

FDH Bank Limited and Others v Eddie Kamanga

Summary

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| Court: | High Court of Malawi |
| Registry: | Civil Division |
| Bench: | Honourable Justice Howard Pemba |
| Cause Number: | Civil Appeal No.26 of 2024 (Being Matter No. IRC 437 of 2022) |
| Date of Judgment: | October 13, 2025 |
| Bar: | Mr Kaduya, on brief for Counsel for the Appellant Mr Kalua, Counsel for the Respondent |

The Appellant appealed to the High Court, Lilongwe District Registry, against the decision of the Industrial Relations Court (IRC) which had found the Appellant liable for unfair dismissal and awarded the Respondent over K174 million as compensation for unfair dismissal plus severance allowance. The facts before the IRC were that the Respondent was employed by the predecessor to the Appellant, Malawi Savings Bank (MSB), as a Branch Manager in 2009. Following the 2015 acquisition of the MSB by the Appellant, and consequently during the integration process, the Appellant's management repeatedly assured all

employees, through internal memos and a newsletter, of job security and promised that any workforce transition would be handled with consultation. Despite these assurances, the Appellant declared the Respondent's position redundant in October 2016 without, as the Respondent claimed, forewarning or individual consultation. The Respondent subsequently initiated proceedings in the IRC, claiming unfair dismissal, underpaid terminal benefits, and severance allowance. The IRC found that the failure to consult the Respondent before confirming redundancy amounted to unfair dismissal. The lower court proceeded to award compensation for unfair dismissal, additional redundancy pay, a mileage allowance, and also a separate severance allowance under section 35 of the Employment Act (Cap. 55:01), despite the Respondent having already received a more generous contractual redundancy pay.

The Appellant challenged both the finding of liability and the award of compensations made. The principal legal questions for the Appeal to the High Court were three-fold: first, whether the IRC erred in finding liability for unfair dismissal, specifically regarding the obligation to consult; second, whether the high compensation award was justified; and third, whether contractual redundancy pay and statutory severance allowance were mutually exclusive benefits.

The appeal was allowed in part. The Court upheld the IRC's finding of unfair dismissal, holding that the Appellant failed to discharge the burden of proving that it had individually consulted the Respondent before termination, affirming that a failure to consult renders a redundancy unfair. The Court was of further view that Consultation ought to be personal, hence, the general information flow

via newsletters and team meetings failed to satisfy the requirement of consultation. However, the Court determined that the enhanced compensation award was not warranted by the facts, reducing it to the equivalent of one month's wage for each of the seven years of service. Further, the Court ruled that the IRC failed to provide sufficient, justifiable reasons for enhancing the compensation and set aside the 50% boosting. The Court set aside the enhanced award, reducing the compensation to K28,877,650.65. Crucially, the Court held that the contractual redundancy payment, being a more favourable term, subsumed the lower statutory severance allowance under the Employment Act, and therefore, the separate award of severance allowance by the IRC was set aside. The Court further set aside the award of mileage allowance for lack of proof. The Court ordered that each party should bear its own costs, as the appeal was successful on quantum but failed on liability.