



**THE REPUBLIC OF MALAWI  
IN THE INDUSTRIAL RELATIONS COURT  
PRINCIPAL REGISTRY  
IRC MATTER NO. 632 OF 2020 AND IRC MATTER NO 822 OF 2021**

**BETWEEN**

**EDNA NYIRENDA.....1<sup>ST</sup> APPLICANT  
PRISCILLA KAKUNGU.....2<sup>ND</sup> APPLICANT  
ATUPELE JANA.....3<sup>RD</sup> APPLICANT  
STELLA NKANA.....4<sup>TH</sup> APPLICANT  
EDWARD LAZARO.....5<sup>TH</sup> APPLICANT  
MADALO M'BWANA.....6<sup>TH</sup> APPLICANT**

**-AND-**

**THE MEDICAL AID SOCIETY OF MALAWI.....RESPONDENT**

**CORUM: PETER M.E KANDULU, DEPUTY CHAIRPERSON**

Mpombeza, Counsel for the Applicants

Chalamanda, Counsel for the Respondent.

Kakhobwe, Court Clerk.

## **JUDGEMENT ON ASSESSMENT OF COMPENSATION**

### **Introduction**

The Applicants commenced this action on the 9<sup>th</sup> day of September 2020 against the Respondent claiming damages for unlawful termination of employment contract, damages for unfair labour practices, with-held salary arrears and benefits, refund of sums deducted from their salaries as part of the Applicants' contributions towards their welfare, payment of pension benefits, payment of all salaries and all earnings lost up to the date of retirement and special damages.

Judgment on liability was entered against the Respondent on the 1<sup>st</sup> day of **June, 2023**. The court ordered the Respondent to compensate the Applicants for unfair dismissal, refund the Applicants dues which were purportedly deducted to recover the defrauded sum, Salary arrears to be assessed, and Severance pay. It is now upon the Court to assess the reasonable damages payable to the Applicants herein.

### **Issues for Determination.**

What is the applicable quantum of compensation the Applicants are entitled to for unfair dismissal, refund of the Applicant's dues deducted by the respondent, salary arrears, and severance pay?

### **Burden of proof**

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. The burden is fixed at the beginning of the 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**

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 claim against the Respondent.

## **The Applicants' Case**

The Applicants paraded 6 witnesses who are the Applicants themselves namely Edna Nyirenda, Priscilla Kakungu, Atupele Jana, Stella Nkana, Edward Lazaro, and Madalo M'bwana. The Applicants adopted their filed written witness statements to form part of their evidence.

### **Edna Nyirenda, the 1<sup>st</sup> Applicant.**

She stated that she worked for the Respondent as a Client Relationship Management Executive. She started working for the Respondent on the 1<sup>st</sup> day of March 2015. In 2020 she was unfairly dismissed by the Respondent on allegations that she had defrauded the Respondent of some money. At the time of dismissal, she had worked for the respondent 5 years and 6 months.

She was 37 years old when the Respondent unfairly dismissed her. She stated that her salary was MK459, 566.00 per month. She stated that she was greatly inconvenienced following the termination of the employment contract and that she was deprived of her right to economic activity and to earn a living. As a result of the dismissal, she has suffered loss of monthly earnings, loss of future earnings, and loss of pension benefits.

During cross-examination, she stated that she did not receive an offer letter when the Respondent promoted her.

During re-examination, she stated that she received the offer from the Respondent through an email and she accepted it.

### **Priscilla Kakungu, the 2<sup>nd</sup> Applicant.**

She stated that she worked for the Respondent as a Data Entry Supervisor. She started working for the Respondent on the 2<sup>nd</sup> day of May 2008. She stated that in 2020 she was unfairly dismissed by the Respondent on allegations that she had defrauded the Respondent of some money. At the time of dismissal, she had worked for the respondent for 12 years and 3 months.

She stated that she was 40 years old when the Respondent unfairly dismissed her. Her monthly salary was MK876, 319 and she was receiving some other benefits in the form of airtime, sugar and milk. She tendered her payslip as part of her evidence which was marked. She stated that the Respondent deducted MK421, 250 from her salary and she received nothing.

She stated that she was greatly inconvenienced following the termination of the employment contract and that she was deprived of her right to economic activity and to earn a living. As a result of her dismissal, she has suffered loss of monthly earnings, loss of future earnings, and loss of pension benefits. Therefore, she is claiming MK262, 895, 700 being loss of earnings, payment of severance allowance, payment of pension benefits, and payment of salary in arrears.

**Atupele Jana, the 3<sup>rd</sup> Applicant.**

She stated that she worked for the Respondent as a Client Service Officer from the 4<sup>th</sup> day of December 2017. She was 25 years old when she was unfairly dismissed by the Respondent in August 2020 on allegations that she had defrauded the Respondent of some money. At the time of dismissal, she had worked for the respondent for 2 years and 8 months.

She stated that her remuneration or benefits was MK291, 000.00 before tax. She tendered her payslip as part of her evidence which was marked. She further stated that she refunded the Respondent MK413, 000,000 through FISCAL Police and tendered evidence which was marked.

She told the court that as a result of the unfair dismissal, she has suffered the loss of monthly earnings, loss of future earnings, and pension benefits.

Therefore, she is claiming MK140, 154, 240 being loss of earnings, payment of severance allowance, payment of pension benefits, and payment of salary in arrears.

During cross-examination, Atupele Jana stated that she refunded the Respondent the sum of MK413, 000.00 at the Respondent's offices but she was not given a receipt.

**Stella Nana, the 4<sup>th</sup> Applicant.**

She worked for the Respondent as a Client Service Executive in the Commercial Department. She stated that she started working for the Respondent on the 1<sup>st</sup> day of January 2014. She stated that she was unfairly dismissed in 2020 by the Respondent on the allegation that she had defrauded the Respondent of some money amounting to, 500,000.00. At the time of dismissal, she had worked for the Respondent for 6 years and 7 months. She informed the court that she is not working currently.

