**REPUBLIC OF MALAWI**

**IN THE INDUSTRIAL RELATIONS COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MATTER NO. IRC 719 OF 2018**

**BETWEEN:**

**MEDSON KALAMBULE……...……..1ST APPLICANT**

**MRS. TALEETHA BOWLER…….....2ND APPLICANT**

**ANDREW KALAMBO…….3RD APPLICANT**

**MRS. WOCHIWE PHIRI…….……...…….4TH APPLICANT**

**MRS. DEBORAH NTABA…….……..5TH APPLICANT**

**-And-**

**G4S SECURE SOLUTIONS (MALAWI) LIMITED……...RESPONDENT**

**CORUM: HON. PETER M.E. KANDULU, DEPUTY CHAIRPERSON**

P. Mwandidya, Counsel for the Applicants

L. Imran, Counsel for the Respondent.

K. Kakhobwe, Court Clerk

## JUDGEMENT ON ASSESSMENT OF COMPENSATION

**Introduction**

The Applicants commenced this claim on the 13th day of December 2018 on damages for unlawful dismissal, lost bonuses and compensation for unfair dismissal. The Respondent opposed the claim and denied that they unfairly dismissed the Applicants.

Honourable Chairperson struck out the defence on grounds that the statement of reply does not disclose a reasonable defence. He therefore entered a judgement on the 5th day of April 2022 in favour of the applicants on two heads, compensation for unfair dismissal, and lost bonuses.

**The Issue for Determination**

What is the just, equitable and reasonable compensation that should be awarded to the Applicants in this matter?

**Burden of proof**

On having so pleaded, the onus is on the applicant to prove her claims as the burden of proof rests upon the party, who substantially asserts the affirmative of the issue ***Joseph Constantine Steamship Line –vs. - Imperial Smelting Corporation Ltd*** (1942) AC 154. The burden is fixed at the beginning of the trial by the state of the pleadings, and it shall be settled as a question of law remaining unchanged throughout the trial exactly where the pleadings place it. ***B. Sacranie v. ESCOM,*** HC/PR Civil Cause Number 717 of 1991.

**Standard of Proof**

The standard required in civil cases is generally expressed as proof on a balance of probabilities ***Miller v. Minister of Pensions*** 1947] All ER 372. See also the cases of ***Joward Katsabola and Others -Vs- Mota Engil Engenharia Construcao E Africa***, SA Civil Cause No. 223 of 2020 (High Court) and ***Msachi -Vs- Attorney General*** [1991] 14 MLR 287 at page 290.

It follows in the matter that the Applicants have a burden to prove on the balance of probabilities the claim against the Respondent.

The Applicants filed their witness statements and these witness statements were adopted in court. Equally, the Respondent filed their reply in opposition to the assessment of compensation. I must state that in terms of factual issues, both parties agree on the dates on which each applicant was employed and what they were entitled to.

**The 1st Applicant**

The Respondent employed Mr. Medson Kalambule as a Sales Director on the 1st day of October 2012. He was entitled to an annual bonus, which was 25 per cent of his annual salary. He told the court that on the 28th day of August 2018, he received a letter informing him that he had been retrenched. A copy of the letter was produced and exhibited which was marked as EXPA**"MK 1".** His last day of employment with the Respondent was on the 21st of September 2018. Therefore, at the time of his retrenchment, he had worked for the Respondent for a period of six (6) years.

On the 5th of April 2022, judgement was entered in favour of their claim against the Respondent for unfair dismissal and lost bonuses.

At the time of his dismissal, he was receiving a gross monthly salary of MK 4, 485, 701.36 which included: a basic salary of MK 2, 412, 353.00; a housing allowance of MK 603, 088.25; a fuel allowance of 200 Liters; an education allowance of MK 273,, 333.33; a car allowance of MK 880, 000.00; a phone and internet allowance of MK 76, 686.78 and a medical contribution of MK 158, 025.00.

Due to his unfair dismissal, he lost the above benefits and he is entitled to be compensated for the same.

The Respondent miscalculated his severance pay at the rate of someone who has worked for less than five (5) years when he had worked for a period of six (6) years starting from October 2019 to September 2018. A copy of the Respondent's calculations marking his last day of employment on the 21st of September 2018 was produced and exhibited which was marked by the court as **"MK 2".**

Therefore, he claims that his severance pay be calculated at the correct rate under the Employment Act.

