

IN THE MALAWI SUPREME COURT OF APPEAL AT BLANTYRE

M. S. C. A. CIVIL APPEAL NO. 38 OF 2003

*[Being High Court Civil Cause No. 569 of 2000
at Zomba District Registry]*

BETWEEN:

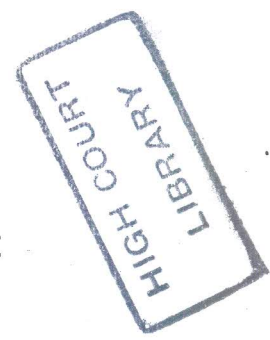
COUNCIL FOR THE UNIVERSITY OF MALAWI.....APPELLANT

AND

URBAN MKANDAWIRE [MALE]RESPONDENT

**BEFORE: THE HON. THE CHIEF JUSTICE
THE HON. JUSTICE MTAMBO, JA
THE HON. JUSTICE TEMBO, JA**

Dr. Mtambo, of Counsel for the Appellant
Mkandawire, Present/Unrepresented
Kunje [Mrs], Court Official



JUDMENT

MTAMBO, JA

The respondent commenced proceedings in the High Court at Zomba by a writ of summons indorsed with a statement of claim in which he sought damages for wrongful termination of the contract of employment which he entered into with the appellant. He also sought other reliefs which are not our concern. The appellant

disputed the claim. The Court nonetheless found that the appellant was guilty of wrongful termination of the contract for not having given the respondent due notice and made an order that the respondent be paid three months' salary in **lieu** of notice. The Court went further and also found the appellant guilty of what it said was a "breach of one of the rules of natural justice which states that a person should not be condemned unheard," and awarded the respondent damages which it said that there was no doubt that the respondent had suffered as a result of the appellant's "action in terminating his services without giving him an opportunity to be heard."

We wish to observe at the outset that the court found as a fact that it was a term of the contract that the contract was determinable by either party upon giving the other three months' notice or three months' pay in **lieu** of notice. We also observe that the contract was silent about whether there would first be an opportunity for a hearing, or to be heard, before termination thereof.

The appellant appealed to this court on four grounds as follows:

- [a] that the High Court erred in ruling that the respondent was not a probationer at the time of his dismissal;
- [b] that the High Court erred in awarding the respondent damages in addition to the notice pay awarded to him;
- [c] that the High Court erred in awarding the respondent legal costs because he was not represented by counsel, and
- [d] that the High Court erred in treating the action as one of judicial review yet it was commenced by writ

We will deal with each ground of appeal in the order they appear to us to have been argued. And we think we should mention here that ground [a] was not argued before us, although we may appear to