She stated that she suffered loss of monthly earnings, loss of future earnings, and loss of pension benefits. Thus, she is claiming MK126, 359, 808. 00 being loss of earnings, payment of severance allowance, payment of pension benefits, and payment of salary in arrears.

During cross-examination, Stella Nana stated that she has proof that she started working for the Respondent on the 1<sup>st</sup> day of January 2014 but she did not tender it as part of her evidence.

**Edward Lazaro, the 5<sup>th</sup> Applicant.**

He started working for the Respondent on the 1<sup>st</sup> day of March 2015 as a Claims Adjudicator. He stated that his salary was MK321, 187.00. At the time of dismissal, he had worked for the respondent for 5 years and 6 months. He was also receiving a house allowance, medical insurance, a tin of milk, and sugar.

He stated that he was 33 years old when the Respondent unfairly dismissed him in 2020 on the allegation that he had defrauded the Respondent of some money. He informed the court that the Respondent deducted him the sum of MK1, 430,783.00 from his salary being. He stated that he is claiming MK123, 335, 808 as loss of earnings, payment of severance allowance, payment of pension benefits, and payment of salary in arrears.

During cross-examination, Edward Lazaro stated that as a result of the unfair dismissal, he has suffered loss of monthly earnings, loss of future earnings, and pension benefits.

**Madalo M'bwana, the 6<sup>th</sup> Applicant.**

He stated that he worked for the Respondent as a Revenue Supervisor. He started working for the Respondent in May 2006. He stated that his salary was MK660, 000.00 and tendered his payslip which was marked. He told the court that he was receiving MK15, 000.00 as airtime per month, 70 litres of fuel at MK56, 000.00 and medical insurance. He told the court that in or around 2020, he was unfairly dismissed by the Respondent on an allegation that he had defrauded the Respondent of some money and was 40 years old at that time. At the time of dismissal, he had worked for the respondent 14 years and 3 months.

He told the court that he suffered loss of monthly earnings, loss of future earnings and loss of pension benefits as a result. He stated that he is claiming MK512, 591, 400 as loss of earnings, payment of severance allowance, payment of pension benefits and payment of salary in arrears.

During cross-examination, he stated that the benefits such as airtime and fuel reflected on his payslip

During re-examination, he stated that he was also receiving MK194, 319 as a house allowance.

### **The Respondent's Case**

The Respondent paraded one witness. Linda Mamba the Human Resources Manager adopted her filed written witness Statement to form part of her evidence. She exhibited 14 exhibits as part of her evidence which also formed part of her evidence. Linda Mapemba stated that the Applicants were paid all that was due to them after they were dismissed and were instructed how to obtain their pensions if they did not get employed within 6 months.

During cross-examination, Linda Mapemba stated that she has been working for the Respondent for 10 years as a Human Resource Manager. She stated she is not aware if some Applicants did not get payments of severance allowance, pension benefits and salary arrears.

During re-examination, Linda Mapemba stated that some of the Applicants had their last salaries deducted.

The above is the evidence of both the Applicants and the Respondent which the court is called to determine to resolve the issue of compensation due to the applicants.

The court is so grateful to both counsel for the Applicants and the Respondent for final reasoned written submissions. The court would like to state that it shall not reproduce the final written submissions in this judgement for brevity's sake. However, the court would like to assure the parties that the court shall use the filed submissions to resolve the issue as presented before the court.

### **Failure to lay down the formula for Compensation of Assessment**

However, the court would like to register its disappointment with how counsel representing the Applicant had failed to clearly demonstrate the formula how he arrived at the figures submitted in his final submission. The court is aware that counsel has cited a number of cases some of which are not even relevant to the case at hand.

The court expects counsel to lay out the formula on how each of the applicant ought to be compensated. The court is surprised on how the figures presented in the submission by the lawyer

for the Applicants was arrived at. Lawyers are not supposed to dream figures of compensation that their clients ought to be compensated. They ought to cite the law, and principles of the law and provide a formula on how each applicant ought to be compensated. Lawyers should never leave the work they were engaged to do to the court.

The court must adjudicate on what is presented to it by the lawyers not that the court should be doing the work of the lawyers. For example, the court which held the respondent liable ordered the taxing or assessing court to deal with the issue of salary arrears of the applicants. The Applicant's lawyer did not lead its clients to present evidence on the salary arrears. How could the court deal with the issue of salary arrears of the applicants when evidence was not presented in court?

Counsel for the applicant and counsel for the respondent have submitted the following as amount due for compensation to the applicants: As stated earlier they did not provide a formula on how they arrived at the figures of compensation for unfair dismissal. There are no reasons to justify why they thought the applicants must be awarded more than the minimum provided in section 63 (4) and (5).

#### **Applicants Counsel**

#### **Respondent Counsel**

**1. Edina Nyirenda**

MKMK154, 414, 176.00

MK2, 050, 817.54

**2. Priscilla Kagungu**

MK262, 895, 700.00

MK14, 964, 822.16

**3. Atupele Jana**

MK140, 154, 240.00

MK1, 274, 684. 99

**4. Stella Nkana**

MK126, 359, 808.00

MK2, 607, 183. 62

**5. Edward Lazaro**

MK123, 335, 808. 00

MK1, 430, 757. 38

**6. Madalo M'bwana**

7. MK512, 591, 400. 00

MK17, 217, 813. 70

## **Presentation of Evidence**

The court would like also to address the issue of evidence. Counsel for the respondent opposed the inclusion of airtime, a tin of milk, and a packet of sugar since they did not show on the applicant's pay slip. He argued that since these were not shown on the pay slip, it meant that the applicants were not entitled to airtime, 1 tin of 400 grams of milk, and 1 packet of sugar. He argued that the fringe benefits should not be included to form part of the Applicant's wages.