Upon his dismissal, he was unable to secure alternative employment due to how he had been dismissed from the Respondent's employment. He applied for jobs at various organisations to no avail. Copies of his application letters to various organisations were produced and exhibited as **"MK 3".**

**He** has still been unable to secure alternative employment and resorted to operating a personal business to provide for his family. He was only able to set up the business in June 2019 with reduced remuneration and he is yet to obtain full-time employment.

He told the court that his total loss is **MK 501, 543, 391**. This includes all his lost remuneration, bonuses and benefits since his dismissal.

Since the time of his dismissal, the Malawi Kwacha has undergone a 25 per cent devaluation, there has been an increase in inflation and the cost of fuel has increased. For these reasons and for him to be fairly compensated, he prays that the award be boosted by at least 50 percent. A copy of the Reserve Bank of Malawi's communication stating the rate of devaluation and inflation is attached marked and exhibited as **"MK 4".**

He humbly prays to this Honorable Court to award him the compensation for **MK 752, 315, 087** as this is just and equitable compensation for the losses suffered.

**The 2nd Applicant**

The Respondent employed Taleetha Bowler as a National Accounts Manager employed him on 11th April 2016. On 23rd August 2018, he received a letter informing him that he had been retrenched. A copy of the letter was produced and exhibited. It was marked as **"EXA TB 1".**

He told the court that his last day of employment with the Respondent was 21st September 2018. Therefore, at the time of his retrenchment, he had worked for the Respondent for two (2) years and five (5) months.

On 5th April 2022, judgment was entered in favour of their claim against the Respondent for unfair dismissal and lost bonuses.

At the time of his dismissal, he was receiving a gross monthly salary of MK 835, 660.00 which included: a basic salary of MK 399, 168.00; a housing allowance of MK 99, 792.00; a car allowance of MK 296, 700.00; a phone allowance of MK 40, 000.00.

Due to his unfair dismissal, he lost the above benefits and he is entitled to be compensated for the same.

The Respondent miscalculated his terminal benefits and failed to include his days worked in September 2018. A copy of the Respondent's calculations clearly marking his last day of employment as of the 21st of September, 2018 was produced and exhibited. It was marked as EXA**"TB 3".**

Therefore, he claims that his terminal benefits be calculated at the correct rate under the Employment Act.

Upon his dismissal, he was unable to secure alternative employment due to how he had been dismissed from the Respondent's employment. He applied for jobs at various organizations to no avail. Copies of his application letters to various organizations were produced and exhibited. They were marked as EXA **"TB 4".**

He was unemployed for three (3) years and six (6) months until he obtained part-time employment with Illovo Sugar Malawi Limited in April 2022 where he received a reduced salary.

His total loss is therefore **MK 72, 188, 167.72**. This includes all his lost remuneration and benefits since his dismissal.

Since the time of his dismissal, the Malawi Kwacha has undergone a devaluation and there has been an increase in inflation. For these reasons and for him to be fairly compensated, he prays that the award be boosted by at least 50 percent.

He humbly prays to this Honorable Court to award him compensation for **MK 108, 282, 251.58** as this is just and equitable compensation for the losses suffered.

**The 3rd Applicant**

The Respondent employed Wotchiwe Phiri as a Business Development Manager on 1st December 2014. A copy of the Letter of Appointment was produced and exhibited. It was marked as EXA **"WP 1".**

On the 24th of August 2018, he received a letter informing her that she had been retrenched. A copy of the letter was produced and exhibited. It was marked as EXA **"WP 2".**

Her last day of employment with the Respondent was on the 21st of September 2018. Therefore, at the time of her retrenchment, she had worked for the Respondent for three (3) years and nine (9) months.

On 5th April 2022, judgment was entered in favour of their claim against the Respondent for unfair dismissal and lost bonuses.

At the time of her dismissal, she was receiving a gross monthly salary of MK 1, 114, 761.25 which included: a basic salary of MK 586, 845.00; a housing allowance of MK 146, 711.25; a car allowance of MK 341,205.00; and a phone allowance of MK 40, 000.00. A copy of her pay slip was produced and exhibited. It was marked as EXA **"WP 3"**.

Due to her unfair dismissal, she lost the above benefits and she is entitled to be compensated for the same.

The Respondent miscalculated her terminal benefits and failed to include her days worked in September 2018. A copy of the Respondent's calculations marking her last day of employment as 21st September, 2018 was produced and exhibited. It was marked as EXA **"WP 4".**

Therefore, I claim that my terminal benefits be calculated at the correct rate under the Employment Act.

