



IN THE INDUSTRIAL RELATIONS COURT OF MALAWI
SITTING AT BLANTYRE
IRC MATTER NO. 899 OF 2020

BETWEEN:

GREGORY MHANGO AND 29 OTHERS APPLICANTS

-and-

COLUMBIA COMMONWEALTH UNIVERSITYRESPONDENT

CORAM: H/H PETER M.E KANDULU, AR

The Applicants, Present / Unrepresented,

The Respondent, Absent.

Ms Rose Msimuko, Court Clerk.

ORDER ON ASSESSMENT OF COMPENSATION

Introduction

1. This is an assessment of salary arrears for 18 months that is payable to the applicants pursuant to the default judgement entered against the Respondent dated the 22nd day of January 2021 by the then Assistant Registrar Hon. Innocent Nebi.
2. The said default judgement ordered that the applicants be given their accrued 18 monthly salaries to be assessed by the court.

Burden of proof

3. 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.
4. 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

5. 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 Applicant has a burden to prove on the balance of probabilities the claim against the respondent in his pleadings.
6. 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.

Evidence

7. For the applicant, Mr Gregory Mhango informed the court that the matter has taken a while in court and the applicants are suffering due to non-receiving of their salaries. He informed the court that each applicant deposited with the court the detailed accumulative accrued salaries as calculated by the Chief Accountant of Columbia

University. The same should be adopted and used in assessing the accumulated and accrued salaries due to them. He further informed the court that the applicants are of three categories, those on a part-time job, those on a contract which is renewable and those on permanent employment with the university.

8. The accumulated and accrued salaries are as follows:

a) Gregory Mhango after-tax	MK3, 297, 000.00
b) Wellington Dambuleni after-tax	MK13, 473, 045.10
c) Patrick Mpangi after-tax	MK 5, 384, 000.00
d) W. Binali after-tax	MK 3, 041, 000.00
e) Joe Msiska after-tax	MK 1, 835, 650.00
f) Mike Maluwa after tax	MK 986,074.00
g) J. Mmadi after tax	MK 1, 296, 000.00
h) A. Kalepa after tax	MK 769, 850.00
i) Rose Kapinga after tax	MK 794, 400.00
j) M. Phesamendo after tax	MK 1, 590, 000.00
k) G. Mkwezalamba after tax	MK 4, 816, 889.00
l) Elias Madeya after tax	MK 2, 354, 875.00
m) Memory Guja after tax	MK 2, 974, 150.00
n) Dziko Ndau after tax	MK 775, 000.00
o) Ethel Banda after tax	MK 2, 967,202.00
p) Naphy Naphta after tax	MK 3, 568, 900.00
q) A. Munkhodya after tax	MK 4, 443, 000.00

9. The Respondent did not appear and attend trial despite receiving service for the hearing of this matter.

10. The court will proceed to deal with the matter since there is evidence that the respondent was served with the court process for this trial.

Issues

11. Accordingly, the only issue before the Court is how much-accrued salary each applicant is entitled to receive?

12. The matter before the court is a very straight forward matter. The applicants were employed by the Respondent.

13. The applicants rendered various services to the respondent in terms of employment which they were supposed to be paid for.
14. The respondent has failed to pay the applicants for the service rendered which cannot be replaced by any other but to receive their salaries as provided in the terms of their employment.
15. In my view, the respondent is obligated by law to pay salaries for the applicants. By failing to pay salaries of the applicants, the respondent is violating the rights of the applicants to economic empowerment which they legitimately worked for.
16. It is my considered view that this is the right case where the respondent ought to pay the applicants their 18 months accrued salaries.

17. The same shall be boosted with 25 % taking into consideration the devaluation effected on the Malawi Kwacha against the USD in 2022.

a) Gregory Mhango after-tax	MK3, 297, 000.00 X 25 =	MK4, 121,250.00
b) Wellington Dambuleni after	MK13, 473, 045.10 X 25 =	MK16, 841, 306.40
c) Patrick Mpangi after-tax	MK 5, 384, 000.00 X 25 =	MK6, 730,000.00
d) W. Binali after-tax	MK 3, 041, 000.00 X 25 =	MK3, 801, 250.00
e) Joe Msiska after-tax	MK 1, 835, 650.00 X 25 =	MK2, 294, 562.50
f) Mike Maluwa after tax	MK 986,074.00 X 25 =	MK1, 232,592.50
g) J. Mmadi after tax	MK 1, 296, 000.00 X 25 =	MK1, 620,000.00
h) A. Kalepa after tax	MK 769, 850.00 X 25 =	MK962, 312,50
i) Rose Kapinga after tax	MK 794, 400.00 X 25 =	MK993, 000. 00
j) M. Phesamendo after tax	MK 1, 590, 000.00 X 25=	MK 1, 987,500.00
k) G. Mkwezalamba after tax	MK 4, 816, 889.00 X 25 =	MK6, 021,111.25
l) Elias Madeya after tax	MK 2, 354, 875.00 X 25 =	MK2, 943, 593.75
m)Memory Guja after tax	MK 2, 974, 150.00 X 25=	MK3, 048,507.50
n) Dziko Ndau after tax	MK 775, 000.00 X 25=	MK7, 943,750.00
o) Ethel Banda after tax	MK 2, 967,202.00 X 25 =	MK3,709.002.50
p) Naphy Naphta after tax	MK 3, 568, 900.00 X 25=	MK4, 431, 125.00
q) A. Munkhodya after tax	MK 4, 443, 000.00 X 25 =	MK5, 553,750.00

18. Payment to the applicants must be paid within 14 days from the date of service of this order.
19. Delivered in chambers this 25th day of July, 2022 at Blantyre.



PETER M.E KANDULU
ASSISTANT REGISTRAR