The court would like to disagree with counsel for the respondent and put this into perspective. No employer would include hospitality provided to its employees on the pay slip. The court would like to take judicial notice that, most of the senior officers in many organisations get airtime as part of their benefits but the same is not included on the payslips. It is therefore not correct to suggest that because the applicant's pay slip did not show they received a packet of sugar or a tin of milk, they cannot claim them. The applicants, if they were not unfairly dismissed, they could not have lost those benefits. It is my holding that what the applicants were receiving at the end of every month should form part of their wages.

## **Medical Scheme**

The court would like to address the issue of the Medical Scheme. The court had always seen several applicants claiming medical schemes to be part of their monthly wages. This, in my view, has to be shown or proven on the pay slip that the employer was contributing monthly, a certain amount towards a medical scheme, which if, the applicants were not unfairly dismissed, they could have continued to enjoy that benefit. Without any evidence to support the remittance of any amount monthly towards a medical scheme, the court shall be very reluctant to compensate the applicants on this aspect. So it is my view that the applicants failed to show and demonstrate that the respondent was contributing so much money which could assist the court to decide on the same.

## **The Law**

*Section 8 (2) of the Labour Relations Act* empowers the Industrial Relations Court to award compensation.

An award of compensation for unfair dismissal is made under Section 63(4) of the Employment Act, ("the Act") which states:



*“An award of compensation shall be such 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.”*

It follows that in assessing compensation the court has to consider the following:

- (I) Award amount that is just and equitable.
- (ii) Amount shall be determined by loss sustained by the employee.
- (iii) Cause or contribution to the dismissal by the employee.

Section 63 (5) of the Employment Act prescribes minimum awards that the court may award. It must be noted that this provision does not take away prescription in Section 63(4) of the Act.

Section 63 (5) of the Act provides:

The amount to be awarded under sub-section (4) shall not be less than:

- a) One week’s pay for each year of service for an employee who has served for not more than five years.
- b) Two weeks’ pay for each year of service for an employee who has served for more than five years but not more than ten years.
- c) Three weeks’ pay for each year of service for an employee who has served for more than ten years but not more than fifteen years and.
- d) One month’s pay for each year of service for an employee who has served for more than Fifteen years.

The Malawi Supreme Court of Appeal and High Court of Malawi have expounded these two provisions:

In ***Willy Kamoto v Limbe Leaf Tobacco Malawi Ltd*** MSCA Civil Appeal Cause no. 24 of 2010 the Supreme Court of Appeal held that:

*“Compensation could never be aimed at completely protecting the employee into the future.”*

In ***Terrastone Construction Ltd v Solomon Chatantha*** MSCA Civil Appeal Cause no. 60 of 2011, the court held that:

*“Our labour law is concerned with the attainment of fairness for both employer and employee. In weighing up the interest of the respective parties is of paramount importance to ensure that a balance is achieved to give credence not only to commercial reality but also to a respect of human dignity”. (Emphasis supplied).*

Furthermore, in the same case of ***Terrastone Construction Ltd vs Solomon Chathuntha***, (Supra), 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 to arrive at a just and equitable compensation concerning Section 63(4) of the Employment Act.

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 inquiry of loss. The court has to determine the matter on reasonable terms and that reasonableness will be achieved, if the interests of both the employee and the employer are taken into account.

The court in that case (Supra) 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 more than what is set down in the law.”*

In the case of ***Sothorn Bottlers (SOBO) vs Graciam Kalengo***, [2013] MLR 345 the Supreme Court of Appeal also stated the following on Page 348:

*“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 can appreciate why the award was enhanced.”*

Section 63 (4) is not a blank cheque for the court to decide any amount to be paid. It needs to be read with 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”. (Emphasis supplied).

*“It is important that courts must not be seen to award damages, with elements of punishment to the employer”.*

In ***Stanbic Bank Ltd v Mtukula*** [2008] MLLR 54 the Malawi Supreme Court of Appeal said on p. 62:

*“We, therefore, think that for the 19 years of service, the respondent would receive three months’ pay for each year which would translate to 57 months’ pay”.*

In ***First Merchant Bank Ltd v Eisenhower Mkaka and Others*** Civil Appeal no. 1 of 2016 Mkandawire J (as he was then) stated the following:

*“In assessing compensation, the Industrial Relations Court 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 compensation that falls 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 loss does not matter. Therefore, one cannot talk of loss of earnings up to the time the former employee would have retired, certainly, which is not in the spirit of the Employment Act. (Emphasis supplied).*

“There are 17 respondents and each one of them had worked for the appellant for a different number of years. Each one of them gave evidence during the assessment. Each respondent should therefore have been treated separately in assessing compensation.

In all, the above-cited decisions do (inter alia) hold that the period of service by the employee is the most important factor when computing compensation under Section 63 (4) as read with Section 63(5) of the Employment Act. Other factors will be taken into account but this is the most important one.

It follows for example that someone who has served for 16 years may not get the same compensation as someone who has served say 5 years.

This approach has been applied in this court. The point is the order of assessment in ***Eisenhower Mkaka and Others v First Merchant Bank Ltd*** IRC Matter no. 137 of 2012 (LL).

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 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 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”.*

In this case, the respondent substantively breached the contract of employment for the applicants when he dismissed the applicants unfairly without any good cause. This was held by the court when it found the Respondent wholly to blame for the breach of the contract of employment of the applicant which resulted in the loss of employment by the applicants. It is a result of this loss that the court is called upon to compensate the applicants.

It is also trite that in considering what is just and equitable compensation, the court takes into account the age of the applicants, education qualification, marketability and contribution to the dismissal see ***Chiumia vs SS Rent a Car Ltd*** Matter No 149 of 2000.

On the issue of compensation, the case of ***Eisenhower Mkaka and Others v First Merchant Bank Ltd*** (supra) in my view should be the guiding and leading case on how compensation ought to be

computed in this case. The reason was that the trial Court did not find that the applicants contributed to their unfair dismissal.