Upon her dismissal, she was unemployed for four (4) months until she was employed by FDH Bank Limited in January 2019.

Her total loss is therefore **MK 54, 709, 052.20**. This includes all her lost remuneration and benefits since her dismissal.

Since the time of her dismissal, the Malawi Kwacha has undergone a devaluation and there has been an increase in inflation. For these reasons and for her to be fairly compensated, she prays that the award be boosted by at least 50 per cent.

She humbly prays to this Honorable Court to award her compensation for **MK 82, 063, 578.30** as this is just and equitable compensation for the losses suffered.

**The 4th Applicant**

The Respondent employed Mrs Deborah Ntaba as a Talent and Resourcing Manager on 1st August 2012. During her employment with the Respondent, she was promoted to the position of Regional Human Resources Manager where she was entitled to an annual bonus of MK 4, 200, 000.00.

On 28th August 2018, she received a letter informing her that she had been retrenched. A copy of the letter was produced and exhibited. It was marked as EXA **"DN 1".**

Her last day of employment with the Respondent was 21st September 2018. Therefore, at the time of her retrenchment, she had worked for the Respondent for six (6) years.

On 5th April 2022, judgment was entered in favour of their claim against the Respondent for unfair dismissal and lost bonuses.

At the time of her dismissal, she was receiving a gross monthly salary of MK 1, 258, 313.00, which included a basic salary of MK 622, 924.00; a housing allowance of MK 155, 731.00; a fuel allowance of 120 Liters per month; a car allowance of MK 341, 000.00; and a phone allowance of MK 40, 000.00.

Due to her unfair dismissal, she lost the above benefits and she is entitled to be compensated for the same.

The Respondent miscalculated her terminal benefits and failed to include her days worked in September 2018. A copy of the Respondent's calculations clearly marking her last day of employment as 21st September, 2018 was produced and exhibited. It was marked as EXA **"DN 2".** Therefore, she claims that her terminal benefits be calculated at the correct rate under the Employment Act.

Upon her dismissal, she was unable to secure alternative employment due to how she had been dismissed from the Respondent's employment. She applied for jobs at various organizations to no avail. Copies of her application letters to various organizations are attached and exhibited. They were marked as EXA **"DN 3".**

She was unemployed for six (6) years until she was employed by Reunion Insurance Company Limited in March 2019 where she received a reduced salary.

Her total loss is therefore **MK 69, 922, 655.90**. This includes all her lost remuneration, bonuses and benefits since her dismissal.

Since the time of her dismissal, the Malawi Kwacha has undergone a devaluation, there has been an increase in inflation and the cost of fuel has increased. For these reasons and for her to be fairly compensated, she prays that the award be boosted by at least 50 per cent.

She humbly prays to this Honorable Court to award her the compensation for **MK 104, 883, 984** as this is just and equitable compensation for the losses suffered.

**The 5th Applicant**

The Respondent employed Mr. Andrew Kalambo as a Bids Coordinator on 1st April 2014. On 28th August 2018, he received a letter informing him that he had been retrenched. A copy of the letter was produced and exhibited. It was marked as EXA **"AK 1".**

Her last day of employment with the Respondent was 21st September 2018. Therefore, at the time of her retrenchment, she had worked for the Respondent for four (4) years and five (5) months.

On 5th April 2022, judgment was entered in favour of their claim against the Respondent for unfair dismissal and lost bonuses.

At the time of her dismissal, she was receiving a gross monthly salary of MK 291, 505.00 which included: a basic salary of MK 201, 204.00; a housing allowance of MK 50, 301.00; and a phone allowance of MK 40, 000.00.

Due to her unfair dismissal, she lost the above benefits and she is entitled to be compensated for the same.

The Respondent miscalculated her terminal benefits and failed to include her days worked in September 2018. A copy of the Respondent's calculations marking her last day of employment as 21st September 2018 was produced and exhibited. It was marked as EXA **"AK 2".**

Therefore, he claims that his terminal benefits be calculated at the correct rate under the Employment Act.

Upon his dismissal, he was unable to secure alternative employment due to the manner in which he had been dismissed from the Respondent's employment. He applied for jobs at various organizations to no avail. Copies of his application letters to various organizations were produced and exhibited. They were marked as EXA **"AK 3".**

He was unemployed for three (3) years and three (3) months until he obtained part-time employment with Old Mutual Life Assurance Company Limited in January 2022 where he received a reduced salary based on his earned commissions.

His total loss is therefore **MK 25, 002, 159.70**. This includes all his lost remuneration and benefits since his dismissal.

Since the time of his dismissal, the Malawi Kwacha has undergone a devaluation and there has been an increase in inflation. For these reasons and for him to be fairly compensated, he prays that the award be boosted by at least 50 percent.

He humbly prays to this Honorable Court to award him compensation in the sum of **MK 37, 503, 239.50** as this is just and equitable compensation for the losses suffered.

**The Respondent's Case**

Sande Kumwenda and Paul Chiponda filed affidavits in opposition to the assessment of compensation. The Affidavit of Paul Chiponda is more summarised and the court shall use this while acknowledging the affidavit in opposition filed by the Human Resources Director for the Respondent. His statement was as follows:

Following the Respondent's review of its business results of 2017 and the results of the 1st and 2nd quarters of 2018, the Respondent observed that its business had shrunk and there was no growth.

The Respondent also observed that the labour cost for support roles was considered too high as a percentage of revenue and also that the Business Development and Sales department was not making headway in bringing in revenue to cushion the overhead costs.

As a result, it was then, decided that the only plausible way to sustain the business performance was to cut down the overhead costs for support departments whose members of staff were all in direct costs to the business by reducing the workforce for those support departments.

The decision to cut down the overhead costs and to reduce the workforce was likely to affect five (5) positions within the Respondent's structures, which were held by the Applicants by way of retrenchment and redundancy.

The positions, which were affected, were: (1) Sales Director; (2) National Account Managers; (3) Bids Coordinator; (4) Business Development Manager; and (5) Human Resource Business Partners.

At the time the decision was made, the Respondent had one (1) Sales Director, who was the 1st Applicant. The decision was likely to remove this position from the Respondent's structures.

The Respondent also had four (4) National Accounts Managers including the 2nd Applicant. The decision was likely to reduce the personnel from this position.

Another position, which was also affected, was the position of the Bid Coordinator held by the 3rd Applicant. The decision made was likely to remove the position from the Respondent's structures.

The other position, which was affected, was the position of the Business Development Manager held by the 4th Applicant. The decision was also likely to remove the position from the Respondent's structures.

The last position affected was the position of the Human Resource Business Partner, which was held by three (3) personnel including the 5th Applicant. The decision made was likely to reduce the personnel from this position.

Before implementing the decision, the Respondent invited the affected employees including the Applicants to consultation meetings aimed at formally informing them of possible retrenchments and redundancy of their positions and also to explore ways to avert the said retrenchment and redundancy.

The consultations were conducted as scheduled and the Applicants attended the consultation meetings.

During the consultation meetings, the Applicants were duly informed of the reason for the decision to retrench their position. The parties further explored alternative ways the retrenchment and redundancy could be averted.

After reviewing the outcomes of the consultation meetings, and having carefully considered all the alternative options explored and available, the Respondent made the decision to reduce the workforce from the National Account Managers and the Human Resource Business Partners positions, and to completely remove the positions of the Sales Director, Business Development Manager, and Bids Coordinator from its structures.

On 13th December 2018, the Applicants commenced these proceedings against the Respondent, claiming damages for unfair dismissal and underpayment of severance allowance.

On 5th April 2022, this Court entered Judgment in favour of the Applicants. The Court now has to determine the just, equitable and reasonable compensation that should be awarded to the Applicants.

The court must state that the applicants were all cross-examined. Most of the cross-examinations in my view were not relevant to the assessment of compensation proceedings. Suffice to mention that all the Applicants admitted during cross-examinations that their last date of employment with the respondent was on the 27th of August 2018. However, the court would like to assure the parties that the notes of the cross-examinations are on the Court's file and shall be taken into consideration together with the final submissions, which would guide the court to come up with proper awards.

**The Law**

Section 8 (2) of the Labour Relations Act empowers the Industrial Relations Court to award compensation.

In determining the sum payable as compensation, the starting point is the sum the Applicants were getting as wages.

Section 3 of the Employment Act defines 'wages' to mean all earnings, however, designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law, which is payable by a written or unwritten contract of employment by an employer to an employee for work done or to be done or for service rendered or to be rendered.

An award of compensation for unfair dismissal is made under Section 63(4) of the Employment Act, ("the Act") which states:

"An award of compensation shall be such amount as the court considers just and equitable in the circumstances having regard to the loss sustained by the employee in consequence of the dismissal in so far as the loss is attributable to action taken by the employer and the extent, if any, to which the employee caused or contributed to the dismissal."

It follows that in assessing compensation the court has to consider the following:

(I) Award amount that is just and equitable.

(ii) Amount shall be determined by loss sustained by the employee.

(iii) Cause or contribution to the dismissal by the employee.

Section 63 (5) of the Employment Act prescribes minimum awards that the court may award. It must be noted that this provision does not take away prescription in Section 63 (4) of the Act.

Section 63 (5) of the Act provides:

The amount to be awarded under sub-section (4) shall not be less than:

A) One week's pay for each year of service for an employee who has served for not more than five years.

b) Two weeks' pay for each year of service for an employee who has served for more than five years but not more than ten years.

c) Three weeks' pay for each year of service for an employee who has served for more than ten years but not more than fifteen years and.

d) One month's pay for each year of service for an employee who has served for more than Fifteen years.

The Malawi Supreme Court of Appeal and High Court of Malawi have expounded these two provisions:

In ***Willy Kamoto v Limbe Leaf Tobacco Malawi Ltd*** MSCA Civil Appeal Cause no. 24 of 2010 the Supreme Court of Appeal held that:

"*Compensation could never be aimed at completely protecting the employee into the future."*

In ***Terrastone Construction Ltd v Solomon Chatantha*** MSCA Civil Appeal Cause no. 60 of 2011, the court held that:

"*Our labour law is concerned with the attainment of fairness for both employer and employee. In weighing up the interest of the respective parties is of paramount importance to ensure that a*

*balance is achieved to give credence not only to commercial reality but also to a respect of human dignity". (Emphasis supplied).*

Furthermore, in the same case of ***Terrastone Construction Ltd vs Solomon Chathuntha,*** (Supra), the Supreme Court of Appeal determined the question of what amounts to a just and equitable compensation and how the Court would apply its discretion to arrive at a just and equitable compensation concerning Section 63 (4) of the Employment Act.

The Court held that a court has to take into account the loss sustained by an employee because of the unfair dismissal but that the assessment does not have to end on the enquiry of loss. The court has to determine the matter on reasonable terms and that reasonableness will be achieved, if the interests of both the employee and the employer are taken into account.

The court in that case (Supra) then guided and advised that Section 63(4) of the Employment Act should be read together with Section 63(5) of the same Act and added that

*"It is important that reasons should always be given for coming up with the assessment of damages which are more than what is set down in the law."*

In the case of ***Sothern Bottlers (SOBO) vs Graciam Kalengo***, [2013] MLR 345 the Supreme Court of Appeal also stated the following on Page 348:

*"Let us reiterate what was said in* ***Standard Bank vs R. B Mtukula,*** *Misc Appeal No. 24/2007 (High Court) that where the court wishes to exceed the minimum compensation in Section 63 (5) of the Employment Act, it must give clear reasons so that the employer, employee and also the appeal or review court can appreciate why the award was enhanced."*

Section 63 (4) is not a blank cheque for the court to decide any amount to be paid. It needs to be read with Section 63 (5) whenever compensation is awarded. In our view, it is a guideline on how a court may give an award under subsection (5) and should not be read in isolation". (Emphasis supplied).

*"It is important that courts must not be seen to award damages, with elements of punishment to the employer".*

In ***Stanbic Bank Ltd v Mtukula*** [2008] MLLR 54 the Malawi Supreme Court of Appeal said on p. 62:

*"We, therefore, think that for the 19 years of service, the respondent would receive three months' pay for each year which would translate to 57 months' pay".*

In ***First Merchant Bank Ltd v Eisenhower Mkaka and Others*** Civil Appeal no. 1 of 2016 Mkandawire J (as he was then) stated the following:

*"In assessing compensation, the Industrial Relations Court had to stick to the spirit of Section 63 of the Employment Act. Under this provision, it is the duration of service before termination that matters a lot in the calculation of compensation that falls due, not the loss of salary increments and sundry amenities from the date of dismissal to the date of judgment or the assessment of damages compensation." In the same manner, future loss does not matter. Therefore one cannot talk of loss of earnings up to the time the former employee would have retired, certainly, which is not in the spirit of the Employment Act. (Emphasis supplied).*

*"There are 17 respondents and each one of them had worked for the appellant for a different number of years. Each one of them gave evidence during the assessment. Each respondent should therefore have been treated separately in assessing compensation.*

In all, the above-cited decisions do (inter alia) hold that the period of service by the employee is the most important factor when computing compensation under Section 63 (4) as read with Section 63(5) of the Employment Act.

Other factors will be taken into account but this is the most important one. I have the view that other factors could be considered when the court would like to award compensation above the minimum as prescribed under section 63 (4) and (5).

It follows for example that someone who has served for 16 years may not get the same compensation as someone who has served say 5 years. This approach has been applied in this court.

The Court is reminding itself and all the concerned parties that the present matter is the assessment of compensation trial. This trial follows the judgement of the Honourable Chairperson. The Hon Chairpersons had struck out the reply of the Respondent in defence because it did not disclose a reasonable and justifiable defence.

The respondent lost the opportunity to defend the matter, as it did not do their work properly by failing to disclose the reasonable defence to the present matter. This is according to the judgement on record by Hon the Chairperson. There is therefore, no finding by the court whether the dismissal was wholly attributed to the employer or that the employees contributed to their dismissal as alleged by the Respondent.

Similarly, in this compensation of assessment trial, the court should state that it did not receive any evidence from the applicants on how bonuses were supposed to be awarded apart from the general statement from the applicants that they were entitled to 25% bonuses yearly. There was no mention by the applicants, what was the qualifying factors for the applicants to get or receive these bonuses at the end of each year. The name bonus is suggestive that the company or Organisation gets bonuses after achieving a certain measure of profit hence a certain portion of the profits are shared with the employees in order to motivate them. The court expected the applicants to demonstrate to the court with evidence the profits generated by the respondent with the help of the applicants for them to claim the said bonuses.

However, the respondent had produced evidence to show how bonuses were supposed to be earned. The Respondent was more precise and detailed that each year the applicants especially those in management were given a target to achieve. Upon achieving their targets, the employees in management positions qualified to receive their bonuses. The respondent informed the court that in 2017, the company did not realize or make any profits hence bonuses were not awarded to any of their employees. In 2018, the applicants were dismissed in August slightly 4 months before the expiry of 2018. This meant the indicators, which would entitle a person to receive a bonus, were not fulfilled. This was the reason the applicants failed to show to the court as a matter of evidence whether they fulfilled the targets which was set and assigned to them. Without such evidence, the respondent argued, there was no basis that the applicants could have received bonuses. The applicants failed to contest this argument during cross-examination.

By failing to produce evidence to show to the court how and when was the bonuses supposed to be paid, in my view, this head must fail. More so, during cross-examination, the applicants conceded that they were not entitled to receive bonuses in 2018.

My understanding that bonuses were paid yearly meant, that in December of each year, the company was supposed to pay his management team those bonuses. The applicants were retrenched in August 2018, which was before the expiry of the year. The court would be very unreasonable to expect that the applicants must be paid bonuses when their services are terminated before the expiry of the year.

***First Merchant Bank Ltd v Eisenhower Mkaka and Others*** (supra) has emphasized that duration of employment is crucial and a factor to consider when calculating compensation. The court also

emphasized that when calculating compensation, the court must stick to the spirit of section 63 (40 and (5). Where the court felt there was a need to pay more than a minimum as provided in section 63, the court must justify the reasons.

In my view, this is the proper case where the applicant ought to be paid more than a minimum. There is only one reason the court would award the applicants more than a minimum as provided in section 63 (3) and (4) of the Employment Act. The reason was that the court held that the dismissal of the applicants was unfair. There is no decision of the court, which held that the applicants contributed to their dismissal.

The applicants have claimed huge sums of awards they want the court to compensate them. The applicants did not provide any formula they used to come up with such huge sums of compensation. The respondent too have provided their schedule on how the applicants ought to be compensated. The respondent has suggested that the applicants ought to be paid the minimum as provided in sections 63 (4) and (5) of the Employment Act. The court has already given reasons why the applicants ought to be paid more than a minimum. The reason as advanced by the court is that there is no decision of the court on merit, which held the applicants contributed to their dismissal. It is also very salient that compensation must be just, fair and equitable to both the employee and employer. In my view, a just, fair and equitable compensation to the applicants shall be 1 month's compensation for each completed year of service.

The 1st Applicant's monthly wage was K4,485,701.36 as per Exhibit "PC 3" broken down as follows:

Basic pay: K2,412,353.00

Housing allowance: K603,088.25

Fuel: K82,215.00

Education allowance: K273,333.33

Car allowance: K880,000.00

Security allowance: K76,686.78

Phone allowance and home internet: K158,025.00

In terms of Section 63(5) (b) of the Employment Act the 1st Applicant is entitled to two weeks' pay for each year of service for the first 5 years, and three weeks' pay for the sixth year. Since had worked for 5 years and 11 months. The 1st applicant is considered to have worked 6 years.

K4,485,701.36 X 6 years = MK26, 914, 208.16

I therefore award the 1st applicant the total sum of **MK26, 914, 208.16**

**The 2nd Applicant**

The 2nd Applicant's monthly wage was K835,660.00 as per Exhibit "PC 6" broken down as follows: The 2nd Applicant had worked for 2 complete years and 5 months (from 11th April 2016 to 27th August 2018).

Basic pay: K399,168.00

Housing allowance: K99,792.00

Car allowance: K296,700.00

Phone allowance: K40,000.00

For purpose of calculating For purposes of computing compensation under Section 63(5) of the Employment Act, each year of service, whether completed or not, shall be taken into account. This means that the 2nd Applicant had served 3 years. In terms of Section 63(5)(b) of the Employment Act the 2nd Applicant is entitled to two weeks' pay for each year of service.

K835,660.00 X 3 years = MK2, 506, 980.00

I therefore award the 2nd applicant the total sum of **MK2, 506, 980.00**

**The 3rd Applicant**

The 3rd Applicant's monthly wage was K291,505.00 as per Exhibit "AK 2" broken down as follows: The 3rd Applicant had worked for 4 complete years and 6 months (from 1st April 2014 to 27th August 2018).

Basic pay: K201,204.00

Housing allowance: K50,301.00

Phone allowance: K40,000.00

For purposes of computing compensation under Section 63(5) of the Employment Act, each year of service, whether completed or not, shall be taken into account. This means that the 3rd Applicant had served 5 years.

K291,505.00 X 3 years = **MK1, 457, 525. 00**

I therefore award the 3rd Applicant the total sum of **MK1, 457, 525.00**

The **4th Applicant**

The 4th Applicant had worked for 3 complete years and 9 months (from 1st December 2014 to 27th August 2018). For purposes of computing compensation under Section 63(5) of the Employment Act, each year of service, whether completed or not, shall be taken into account. This means that the 4th Applicant had served 4 years.

The 4th Applicant's monthly wage was K1,114,761.25 as per Exhibit "PC 12" broken down as follows:

Basic pay: K586,845.00

Housing allowance: K146,711.25

Car allowance: K341,202.00

Phone allowance: K40,000.00

K1,114,761.25 X 4 years = **MK4, 459, 045.00**

I therefore award the 4th Applicant the total sum of **MK4, 459, 045. 00**

**The 5th Applicant**

The 5th Applicant's monthly wage was K1, 258,313.00 as per Exhibit "PC 15" broken down as follows: The 5th Applicant had worked for 6 complete years (from 1st August 2012 to 10th September 2018).

Basic pay: K622,924.00

Housing allowance: K155,731.00

Car allowance: K341,000.00

Phone allowance: K40,000.00

Fuel allowance: K98,658.00

K1,258,313.00 X 6 years = **MK7, 549, 878.00**

I therefore award the 5th Applicant the total sum of **MK7, 549, 878.00**

The Applicants have urged the court to boost the awards awarded to them as compensation since the same arose in 2018.

The awarded sum was due to the applicants in 2018 as stated in their final submission. However, there has been a devaluation of the kwacha over time since 2018. In 2018 the Malawi kwacha was

trading at around MK729,000 to USD Cumulatively, the kwacha has been devalued by slightly over 125 % if we have to factor in all the devaluation that the Reserve Bank of Malawi has been effecting over the past years. It is therefore crucial that the awarded figure should be boosted to retain the purchase value or purchasing power of the amount awarded to the applicant if the same had been paid in March 2018 the time the applicants were dismissed.

In the case of ***Museum and Chillida -vs- Reserve Bank of Malawi*** Matter No. 30 of 2014, the court boosted the awards by 50% owing to inflation.

In ***Kandonje v Malawi Housing Corporation*** [2008] MLR 433 in the court said

*"The cause of action arose in 2003 but the events cover a period from 1998. The Applicant was lowly paid as noticed from the pay slip. The local currency has since devalued and the court has the discretion to award interest to cater for devaluation and inflation …in this case, court awards 40% of the total awards to cater for devaluation since 1998"*

Not every case requires that the award be boosted. Compelling reasons have to be shown to warrant such an award and the percentage thereof. Thus, in ***Frackson Chitheka v Attorney General (Ministry of Finance)***, Civil Appeal No. 67 of 2008 (unreported an award of compensation was boosted by 100%, whilst in ***Mrs Catherine Kamwendo v Portland Cement Company*** (1974) ***Limited***, Civil Appeal No. 25 of 2012, the court deemed it fit to boost the award by 75%.

