

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. 21 OF 2005

BETWEEN

MKANDAWIREAPPLICANT

-and-

**COUNCIL FOR THE UNIVERSITY
OF MALAWIRESPONDENT**

CORAM: R. ZIBELU BANDA (MS) - CHAIRPERSON

Dr Mtambo of counsel for the respondent

Urban Mkandawire - applicant

Chinkudzu Official Interpreter

RECORD

Dr Mtambo: I have an objection to make to the jurisdiction of this case. I contend that this matter its res judicate. I have therefore appended decision of the Constitutional Court referring this case to this Court

Mkandawire: I have not seen the appeal, this is a delaying tactic. It is not true that the matter has been appealed.

Court: I would rather the applicant should verify with the Registrar of the High Court and Supreme Court of Appeal on whether an appeal notice has been filed with the Supreme Court of Appeal. I would not want to proceed with this matter especially considering the several stages that it has gone through. I will wait to hear the decision of the Supreme Court of Appeal after they hear the appeal on the High Court judgment.

R.Zibelu Banda (Ms)
CHAIRPERSON

7/03/06

CORAM: R.ZIBELU BANDA - CHAIRPERSON

Applicant - present

M. Mwenye - representing Chancellor College – Assistant Registrar
Human Resources

Gowa - Official Interpreter

Court: The matter was referred back to this court by the Constitutional Court. We will rehear the evidence.

App. : Takes oath and states : I am Urban Mkandawire, P.O. Box 30011 Blantyre 3 . I am working at French Cultural Centre. I joined in January 2005.

I was employed by Chancellor College on 1/12/98
termination 2/12/99

Reason - none given

I have letter of termination

Court: AP 1

Reads – letter does not disclose any reason

Hearing: I did not have a hearing about the dismissal. The vice Chancellor read me two documents

Reads - 13/11/99 from Head of French to Principal – Disciplinary Action
I was not given this document – I came across it after the termination

The second document of the same date was written by the Principal to the Vice Chancellor - 13/11/99

Assessment of Professional Conduct – referring to 8/11/99 memo

I came across this document after the termination

The Vice Chancellor called me on 2/12/99 and told me that he had received these two letters, he read them out to me. I told him that I did not agree with the contents. The Vice Chancellor advised me to go back to the Principal and to the Head of French to get the letter but when I tried to get the letter the two officers could not attend to me. I then found the letter of dismissal in my pigeon hole from the Registrar of the University

Looks at letter of 8/11/99 from Vice Chancellor to myself - Disciplinary Action – warning – extension of probation – pending review report.

I received this letter - Warning letter

Court: AP 2

Unfair:

Procedure - I was not given the opportunity to be heard on the allegations against me.

Substantive issue - I was supposed to be given reason why my services were terminated. I was given opportunity to improve for a period of 12 months up to the next semester. Before I could improve, my services were terminated.

I was put on probation when I was not employed on probation - I was employed as permanent staff.

Offer of employment

It was not true that I had taught a group of students before, it was my first time to teach them.

The Head of Department sat in my class twice but did not make any comment about my teaching. I asked for his comments, they just said everything was ok. I got a new course which nobody had taught before.

The warning letter was issued not based on what really happened.

I never appeared before any hearing to answer about the way of my teachings. Nobody came forward to prove the issues of insubordination. The Dean was not involved in this whole issue. I was never shown any minutes of disciplinary hearing which led to the warning letter. I never received any complaint from students.

Relief: compensation – immediate loss

Reinstatement or in the alternative damages from termination to retirement age

Professional allowance for two months in lieu of notice - $K3527 \times 2 = K7054$

XXN: All matters in the University end up with the Vice Chancellors office. My contract did not talk about probation. I have a letter which states that I was employed on permanent basis and not on probation.

Professional allowance - I don't know that I am not supposed to get professional allowance when not teaching. Incompetence leads to dismissal.

I did not get letter of dismissal from Vice Chancellor.

Mwenye: I have three witnesses but they are not here today. There was communication break down with the court. May I seek adjournment. We thought that today we were just meeting our former legal counsel. My witnesses are Professor

Kishindo; Dr Soko; Head of French; Mr Chiivwalu lecturer in French, will talk about the procedure.

Court: Matter is adjourned to a date to be fixed for continued hearing. This is the last adjournment for the respondent. If they fail to conclude the matter at the next date of hearing without good reasons the matter shall be disposed of basing on the evidence now on record.

R.Zibelu Banda (Ms)
CHAIRPERSON
14/08/06

CORAM: R. ZIBELU BANDA - CHAIRPERSON
Applicant present
Respondent - absent not excused
Gowa - Official Interpreter

AP: I brought some submissions I would like to tender them.

Court: That is alright

AP: I would like to explain what is happening at my current work place. They are threatening to chase me because I came to court last time.

Court: You need to visit Labour office to explain your current situation. They will give you advice and perhaps will try to intervene on your behalf. If that fails they will give you a referral to this court.

Court: In the absence of the respondents to bring any witnesses the court will proceed to write judgment on the basis on the material on record. Judgment in 21 days from today.

Mwenye: I am sorry I am late. I just arrived.

Court: We concluded hearing the applicant's case and he was cross examined. You were supposed to bring your witnesses today. You are coming in after the case. I will not accept any adjournment. However you may prepare written submissions which the court shall use. If you have any documents you may attach them and they will be taken into consideration in the judgment.

Mwenye: I will prepare written submissions.

R. Zibelu Banda (Ms)
CHAIRPERSON

22/11/06

CERTIFIED A TRUE COPY OF THE ORIGINAL RECORD