

**IN THE INDUSTRIAL RELATIONS COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MATTER NO. IRC 173 OF 2004**

**BETWEEN**

**KALESO..... APPLICANT**

**-and-**

**ADMARC..... RESPONDENT**

**CORAM: RACHEL ZIBELU BANDA (MS); CHAIRPERSON**  
**MRN PADAMBO; EMPLOYEES' PANELIST**  
**JE CHILENGA; EMPLOYERS' PANELIST**  
Chizuma (Ms); Ag. Deputy Chairperson  
Applicants; Present  
Nchembe; For the Respondent  
Ngalauka; Official Interpreter

**JUDGMENT**

- 1. Dismissal-Reason-Must be valid and justify action taken by Respondent*
- 2. Procedure-Right to be heard-Right to defend oneself-Must be fair*

**Facts**

The applicant was dismissed for incurring shortages. He was operating an ADMARC depot as Buyer. He kept some maize grains. Auditors from the respondent company visited him for stock taking. They discovered a shortage of 1400kgs of maize. The applicant was asked to explain the shortage to the Auditors. He explained that the maize had lost weight because it was eaten up by pests (weevils). The applicant further explained that he had on several occasions reported to management that the maize under his care was under the attack of weevils. The respondent did not respond to his reports and concerns. At the time of the Audit the respondent had not acted on the report and concerns of the weevils. The respondent dismissed the applicant based on the Audit report. The applicant challenged the dismissal on the basis that the reason was not valid and that he was not given an opportunity to be heard.

The respondent conceded that they did not investigate the concerns of the applicant that maize was eaten by pests and hence the loss of weight. They did not invite the applicant to a hearing where he could defend himself. Further the respondent conceded that the applicant reimbursed the respondent for the lost maize although they never investigated whether the loss of weight was due to the applicant's negligence or due to an attack by pests.

### **The Law**

In all dismissal cases employers must act with fairness and must apply rules of natural justice as enshrined in the Employment Act, sections 56 and 57. They must assess each case according to its merits and act with lenience where an employee gives a good reason for his action. It was also held in *Matipwiri v Securicor (Mw) Ltd* [Matter Number IRC 131/2001 (unreported)] that penalty must fit the offense.

In this case the applicant had a good reason why the maize lost weight. The respondent did not investigate the reason. The applicant had on several occasions asked management to do something about pests that were destroying the maize. The respondent did not do anything. The applicant was advised to reimburse the respondent the lost maize. He complied, and yet the applicant was still dismissed.

### **Finding**

The reason for dismissal was not valid and process before dismissal was unfair. According to section 58 of the Employment Act, this court must find that the termination was unfair on both substance and procedure. On procedure because the respondent did not hear the applicants' side and defence and if they heard them, they did not take their defence and explanation into consideration when making the decision to dismiss.

The applicant did not claim for reimbursement of his maize and cash which was wrongfully demanded from him when in actual fact the maize might have been destroyed by weevils. There was no justification for the respondent to demand the maize back. If it had been pleaded the court would have ordered that the respondent return the maize and cash to the applicant.

### **Remedy**

The matter shall be set down on a date to be fixed to assess an appropriate remedy. Any aggrieved by this decision is at liberty to appeal to the High Court within 30 days of this judgment.

**Made this 15h day of November 2007 at Blantyre.**

**Rachel Zibelu Banda**  
**CHAIRPERSON**

**Maxwell RN Padambo**  
**EMPLOYEES' MEMBER PANELIST**

**Joel Evalisto Chilenga**  
**EMPLOYERS' MEMBER PANELIST**