Recently in ***Malawi Confederation of Chambers of Commerce and Industry v Rehema Mvula and 5 others***, Civil Appeal No. 13 of 2014, Justice Madise on 21st May 2018 confirmed the 50% uplifting of a compensation award.

Mzikamanda J, as he was then, in confirming the 100% boost of the award in ***Frackson Chitheka Case:-***

*"As will be seen the issue of compensation for unfair dismissal is a matter governed by the law with the discretion of the court built in …in assessing compensation for unfair dismissal the court takes into account several factors. These include the applicant's effort to mitigate his loss, the employee's age, physical fitness, qualification, and the prevailing labour market. These factors inform the court in determining the multiplier and the formula for calculating is set by the law. In matters that come to the Industrial Relations Court, the general formula will apply unless some special formula is pleaded and proved… As regards the boost of 100% per cent that was entirely*

*at the discretion of the lower court considering the devaluation and the rate of living at the time. I confirm that 100% boost"*

I am of the view that there are more compelling reasons, which entitle the court to boost the money awarded to the applicants by 100 % considering how the kwacha has devalued to the USD in the recent past. I would cite a basic simple example that a 1 kg packet of sugar in 2018 was selling at K750.00 on the market but the same 1 kg packet of sugar price is now selling at MK2, 200, 00. Petrol was selling MK690.50 per litre in 2018 but now the pump price is MK2, 530.00.

The Court would fail its mandate if it fails to consider factors in the devaluation of the kwacha to retain the purchase value of the awards due to the applicants. To align the value of the awards to the period it was due, my court is of the view that a 100% boost will be justified.

Let me hasten to mention that the issue of boosting the money awarded to the applicant is always the discretion of the taxing or assessing court if justice has to be achieved, especially, owing to inflation and devaluation of the kwacha among other factors.

The assessing or taxing court will weigh all the intervening factors from the date the cause of action arose to the date the awards are determined especially to retain the purchase value of the money as awarded would have been paid to the applicants.

The litigants must understand that the purpose of boosting the award is only to retain the value or the purchase value of the amount (money) owed by the respondent and nothing else. There is no need to plead the boosting of awards in the pleadings. However, if the applicant would like to be awarded interest, then interest should be pleaded in the claim against the respondent at the inception of the case but not the boosting of the award to retain the purchase value of the amount of the award.

An interest and boosting of the awards are two different concepts. Boosting of awards is aimed at aligning the amount awarded to the period the cause of action arose or the amount would have been paid, while interest would mean, if the amount awarded to the applicant was not withheld by the respondent, the money could have been used or could have been put to good use by the applicants. An award of interest is statutory while the boosting of the amount awarded is at the discretion of the court computing the awards.

This is the proper case for the awards to be boosted to retain the purchase value of the money, which would have been made or paid out to the applicant in 2018. As stated in the previous

paragraphs in this judgement, the kwacha cumulatively had been devalued to date by slightly over 125 % against USD for the last 5 years. Therefore, with the authority of ***Frackson Chitheka v Attorney General (Ministry of Finance),*** Civil Appeal No. 67 of 2008 boosted the award by 100 %. I now present the award of compensation due to the applicants.

Summary of the Total Awards

The total payable compensation awarded to the applicants is as follows:

For the 1st Applicant = MK26, 914, 208.16 X100% = **MK53, 828, 416.32**

For the 2nd Applicant = MK2, 506, 980.00 X 100% = **MK5, 013, 960. 00**

For the 3rd Applicant = MK1, 457, 525.00 X 100% = **MK2, 915, 050. 00**

For the 4th Applicant = MK4, 459, 045. 00 X 100% = **MK8, 918, 090.00**

For the 5th Applicant = MK7, 549, 878.00 X 100% = **MK15, 099, 756.00**

Total: **MK85, 775, 272.32.**

The Applicants are awarded MK 85, 775, 272. 32 being compensation for unfair dismissal and the same must be paid within 14 days.

Any party who is aggrieved by this judgement is free to appeal to the High Court within a period prescribed by the Industrial Relations Court (Procedure) Rules.

Delivered in chambers this 20th day of February 2024 at Blantyre.

**HON. PETER M.E KANDULU**

**DEPUTY CHAIRPERSON**