The Amended 35 (2) of the Employment Act, provides the meaning of pay or wages, it is provided under section 35 (2) (a) that ‘wages’ includes basic salary, housing and accommodation allowance, car allowance, cash payments, and payments in kind to an employee, except those excluded from the formula.

Section 35 (2) (c) excludes the following items, among others, from the meaning of the word ‘wages’: cash payments for equipment to enable the employee to work, employer contributions to medical aid, pension, provident fund, or similar schemes, etc.

Counsel for the Applicants has submitted that one of the factors to consider, 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 the 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).

Counsel for the Applicants argued that the reason is that it is not “just and equitable” for the Court to assist litigants who sit idle and fail to make an 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.

The court’s understanding of the Judgement cited by counsel for the Applicants regarding the mitigation of loss, these cases are not applicable, especially after the enactment of the Employment Act 2000 which is the main Act parliament had legislated to regulate how compensation ought to be made. Before the enactment of the Employment Act 2000, the court relied on common law principles to resolve the puzzle of how much a dismissed employee ought to have been compensated.

The common law is part of the laws in Malawi especially where there is no law to resolve the issue brought before the court. But where the law is available, the court is afraid to say in a disappointing

way that it sees no relevance to resorting to looking at the common law principles when there is clear law that could easily guide the court and resolve any matter brought before it.

In this regard, the court read the Employment Act and Labour Relations Act to try and understand whether the concept of mitigation of loss is one of the factors the court should consider when calculating how much a dismissed employee should be awarded. The Court is sorry to disappoint and to say that it did not find these principles in the law dealing with labour and employment matters.

This is the reason ***Mkaka's case*** (supra) shall remain the precedent to be followed and in that case, the court held “*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 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.*

From the reading of the Judgement of ***Mkaka's case***, it demonstrates to me that the issue of common law principles was abandoned when the court held that the IRC must stick to the spirit of section 63 of the Employment Act when assessing compensation. When you read section 63 of the Act, the concept of mitigation of loss is not one of the factors to consider. The question that had always exercised my mind is, how would then should we stick to the spirit of section 63 (4) and (5) on the one hand and insist on the principle of mitigation of loss on the other hand when the same is not part of the employment law in Malawi.

It is now trite that one would not be compensated up to the retirement age despite the breach of contract which was unspecified. The court has always insisted that it cannot award compensation to a dismissed employee during the time he was not an employee of the employer because doing so, it would mean the employee was never dismissed at all see ***Kachinjika vs Portland Cement Company*** [2008] MLLR 161.

In my understanding of this holding, it meant that the court had refused to accept the concept of common law principles which would have entitled the applicants to receive their compensation up to the retirement age or period because in any contract an innocent party who has not caused any harm any agreement he has the right to be compensated damages which were not caused by his fault.

The court had departed from this concept which is mostly a common law principle embedded in the law of contract. If this was abandoned, in my view, there shall be no need for the same court to insist that the applicants must mitigate loss when the same is not the spirit in section 63 of the Employment Act.

This court shall not take into consideration the concept of mitigation of loss as a factor to consider when assessing and computing compensation for the applicants as the same is not provided for in the Employment Act.

In the *National Bank of Malawi vs Benjamin Khoswe (supra)*, Chipeta J, as he then was stated the following on the award of compensation for unfair dismissal and salary increments on pages 25 and 26 of the judgment:

*“In this case, however, instead of the Respondent seeking just and equitable compensation that is by 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 month’s 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.”*

In the case of **Kachinjika vs Portland 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’.

Counsel for the applicants has submitted that the court should consider factors in the issue of future and immediate loss when computing compensation. Counsel has cited several decisions that were pronounced before the enactment of the Employment Act, especially section 63 (4) of the said Act. However, the notion of future and immediate loss is common law principles ***Kachinjika v Portland Cement Company*** Civil Cause Number: 320/1998 which were applicable in the past before the codification of the Employment Act which has the modalities on how compensation ought to be calculated see section 63 (4) of the Act

In the Employment Act, an award of compensation shall be such 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. Factors to consider when calculating compensation for unfair dismissal include whether the dismissal is wholly attributed to the employer or whether the employee contributed to his loss. The law has only indicated that the award must be fair and equitable.

If the applicant or applicants contributed to the termination of employment, they ought to be compensated with the minimum which is one weeks’ pay for each completed year if the employee worked below not more than 5 years according to the Employment Act.

If the termination is wholly on the respondent, the court is called to award compensation more than the minimum and when deciding how much more to compensate the victim, the issue of just and equitable comes into play.



The compensation must be just and equitable. Compensation is not meant to punish the employer or to unnecessarily and unjustly enrich the applicants. But the compensation must be just and equitable to any reasonable person.

Section 35 (2) (c) of the Employment Act (as amended in 2010) stipulates that in the calculation of severance allowance, such benefits as fuel, airtime, phone allowance, and internet allowances which were in the form of cash are excluded by section 35 (2) (c) (I) of the Employment Act. These were cash payments or payments in kind which were provided to enable the applicants to work efficiently. Pension and medical schemes are excluded in Section 35 (2) (c) (VI),

The only applicable benefits that ought to be calculated for the applicant's severance allowance are their basic salary and house allowance for each applicant.

In terms of First Schedule – Part 1 of the Employment Act the severance allowance should be two weeks' wages for each completed year for the first 5 years, 3 weeks' wages for each completed year for the second 5 years, and four weeks' wages for each completed year for the third 5 years.

These underhand actions of the respondent have caused a colossal loss to the applicants. They lost lucrative jobs and are now languishing in financial hardship due to the respondent's actions.

Counsel has implored the court to consider this aspect of loss that if the respondent did not unfairly dismiss the applicants, they could not have suffered loss. Counsel had submitted that the award to be computed should reflect the loss that has been suffered by the applicants and that the court should consider awarding the applicants more than the minimum.

The court shall take into consideration this aspect when computing the awards to be paid to the applicants. The court has a legal responsibility to balance the interest of the applicants and the respondent when it is computing compensation to be awarded to the applicants.

