68,546.45            |
| Total                        | <b>MK2, 233, 358.99</b> |

<b>26. Mr. Justin Makwale</b>	
Damages for unfair dismissal	MK6, 649, 005.65
Severance Pay	MK 771, 145. 57
Withheld wages	MK 297, 011.77
Notice Pay	MK 68,546.45
Total	<b>MK7, 785, 709. 44</b>
<b>27. Mr. James Chapambali</b>	
Damages for unfair dismissal	MK6, 649, 005.65
Severance Pay	MK 377, 005.48
Withheld wages	MK 297, 011.77
Notice Pay	MK 68,546.45
Total	<b>MK7, 391, 569.35</b>
<b>28. Mr. Jarrieson Litchowa</b>	
Damages for unfair dismissal	MK3, 358, 776.05
Severance Pay	MK377, 005. 48
Withheldwages	MK 297, 011.77
Notice Pay	MK 68,546.45
Total	<b>MK4, 101, 339.75</b>
<b>29. Mr. Issac Sawelengera</b>	
Damages for unfair dismissal	MK1, 645, 114.80
Severance Pay	MK496, 961. 77
Withheldwages	MK 297, 011.77
Notice Pay	MK 68,546.45
Total	<b>MK2, 507, 634.79</b>
<b>30. Mr. Limbani Chirambo</b>	
Damages for unfair dismissal	MK1, 028, 196. 75
Severance Pay	MK496, 961.77
Withheld wages	MK 297, 011.77
Notice Pay	MK68,546.45
Total	<b>MK1, 890, 716.74</b>

31. Total sum to be awarded to the applicants following the court Judgement must be **MK25, 916, 329.06**

**The Law on failure to show up to tell their version of Evidence**

32. Regarding failure to show up to tell their version of the evidence, the court held in the case of *Edwin Govati t/a Nzeru Zathu Investments v Carnival Furnishers Limited*, High Court Principal Registry Civil Appeal No. 59 of 2012 (being Civil Cause No. 124 of 2011, Blantyre Magistrate Court before Her Worship Tizifa) the High Court dismissed the appeal and upheld the lower court's findings after noting that the lower court had only one version of facts as the Appellant, then the defendant in the lower court had chosen not to testify.
33. In the case of *Maonga & Others v Blantyre Print & Publishing Company Limited*, 14 MLR, 240, Unyolo, J upheld a decision of *Leyland Motors Corporation Malawi Limited v Mohamed*, Civil Cause No 240 of 1983:  
*"Failure to call a material witness to testify on a material point may damage the case of the party who fails to do so as that failure may be construed that the story is fictitious."*
34. The Learned Judge also quoted with approval the case of *Attorney General v Chirambo*, Civil cause No 444 of 1955 in the following words:  
*"Such failure (that is to call a material witness) may raise suspicion and although suspicion is not enough proof of guilt, but it has the effect of reducing the weight of the evidence of a party."*
35. In this case there is only evidence of the applicants, the said evidence remains uncontroverted. The court has only one version of the story of the applicants. The respondent has chosen to conceal their story from the court. I shall use the version of the applicants in determining and disposing of this matter.
36. In their final submission of the assessment of damages, the respondent has submitted the following, the court ordered unpaid wages from January, 2016 to 10<sup>th</sup> May, 2016. The applicant's salary per month was MK65, 282.33 as of 31<sup>st</sup> December 2015.  
Total for 3 months salary for each applicant is MK195, 847.35  
Salary for 10 days is MK19, 584.60  
As such each applicant is entitled to 195, 847.35 + 19, 584.60

- There are a total of 6 applicants in this case. As such, the total sum payable by the respondent as unpaid wages is MK1, 292, 591.70 according to the submission of the respondent.
37. The total sum for the 6 applicants' notice pay is MK391, 694.70  
Severance pay for Mr Laurent Daula is MK511, 579.09  
Severance pay Mr. Makwale is Mk669, 149.80  
Severance pay Mr. Chapambali is MK261, 128.68  
Severance pay for Mr. Litchowa is MK261, 128.68  
Severance pay Mr Sawerengela is MK359, 052.35  
Severance pay for Mr Chirambo is MK359, 052.35
  38. According to the respondent a total of MK2, 421, 090.95 is severance pay for the 6 applicants.
  39. According to the respondent the applicants are entitled to minimum compensation. Counsel has cited a number of cases to support their position. Accordingly, a total of MK 3, 182, 519.34 is payable as compensation to the 6 applicants.
  40. In summary the respondent has submitted that in total the 6 applicants are entitled to MK7, 287, 896.69 under all the head of compensation.
  41. As already indicated earlier on, the respondent did not bring or parade any witness to testify before the court. It was only the applicants who filed their written statement which is on the court file. This means there is only one version of the story as filed by the applicants and cross-examined by the respondent.
  42. Both counsels for the parties provided their final written submission and skeletal argument within the time as ordered by the court. The court will not reproduce all that was submitted. The court will however take all necessary steps to ensure that the submissions and arguments are used in this judgment. I must mention that I am indebted to both counsels for the well-researched and written submissions.
  43. Accordingly, the only issue before the Court is that compensation should be assessed on the heads in the Judgment of the court dated the 17<sup>th</sup> day of May 2022.
  44. What is the applicable quantum of compensation for unfair dismissal, notice pay, withheld wages for 4 months and amount of severance pay that each applicant is entitled?



