

Electricity Supply Corporation of Malawi v Kennedy Kaphamtengo and 23 Others Civil Appeal Number 12 of 2023 (Being Matter Number IRC PR 230 of 2009)

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Civil Appeal Number 12 of 2023 (Being Matter Number IRC PR 230 of 2009)
Date of Judgment:	July 15, 2025
Bar:	Mr. Fiskani Nkhoma, Counsel for the Appellant Counsel for the Respondents: Mr. Chikondi Khondiwa

The Appellant, Electricity Supply Corporation of Malawi Limited (ESCOM), appealed to the High Court, Principal Registry, against a judgment of the Industrial Relations Court (IRC) which found it liable for unfair dismissal and an order on the assessment of compensation. The dispute arose after the Respondents, who had been engaged as part-time meter readers, were informed that their contracts were expiring. The Respondents had worked for ESCOM for

about six years, despite initially being told their contracts were for a one-year term. They continued to work beyond the verbally stated expiry dates and subsequent written extensions until new employees were hired to replace them.

The IRC had determined that the Respondents were employees, not independent contractors, and that their contracts, initially for a fixed term, had become contracts for an unspecified period. The IRC found the dismissal unfair and awarded the Respondents compensation, severance allowance, and notice pay. On appeal, the High Court had to decide whether the IRC erred in law by determining that the Respondents were employees and that their contracts had become indefinite. The Court also had to consider if the IRC was wrong in its finding on the reason for termination and if the compensation awarded was manifestly excessive.

The appeal was dismissed. The Court upheld the IRC's finding that the Respondents were employees based on the nature of their relationship with ESCOM, including economic dependence, obligation to perform duties, and the high degree of control exercised by ESCOM. The Court also found that by operation of section 28(3) of the **Employment Act**, the Respondents' continuous service for several years had transformed their fixed-term contracts into contracts for an unspecified period. The Court further held that the Appellant's purported reason for termination—the phasing out of postpaid meters—was not supported by evidence. Finally, the Court found the compensation awarded to be just and equitable, stating that it should not be considered a bonus or punishment for the employer. The Court directed that each party should bear their own costs.