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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 52 OF 2016

BETWEEN:

AWALI ISSA

PLAINTIFF

AND

WE EFFECT

DEFENDANT

Coram: JUSTICE M.A. TEMBO,

Chayekha, Counsel for the Plaintiff

Chakachadza, Counsel for the Defendant

Chanonga, Official Court Interpreter

ORDER

This is this court's order on the defendant's application that the plaintiff's action be dismissed for being commenced in this Court wrongly.

The plaintiff's claim is for re-instatement following what he claims was an unfair termination that was effected on him by the defendant who is his former employer. The plaintiff also claims damages for defamation following defamatory allegations made publicly by the defendant at the time of his termination.

The defendant argued that the plaintiff should have commenced his action in the Industrial Relations Court and that it was irregular for him to commence this matter in this Court.



In support of its claim, the defendant referred to the case of *Mungoni v The Registered Trustees of Development of Malawi Traders Trust* civil cause number 686 of 2001 (High Court) (unreported) where a labour dispute was in issue and the Court dismissed the action holding that the High Court should not assume its unlimited jurisdiction as provided under section 108 (1) of the Constitution in such matters considering that there is a specialized subordinate court, namely, the Industrial Relations Court, that should properly exercise such jurisdiction.

The plaintiff objected to the instant application. He argued that whilst he recognized the decision, correctly made by this Court, in *Mungoni v The Registered Trustees of Development of Malawi Traders Trust*, he had properly brought this action before this Court since it is a matter involving mixed claims of unfair termination of employment as well as defamation.

The plaintiff added that splitting the claims of unfair termination and defamation between this Court and the Industrial Relations Court will result in duplication of actions.

In reply, the defendant argued that in that case only the unfair termination claim should be dismissed to leave the defamation matter.

This Court agrees with the plaintiff that the decision in the case of *Mungoni v The Registered Trustees of Development of Malawi Traders Trust* is not applicable to this matter given that this matter involved a mixed claim of defamation and unfair termination as opposed to a single claim of unfair termination.

This Court had occasion to consider a mixed claim case such as the instant one in the case of *Kanyemba v Dzinyemba t/a Tirza Enterprises* [2005] MLR 146 where Mkandawire J stated that

As a general approach, I would advocate that labour related cases should certainly be transferred to the Industrial Relations Court. This Court as a Court of first instance is best placed to adjudicate over them. The High Court should be spared for appeals pursuant to section 65(2) of the Labour Relations Act. Let me however throw in a word of caution. The transferring of Labour related matters from the High Court to the Industrial Relations Court should be approached on a case by case basis. There should be guidelines which the High Court should follow in order to avoid injustice to the parties. I would therefore herein under list some of these guidelines—

- (1) The Nature of the claim before the Court. Is the claim comprising other issues beyond the jurisdiction of the Industrial Relations Court?
- (2) Would the separation of these claims not occasion injustice to any of the parties?
- (3) At what stage of the trial is the application for transfer made?
- (4) How much time has elapsed between the date of filing of the claim to the date the application to transfer the case is made?

These are a few of the guidelines which may be of help to the High Court if we are to attain uniformity in approach.

Having said that, let me look at the facts of this application. Apart from the claim of unlawful dismissal, the plaintiff is also claiming for defamation of character and other special damages.

I am aware however that from the detailed statement of claim attached to the writ of summons, the plaintiff is basically relying on the claim of unlawful dismissal. The plaintiff has deliberately drafted the statement of claim in such a way as if the claim of defamation is a core claim yet it is not. Therefore, on the nature of the claim, I find that this is a purely labour related issue. I have also taken into account that the case has not yet been set down for hearing at this Court. If it is transferred to the IRC, very little shall be lost. I also observe on the case file that there is not too much time lost.

This Court does not agree that each case must be considered in view of the several matters pointed out for consideration by the Court in *Kanyemba v Dzinyemba t/a Tirza Enterprizes*. The result of the proposition in *Kanyemba* is that the Court was forced to end up forming a very low opinion of the claim for damages for defamation and to transfer the whole matter to the Industrial Relations Court. The problem there is that the claim for damages for defamation might as well have been a viable one.

This Court would rather that, it is time, that all labour-related matters are dealt with by the Industrial Relations Court. So, that, the plaintiff's claim for compensation for unfair termination is dealt with by the Industrial Relations Court which, in the spirit of section 110 (2) of the Constitution, is specifically created and provided with original jurisdiction to deal with all employment and labour-related matters at first instance. The High Court will deal with such matters on appeal and afford the appellate ladder.

If there are claims, arising out of the same facts, which are not within the jurisdiction of the Industrial Relations Court, such as defamation claims as is the case in the present matter, the plaintiff must commence the action on such claims in the High Court.

This Court is of the view that it cannot be said that there will be duplication or prejudice to a plaintiff in such matters given that in the Industrial Relations Court the procedure is deliberately informal and ideally aimed at dealing with the employment matters with dispatch and economy.

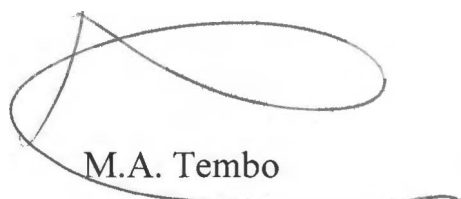
The notorious fact that there have previously been or there are problems with the organization of the Industrial Relations Court, in terms of unavailability of panelists or otherwise, should not be used as an excuse for letting the High Court do the work that the Industrial Relations Court is supposed to do at first instance.

The plaintiff's action shall therefore proceed in this Court in so far as it relates to the defamation claim. The writ of summons must accordingly be amended within seven days to reflect this aspect.

The claim for compensation for unfair termination shall be transferred to the Industrial Relations Court.

Costs on this application are for the defendant.

Made in chambers at Blantyre this 22nd May 2017.



M.A. Tembo

JUDGE