### **Burden of proof**

45. On having so pleaded, the onus is on the applicants to prove their claims as the burden of proof rests upon the party, who substantially asserts the affirmative of the issue *Joseph Constantine Steamship Line –vs.- Imperial Smelting Corporation Ltd* (1942) AC 154.
46. The burden is fixed at the beginning of trial by the state of the pleadings, and it is settled as a question of law remaining unchanged throughout the trial exactly where the pleadings place it. *B. Sacranie v. ESCOM*, HC/PR Civil Cause Number 717 of 1991.

### **Standard of Proof**

47. The standard required in civil cases is generally expressed as proof on a balance of probabilities *Miller v. Minister of Pensions* 1947] All ER 372. It follows in this matter that the Applicants have a burden to prove on the balance of probabilities the claims against the respondent in their pleadings.

### **The applicable law**

48. The law governing these matters can be summarised as follows:
49. Section 8 (2) of the Labour Relations Act empowers the Industrial Relations Court to award compensation.
50. In *Chilongwe v Chilembwe Lodge* [2008] MWIRC 17, the Court noted that;  
*“Remuneration means the wage or salary and any additional benefits, allowances or emoluments whatsoever payable directly or indirectly, whether in cash or kind, by the employer to the employee and arising out of the employee’s employment. On the other hand: Wages mean all earnings, however, designated or calculated capable of being expressed in terms of money and fixed by mutual agreement or by law, which is payable by virtue of a written or unwritten contract of employment by an employer to an employee for work done or to be done or for services rendered or to be rendered.”*
51. It should be noted that the Labour Relations Act and the Employment Act, of 2000 do not define salary or pay. This notwithstanding, these words do appear now and again in the said Acts. The General Interpretation Act, too does not define salary or pay. The

only conclusion that one can draw from this is that salary and pay bear the extended meaning of remuneration and wages ...

52. In the present case, the lower court followed the Magola case and some English case authorities. It listed several heads under which compensation may be awarded. These included immediate loss of salary, loss of fringe benefits, house allowance, utilities, mobile phones, guard allowances, pension contributions and future earnings. From a glance, these heads reveal that the Court misled itself on this issue.
53. It is clear that the splitting of the head ignores the basic tenets of the definition of remuneration and wages herein before referred. Had the trial Court directed its mind to the said definitions, it would have found that such earnings or allowance are included in remuneration or wages. They should not be treated separately. The proper approach therefore is that all earnings, in the wider sense of the definition of remuneration or wages that accrue to the employee directly or indirectly from the employer which are, or capable of, being expressed in terms of money are calculable as wages ... [emphasis added].
54. In the case of *Tourism Development and Tourism Company and another v Mhango* [2008] MLLR 319 it was stated that unfair dismissal is a statutory wrong and in assessing compensation a court has a wide discretion. That discretion must be exercised judicially and in accordance to principles.
55. The basis of an award of damages is to give a claimant compensation for the damage or any loss or injury that he has suffered. This is a position taken by Lord Blackburn in *Livingstone vs Rawyards Coal Company* (1880) 5 AC 25.
56. According to lord Scarman in *Lim vs Camden & Islington Area Health Authority* (1980) AC 174, compensation should be as nearly as possible to put the party who has suffered in the same position he/ she would have been in as if he/ she had not suffered the wrong.
57. As outlined by Section 63 (1) (c), in awards for compensation for unfair dismissal, the guiding principles are as specified in Section 63 (4) read together with subsection (5) of Employment Act. Section 63 (4) provides as follows:  
*“An award of compensation shall be such an amount as the Court considers just and equitable in the circumstances having regard to the loss sustained by the employee in*

