First Merchant Bank Limited v. Eisenhower Mkaka and Others

Judgment

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Mkandawire
Cause Number:	Civil Appeal No. 1 of 2016
Date of Judgment:	February 01, 2017
Bar:	appellant unrepresented Allan Chinula, Counsel for the Respondents

Introduction

This is an appeal brought by First Merchant Bank Limited against the respondents Eisenhower Mkaka and Others. The appeal is against the assessment of damages/compensation made by the Industrial Relations Court dated 21st October 2015. In a nutshell, the appellant says that the Industrial Relations Court erred in law in failing to assess damages based on breach of terms and conditions of service instead of unfair dismissal under the Employment

Act. The appellant further stated that the Industrial Relations Court erred in law in failing to distinguish between damages for breach of Conditions of Service and Damages for Unfair Dismissal as defined by the Employment Act 2000.

The respondents have cross-appealed against the assessment of compensation by the Industrial Relations Court. Their appeal is against that part of the order on assessment awarding each one of the respondents 48 month's salary as compensation. The respondents argue that the Industrial Relations Court erred in law in failing to compensate the appellants up to their retirement ages. They further submit that the court erred in law in failing to distinguish between those appellants that had since secured employment and those that have not. Finally, the respondents submitted that the Industrial Relations Court erred in law in failing to treat each appellant separately other than treating them as a group in assessing the compensation payable when during hearing on assessment of compensation each appellant gave separate evidence.

Background

On 13th December 2012, the Industrial Relations Court delivered a judgment in favour of the respondents in which it held that the respondents were unfairly dismissed by the appellant. Not satisfied with that decision, the appellant appealed to the High Court of Malawi. On 9th September 2013, the High Court upheld the decision of the Industrial Relations Court. The appellants further appealed to the Malawi Supreme Court of Appeal. On 10th of October 2014, the Malawi Supreme Court of Appeal made a finding agreeing with the High Court

and dismissed the appeal against the holding that it was guilty of unfairly dismissing the respondents. After the decision by the Malawi Supreme Court of Appeal, the Industrial Relations Court proceeded to assess the damages hence its Order of 21st October 2015.

Matters in issue

The first issue in this appeal is whether the Industrial Relations Court was right in proceeding to assess compensation based on the concept of unfair dismissal in section 57 as read with section 63 of the Employment Act respectively instead of using the Terms and Conditions of Service.

The second issue is whether the Industrial Relations Court was right to make a blanket compensation award of 48 months' instead of treating each individual on a case by case basis. The second issue will largely depend on my finding on the first issue.

Appeal from the Industrial Relations Court to the High Court

As per Section 65(1) of the Labour Relations Act, decisions of the Industrial Relations Court shall be final and binding. Section 65(2} further provides that

decisions of the Industrial Relations Court may be appealed to the High Court on a question of law or jurisdiction. In this appeal, I can therefore only entertain issues of law and nothing else but that. I am satisfied that this appeal is properly before me as there are matters of law on compensation aspect.

Analysis of the Law

This appeal is premised on the understanding of what the decision of the Malawi Supreme Court of Appeal said. From the way counsel for the appellant understood the decision of the court, the appellants were not found liable of unfair dismissal but mere breach of the terms and conditions of service. Thus section 57 of the Employment Act which deals with unfair dismissal was out of the equation. The respondents' side however understood the decision of the court to hold that the appellant had acted unfairly and that the Industrial Relations Court was justified to assess compensation pursuant to section 63 of the Employment Act.

My understanding of the decision of the Malawi Supreme Court of Appeal is that it upheld the decision of the High Court of Malawi which had earlier on upheld the decision of the Industrial Relations Court. In both the decision of the Industrial Relations Court and that of the High Court, the end products were that the respondents had been unfairly dismissed. The Malawi Supreme Court of Appeal however further distilled the matter as to why they had come to a conclusion that ended up upholding the decision of the High Court. Although the Malawi

Supreme Court of Appeal had relied on the terms and conditions of service, the end result was however the same that the conduct of the appellant amounted to unfair dismissal. The concept of unfair dismissal is covered in section 57 of the Employment Act and the issue of compensation for such a dismissal is provided for under section 63 of the Employment Act 2000. The Industrial Relations Court was therefore right in approaching the assessment of compensation based on what the Employment Act provides in section 63 of the Employment Act. I can therefore not interfere with that approach. Having found that the Industrial Relations Court was justified to take that roadmap, I have addressed my mind towards Section 2 as read with Section 63 of the Employment Act as amended in 2010. In terms of Section 63(4) the compensation must be considered in terms of how the loss of the employee is attributable to the actions of the employer. The compensation should also be considered in terms of how, if at all, the employee himself contributed to his own dismissal. This is what is termed as the principle of just (fair) and equity. Section 63(5) sets down the minimum standards payable.

In assessing the compensation, the Industrial Relations Court had to stick to the spirit of sections 63 of the Employment Act. Under this provision it is the duration of service before terminations that matters a lot in the calculation of the compensation that must fall 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 losses do not matter therefore one cannot talk of loss of earnings up to the time the former employee should have retired. Certainly that is not the spirit of our Employment Act. As already observed, Section 63(5) sets down the minimum compensation. The court may go up depending on its evaluation of the matter. The court is not

limited by the next bracket as counsel for the appellants would have loved this court to

believe. The court enjoys wide discretion to settle for either the minimum prescribed or for any higher amounts of compensation as would fit the description of "just and equitable in the circumstances" after weighing the

considerations in Section 63(4) of the Employment Act. I have looked at the assessment record and the final order issued by the court. I do not find any supporting material as to how the IRC had come to the conclusion that each respondent should be awarded 4 month's salary. Much as I am aware that this is a discretionary exercise, it is however imperative that justification has to be there as to why the court has awarded more than the minimum scale. There are 17 respondents and each one of them had worked for the appellant for different number of years. Each one of them gave evidence during the assessment. Each respondent should therefore have been treated separately in assessing compensation. The lower court without any supporting evaluation of the facts before it merely ordered that each one of them should be compensated with 4 month's salary. I find this type of approach wanting and not satisfying Section 63(5) of the Employment Act. I therefore order that this matter should be remitted back to the Industrial Relations Court for re-assessment of the compensation which should be done within 30 days from the date hereof. I order that each party should meet its own costs.

DELIVERED THIS 1ST DAY OF FEBRUARY 2017 AT LILONGWE