

# Commercial Bank of Malawi v Mhango MSCA

## Civil Appeal Number 8 of 2001 , [2002-2003]

### MLR 43 (SCA)

#### Summary

---

<b>Court:</b>	Supreme Court Of Appeal
<b>Bench:</b>	The Honourable Justice J Kalaile SC JA, The Honourable Justice A Msosa SC JA, The Honourable Justice D Tambala SC JA
<b>Cause Number:</b>	MSCA Civil Appeal Number 8 of 2001
<b>Date of Judgment:</b>	December 18, 2002
<b>Bar:</b>	For the Appellant: Mr. M. Chilenga For the Respondent: Mr. T Mvalo

The Appellant appealed to the Malawi Supreme Court of Appeal, against a judgment awarding damages to the Respondent for wrongful dismissal and defamation, having dismissed the Appellant's counterclaim. The Respondent, a former Branch Manager for the Appellant, was summarily dismissed after an internal investigation revealed a number of irregularities in the way the Respondent was discharging his duties . These included debiting customer accounts without authority to pay insurance premiums, failing to secure the

policies, and granting loans without following correct banking procedures. The Appellant consequently dismissed the Respondent for serious misconduct and negligence.

The trial judge had found in favour of the Respondent on all claims except interest and exemplary damages, dismissing the Appellant's counterclaim entirely. The Appellant challenged this decision on twelve grounds, and the Respondent cross-appealed on two grounds. The Supreme Court of Appeal found that the trial judge had erred on several points of law. The Court held that the burden of proof in a civil case is on the party asserting the affirmative and that the trial judge was wrong to hold the defendant's burden of proof was heavier than the plaintiff's. The Court further found that the trial judge erred by failing to give due weight to evidence, including the testimony of the bank's Chief Inspector, and by improperly using personal knowledge to disregard evidence about an insurance brokerage firm. The Court ruled that the Respondent, as a bank manager, had a duty to protect the bank's property and had acted with negligence and misconduct by not following correct lending and insurance premium procedures. The Court also found that the allegations of a money-lending business run by the Respondent were in conflict with his employment. Finally, the Court determined that the statement regarding the 'Bank Manager' was not defamatory, as it was a statement of truth regarding misconduct, which is a complete defence. The appeal was allowed, and the cross-appeal was dismissed. The Court condemned the Respondent in costs for both the appeal and the cross-appeal.