



Libraury



IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
CIVIL CASE NUMBER 193 OF 2020

BETWEEN

JEAN NKHOMA.....CLAIMANT

AND

CHIPIKU STORES LIMITED.....DEFENDANT

BEFORE Hon Justice Jack N'riva
Mr Mickeus for the claimant
Mr Maele for the defendant
Ms Nkangala Court Clerk

RULING/DIRECTION

In addition to common law torts claimed in this matter, the claimant made some employment-related claims which fall under the Employment Act. An issue arose whether such claims should proceed in this Court or in the Industrial Relations Court. My immediate temptation was to hear all the claims considering that they arise out of the same facts. However, my search of the decisions of the Supreme Court and the High Court on the matter points toward one learning. This is that notwithstanding the High Court

having unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law (section 108(1) of the Constitution), where specialised courts or tribunals have been established to handle particular matters, the High Court should desist from hearing such matters. The same applies to divisions of the High Court. Matters must go to the courts or tribunals established to handle such dispute belongs; and not any other division. See *Mbale v Maganga* Miscellaneous Civil Appeal Number 21 of 2013, *Chilemba v Malawi Housing Corporation* 2008 MLLR 137, *Kamphoni v Malawi Telecommunications Limited* Civil Case Number 684 of 2004; *Cuepers v Armbruster* Civil Case Number 130 of 2016.

In *Andrew Thawe v Blantyre Water Board* Civil Cause No. 379 of 2915 (unreported) the Court stated that labour/employment matters must first be dealt with in the Industrial Relations Court, as a court of first instance before being brought to the High Court. The Courts base the jurisprudence on sections 110(2) of the Constitution as well as section 64 of the Labour Relations Act.

Section 110 (2) of the Constitution provides that:

"There shall be an Industrial Relations Court, subordinate to the High Court, which shall have original jurisdiction over labour disputes and such other issues relating to employment and shall have such composition and procedure as may be specified in an Act of Parliament."

Section 64 of the Labour Relations Act provides as that:

"The Industrial Relations Court shall have original jurisdiction to hear and determine all labour disputes and disputes assigned to it under this Act or any other written law."

The decisions hold that it is very clear that the Industrial Relations Court is the first point of call for all labour and employment related matters. Thus, labour related matters ought to be heard in the Industrial Relations Court, unless otherwise stated or directed by the High Court.

In *Chilemba v Malawi Housing Corporation* [2008] MLLR 137 Potani J, as he then was, said to say at page141:

"Whilst this Court indeed has unlimited original jurisdiction in both criminal and civil matters, the Industrial Relations Court was specifically created to deal with labour related matters, and it would therefore make sense that labour related matters should first be dealt with by that court before they are pushed to this Court. In the scenario of this arrangement, the High Court despite having original unlimited jurisdiction would only come in as an appellate court and not a court of first instance. This is what the framers of the Constitution intended, for they could not provide for a separate and specific court in the name of the Industrial Relations Court having original jurisdiction over labour disputes and such other issues relating to employment whilst the High Court was still there. Clearly the Industrial Relations Court was intended to be the first port of call."

See also *Armstrong Kamphoni v Malawi Telecommunications Ltd*, Civil Cause No. 684 of 2001 (unreported) HC and *Beatrice Mungomo v Brian Mungomo and others*, Matrimonial Cause No. 6 of 1996 (unreported). In *Beatrice Mungomo v Brian Mungomo and others*, the Court said

"In my judgment, it would be both inappropriate and wrong for the High Court to proceed to assume jurisdiction over proceedings which fall within the jurisdiction of a subordinate court simply because the High Court has...unlimited original jurisdiction. Such an approach would create confusion, as parties would be left to their whims to bring proceedings willy-nilly in the High Court or in a subordinate court as they pleased In short the High Court should recognise the subordinate courts and decline jurisdiction in matters over which the subordinate courts have jurisdiction."

In summary, generally disputes of labour relations and employment matters ought to be commenced in the Industrial Relation Court and not the High Court.

Based on reasoning in the precedent I have referred to, I order that the employment related issues in this matter ought to proceed in the Industrial Relations Court, to which I transfer the claims.

As for the other claims, we shall proceed to have a scheduling conference on 14th July, 2022 at 15.10 hours.

Costs shall be in the cause.

MADE this 30th day of June 2022

A handwritten signature in black ink, appearing to read 'J N'RIVA', written in a cursive style.

J N'RIVA
JUDGE