REPUBLIC OF MALAWI

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. IRC 488 OF 2015

BETWEEN:

CECILIA KULUWANI……...……APPLICANT

AND

NATIONAL BANK OF MALAWI…….DEFENDANT

CORUM: PETER M.E KANDULU, DEPUTY CHAIRPERSON

G Dikiya, Counsel for the Applicant

H. Mwangomba, Counsel for the Respondent

K. Kakhobwe, Court Clerk

JUDGEMENT ON ASSESSMENT OF COMPENSATION

Introduction

The Applicant commenced this claim of reinstatement or compensation for unfair dismissal on 13th day of April 2015. Judgement on liability delivered on the 6th day of September 2021. The Import of the judgement from the fourth paragraph from the bottom on page 22 states,

"*In the present case, we find there was no procedural fairness as the applicant did not confront the witness who were part of the investigation. We find unfair dismissal. We award compensation as per section 63 (4) EA the applicant contributed to the dismissal by calling a meeting she had no mandate to convene and severance pay to be assessed."*

As quoted from the trial court's judgement, the court only indicated that compensation for unfair dismissal and severance to be assessed. The court did not direct or order who is specifically to assess the said compensation for unfair dismissal and severance pay. This court resumes its jurisdiction, as DCP on AA to assess the compensation. Any appeals from this judgement shall lay in the High Court of Malawi for any avoidance of doubt.

The respondent indicated in their final written submissions that they were not satisfied with the Judgement hence they filed an appeal against the judgement. Perusal on file, there is a notice of appeal against the judgement filed on the 12th day of November 2021. The appeal is waiting for the conclusion of this matter.

I must hasten to mention that this matter has taken 8 years before it came to its conclusion for a number of reasons. It is my view that the appeal, which the Respondent intends to launch despite having the right to appeal, should never be one of those tactics to delay the matter further. I am alive to the fact that litigants like the Respondent have the right to appeal when aggrieved by any judgement of the subordinate courts to the High Court and the Supreme Court of Appeal.

It shall therefore be proper that the respondent shall pay the applicant 50% of the assessed sum if indeed they intend to proceed with the process of the appeal, since; the appeal on its own is not a stay order of the judgement. So it is ordered.

The Issue for Determination

The main issue therefore, before this court is the assessment of compensation for unfair dismissal and severance pay because of the failure to follow procedural fairness, as the applicant never accorded the opportunity to cross-examine the witnesses who were part of the investigation.

Burden of proof

On having so pleaded, the onus is on the applicant to prove her 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 shall be 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 the matter that the Applicant has a burden to prove on the balance of probabilities the claim against the Respondent.

Written Witness Statement

The Applicant filed her own written witness statement. She adopted and tendered the witness statement with the exhibit produced and attached marked by the court. She was not cross-examined, as counsel for the respondent was not in court at the presentation of the applicant's case despite acknowledging receipt of the duly issued service of the court.

The applicant stated that the Respondent employed her as a Swift Operator in the Treasury and Investment Banking Division on February 2, 1993. In the course of her employment, she was receiving a monthly sum of MWK 192,432.25. She produced and exhibited evidence of her monthly earnings.

She stated that the current monthly salary range for employees of the Respondent at her former position is roughly between MWK 609, 415 -MWK 1,536,164.00. She produced and exhibited a

copy of an Affidavit in Response to Order Directing Production of Information and marked by the court.

She stated that since her dismissal, she have encountered challenges in securing an alternative job. Despite numerous attempts, finding employment has proven difficult due to the current tight and competitive job market. She produced and exhibited copies of application letters, which were marked by the court. She stated that she was presently facing financial difficulties due to her employment.

She stated that at the time of her dismissal, she was 46 years old, with 14 years remaining until reaching the required retirement age of 60 years. She worked for the Respondent for 22 years.

She stated that considering her 22 years of experience as well as her performance while working for the Respondent if she were still employed by the Respondent, her monthly salary would have amounted to roughly MWK 1,536,164.00 as shown in exhibit "CK2".

