

IN THE INDUSTRIAL RELATIONS COURT OF MALAWI

PRINCIPAL REGISTRY

MATTER NO. IRC 156 OF 2006

BETWEEN

BWAILA.....APPLICANT

-and-

LE MERIDIEN HOTELS.....RESPONDENT

**CORAM: R. ZIBELU BANDA (MS.); CHAIRPERSON
D. NAMANDWA; EMPLOYERS' PANELIST
NC KAJOMBO; EMPLOYEES' PANELIST
Chibisa (Ms); of Counsel for the Respondent
Saukila; of Counsel for the Applicant
Gowa; Official Interpreter**

JUDGMENT

- 1. Dismissal- Reason-Misconduct-Dishonesty*
- 2. Procedure-Right to be heard-Disciplinary hearing- Fair*

Facts

The applicant was employed as chef and was at the material time in-charge and responsible for kitchen stork. Some stork including 28 packets of sausages and 2 packets of buttercup margarine were taken out of the kitchen to some other unauthorized place. When stork in the freezer kept in the kitchen was audited, it was found that there were some shortages. The applicant was invited to a hearing to explain his involvement in taking out stork from the freezer, which it transpired was not consumed by guests but was found with an unauthorized person being taken out of the hotel. The applicant was not able to give a satisfactory explanation. The respondent proceeded to dismiss him. The applicant was not convinced with the dismissal. Hence his seeking legal redress for unfair dismissal. The respondent contended that the dismissal was fair.

The Law

Section 31 of the Constitution provides for fair labour practices. This includes a number of factors that must be adhered to in an employment relationship. In this matter the factors to consider were that before dismissal the applicant was to be given a valid reason. The applicant was further entitled to be accorded an opportunity to be heard and defend himself against those reasons, see section 43 of the Constitution and *Chawani v Attorney General* [MSCA Civil Appeal Number 18 of 2000 (unreported)] SCA.

It was heard in this matter that when the sausages and the margarine were found in a place other than where they were supposed to be, the applicant was invited to explain. He was a suspect because he was in charge of the freezer where the stork was kept; as man in charge he was responsible for the safe custody of the stork; further he was on duty at the time of the incident. The respondent concluded that this was an act of misconduct warranting dismissal.

Misconduct involving dishonesty has been held to constitute valid ground for dismissal, see: *Ibrahim V Suncrest Creameries Ltd* [Matter Number IRC 73 of 2003 (unreported)].

Finding

The court finds that the reason for dismissal was valid and that the applicant was accorded an opportunity to state his case before dismissal. The respondent complied with rules of natural justice. This action is therefore dismissed in its entirety.

Any party aggrieved by this decision has the right of appeal to the High Court within 30 days of this decision. Appeal lies only on matters of law and jurisdiction and not facts: Section 65 (2) of the Labour Relations Act.

Made this 6th day of November 2007 at **BLANTYRE**.

Rachel Zibelu Banda
CHAIRPERSON

Daphter Namandwa
EMPLOYERS' PANELIST

Nick Chifundo Kajombo
EMPLOYEES' PANELIST