The court would like to state a tin of Milk, Airtime cash out, and Sugar shall form part of wages for the applicants to calculate the compensation for unfair dismissal except when calculating severance pay which only considers the aspect of salary, car allowance, housing and accommodation.

As already discussed in the law's section, the employment contract is not lifetime employment according to cases that had been cited. No law provides that upon termination of employment, an applicant must be compensated up to the retirement age. It is trite, these days that the most important factor the court takes into consideration when calculating compensation due to the applicants is the duration the applicants had been in employment with the respondent.

In this case, the 1<sup>st</sup> applicant worked for the respondent for 5 years and 6 months. She did not contribute to her dismissal as per the decision of the court. If she was not unfairly dismissed there was a possibility that she could have been an employee of the Respondent. She could have enjoyed promotions and adjustments of her salary and other benefits.

They all have informed the court that since the dismissal they have suffered loss and they have not managed to secure alternative employment despite that they are young. They exhibited evidence that they submitted applications for alternative employment but they had not been successful due to the economic turndown the world is undergoing at the moment.

As alluded to earlier, the issue of mitigation of losses is a common law principle. This is not statutory within the Employment Act that when the court is computing compensations for the applicants, the court must consider the issue of mitigation of loss as a factor. More so, the issue of mitigating losses was relevant when the court at the time was factoring in the principles of immediate and future losses in computing compensation which were abandoned when we read the *Mkaka's case*.

In this case, the factor that the court shall consider seriously is whether the applicants contributed to their unfair dismissal, if the answer is negative. What is an appropriate quantum to compensate each applicant for the unfair dismissal inflicted on them? If the applicants contributed to their unfair dismissal whether a minimum compensation as provided in section 63 should be used to compensate the applicants.

Whether the dismissal is wholly hinged on the Respondent? If the answer is in the affirmative whether this is the appropriate case the court should compensate the applicants more than a minimum if the court is to award the applicants more than a minimum what is the justification for the same? However, the court would like to emphasize that sight should never be lost when

computing the appropriate quantum and that the compensation must be just and equitable to any reasonable person or tribunal.

From the reading of the judgement, it is very clear that the respondent is wholly to blame for dismissing the applicants unfairly. The court faulted the respondent for unfairly dismissing the applicants. The court did not find that the applicants contributed to their unfair dismissal. The fact that the court did not find the applicants contributed to their unfair dismissal is a valid point that the court ought to compensate the applicants with the above minimum.

The severity of the wrong which was alleged against each applicant was not the same, but the treatment which was given to each applicant was not distinguished. All the applicants despite, that their wrongdoing was not similar in terms of its severity but the respondent decided to apply a similar treatment to dismiss them all from their employment.

The court shall use the same principle that the Respondent used against the applicants when it dismissed them all without any distinction. The suffering inflicted on the applicants was the same despite that their offenses could have been similar but their severity was different.

The court is of the view that 2 months' compensation for each completed year of service would be just and equitable. The court has decided to compensate the applicants with 2 months' pay for each completed year as compensation for unfair dismissal to balance the interest of the employer who deliberately chose to ignore the proper procedure when he dismissed the applicants and the interest of the applicants especially for the loss and suffering which was inflicted on them by the respondent.

The 2 month's pay in my view would be just and equitable considering that it would be very unlikely that the applicants can find alternative employment in the shortest period following the impact of the economic turndown the country is experiencing at the moment. Considering at their qualifications and availability of employment in this country, it would be very unlikely that the applicants have the chance of getting employed soon. The court factored this as a reason to award the applicants with 2 month's pay.

The Judgement ordered the court to compute and calculate compensation for the applicants to deal with the issue of salary arrears. Unfortunately, there was no evidence presented in the court

concerning the salary arrears. The court is unable to determine the issue of salary arrears as none of the parties had addressed and lead evidence in the court on the same.

**Edna Nyirenda** worked for the Respondent 5 for years and 6 months. Her monthly earning was MK459, 566. 00 inclusive of a salary and house allowance. She was entitled to MMK15, 000 00 per month of airtime, 1 tin of milk worth MK5, 000 and 1 packet of sugar worth MK800. However, there are conflicting dates the Applicant indicated she started work on 1<sup>st</sup> March 2015 and the Respondent indicated that she started work on 12<sup>th</sup> November 2015. The court expected the respondent to produce evidence by adducing offer letter which would confirm that the applicant started working for the respondent on 12<sup>th</sup> day of November 2015. Without such evidence, the court accepts evidence of the applicant that she started working for the Respondent on 1<sup>st</sup> March 2015.

For the sake of computing compensation for unfair dismissal, the court shall aggregate all the benefits accrued to the applicants to form part of their wages. The 1<sup>st</sup> applicant's wages are therefore inclusive of salary, housing and accommodation allowance, airtime, Milk, and Sugar.

Hence her monthly wages when totalled was MK480, 366.00. The court has awarded the applicant 2 months' wages for each completed year of service.

$\text{MK480, 366. 00} \times 2 \text{ months} = \text{MK960, 732. 00}$   $\times 5 \text{ completed years} = \text{MK4, 803, 660}$   
compensations for unfair dismissal for the 1<sup>st</sup> applicant.

Severance pay is calculated as 2 weeks' wages for each completed year of service for the 1<sup>st</sup> 5 years. The 1<sup>st</sup> applicant worked for the respondent for 5 years and 2 months. For the avoidance of doubt, severance is calculated based on the last salary of dismissal.

For purposes of calculating severance pay, the court shall use salary plus housing and accommodation allowance to form part of the wages of the 1<sup>st</sup> applicant. The 1<sup>st</sup> applicant was entitled to MK459, 566. 00 salaries per month. To get the 2 weeks' wages for the 1<sup>st</sup> Applicant, the court shall divide the salary by 2 weeks.  $\text{MK459, 566} / 2 = \text{MK229, 783. 00}$

2 weeks' wages of the 1<sup>st</sup> applicant is  $\text{MK229, 783.00} \times 5 \text{ years} = \text{MK1, 148, 915.00}$ .