Written Witness Statement

The Respondent's representative was Mr. Charles Dulira. He adopted his written witness statement and exhibits attached thereto. He stated in his statement that he was Head of Human Capital at National Bank of Malawi Plc. He stated that the court correctly found that the applicant contributed to her dismissal. He further stated that she wholly caused or contributed to her dismissal because had she not done what she did, she could not have been dismissed.

He stated that the court only took issue with a matter of procedural fairness in that according to the court, the applicant had no opportunity to confront witnesses who were part of the investigation. He stated that the witnesses did not come to the disciplinary hearing because the applicant did not request that they be called to the disciplinary hearing.

He stated that although, she was dismissed the applicant had an obligation to find alternative employment. He stated that as far as there is a finding by the trial court that the applicant contributed to the dismissal, she could not be entitled to an award more than the minimum award prescribed under the law.

During cross-examination

He stated that he read the judgement with explanation but sometime back. He stated that the applicant only contributed to her dismissal but not wholly contributed to her dismissal as indicated in his witness statement. As Head of the Human Resources Department, he did not know that a judgement could be on substantive or procedural failure aspect. He was not aware that a person could challenge the dismissal on a procedural aspect. He was not aware that a person who challenges the judgement on a procedural aspect is entitled to full compensation. She could have been trying to find alternative employment.

During re-examination, he stated that the judgement stated that she played some role in her dismissal. She contributed to her dismissal.

Devaluation of the Kwacha and Inflation

I must mention that the Kwacha to USD in 2015 was around MK434. 00. The kwacha has been devalued multiple times between 2015 to 2024. The current official exchange rate of the USD to Kwacha is now MK1,700.00 but on the black market it is around MK2, 200.00. I have mentioned this deliberately from the outset, as this shall have a bearing on the computation of the assessment of compensation of the applicant in order to retain the purchase value of the award.

Written Submissions

The court is so grateful to both counsel for the Applicant and counsel for the Respondent for their thoughtful submission, which should guide this court in determining how much the applicant must be paid for unfair dismissal and severance pay. The court must state that it will be impossible to reproduce all that was submitted in writing verbatim.

The Law

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

Section 31 (1) of the Constitution of Malawi provides specifically that:

'Every person shall have the right to fair and safe labour practices and fair remuneration.'

Section 41 (3) of the Constitution also provides that:

‘Every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him by this constitution or any other law’.

Section 63 (4) of the Employment Act makes the following provisions:

“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”.

In assessing compensation for the Applicant, the court shall consider whether:

a) Award amount that is just and equitable
b) Amount shall be determined by loss sustained by the employee.
c) To what extent of the 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 provides as follows:

The amount to be awarded under subsection (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 week's 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 and an additional amount may be awarded where dismissal was based on any of the reasons set out in section 57 (3).

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).

The court is so grateful to the decision in the case of ***Terraston Construction Ltd*** (supra) which emphasizes on the attainment of fairness for both the employee and the employer. The court shall be so mindful with this principle that the amount of compensation to award the applicant must aim at achieving this fairness not only to the employer but also to the employee hence the mention of the devaluation and inflation at the outset.

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 because 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 reasonable terms and that reasonableness will be achieved, if the interests of both the employee and the employer are taken into account. Loss sustained by the employee could include the intervening factors, which could have happened when the applicant was unfairly dismissed. In my view, these intervening could include one gain loss of the purchase of value of the money due to inflation and devaluation of the kwacha.

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 ***Sothern 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.

I have the view that other factors could be considered when the court would like to award compensation above the minimum as prescribed under section 63 (4) and (5).

This approach has been applied in this court. 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".