*consequence of the dismissal in so far as the loss is attributable to action taken by the employer and the extent, if any, to which the employee caused or contributed to the dismissal”*

58. Section 63 (5) then provides some guidance as to the amount of compensation the court may award. It provides that ‘the amount to be awarded under subsection (4) shall not be less than—

- a) Two weeks’ wages for each completed year of service up to and including the fifth year.
- b) Two week’s pay for each completed year of service for the first five years, plus three weeks’ wages for each completed year of service from the sixth up to and including the tenth year;
- c) Two week’s pay for each completed year of service for the first five years, plus three weeks’ wages for each completed year of service from the sixth year up to and including the tenth year, plus four weeks’ wages for each completed year of service from the eleventh year onwards,

59. Further to these, the court is given wide latitude to the extent that entrenched common law principles are applicable in assessing compensation provided the same revolves around the principle enacted in Section 63 (4). This was reflected in the Supreme Court decision in ***Wawanya vs Malawi Housing Corporation***, Civil Appeal No.40 of 2007. In that case, the question of whether the compensation could be said to be compensated under common law or under the Employment Act was answered by the Supreme Court at page 8 of the transcript in this way:

*“Our reading of Section 63 (4) is that a court has considerable latitude in awarding compensation under the Employment Act. In the end it really should not make any difference whether one wants to call the award an award under Section 63 of the Employment Act or a common law award or any other description as one may please.”*

60. As promulgated by the provision of Section 63 (4) of the Employment Act, the fundamental principle in making the award of compensation for unfair dismissal is that it should be just and equitable in the circumstances.

61. Now, to ensure that the compensation is fair, just and equitable to both parties, Section 63 (5) then provides for the starting point. Thus, the discretion of how much maximum compensation to award to an employee who has been unfairly dismissed is given to the court. In exercising these discretionary powers, however, what essentially Section 63(4) states is that the court must consider a proven loss sustained by the Applicant due to the dismissal in the first place and that the dismissal must be attributable to the actions of the employer. And finally that the loss suffered must be examined in light of the actions of the employee himself/herself, as to whether he or she has contributed in one way or the other.
62. Another important factor, of course, in determining how much to award as compensation, and it is now trite in all employment cases dealing with issues of compensation for unfair dismissal, is that of mitigation of loss. Under this requirement, the dismissed employee must take initiative to mitigate the loss. He is not supposed to sit idle on the pretext that the court will make good no matter what the time. He must move on and try to fetch for himself another job (See *Archibald Freighting Ltd vs Wilson* [1974] IRLR 10). The reason being that it is not “just and equitable” for the Court to assist litigants who sit idle and fail to make effort to alleviate their loss (See also *Msiska vs Dairiboard Malawi*, IRC, Matter No. 6 of 1999). This takes different forms but the obvious ones include trying to look for alternative employment. If this is not shown at trial, it is a ground on which discretion could be exercised by the court in an unfavourable way to the Applicant.
63. In addition, the employee’s age, physical fitness or health, type of contract and skill or qualifications in relation to one’s chances of getting another employment at the prevailing labour market in his/her field at that particular time are also factors to be considered in deciding the amount to award to the dismissed employee (See *Kachinjika vs Portland Cement Company* [2008] MLLR 161 and *Davie Daudi and 7 others vs Glory Investment*, Matter No. IRC 769 of 2019).
64. In the case of *Norton Tool Company vs Tewson* 1973]1 ALL ER183, Sir John Donaldson, President of the National Industrial Relations Court said: -  
“The amount has a discretionary element and is not to be assessed by adopting the approach of a conscientious and skilled cost accountant or actuary. Nevertheless, that

- discretion is to be exercised judicially and on the basis of principle. First the object is to compensate and to compensate fully, but not to award a bonus...second, the amount to be awarded is that which is just and equitable in all circumstances having regard to the loss sustained by the complainant. Loss does not include injury to pride or feelings”*
65. The above quote clearly indicates that the court has to show satisfaction on how it arrived at figures for compensation. See the case of ***Kachingwe vs Group Commodity Brokers Limited***, IRC Matter No.117 of 2000.
  66. Furthermore, in the case of ***Terrastone Construction Ltd vs Solomon Chathuntha***, MSCA Civil Appeal No 60 of 2011, the Supreme Court of Appeal determined the question of what amounts to a just and equitable compensation and how the Court would apply its discretion in order to arrive at a just and equitable compensation with reference to Section 63(4) of the Employment Act.
  67. The Court held that ‘a court has to take into account the loss sustained by an employee as a result of the unfair dismissal but that the assessment does not have to end on the enquiry of loss. The court has to determine the matter on terms which are reasonable and that reasonableness will be achieved, if the interests of both the employee and the employer are taken into account’. The court then guided and advised that Section 63(4) of the Employment Act should be read together with Section 63(5) of the same Act and added that ‘it is important that reasons should always be given for coming up with the assessment of damages which are in excess of what is set down in the law.
  68. In the case of ***Sothorn Bottlers (SOBO) vs Graciam Kalengo***, [2013] MLR 345 the Supreme Court of Appeal also stated the following at Page 348:
  69. *“Let us reiterate what was said in ***Standard Bank vs R. B Mtukula***, Misc Appeal No. 24/2007 (High Court) that where the court wishes to exceed the minimum compensation in Section 63(5) of the Employment Act, it must give clear reasons so that the employer, employee and also the appeal or review court are able to appreciate why the award was enhanced.”*
  70. The court, in Terrastone case (supra) actually warned against awarding damages with elements of punishment to the employer and set aside an award of damages that was equivalent to the salary the Respondent earned the whole period he had worked for the Appellant. Instead, the Court awarded him the minimum statutory compensation in

Section 63 (5) of the Employment Act of two weeks' pay for each year of service. Taking into account of Section 63 (4), the Court did not increase the award because the Respondent was found to have contributed to his own dismissal.

71. On page 6 of the judgment, the Court held which I find to be illustrative:  
*“Section 63(4) is not a blank cheque for the court to decide any amount to be payable. It needs to be read into Section 63(5) whenever compensation is awarded. In our view, it is a guideline on how a court may give an award under subsection 5, and should not be read in isolation. This section provides for a minimum award, but the court can award more than this minimum depending on the circumstances of the case as provided in Section 63(4) of the Act.*
72. As we have seen in *Graciam Kalengo* case (supra), these guiding principles on assessment of compensation were earlier applied in the case of *Standard Bank vs Mtukula* (supra). In that case, Mtukula, who had worked for the bank for 19 complete years and therefore entitled to the statutory minimum award of one month's salary for each year of complete service, was awarded compensation at the rate of three months' pay for each year of completed service upon the court taking into account the peculiar facts of the matter. This award was upheld by the Supreme Court of appeal. These principles as outlined in Mtukula case were similarly applied in *National Bank of Malawi vs Benjamin Khoswe and First Merchant Bank Ltd vs Eisenhower Mkaka and Others*, Civil Appeal No1 of 2016, being IRC matter number 137 of 2012.
73. In fact, in the case of *First Merchant Bank Ltd vs Eisenhower Mkaka and Others* (supra), which is relatively the recent Supreme Court of Appeal decision, it was well articulated that employment is not a lifetime commitment and that it would not be in the spirit of Section 63(4) and (5) of the Employment Act to award the Applicant up to retirement age. The Court actually stated as follows which we also find quite illuminating, instructive and illustrative:  
*“In assessing compensation, the IRC had to stick to the spirit of Section 63 of the Employment Act. Under this provision, it is the duration of service before termination that matters a lot in the calculation of the compensation that must fall due, not the loss of salary, increments and sundry amenities from the date of dismissal to the date of judgment or the assessment of damages/compensation. In the same manner, future*
- 74.

*losses do not matter at all. Therefore, one cannot talk of loss of earnings up to the time the former employee should have retired. Certainly, that is not the spirit of the Employment Act. As already observed, Section 63(5) sets down the minimum compensation. The court may go up depending on its evaluation of the matter. The court enjoys the wide discretion to settle for either the minimum prescribed or for any higher amounts of compensation as would fit the description of “just and equitable” after weighing the considerations in Section 63(4) of the Act”.*

75. In the **National Bank of Malawi vs Benjamin Khoswe** (supra), Chipeta J, as he then was stated the following on award of compensation for unfair dismissal and salary increments on page 25 and 26 of the judgment:
76. *“In this case, however, instead of the Respondent seeking just and equitable compensation that is in accordance with Section 63(5) as might or might not be increased in the court’s discretion, he wants full salary and increments for each day he was out of employment to date of assessment of damages. Subject to discretion the law gives me about whether to stick with the minimum or to increase it, my opinion is to follow the guidance offered by Section 63(5) of the Employment Act. At the minimum, therefore, regardless of whether it will come to more than or less than what the Deputy Registrar had awarded him, I hold the view that the Respondent would be entitled to a just and equitable award of a month’s pay for each of the 21 years he had served the Bank. Considering, however, that this case is virtually at all fours with the **Stanbic Bank vs Mtukula** case, where the Supreme Court of Appeal upheld an award at the rate of three months’ pay for each of the completed years of service, I see no reason why the Respondent should be treated differently in this case. I accordingly set aside the award he got of full salary for the whole period between dismissal and assessment of damages. Instead, I award him three months’ salary per year for each of the 21 years he served the Appellant ...which is what I would consider granting him as his due compensation under the current legal formula as legislated by the Employment Act.”*
77. In the case of **Kachinjika vs Potland Cement Company** [2008] MLLR 161, the court refused to award loss of salary from the date of termination to the date of judgment on the ground that ‘such an award would be flawed as it would proceed on the assumption that the plaintiff was never terminated which was not true; that he continued being an

employee of the defendant company which was not true; and that the plaintiff in his pleadings prayed a declaration that he should be regarded as having continued in his position from the date of termination until that of judgment which was also not the case’.

78. The above cited and discussed cases were considered and applied in the cases of *Douglas Mbilima vs Macsteel Malawi Limited*, Matter No IRC. LL 645 of 2011, *Vision Zikhole vs Blantyre Water Board*, MZ IRC 319 of 2011 *and Loveness Chalera and Davie Maseko vs Reserve Bank of Malawi*, Matter No IRC 32 of 2015; and almost in all of these cases, the contracts of employment were for an unspecified period of time. Guided by the above-outlined principles on the assessment of compensation for unfair dismissal, my court will now proceed to analyze the facts in light of these applicable principles.
79. An assessment is a trial. Accordingly, during the assessment in this case, the Court will have to bear the foregoing principle in mind. The Court will have to analyze the evidence and see whether the applicants have discharged the burden placed on them by law. The duty of the applicants is to prove their compensation on a balance of probabilities and nothing more.
80. The applicant through counsel has provided calculated compensation payable to the applicants and the respondent has made a submission on how calculations ought to be done in this matter. Having analysed the calculations submitted by both parties I find the calculation done by counsel for the applicants are in tandem with the judgement order made by the Hon Deputy Chairperson. I find that the 4 applicants mitigated their future loss when they secured employment. I, therefore, awarded the damages for unfair dismissal to the year they got their current employment. For the two who failed to get employed despite having been dismissed, I shall award them damages to July 2022. The awards are as follows:
81. Mr. Laurent Daula
- |                              |                  |
|------------------------------|------------------|
| Damages for unfair dismissal | MK1, 165, 289.65 |
| Severance Pay                | MK702, 601.12    |
| Withheld wages               | MK297, 011.77    |
| Notice Pay                   | MK 68,546.45     |



	<b>Total</b>	<b>MK2, 233, 358.99</b>
82.	Mr. Justin Makwale	
	Damages for unfair dismissal	MK6, 649, 005.65
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	Withheld wages	MK 297, 011.77
	Notice Pay	MK 68,546.45
	<b>Total</b>	<b>MK7, 785, 709. 44</b>
83.	Mr. James Chapambali	
	Damages for unfair dismissal	MK6, 649, 005.65
	Severance Pay	MK 377, 005.48
	Withheld wages	MK 297, 011.77
	Notice Pay	MK 68,546.45
	<b>Total</b>	<b>MK7, 391, 569.35</b>
84.	Mr. Jarrieson Litchowa	
	Damages for unfair dismissal	MK3, 358, 776.05
	Severance Pay	MK377, 005. 48
	Withheld wages	MK 297, 011.77
	Notice Pay	MK 68,546.45
	<b>Total</b>	<b>MK4, 101, 339.75</b>
85.	Mr. Issac Sawelengera	
	Damages for unfair dismissal	MK1, 645, 114.80
	Severance Pay	MK496, 961. 77
	Withheld wages	MK 297, 011.77
	Notice Pay	MK 68,546.45
	<b>Total</b>	<b>MK2, 507, 634.79</b>
86.	Mr. Limbani Chirambo	
	Damages for unfair dismissal	MK1, 028, 196. 75
	Severance Pay	MK496, 961.77
	Withheld wages	MK 297, 011.77
	Notice Pay	MK68,546.45
	<b>Total</b>	<b>MK1, 890, 716.74</b>

87. Total sum to be awarded to the applicants following the court Judgement must be MK25, 916, 329.06
88. Payment to be effected within 14 days from the date of service of this order.
89. Delivered in chambers this 4<sup>th</sup> day of October 2022 at Blantyre.



**PETER M.E KANDULU**  
**ASSISTANT REGISTRAR**