Total Severance pay for the 1<sup>st</sup> applicant is **MK1, 148, 915. 00**

The court also ordered the respondent to refund the money which was deducted from the Applicants. **MK480, 366.00** is awarded to the applicant as salary withheld or deducted by the Respondent.

#### Summary for 1<sup>st</sup> Applicant

- I. Compensation for unfair dismissal **MK4, 803, 660.00**
- ii. Severance pay **MK1, 148, 915. 00**
- iii. Deducted Salary **MK480, 366. 00**
- iv. Total **MK6, 432, 941. 00**

**Priscilla Kakungu** worked for the Respondent 12 years and 4 months. Her monthly salary and house allowance was MK876, 319. She was entitled to other benefits in the form of airtime MK15, 000, a packet of sugar and a tin of 400 grams Milk. She was deducted MK421, 250 from her salary which the court ordered the respondent to refund her. She was supposed to be paid the difference of her salary after the respondent had deducted her salary which she did not receive.

The 2<sup>nd</sup> applicant monthly wages when totalled was MK897, 119. 00. The court has awarded the applicants 2 months' wages for each completed year of service.

$MK897, 119. 00 \times 2 \text{ months} = MK1, 794, 238 \times 12 \text{ completed years} = \mathbf{MK21, 530, 856. 00}$   
compensation for unfair dismissal for the 2<sup>nd</sup> applicant.

Severance pay is calculated as 2 weeks' wages for each completed years of service for the 1<sup>st</sup> 5 years, 3 weeks' wages for the 2<sup>nd</sup> 5 years and 4 weeks' wages for the next 3<sup>rd</sup> 5 years and following. The 2<sup>nd</sup> applicant worked for the respondent 12 years and 4 months. For the avoidance of doubt severance is calculated based on the last salary of dismissal.

For purposes of calculating severance pay, the court shall use salary plus housing and accommodation allowance to form part of the wages of the 2<sup>nd</sup> applicant. The 2<sup>nd</sup> applicant was entitled to MK876, 319. 00 salaries per month.

The first schedule of the Employment Act provides that a person who has worked for a period exceeding ten year shall be entitled as severance allowance to "Two weeks' wages 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."

To get the 2 weeks' wages for the 2<sup>nd</sup> Applicant for the 1<sup>st</sup> 5 years, the court shall divide the salary by 2 weeks.  $\text{MK}876,319 / 2 = \text{MK}438,159.50$

2 weeks' wages of the 2<sup>nd</sup> applicant is  $\text{MK}438,159.50 \times 1^{\text{st}} 5 \text{ years} = \text{MK}2,190,797.50$ .

3 weeks' wages of the 2<sup>nd</sup> applicant is  $\text{MK}657,239.25 \times 2^{\text{nd}} 5 \text{ years} = \text{MK}3,286,196.25$

4 weeks' wages for the 2<sup>nd</sup> applicant is  $\text{MK}876,319.00 \times 3^{\text{rd}} 2 \text{ years} = \text{MK}1,752,638.00$

Total Severance pay for 12 years is **MK7,229,631.75**

The court also ordered the respondent to refund the money which was deducted from the Applicants. The Applicant was entitled to **MK876,319,00** which she told the court was not paid to the applicant. When all is included as wages the 2<sup>nd</sup> applicant was entitled to **MK897,119.00**. as her salary. **MK897,119,00** is awarded to the 2<sup>nd</sup> applicant as salary for the last month which was withheld by the respondent.

Summary for 2<sup>nd</sup> Applicant

- I. Compensation for unfair dismissal **MK21,530,856.00**
- ii. Severance pay **MK7,229,631.75**
- iii. Deducted Salary **MK897,119.00**
- iv. Total **MK 29,657.606.75**

**Atupele Jana** worked for the Respondent for 2 years and 9 months. Her salary and house allowance was  $\text{MK}318,672.00$  per month. She refunded the Respondent the sum of  $\text{MK}413,000.00$  through FISCAL Police. She was entitled to  $\text{MK}15,000$  airtimes, 1 tin of 400 grams of Milk (K5,000), and 1 packet of sugar (K800)

The 3<sup>rd</sup> applicant's monthly wages when totalled was  $\text{MK}339,472$ . The court has awarded the applicants 2 months' wages for each completed year of service.

MK339, 472. 00 X 2 months = MK678, 944 X 2 completed years = **MK1, 357, 880. 00**  
compensation for unfair dismissal for the 3<sup>rd</sup> applicant.

Severance pay is calculated as 2 weeks' wages for each completed year of service for the 1<sup>st</sup> 5 years. The 3<sup>rd</sup> applicant worked for the respondent for 2 years and 9 months. For the avoidance of doubt, severance is calculated based on the last salary of dismissal.

For purposes of calculating severance pay, the court shall use salary plus housing and accommodation allowance to form part of the wages of the 3<sup>rd</sup> applicant. The 3<sup>rd</sup> applicant was entitled to **MK318, 672. 00** salaries per month.

To get the 2 weeks' wages for the 3<sup>rd</sup> Applicant for the 1<sup>st</sup> 5 years, the court shall divide the salary by 2 weeks. MK318, 672. 00 / 2 = **MK159, 336**

2 weeks' wages of the 3<sup>rd</sup> applicant is MK159, 336. X 1<sup>st</sup> 2 years = **MK318, 672. 00**

The court also ordered the respondent to refund the money which was deducted from the Applicants. The Applicant was entitled to **MK339, 472, 00** which she told the court was not paid to the applicant. When all is included as wages the 3<sup>rd</sup> applicant was entitled to **MK339, 472. 00.** as her salary. **MK339, 472, 00** is awarded to the 3<sup>rd</sup> applicant as salary for the last month which was withheld by the respondent.

Summary for 3<sup>rd</sup> Applicant

- I. Compensation for unfair dismissal **MK1, 357, 880. 00**
- ii. Severance pay **MK318, 672. 00**
- iii. Deducted Salary **MK339, 472, 00**
- iv. Total **MK2, 016, 032. 00**

**Stella Nkana** worked for the Respondent for 8 years and 2 months. Her salary and house allowance was MK329, 062. She was entitled to 1 packet of sugar (K800) and 1 tin of 400 grams of milk (K5, 000).

The 4<sup>th</sup> applicant's monthly wages when totalled was MK335, 762. 00. The court has awarded the applicant months' wages for each completed year of service.

MK335, 762. 00 X 2 months = MK671, 524. 00 X 8 completed years = **MK5, 372, 192. 00**  
compensations for unfair dismissal for the 4<sup>th</sup> applicant.

Severance pay is calculated as 2 weeks' wages for each completed year of service for the 1<sup>st</sup> 5 years, and 3 weeks' wages for the 2<sup>nd</sup> 5 years. The 4<sup>th</sup> applicant worked for the respondent for 8 years and 2 months. For the avoidance of doubt, severance is calculated based on the last salary of dismissal.

For purposes of calculating severance pay, the court shall use salary plus housing and accommodation allowance to form part of the wages of the 4<sup>th</sup> applicant. The 4<sup>th</sup> applicant was entitled to **MK329, 062. 00** salaries per month.

To get the 2 weeks' wages for the 4<sup>th</sup> Applicant for the 1<sup>st</sup> 5 years, the court shall divide the salary by 2 weeks. MK329, 062 / 2 = **MK164, 531.00**

2 weeks' wages of the 4<sup>th</sup> applicant is MK164, 531. 00 X 1<sup>st</sup> 5 years = **MK822, 655. 00**

3 weeks' wages of the 4<sup>th</sup> applicant is MK246, 796, 50 X 2<sup>nd</sup> 3 years = **MK740, 389. 50**

Total Severance pay for 8 years is **MK1, 563, 044. 50**

The court also ordered the respondent to refund the money which was deducted from the Applicants. The Applicant was entitled to **MK335, 762, 00** which she told the court was not paid to the applicant. When all is included as wages the 4<sup>th</sup> applicant was entitled to **MK335, 762. 00.** as her salary. **MK335, 762, 00** is awarded to the 4<sup>th</sup> applicant as salary for the last month which was withheld by the respondent.

Summary for 4<sup>th</sup> Applicant

- I. Compensation for unfair dismissal **MK5, 372, 192. 00**
- ii. Severance pay **MK1, 563, 044. 50**
- iii. Deducted Salary **MK335, 762. 00**



iv. Total **MK7, 270, 998. 50**

**Edward Lazaro** worked for the Respondent for 5 years and 1 month. His salary and house allowance was MK320, 687 per month. He was entitled to 1 packet of sugar (800) and 1 400-gram tin of milk (K5, 000)

The 5<sup>th</sup> applicant's monthly wages when totalled was MK326, 487. 00. The court has awarded the applicant 2 months' wages for each completed year of service.

$\text{MK326, 487. 00} \times 2 \text{ months} = \text{MK652, 974. 00} \times 5 \text{ completed years} = \text{MK3, 264, 870. 00}$   
compensation for unfair dismissal for the 5<sup>th</sup> applicant.

Severance pay is calculated as 2 weeks' wages for each completed year of service for the 1<sup>st</sup> 5 years. The 5<sup>th</sup> applicant worked for the respondent for 5 years and 1 month. For the avoidance of doubt, severance is calculated based on the last salary of dismissal.

For purposes of calculating severance pay, the court shall use salary plus housing and accommodation allowance to form part of the wages of the 5<sup>th</sup> applicant. The 5<sup>th</sup> applicant was entitled to **MK320, 687. 00** salaries per month.

To get the 2 weeks' wages for the 5<sup>th</sup> Applicant for the 1<sup>st</sup> 5 years, the court shall divide the salary by 2 weeks.  $\text{MK320, 687} / 2 = \text{MK160, 343. 50}$

2 weeks' wages of the 5<sup>th</sup> applicant is  $\text{MK160, 343. 50} \times 1\text{st } 5 \text{ years} = \text{MK801, 717. 50}$

Total Severance pay for 5 years is **MK801, 717. 50**

The court also ordered the respondent to refund the money which was deducted from the Applicant. The Applicant was entitled to **MK326, 487** which he told the court was not paid to the applicant. When all is included as wages the 5<sup>th</sup> applicant was entitled to **MK326, 487.00** as his salary. **MK326, 487. 00** is awarded to the 5<sup>th</sup> applicant as salary for the last month which was withheld by the respondent.

Summary for 5<sup>th</sup> Applicant

I. Compensation for unfair dismissal **MK3, 264, 870.00**

- ii. Severance pay **MK801, 717. 50**
- iii. Deducted Salary **MK326, 487. 00**
- iv. Total **MK4, 393, 074. 50**

**Madalo Mbwana** worked for the Respondent for 15 years and 1 month. Her salary and house allowance was 854, 319. She told the court that she was receiving MK15, 000.00 as airtime per month, and 70 litres of fuel at MK56, 000.00. 1 tin of 400 grams Milk (MK5, 000) and 1 packet of sugar (K800).

The 6<sup>th</sup> applicant's monthly wages when totalled was MK931, 119. 00. The court has awarded the applicant 2 months' wages for each completed year of service.

$MK931, 119. 00 \times 2 \text{ months} = MK1, 862, 238. 00 \times 15 \text{ completed years} = \mathbf{MK27, 933, 570. 00}$   
compensations for unfair dismissal for the 6<sup>th</sup> applicant.