Counsel for the Applicant has submitted that in employment cases, it has become trite law that when assessing withheld amounts or generally when assessing amounts that were due in the past but are to be paid now, what the court must order to be paid is the current value of the amount that

could have been paid then. The court will not order the actual sum as it was due then but what would be equivalent in value of that sum at the date of payment. Counsel has cited the case of ***Suzgo Nyirenda vs National Bank of Malawi*** [Matter Number IRC PR 139 of 2016] [Judgment of the 28th January 2022]

The court, in ***Lovemore Dzumbira Vs Malawi Broadcasting Corporation***, Civil Cause No. 171 of 2011, when assessing withheld remuneration, used the current salary, which was K109, 021.20. The Plaintiff in this case was suspended in 2004 when his salary was K16, 989.75. At the time of the assessment of damages, people at his level had their salaries raised to K109,021.20. This is what the Court had to say:

"It is trite law as well as well articulated by counsel for the Plaintiff that when assessing withheld amounts or generally when assessing amounts that were due in the past but are to be paid now, what the court must order to be paid is the current value of the amount that could have been paid then. The court will not order the actual sum as it was due then but what would be the equivalent in value of that sum at the date of payment…

"Coming to the present case, the Plaintiff has never been paid salary since 22nd December 2004 when he was suspended up until the judgement on liability was pronounced on 13th January 2013. At the time of his suspension, the Plaintiff's salary was K16,989.75 as per PS5, which is the same document as LD2. By now, as found out by this court, the Plaintiff's salary should be K109,021.20. Applying the above-discussed principles, the court will, therefore, award the Plaintiff the sum of K109, 021.20 multiplied by the number of months he has not been paid".

Counsel for the Respondent had argued that the High Court has held that a dismissed employee cannot claim salary and benefits as compensation because these are paid to someone who has worked for them. An unfairly dismissed employee is supposed to be paid general damages or compensation. Counsel cited the case of ***Kachinjika v Portland Cement Company Ltd*** [2008] MLLR 161 on page 177 Chikopa J. (as he was then) said:

"Fourthly, we might, if we compensate separately for that period, end up paying the plaintiff salary that he has never in fact lost for the simple reason that he was in gainful employment elsewhere. Compensation in cases like the one before us should on the other hand be based on factual truths.

These, inter alia, are firstly that the plaintiff was terminated on 1st April, 1997 and secondly that he has since then done no work for the defendant company for which he should be paid salary".

Your Honour, it follows that the notion that any applicant should get a salary increment (in the form of being given a monthly salary being earned currently by grade G employees) as part of the award has no legal basis at all. You are called upon to assess compensation and not award salary or benefits increments. You cannot award salary and benefits to the applicant because she stopped working for the respondent on the date of dismissal. The applicant is not entitled to earn salaries currently being paid at the National Bank of Malawi Plc because she is no longer working there.

Before I come to comment and resolve the issue raised by the two counsels, let me comment on the arguments raised by counsel for the Respondent, which in his view, the court should not award salary and benefits applicable to employees at grade G to the dismissed employee.

I wish to state that I entirely agree with the counsel for the Respondent that for an employee who had been properly dismissed by following the substantive and procedural aspects, he or she must not be given salary and benefits similar to those still working. However, in the present case, the court held the respondent liable for flouting their own procedure when they failed to accord the applicant to cross-examine the investigators. It could have been possible, if, she had cross-examined the investigators that she could not have been found wrong or that she could not be found that she contributed to her dismissal. If she has been found not wrong or that she did not contribute to her unfair dismissal, she could have still be receiving a salary and benefits equal to or more than what the current holders are receiving. Unfortunately, she was denied that opportunity to cross-examine the investigators.

It is based on this reason that this matter must be distinguished from the ***Kachijika Case*** (supra) which the applicant was properly dismissed and that the court did not hold the respondent liable for flouting his or her own procedures during the disciplinary hearing, unlike the present matter. If the respondent had followed all the proper procedures during the disciplinary hearing before dismissing the applicant, I am very sure that the court could not have awarded her compensation for unfair dismissal since the respondent had legitimate reasons to dismiss the applicant.

More so, the issue here is not to raise salary and benefits as punishment. The aim and rationale is to compensate the applicant for a salary and benefits which has similar purchase value if she had received the same in 2015.

My first task is to address and resolve the issue raised by counsel for the Applicant and counter-argued by counsel for the Respondent in terms what is the correct salary to use in calculating compensation for the applicant.

Suzgo Nyirenda vs National Bank of Malawi *(supra) 2016 held as follows "the court would not order the actual sum as it was due then but what would be equivalent in value of that sum at the date of payment" This is the position of the judgement in the Industrial Relations Court which their judgements are final and bidding.*

I am persuaded and bound by the latest reasoning in the judgement of the Industrial Relations court, which in my view, had distinguished the reasoning in the case of ***Kachinjika v Portand Cement Company Ltd*** *(supra) 2008.*

Nyirenda v National Bank *(supra) being a latest judgement to* ***Kachinjika V Portland Company*** *Ltd, my court would prefer to err while maintaining and upholding consistency obtained in the Industrial Relations Court which if need be, that position shall be corrected at any Appellant court superior to this court.*

I, therefore, hold that calculating compensation for unfair dismissal and severance allowance at the current salary would put the applicant in the position if the withheld salary had been paid to her in the year she was unfairly dismissed. The Court had held the dismissal for the applicant was unfair, in another language the dismissal did not follow the proper procedure of dismissing an employee and this would entail the salary withheld by the respondent at the time the applicant was dismissed was withheld without any good justification.

The Respondent is a commercial entity. The court is compelled to believe that the Respondent had made gains and profits with the withheld salary or benefits of the Applicant, which was supposed to be paid to her in 2015. There would be no justifiable reasons for the Respondent to have failed to put the salary and benefits of the applicant into good use in order to maximise its purchase value

in 2024. If the court fails to take into consideration this aspect in calculating the appropriate compensation, the issue of fairness and equity will not be achieved on the part of the applicant.

This court has stated repeatedly in its previous judgements quoting from authorities from the superior courts that the most crucial factor to consider in calculating compensation for unfair dismissal is the duration the applicant had been in employment with the respondent. In this case, the applicant had worked for 22 years with the respondent.

The issue of immediate and future loss is not among the factors that the court is invited to use in calculating compensation if sections 63 (4) and (5) are understood in its context. Likewise, the issue of mitigation of loss is not provided in the Employment Act which is the main statute guiding on how compensation ought to be calculated. *Mkaka's case* and other MSCA cases have provided a clear procedure that when commuting compensation the court must stick to the spirit of section 63 of the Employment Act. A perusal of the Employment Act especially sections 63 (4) and (5), the issue of mitigation of loss is not provided to be one of the issues to consider for calculating compensation as per the ***Mkaka's*** case.

In the case of ***Sothern 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."*

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".

I am aware that both counsel for the Respondent and counsel for the Applicant had cited several cases which in their good intention, they should guide this court in determining this matter. I must state that I am grateful especially with the case of ***Mtukula v Stanbic*** (supra) who had worked for

the bank for 19 years and the court awarded him 3 months compensation for each completed year of service.

In the present matter, the applicant had worked for the respondent for 22 years. To maintain consistency in the Industrial Relations Court's judgement, Mr Mtukula who worked for 19 years, was compensated 3 months' pay for each completed year of service. For the applicant who had worked for 22 years, the court is persuaded to award her 4 months' compensation for each completed year of service, which in my view would be fair compensation for the applicant.

According to the finding of the trial Court, the applicant partially contributed to her unfair dismissal. Since the court held that she partially contributed to her dismissal, the court shall subtract 1-month pay compensation for each completed year of service to acknowledge her partial contribution to the unfair dismissal. This shall result in the applicant being compensated with 3 months' pay for each completed year of service. Had the applicant wholly contributed to her unfair dismissal, the court would have compensated her with one-month pay regardless of her long service of 22 years with the respondent.

I have awarded three months compensation to the applicant which is two months more than the minimum as provided in section 63 (4) and (5) of the employment Act. The reason for such an award of more than a minimum is that the applicant had dedicated her life to working for the bank for more than 22 years, which is 2 years more too when an employee can retire voluntarily in other Organisations like the civil servants in the Malawi Government.

In my view, the respondent could have opted to ask the applicant to retire voluntarily rather than to dismiss her. More so, by failing to follow the proper procedure during the disciplinary hearing. This is the reason the court is persuaded to award the applicant above the minimum, as her partial contribution to her dismissal does not qualify her to be compensated with a minimum compensation.

I have already resolved that the applicant shall be paid using the current salary and benefits of the employee in Grade G to retain the purchase value of the award.

The Respondent by order of the court produced the current salary for those working in a similar position to what the applicant held before her dismissal, which is MWK 1,536,164.00 as shown in exhibit “CK2”.

The court had already justified the reasons to use the current salary to avert several devaluations that the Reserve Bank of Malawi had effected over the years from 2015, which by then the USD to Malawi Kwacha was MK433. 72. Currently the Kwacha is MK1,700.00 to USD. If the court would use the salary, she used to receive before the unfair dismissal; the applicant shall not get justice as required in the Employment Act. The court has awarded the applicant with 3 month's salary for each completed year of service having reduced one month from the 4 months awarded to her

MK1, 536, 164. 00 X 3 months’ salary is MK4, 608, 492.00

MK4, 608, 492.00 X 22 years is MK101, 386, 824. 00

I therefore award the applicant **MK101, 386, 824.00** compensation for unfair dismissal.

Severance Allowance

Computation of severance allowance is provided in the First Scheduled of the Employment Act. The computation of severance allowance is by reference to the length of one’s service. As per the evidence on record and the court’s judgement, the Applicant worked for 22 years. At the time of her dismissal, therefore, she had completed 22 years.

The First Schedule of the Employment Act provides that a person who has worked for a period exceeding five years 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.”

In terms of payments forming the basis of severance allowance, Section 35(2) as amended, provides as follows:

“(2) The calculation of severance allowance under subsection (1) shall be based on the following-

(a) basic salary;

(b) housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind;

(b) car allowance of provision of a car, except to the extent that the car is provided to enable the employee to work;

(c) any cash payments made to an employee, except those listed as exclusions in terms of this schedule;

(d) any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule;

(2) The following items do not form part of remuneration to calculate severance allowance unless an employment contract or collective agreement expressly provides otherwise -

(a) any cash payment or payment in kind provided to enable the employee to work (for example, a piece of equipment, tool or similar allowance or the provision of transport or the payment of a transport allowance to enable the employee to travel to and from work);

(b) a relocation allowance;

(c) gratuities (for example, tips received from customers) and gifts from the employer;

(d) Share incentive schemes;

(e) discretionary payments not related to an employee's hours of work or performance (for example, a discretionary profit-sharing scheme);

(f) employer's contributions to medical aid, pension, provident fund or similar schemes;

(g) employer's contributions to funeral or death benefit schemes.

(h) an entertainment allowance;

(i) an education or schooling allowance.

The Applicant was receiving a clean wage bill, which was MK1, 536, 164. 00. For the sake of calculating severance pay, the court shall use the said salary.

1st 5 years 2 weeks wages MK1, 536, 164.00 / 2 = MK768, 082.00 X 5 years= MK3, 840, 410.00

2nd 5 years, 3 weeks wages MK1, 536, 164.00 /3 = MK1, 152, 123. X 5 years=MK5, 760, 615.00

3nd 5 years above 1 month wages MK1, 536, 164. 00 X 12 years = MK18, 433, 968.00

Total Severance pay **MK28, 034, 993. 00**

I, therefore, award the applicant **MK28, 034, 993.00** as a severance allowance.

Summary of compensation for the unfair dismissal and severance allowance

1. MK101, 386, 824.00
2. MK 28, 034, 993. 00

   MK129, 421, 817.00

The court therefore award the applicant the total sum of MK129, 421, 817. 00 for unfair dismissal and severance allowance.

Since the court have awarded the applicant the current salary, there will be no need to either boost the award or calculate interest on the awarded sum, since with the current salary and benefits awarded, the issue of inflation, devaluation and others factors have already been considered during the time of computation of the award.

The award must be paid to the applicant within 14 working days. I have already issued direction if the Respondent would like to appeal that leave shall be granted upon the payment of 50% of the awarded sum to the applicant.

Any aggrieved party with the decision of this court is free to appeal to the High Court within the period prescribed by the Industrial Relations Court (Procedure) Rules.

Delivered in chambers this 20th day of February 2024 at Blantyre.

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON