

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

MZUZU REGISTRY

MATTER NO. IRC 65 OF 2002

BETWEEN:

KAONGA..... APPLICANT

-and-

LIMBE LEAF TOBACCO COMPANY.....RESPONDENT

CORAM: R. Zibelu Banda (Ms); Chairperson
Applicant; present
Respondent; Absent without any excuse
Namponya; Interpreter

JUDGMENT

*Dismissal-Justification-Reason-Reason not provided-Unconstitutional
-Unfair labour practices-Remedy-Compensation-Factors-Circumstances of
the case-Withheld certificate-Order to produce and surrender.*

Facts

The applicant was employed on 15 February 1997. He was dismissed on 30 June 1997. The reason for dismissal was not given to him. The applicant challenged the dismissal on ground that he was not given any reason for dismissal. The respondent did not attend court. Counsel for the respondent, a Ms Chikungwa, faxed a notice of adjournment on 23 March 2005, a day before the hearing of the matter. The notice of adjournment did not give any reasons for the adjournment.

This notice of adjournment was irregular because it did not comply with the rules of procedure of this court. Rule 17(2) of the Industrial Relations Court

(Procedure) Rules 1999 provides that parties shall not, without the leave of court, postpone or remove a matter from the list within two weeks of the hearing date unless such matter has been settled.

The respondent filed their notice of adjournment (postponement) a day before the hearing in contravention of the said Rule. Such being the case, this matter is to proceed to hearing in the absence of the respondent, pursuant to section 74 of the Labour Relations Act 1996.

The Law

The cause of action arose in 1997, therefore the applicable law is the Constitution. Section 31 provides for fair labour practices. This entails that before dismissal an employee must be given reasons for the dismissal. The justification for this requirement is that it is only where a party has been given a reason that he can properly respond in relation to any adverse action planned against him, see *Chawani V Attorney General* [MSCA Civil Appeal Number 18 of 2000 (unreported)].

In the instant case the applicant was not given any reason for dismissal so that he could respond or defend himself. This was a violation of the Constitution as the applicant was denied his right to fair labour practices as demanded by section 31.

FINDING

The court finds therefore that the dismissal was unfair. The action succeeds.

REMEDY

Where a court finds that a person's Constitutional rights were violated, the court must award that person a remedy, in accordance with section 46 of the Constitution. There are a number of remedies that a court can award. In cases of employment the likely remedies are reinstatement so that the aggrieved party can continue to enjoy his rights or compensation to restore his status in monetary form.

In deciding what remedy to award the court takes into account the needs of the aggrieved party and the circumstances of the case. In this case the applicant asked for the remedy of compensation.

Compensation

In deciding what compensation to award, the court must assess the circumstances of the case, including the length of time that the employee was in employment and circumstances leading to the dismissal. There was not much to learn about the circumstances leading to the dismissal as the respondent was not present. The court will therefore consider the case as presented.

The applicant worked for five months only. The court was not told whether the applicant was on probation or was a confirmed employee. However length of service matters in considering a remedy of compensation. The question is what loss has the employee suffered in these months? In this case not much. The court shall therefore award the applicant the equivalent of one month' salary being K1400. 00 according to the evidence of the applicant.

ORDER

The court orders the respondent to pay the applicant K1 400.00 as compensation. The respondent is further ordered to surrender to the applicant his Trade Test Certificate. These orders are with immediate effect.

Pronounced in open court this 24th day of March 2005 at **MZUZU**.

R Zibelu Banda (Ms.)
CHAIRPERSON.