Severance pay is calculated as 2 weeks' wages for each completed year of service for the 1<sup>st</sup> 5 years, 3 weeks' wages for the 2<sup>nd</sup> 5 years, and 4 weeks' wages for the next 3<sup>rd</sup> 5 years and following. The 6<sup>th</sup> applicant worked for the respondent for 15 years and 1 month. For the avoidance of doubt, severance is calculated based on the last salary of dismissal.

For purposes of calculating severance pay, the court shall use salary, fuel allowance and housing and accommodation allowance to form part of the wages of the 6<sup>th</sup> applicant. The 6<sup>th</sup> applicant was entitled to **MK910, 319. 00** salaries per month.

The first schedule of the Employment Act provides that a person who has worked for a period exceeding ten year shall be entitled as severance allowance to “Two weeks’ wages 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.”

To get the 2 weeks' wages for the 6<sup>th</sup> Applicant for the 1<sup>st</sup> 5 years, the court shall divide the salary by 2 weeks.  $MK910, 319 / 2 = \mathbf{MK455, 159. 50}$

2 weeks’ wages of the 6<sup>th</sup> applicant is  $MK455, 159. 50 \times 1^{\text{st}} 5 \text{ years} = \mathbf{MK2, 275, 797. 50}$

3 weeks' wages of the 6<sup>th</sup> applicant is MK682, 739, 25 X 2<sup>nd</sup> 5 years = **MK3, 413, 696. 25**

4 weeks' wages for the 6<sup>th</sup> applicant is MK910, 319. 00 X 3<sup>rd</sup> 5 years = **MK4, 551, 595. 00**

Total Severance pay for 15 years is **MK10, 241, 088. 75**

The court also ordered the respondent to refund the money which was deducted from the Applicants. The Applicant was entitled to **MK931, 119, 00** which she told the court was not paid to the applicant. When all is included as wages the 6<sup>th</sup> applicant was entitled to **MK931, 119. 00.** as her salary. **MK931, 119, 00** is awarded to the 6<sup>th</sup> applicant as salary for the last month which was withheld by the respondent.

Summary for 6<sup>th</sup> Applicant

- I. Compensation for unfair dismissal **MK27, 933, 570. 00**
- ii. Severance pay **MK10, 241, 088.75**
- iii. Deducted Salary **MK931, 119.00**
- iv. Total **MK39, 105, 777. 75**

Counsel for the applicants has pleaded that the awards must be boosted and he cited the case of *Museum and Chillida -vs- Reserve Bank of Malawi* Matter No. 30 of 2014, where the court boosted the awards by 50% owing to inflation.

The court has taken judicial notice to the increases of salaries which it had seen recently owing to the devaluation of the kwacha. The Government of Malawi had presented a revised budget in parliament with the pronouncement of 10% of the salaries of its employee to caution the devaluation. The Reserve Bank of Malawi Governor had cautioned companies to avoid adjusting salaries due to the devaluation to avoid raising the inflation in this country. However, there is need to caution the impact of the devaluation to the award made. In my view, it would be justified if the awards are boosted by 10% in order to caution them from the impact of the devaluation.

I now present the summary awards as determined by the court in the judgement against the respondent regarding compensation of assessment for the applicants.

### **1. 1<sup>st</sup> Applicant Edina Nyirenda**

- I. Compensation for unfair dismissal MK4, 803, 660.00
- ii. Severance pay MK1, 148, 915. 00
- iii. Deducted Salary MK480, 366.00
- iv. Total MK6, 432, 941.00 X 10 % boost =**MK643, 294. 10**

Total Award for the 1<sup>st</sup> Applicant **MK 7, 076, 235. 10**

### **2. 2<sup>nd</sup> Applicant Priscilla Kagungu**

- I. Compensation for unfair dismissal MK21, 530, 856. 00
- ii. Severance pay MK7, 229, 631. 75
- iii. Deducted Salary MK897, 119. 00
- iv. Total MK29, 657, 606. 75 X 10 % boost = **MK2, 965, 760. 68**

Total Award for the 2<sup>nd</sup> Applicant **MK 32, 623, 367. 43**

### **3. 3<sup>rd</sup> Applicant Atupele Jana**

- I. Compensation for unfair dismissal MK1, 357, 880.00
- ii. Severance pay MK318, 672. 00
- iii. Deducted Salary MK339, 472, 00
- iv. Total MK2, 016. 024 X 10% boost= **MK201, 602. 40**

Total Award for the 3<sup>rd</sup> Applicant **MK 2, 217, 626. 40**

### **4. 4<sup>th</sup> Applicant Stella Nkana**

- I. Compensation for unfair dismissal MK5, 372, 192. 00
- ii. Severance pay MK1, 563, 044. 50

- iii. Deducted Salary MK335, 762. 00
- iv. Total MK7, 270, 998. 50 X 10 % boost = **MK727, 099. 85**

Total Award for the 4<sup>th</sup> Applicant **MK 7, 998, 098. 35**

**5. 5<sup>th</sup> Applicant Edward Lazaro**

- I. Compensation for unfair dismissal MK3, 264, 870. 00
- ii. Severance pay MK801, 717. 50
- iii. Deducted Salary MK326, 487. 00
- iv. Total MK4, 393, 074. 50 X 10 % boost = **MK439, 307. 45**

Total Award for the 5<sup>th</sup> Applicant **MK 4, 832, 381. 95**

**6. 6<sup>th</sup> Applicant Madalo M'bwana**

- I. Compensation for unfair dismissal MK27, 933, 570. 00
- ii. Severance pay MK10, 241, 088.75
- iii. Deducted Salary MK931, 119.00
- iv. Total MK39, 105, 777. 75 X 10% boost = **MK3, 910, 577. 76**

Total Award for the 6<sup>th</sup> Applicant **MK43, 016, 355. 53**

The awards to the applicants must be paid within 14 days from the date of this order.

Any party dissatisfied with the judgement is free to appeal to the High Court within a period stipulated by the IRC Rules,

Delivered in chambers this 4<sup>th</sup> day of December 2023 at Blantyre.



HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON