Ganizani Chimbalanga v Ecobank Malawi Limited

Judgment

Court:	Industrial Relations Court
Bench:	His Hon Kapaswiche, Deputy Chairperson
Cause Number:	I.R.C. 195 of 2024
Date of Judgment:	July 08, 2025
Bar:	W. Mukhondia, Counsel for Applicant C. Machika, Counsel for Respondent

BACKGROUND

The Applicant commenced this action against the Respondent claiming unfair dismissal. He prayed for a declaration that he was unlawfully and unfairly dismissed, a declaration that he suffered breach of his right to fair labour practices, damages for unfair dismissal, damages for unfair labour practices, severance pay, notice pay, terminal benefits and reimbursement of MK2,000,000 legal fees. The Respondent denied the claim and the parties failed to settle the matter during the pre-hearing conference hence the matter was referred to this Court for trial. This is the judgment of the Court having heard the evidence from

the parties and having considered the applicable law.

THE EVIDENCE

CASE FOR THE APPLICANT

The Applicant was the only witness in his case. He adopted his witness statement and supplementary witness statement as his evidence and he was cross examined. The Applicant testified that he was employed by the Respondent on the 22nd day of April, 2014 as a Customer Service Officer based at the Respondent's Limbe Branch. He was later promoted to the position of Customer Service Manager at Mzuzu Branch. It was the evidence of the Applicant that in or around the month of September, 2021 whilst in the course of discharging his duties, he noticed and identified unusual and clearly fraudulent transactions at the Respondent's said Mzuzu Branch in several accounts. His revelations were that some customers were colluding with the Respondent's staff including the tellers and the Branch Manager to access loans using accounts that were not funded. All this was premised on an unfounded and invalid reason that such customers and their respective accounts were awaiting loan bookings or facilities of payments.

Having noted the anomalies and fraudulent transactions, the Applicant confidentially wrote an email on 24th September, 2021 to the Defendant's Compliance Department as a whistleblower, notifying the Defendant through this Department of the fraudulent dealings. The confidential email was tendered as exhibit GC 3. The Applicant stated that he engaged the Respondent's Compliance

Department as per requirement that all fraudulent dealings are supposed to be reported to this Department. His aim in raising an alarm was seeking profession assistance from the Respondent's said responsible Department
to assist in identifying these fraudulent transactions.

It was the evidence of the Applicant that in reaction to the confidential email above, the Defendant engaged internal Control department to do audits at the branch and the culprits were duly identified and charged with criminal charges in Court. Surprisingly, the Defendant then suspended the Applicant from employment on the 6th day of June, 2022 on an allegation that he was negligent in the discharge of his duties and for failing to identify the fraudulent dealings. A copy of the suspension letter was tendered as exhibit GC 4. The suspension letter was followed by a notice of disciplinary hearing dated the 1st of July, 2022 with a charge bordering on incompetence and unprofessional discharge of duties.

The Applicant proceeded to testify that his disciplinary hearing was scheduled for the 7th of July, 2022 at the Respondent's Head Office in Blantyre. He stated that was not given enough time to prepare for his defence to the allegations and for the actual disciplinary hearing. This is because he only had 5 days to thoroughly go through the charge (s), to plan his defence and then to travel from Mzuzu to Blantyre for the hearing. It was further stated that in the notice of disciplinary hearing, the Respondent also referred to an audit which detailed the alleged dubious and fraudulent transactions in issue. The material audit report was however not served on the Applicant beforehand to allow him to thoroughly go through it before the disciplinary hearing. It was stated that the Respondent's conduct was grossly unfair and it negatively affected his right to be heard. In the

premises, the Applicant stated that he was not heard at all and that the purported hearing herein was purely cosmetic and a sham.

The Applicant went further to testify that during the disciplinary hearing, he testified on his own behalf in denying the charges and he also tendered a copy of the email which he wrote and sent to the Respondent's Compliance Department as a whistleblower on the said fraudulent transactions. The Respondent paraded no witnesses to contradict the Applicant's testimony. Surprisingly, he received a letter from the Respondent dismissing him from employment on the 5th of August, 2022 on the same charge of incompetence and inefficiency in the discharge of his duties. He emphasized that the Respondent had no valid reasons to dismiss him in the circumstances of the present case. He contended that the fact that he discovered the fraudulent activities at the branch means that he was discharging his duties diligently.

The Applicant proceeded to testify that being dissatisfied with the dismissal herein, he appealed to the Respondent's Appeals Committee on the 12th August, 2022 and a copy of the appeal was tendered as exhibit GC 5. The said appeal was never heard. The Applicant stated that the Respondent's failure to process the appeal is a breach of its own Terms and Conditions of Service which provide for the right to appeal against an order of dismissal and an obligation on the part of the Respondent to process the lodged appeal within a reasonable time. In light of the foregoing, the Applicant contended that he was subjected to harsh and unfair labour practices by the Respondent.

The Applicant went further to testify that he also spent the sum of MK2, 000, 000.00 in legal fees in engaging his Legal Practitioners in pursuit of this matter and it was his prayer that the Respondent should be ordered to reimburse me this amount. He tendered a copy of the receipt as evidence of payment of the legal fees as exhibit GC 6.

In his supplementary witness statement, the Applicant stated that his salary at the time of his unfair dismissal was MK 1, 024, 638.95 and he exhibited his pay slip. The Applicant told this Court that in the likely event that he succeeds in his claim for unfair dismissal, he should be awarded the said sum of MKl, 024, 638.95 as his notice pay. He also prayed for plus salary increment arrears in the sum of MK291, 815.55 per month which were not paid to him for 4 months plus his gross salary for the month of August which was also not paid to him despite the Respondent issuing him a pay-slip for that month. As for the actual compensation for unfair dismissal, the Applicant prayed that he should be awarded the sum of MK 150, 000, 000.00 and that the said sum will justly, fairly and fully compensate him for the unfair dismissal herein which is wholly attributable to the Respondent and all its attendant losses that he continues to suffer.

It was the evidence of the Applicant that has up to date not secured alternative employment due to the manner of his unfair dismissal and the allegations of fraud which the Respondent painted his reputation. He prayed that he should be awarded severance pay in the sum of MK5, 635, 514.23 covering the 9 years period that he worked for the Respondent. He also prayed for payment of not less than MK30, 000, 000.00 in terminal benefits; the sum of MK10, 000, 000.00

in compensation for the breach of his right to fair labour practices and the sum of MK20, 000, 000.00 for breach of the employment contract.

In cross-examination, the Applicant confirmed that his whistleblowing was in September 2021. He further confirmed that the reasons for his disciplinary hearing related to transactions that occurred in May and June 2022. He confirmed having knowledge that Zanack Pharmaceuticals and Sana Cash and Carry reported to police fraudulent transactions at the Mzuzu Branch of Ecobank. He stated that his duties as Customer Services Manager were to oversee all the transactions happening at the bank and that he was reporting to the Branch Manager. He confirmed that authorization of transactions was his duty as well as the duty of the Branch Manager. He emphasized that he had similar rights of approvals with the Branch Manager and he was not told that he was a primary approver.

The Applicant confirmed further that the Branch Manager and himself were the primary custodians of the vault. He confirmed further that in 2022, the Respondent planned to put him on performance improvement plan and the meaning of this is that he did not perform his duties well in 2021. The Applicant went further to state that he did not take any role on the transactions that happened in May and June 2022. He further confirmed that the transactions in question involved loans and belonged to the operations department which the Applicant belonged. The Branch Manager belonged to the commercial department. He further confirmed that his charges were under the Respondent's Human Resources Policy and Disciplinary Procedure. He further confirmed that

he never asked for an adjournment despite his claim that he was not given enough time to prepare for
the disciplinary hearing appearance.

In re-examination, the Applicant stated that his whistleblowing to headquarters led to investigations that revealed the Zanack and Sana accounts fraudulent transactions. He stated that the 2022 fraud was done to cover up the 2021 fraudulent transactions that the Applicant had reported. The Applicant also stated that he had similar roles with the Branch Manager hence approvals for transactions by tellers were both done by him and the Branch Manager.

CASE FOR THE RESPONDENT

The case for the Respondent was made of up of one witness named Frank Sabala, herein referred to as RWl. He works as Head of Human Resources for the Respondent. The evidence of RW 1 was that the Applicant was employed on 1 Sfh April 2014 as Customer Service Officer but at the time of his dismissal on 5th August 2022 he was working as Customer Service Manager based at Ecobank Malawi Limited's Mzuzu branch. It was stated that the Appficant's duties as a Customer Service Manager included validating of branch customer cheques, vault custodian of the branch, authorization of all branch transaction and ensuring signature against internal records for conformity and genuineness, and the second being verification against account documentation such as cheques and customer instruction letters; funds transfer to ensure that the owner of the signature is empowered or has the authority to issue the instruction. The job description of the Applicant's position was exhibited as exhibit FS 3. It was also stated that the Applicant also went through on the job training and he confirmed

to have covered eleven areas
which were key to his position as Customer Service Manager. The on-job training form was tendered as exhibit FS 4.

RW 1 proceeded to testify that the Applicant indeed sent a whistle blow email on or around 24th September 2021 and the said issue was attended to by the Respondent's Compliance Department. It was stated that looking at the whistle blow email sent by the Applicant, he should not have sent it because one of his core duties was to ensure that he authorizes all transaction at the Branch. The fraud should not have taken place if the Applicant was properly discharging his duties at the Branch. His failure to properly discharge his duties resulted in some branch officials taking advantage of it to commit the fraud. It was stated that upon noticing that the Applicant was failing to do his job, the Respondent placed the Applicant on Performance Improvement Program from 10th May to 9th August 2022. The letter placing the Applicant on performance improvement plan was tendered as exhibit FS 5.

It was the evidence of RW 1 that whilst the Applicant was on Performance Improvement Program and under his watch the accounts of Sana Cash "N" Carry and Zanack Pharmaceuticals had unauthorized transactions. These transactions were without
supporting documents and the Applicant being the official mandated to authorize all transactions at the branch should not have allowed them to go through. The account holders made complaints which led to the Respondent taking a decision to suspend the Applicant and other four officials on or around 6th June 2022. The complaints from Sana Cash "N" Carry, Zanack Pharmaceuticals and the letter of

suspension were tendered as exhibit FS 6 and exhibit FS 7.

Following the suspension of the Applicant and the other four officers, the Respondent and the police did their parallel investigations. The Respondent's investigation led to a disciplinary hearing of the Applicant and the other officers while the police investigation led to the arrest of three officers who appeared in court to answer criminal charges of theft and fraud under Criminal Case Number 500 of 2022. The three officers were on 20th December 2024 sentenced to various custodial sentences on offences of theft by servant and fraudulent false accounting.

RW 1 proceeded to testify that the Applicant was summoned to a disciplinary hearing on or around 7th July 2022 on charges of inefficiency and or incompetence in the performance of duties. The brief of the charge was that the Applicant as Customer
Service Manager was negligent or incompetent to the extent that he allowed the Branch Manager to takeover one of his core duties of ensuring signature against internal records for conformity and genuineness, and the second being verification against account documentation such as cheques and customer instruction letters; funds transfer to ensure that the owner of the signature is empowered or has the authority to issue the instruction. It was stated that when the Applicant saw the Branch Manager approving or allowing the Sana Cash "N" Carry and Zanack Pharmaceutical transactions he should have stopped them considering that he was the primary approver of such transactions at branch level. Branch Manager approving the Sana Cash "N" Carry and Zanack Pharmaceutical transactions whilst he was available was a red flag that called

him to exercise his professional skills but he kept quiet and allowed customers to lose money, this is negligence and incompetence and it was found so by the Disciplinary Panel.

RW 1 emphasized that the Applicant's dismissal from the reading of his invitation to the disciplinary hearing and the dismissal letter was due to negligence and incompetence as demonstrated in the Sana Cash "N" Carry and Zanack Pharmaceutical transactions which took place in May 2022 and June 2022 respectively. It was stated that the Applicant's dismissal had nothing to do with the whistle blow email he wrote to Compliance Department in September 2021. It was further stated that in any event, what the Applicant did in September 2021 in writing the email to Compfiance Department was a clear sign that he was failing on his job, when he noted the alleged fraudulent transactions as a Customer Service Manager he should have stopped them in the system and escalate to his supervisor only if he had failed to handle or address them.

RW 1 proceeded to emphasize that for the Sana Cash "N" Carry and Zanack Pharmaceutical transactions, the Applicant failed to ensure that his team members or branch people were following necessary procedures and this led to customers losing money and the Respondent had to refund these customers. This is a valid reason for dismissal of the Applicant. In terms of the disciplinary hearings, the Applicant was served with the notice of disciplinary hearing on 1st July 2022 and the hearing took place on 7th July 2022, this meant the Applicant had more than three days which is provided for under Clause 5.2 (vii) (c) of Ecobank Malawi Disciplinary and Grievance Policy and Procedure Manual. It was stated that if the Applicant felt that five days were not enough, he was at liberty

to seek an adjournment of the hearing as was communicated to him in the invitation. The Ecobank Malawi Disciplinary and Grievance Policy and Procedure Manual was tendered as exhibit FS 8.

It was the further evidence of RW l that the Applicant was also informed through the invitation that if he wanted some documentation which would help him in his case he was free to ask for those documentation. The Applicant had a right to ask for the audit/investigation report before the hearing. It was stated that the Respondent would not have assumed that the Applicant was in need of the audit/investigation report. It was the further evidence of RW l that the Applicant also did not inform the Panel during the hearing that he did not have enough time to prepare for the hearing and he needed the audit/investigation report and that if he had informed the panel he would have been granted the adjournment to give him more time to prepare and go through the documents he was to request.

RW 1 stated that at the disciplinary hearing, the chairperson read the charge and the Applicant pleaded guilty to the charge. The panel made recommendations to Respondent's Management who made a decision to terminate the Applicant's employment. On 5th August 2022 a termination letter was sent to the Applicant informing him of the decision of the Respondent. The termination letter was tendered as exhibit FS 9. It was emphasized that the Respondent at all material time acted with fairness in that when it received a complaint it investigated the same and the Applicant was given an opportunity to respond which he did. Then the Applicant was duly invited for a disciplinary hearing where he confirmed his rights and was able to defend himself. The Applicant's termination was justifiable

and with valid reasons hence the prayer was that the claim should be dismissed.

In cross-examination, RW 1 confirmed that the Applicant sent an email to the compliance department with respect to the fraud that was happening at the Mzuzu branch. He confirmed that the compliance department is there to ensure that there is compliance with the policies of the bank. It was stated that it was not wrong for the Applicant to notify the Respondent about the fraud. RW 1 further confirmed that the Branch Manager and other employees were part of the fraud and further that the Applicant was not part of the fraud and this is why he was not arrested.

RW 1 confirmed that he is the one who charged the Applicant as he signed the notice of the disciplinary hearing. He further confirmed that he sat in the disciplinary hearing panel that tried the Applicant and that was allowable by the policies of the Respondent. When referred to clause 5.2 of the disciplinary policy, RW 1 confirmed that he did not attach any report from the Applicant and this is because the Applicant was asked to write a report but he did not. He confirmed that there is no evidence confirming that the Applicant was asked to write a report. RW 1 confirmed further that the Applicant was served with the report of the disciplinary hearing on the 1st July which was a Friday and the disciplinary hearing was scheduled for the 7th July. He confirmed that the 6th of July was a public holiday. The Applicant had three working days to prepare for the hearing.

RW 1 also confirmed that he did not attach the minutes for the disciplinary hearing anti neither did he attach a confession of the Applicant's admission as alleged in his evidence. He also confirmed that he has not attached the audit report on which the Applicant was charged on. He also confirmed not attaching evidence of the witnesses who testified against the Applicant in the disciplinary hearing and not even names of witnesses have been mentioned. He confirmed that he is the one who also signed the letter of dismissal of the Applicant. RWl confirmed that the Applicant lodged an appeal against his dismissal and the appeal was supposed to be filed with his office for onward transmission to relevant authorities. He stated that the appeal was not determined as the Applicant brought the matter to Court before the appeal could be determined. He stated that for over one year, the Respondent was setting up an independent panel to determine the appeal.

The above presents a summary of the material evidence before this Court.

THE LAW

UNFAIR LABOUR PRACTICES

The right to fair labour practices is provided for under Section 31(1) of the Constitution of the Republic of Malawi. The section provides as follows; "Every person shall have the right to fair and safe labour practices and to fair remuneration."

UNFAIR DISMISSAL

The law on unfair dismissal is provided for under the Employment Act 2000. The relevant law is provided under Sections 58, 57 and 61.

Section 58 of the Employment Act, 2000 provides that 'A dismissal is unfair if it is not in conformity with Section 57.

Section 57 of the Employment Act provides as follows:

" (1) The employment of an employee shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking.

(2) The employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide the opportunity.

Section 61 of the Employment Act provides:

"(1) In any claim or complaint arising out of the dismissal of an employee, it shall be for the employer to provide the reason for dismissal and if the employer fails to do so, there shall be a conclusive presumption that the dismissal was unfair;
(2) In addition to proving that an employee was dismissed for reasons stated in Section 57 (1), an employer shall be required to show that in all circumstances of the case he acted with justice and equity in dismissing the employee."

COMPENSATION FOR UNFAIR DISMISSAL

The applicable law on awards of compensation is provided for under Section 63 of the Employment Act. The relevant parts of the Section provide as follows;

63 (1) (c) If the Court finds that an employee's complaint of unfair dismissal is well founded, it shall award the employee one or more of the following remedies-

(c) an award of compensation as specified in subsection (4).

63(4) 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.

(5) The amount to be awarded under subsection (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 week's 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 week's 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, and an additional amount may be awarded where dismissal was based on any of the reasons set out in section 57 (3).

COSTS

Section 72 of the Labour Relations Act provides as follows;

"72. (1) Subject to subsection (2), the Industrial Relations Court shall not make any order as to costs.

(2) The Industrial Relations Court may make an order as to costs where a party fails to attend, without good cause, any conciliation meeting convened under this Act, or where the matter is vexatious or frivolous.

ANALYSIS OF THE LAW AND EVIDENCE

WHETHER THE APPLICANT WAS UNFAIRLY DISMISSED

The law is clear that in an unfair dismissal claim, it is for the employee to show that he was dismissed by the employer; and then at that point the evidential burden shifts to the employer to prove that the dismissal was fair. For an employer to discharge that burden of proving that the dismissal was fair, it must be shown that he complied with Section 57 and 61 of the Employment Act. The employer has a statutory duty to provide the reason and failure to do so creates a conclusive presumption that the dismissal was unfair. Besides giving the reason, the employer must also show that the reason is 'valid' and is connected with the capacity or conduct of the employee or based on the 'operational requirements of the undertaking.

In cases where the reason for terminating the employment is connected to the employee's capacity or conduct, Section 57 (2) also requires the employer to prove that he did not terminate the employment before giving the employee an opportunity to defend himself against the alleged incapacity or misconduct. Again, to prove the fairness of the dismissal, the employer is required to show that in all circumstances of the case he acted with justice and equity in dismissing the employee.

The law, therefore, requires that in terminating a contract of employment on the basis of capacity and conduct of an employee there must exist a valid reason for the said dismissal and that there must be procedural fairness in hearing the side of the employee. With regard to the validity of the reason for dismissal, the Court, in the case of Stuart Hill v. Department of Juvenile Justice (2000) NSWIR Comm, 128, para. 61, stated as follows:

"The principles to apply when allegations of misconduct are considered ... are now well settled by the relevant authorities. These authorities make it pellucidity clear that it is insufficient for an employer to make allegations of misconduct; the employer must prove such misconduct. The right of an employer to dismiss an employee is qualified by the employee, inter alia, having committed an act of misconduct; thus, to be able to rely upon the right ... the employer must not only allege misconduct, but must prove it."

In Ridge v. Baldwin (1964) AC 40, Lord Morris held as follows with regard to the right to be heard or procedural fairness generally at P.p 113 - 114.

"The essential requirements of natural justice at least include that before someone is condemned, he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges allegations ... which he has to meet."

It has been said that by requiring that the employee be 'provided an opportunity to defend himself against the allegations made against him before the employer terminates the employment, Section 57 (2) must be read as implying that he 'should be given reasonable notice of the charge against him and should receive adequate opportunity to answer to it' See Majawa v. Auction Holdings Ltd IRC Matter No. 25 of 2001.

Additionally, the opportunity to be heard is of no use unless it carries with it the right on the part of the conferee to know in advance any adverse information against him on which the decision maker intends to rely. This is because of the fact that he cannot possibly prepare his defence or defend himself without that information. Failure by the decision maker to give that prior notice is tantamount to denial of procedural fairness.

Apart from requiring disclosure of the allegations against the employee, Section 57 (2) implies that the employer should provide any evidence he may have in support of them: as Potani, J. said in Chakhaza v. Portland Cement Ltd. (2008) MLLR 118 (HC), quoting Kanda v. Government of Malaya (1962) AC 322 at 337:

"If the right to be heard is to be a real thing which is worth anything, it must carry with it the right in the accused man to know what evidence has been given and what statements have been made affecting him. He must be given a fair opportunity to correct or contradict them."

In The State V. Council of University of Malawi ex-parte Msukumwa Misc. Civil Cause No. 50 of 2006 the High Court stated as follows:

"If one is to answer any charge, particulars of the same should be given to afford the accused a clear outline of the nature of the charge so that he is able to ably defend himself or herself. I say to ably defend himself to mean to equip oneself with the necessary ammunition.

It is not enough to give someone the right to heard or to defend himself if he or she was deprived of adequate notice to ably defend oneself or the charge was so general that the accused fails to make a meaningful defence. One should not say I understand I have a charge; they will make it clear to me during hearing time. Before the time of hearing the accused must be clear in his mind about the nature of the charge. Just to say come and answer charges of cheating and no more is so lacking and inadequate since it is devoid of particulars. One has to show how the cheating took place, who saw him cheating and when it happened. Only in such circumstances can one know to defend himself or how to prepare a defence and decide which witnesses to call"

In the case of General Medical Council v. Sparkman (1943) AC 627 at 644 - 45, the Court stated as follows on the effects of failure to adhere to the rules of natural justice during a disciplinary hearing;

"If the principles of natural justice are violated in respect of any decision, it is, indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision."

In addition to the requirement of procedural fairness, the law demands that the employer should actually prove that there is a valid reason for dismissing an employee. In Sokalankhwazi v. Sugar Corporation of Malawi Ltd (2004) MLR 358;

the Court stated that the fact that the law requires that there be a valid reason for the termination of employment casts the burden of proof that such a reason exists on the employer and further that the employer must set about identifying the reason for dismissal. After showing the reason for the dismissal, the onus still remains on the employer to prove the reason for the dismissal. The sentiments in the Sokalankhwazi case were echoed in the Singlni v. BCA Bestobell Malawi, IRC Matter No 274 of 2002, where the Court held as follows:

"Where there is an allegation of dismissal, the burden is on the employer to show that there was a valid reason for the dismissal and that the employer acted with justice and fairness before dismissal. The employer must substantiate the reason in Court. In the absence of such proof there is conclusive presumption that the dismissal was unfair. As I stated earlier on, the legal burden of proving that a dismissal was fair is in the hands of the employer as provided tor under Section 61 (1) of the Employment Act. The proof is in two-fold, there must be proof that there was a valid reason for terminating the employment and further the employer must have given the employee the right to be heard before terminating the employment. Hearing the evidence before this Court, it is the considered view of this Court that the Respondent has failed to discharge their burden of proving that the dismissal of the Applicant was fair. I will begin to address the issue as to whether the Respondent had valid reasons to dismiss the Applicant in the circumstances of the present case.

The Applicant was dismissed after being charged of charges of incompetence with respect to failure to do his job. The issue in question involved fraudulent transactions that happened to two customers of the bank who lodged

complaints. The Respondent contended that the Applicant had the role of being a primary approver of all transactions in customer accounts. The fact that the transactions happened without the Applicant noticing and acting to prevent the fraudulent transactions meant that he was incompetent hence the charges and the subsequent dismissal.

It should be stated that according to the evidence before me, the Mzuzu branch of Ecobank was hit by massive fraud between the period of 2021 and 2022. This fraud was being championed by the Branch Manager and other members of staff at the branch. This is why the Applicant raised on alarm back in 2021 alerting the compliance department of the fraudulent activities. The compliance department visited the branch and conducted its investigations in which the fraud was confirmed. The evidence before this Court is also to the effect that much as the Applicant had the role of approving transactions from bank tellers, the Branch Manager also had the said powers of approving transactions.

It is a fact that the investigations led to the finding that the Applicant was not part of the fraudulent transactions happening at the branch as this was being done by the Branch Manager and other staff members who were later charged with criminal charges and convicted. It is obvious that the Branch Manager was the overall in-charge of the branch and this is why he had the powers to bypass the Applicant and connive with staff members and some customers to do the fraudulent transactions. Considering the circumstances of the present case, it is the considered view of this Court that it is unfair then to put the blame on the Applicant and dismiss him on the basis of fraud that he was never part of and was being orchestrated by his senior who was the Branch Manager. To this end,

it is the considered view of this Court that the Applicant had no valid reasons to dismiss the Applicant.

Having dealt with the issue of reasons for dismissal, this Court will now examine as to whether the Applicant was accorded procedural fairness in as far as his dismissal is concerned. The Court will begin by addressing the issue of the role played by Mr. Frank Sabola in the disciplinary process. RW 1 was the one who charged the Applicant. He was also part of the disciplinary hearing panel that heard the matter upon the summoning of the Applicant. Again, it is the same RW 1 who terminated the employment of the Applicant as he is the one who issued the dismissal letter of the Applicant. A reasonable person presented with these facts would view Mr. Frank Sabala as a compromised figure in the whole set up and this is against the rules of natural justice as the principle Is that Justice must not only be done but must be seen to be done. In Khoswe V National Bank of Malawi (2008) MLLR, 201: the court stated as follows:

"It is also a general principle of law that a person who holds on inquiry must be seen to be impartial, that justice must not only be done but must be seen to be done, that if a reasonable observer with full knowledge of the facts would conclude that the hearing might not be impartial, that is enough. Even if the decision-maker has not been biased at all, a decision may still be quashed if they have any professional or personal interest in the issues, because justice must be seen to be done."

This Court has also found that the formal disciplinary procedure as provided by Clause 5.2 of the Respondent's Disciplinary and Grievance Policy and Procedure Manual was breached. Clause 5.2 (i) provides that a formal disciplinary process shall begin by requiring an employee to provide a written response to an allegation or complaint made against him. The Applicant told this Court that the Respondent did not follow this clause as he was never given the chance to provide the written response. In his evidence, RW 1 told this Court that the Applicant was told to write a report but he did not write the said report. However, there is no evidence on record to support the contention of the Respondent's witness as no letter was exhibited showing that the Applicant was communicated to provide a written response to the allegations against him. To this end, the considered view of this Court is that the Respondent acted contrary to the provisions of Clause 5.2 of the Disciplinary and Grievance Policy and Procedure Manual and this is a procedural irregularity.

The evidence before this Court is to the effect that the charges against the Applicant emanated from an investigation/audit report. The Applicant contended that he was never shared with the report to enable him prepare for the disciplinary hearing. The Respondent stated that the said report was not shared to the Applicant as the Applicant did not request to be furnished with the said report. The case of Chakhaza v. Porlland Cement Ltd already cited in this Judgment made it clear that it is the duty of the one making an accusation to ensure that the accused person is aware of the evidence against him including the statements that have been made against him to enable him to prepare well to contradict the said evidence. The duty to provide the evidence upon which the charge is based is the duty of the employer who is the one making the allegations against the employee. The Respondent, therefore, failed to discharge

their duty of providing the necessary information upon which the charges against the Applicant were based.

The Respondent's failure to provide the investigations/audit report to the Applicant before the disciplinary hearing means that as of the time of going to the disciplinary hearing, the Applicant had no idea as to what was the evidence against him and who was going to be the witnesses for the Respondent against him. In actual fact, the evidence of the Applicant was that no witness was paraded to prove the case against the Applicant at the disciplinary hearing. The Court can only speculate as to why the Applicant was found guilty as no audit report was tendered before this Court, no witness statement was tendered for any witness of the Respondent if at all they had a witness and no minutes of the disciplinary hearing were tendered for this Court's appreciation. As it stands, it is not known as to who laid the allegations against the Applicant during the disciplinary hearing and who was the witness of the Respondent in the hearing. On these premises, this Court would agree with the contention of the Applicant that the alleged disciplinary hearing was a sham.

The evidence before this Court shows that after the Applicant's dismissal on 5th August 2022, he lodged an Appeal against the said decision on 12th August 2022 and the said appeal was never heard by the Respondent. RW 1 confirmed that the Applicant lodged the Appeal and that the appeal was never heard on the basis that before the Respondent could hear the appeal, the Applicant had taken the matter to Court. RWl confirmed that it took almost a year without the Appeal being heard as the Respondent was organizing a panel to hear the Appeal. This is the same Respondent that charged the Applicant, called him for a disciplinary

hearing and dismissed him within a period of 3 months, from June to August 2022. After dismissing the Applicant, the same Respondent requires a period of almost a year to constitute an Appeal hearing panel. This is clear sign that the Respondent did not act with justice and equity towards the Applicant.

As matter of fact, the Appeal by the Applicant was lodged on the 12th August 2022 and the present matter was commenced in July 2024. This means that a period of close to two years lapsed from the time of lodging the Appeal to the time of commencing the matter in Court. The Respondent cannot justify their failure to determine the Appeal on the fact that the matter came to Court. Pursuant to the above analysis, it is the finding of this Court that the Applicant's claim for unfair dismissal is valid as this Court has found that the Respondent did not have a valid reason to dismiss the Applicant and further that the Respondent breached the requirements of procedural fairness in dismissing the Applicant. Consequently, the Applicant is entitled to compensation for unfair dismissal, severance pay and notice pay.

WHETHER THE APPLICANT WAS SUBJECTED TO UNFAIR LABOUR PRACTICES

The Constitution of the Republic of Malawi under Section 31 provides that every person shall have the right to fair and safe labour practices. The Constitution as well as the Employment Act have not defined the term "safe or fair labour practices". Courts have, however, defined fair labour practices to mean practices that are even handed, reasonable, acceptable and expected from the standpoint of employer, employee and all fair-minded persons looking at the unique

relationship between employee and employer and good industrial and labour relations (see Kalinda vs Limbe Leaf Tobacco Ltd-Civil Cause No. 524 of 1995).

In Chilala and Others vs Petroleum Service (Mw) Ltd, Matter No. IRC 158 of 2000, the Court stated that the list of conduct that could amount to unfair labour practices is not exhaustive and some of the things may include unfair conduct by the employer relating to promotion, demotion, training and provisional of benefits. Having carefully considered the evidence before me; it is my considered view that the conduct of the Respondent with respect to failure to determine the Applicant's Appeal is tantamount to acts of unfair labour practices. It is an unfair labour practice to deny an employee the opportunity for an Appeal against the termination of his employment when in actual fact the Respondent's Disciplinary and Grievance Policy provides for the right of Appeal. The claim for unfair labour practices is hereby upheld and the Applicant is hereby awarded damages for unfair labour practices.

DAMAGES FOR BREACH OF CONTRACT

The breach of contract in the present case arises from the fact that the Applicant was dismissed. This Court has already made an award on compensation for unfair dismissal hence the claim for damages for breach of contract has no basis and is accordingly, declined.

TERMINAL BENEFITS

The Applicant made a claim for payment of terminal benefits. This claim was not particularized in the evidence of the Applicant as the Court has no idea as to what terminal benefits are being refereed to. This claim is hereby declined.

REIMBURSEMENT OF COSTS

The Applicant claimed for reimbursement of MK2,000,000.00 being legal fees paid to his lawyers to represent him in the within matter. Section 72 of the Labour Relations Act provides that the Industrial Relations Court shall not make an order of costs. The only instances where the Industrial Relations Court is allowed to make on order on costs are in cases where a party fails to attend, without good cause, any conciliation meeting convened under this Act, or where the matter is vexatious or frivolous. Nothing in the present case justifies an award of costs hence this Court declines the prayer for costs.

WHAT AMOUNTS TO JUST AND EQUITABLE COMPENSATION FOR THE APPLICANT?

Having found that the dismissal of the Applicant was unfair, this Court will proceed to assess as to what is the just and equitable sum of compensation for the Applicant. In awarding compensation for unfair dismissal, the current jurisprudence is that the Court will have to base its award mainly on the duration of service of the employee and the salary that he used to get during his

employment in line with Section 63 (4) as read with Section 63 (5) of the Employment Act.

The law is to the effect that 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 token by the employer and the extent. if any, to which the employee caused or contributed to the dismissal. The law further provides for minimum awards of compensation which are in line with the length of service of an employee. The Supreme Court of Appeal in the case of First Merchant Bank Limited v. Eisenhower MKaka and Others Civil Appeal No. 1 of 2016 stated as follows;

"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 assessment of damages/ compensation. As already observed, Section 63 (5) sets down the minimum compensation. The court may go up depending on its valuation of the matter. The Court enjoys the 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 after weighing the considerations in Section 63(4} of the Act"

Section 63 (5) of the Employment Act stipulates that the amount to be awarded as compensation shall not be less than one week's pay for each year of service for an employee who has served for not more than five years; two week's pay for each year of service for an employee who has served for more than five years but not more than ten years; three week's pay for each year of service for an employee who has served for more than ten years but not more than fifteen years; and one month's pay for each year of service for an employee who has served for more than fifteen years.

The minimum awards provided under Section 63(5) are a starting point. A court has the discretion to award more than the provided minimum awards depending on the circumstances of the case but when awarding more than the minimum, the Court must provide reasons for the same. This is the position stated in Southern Bottlers (SOBO) v. Graciam Kalengo, (2013) MLR 345 where the Supreme Court stated 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 are able to appreciate why the award was enhanced.

As can be seen from the authorities cited, the correct approach in awarding compensation for unfair dismissal is by reading section 64 (4) together with section 63 (5) of the employment Act. This approach places an emphasis on the length of service of an employee when making an award for unfair dismissal and what the law provides for are minimum awards. Again, in making an award of compensation, the Court strives to reach a determination that is 'just and equitable' in the circumstances of the case at hand. The considerations with

regard to the just and equitable principle are not closed but they include marketability of the employee on the job market; whether the employee tried to mitigate his losses; the manner of termination of employment; legitimate expectations and also inflation as was stated in Kachinjika v. Portland Cement Company, [2008] MLLR 161.

The Applicant in the present case was employed on the 15 th April 2014 and he was dismissed on the sm day of August 2022. This means that the Applicant completed 8 years by the time of dismissal and in line with Section 63 (5) of the Employment Act his minimum award is two weeks pay for each year of service. However, the finding of this Court is to the effect that the Respondent did not have valid reasons to dismiss the Applicant and further that they breached the procedural requirements in dismissing an employee. This essentially means that the loss suffered by the Applicant by losing his job is wholly attributed to the fault of the Respondent. In other words, the Applicant herein did not contribute to his dismissal according to the finding of this Court. Considering the above stated circumstances, it is the view of this Court that it is just and equitable to award the Applicant compensation over and above the minimum provided for under Section 63 (5) of the Employment Act.

In his evidence as per the supplementary witness statement, the Applicant prayed for an award of a sum of MK 150,000,000.00 as compensation for unfair dismissdl. The Applicant's proyer is unjustified as It does not have a legal justification. The Respondent chose to remain silent on the Applicant's prayer on compensation as they did not ask any questions in cross- xamination on the prayer made by the Applicant and further the Respondent's witness never

mentioned anything about compensation payable in the event of a finding of unfair dismissal. It could be that the Respondent felt too confident that they fairly dismissed the Applicant hence they saw no need to say anything on the quantum of compensation.

Three cases on awards for compensation for unfair dismissal have been considered by this Court in reaching its determination. The first case is Victoria Chldumula v. Lfmbe Leaf Tobacco Company Limited (Matter No. IRC 87 of 2016). The Judgment in the Chidumula matter was delivered on the 14th November 2022. In that case, the Applicant was awarded one month's pay for each completed year of service over and above the minimum award provided for under Section 63 (5) of the Employment Act though the Applicant was found to have contributed to her dismissal. The Applicant had worked for four years by the time of the dismissal.

The second case is a decision delivered on the 31 st day of January 2023 in the case of Prescott Nkhata & 98 others v. lnde Bank limited {IRC Matter No. 67 of 2016). The Court in the Nkhata case placed emphasis on the length of service of the Applicants; the fact that the Applicants did not contribute to their dismissal and the conduct of the Respondent in the process of dismissal. In its award. the Court awarded one month pay for each year of service for employees who had worked below five years and two months' pay for employees that had worked for more than 5 years but not more than 10 years and three months' pay for those above 10 years and below 15 years. The third case considered by this Court is the case of Chlfundo Chioko & 59 Others v. First Capital Bank (Matter No. IRC MZ 10 of 2020) where the Court awarded the minimum awards as provided under

the law and proceeded to award three months' pay for employees who worked for a period of below five years; four months' pay for employees who worked between five to ten years and five months' pay for employees who worked between ten to 15 years. The Chioko case involved dismissal by way of retrenchment where the Applicants did not contribute to their own dismissal.

Having considered the precedents and the circumstances of the present case, this Court proceeds to award the Applicant three months' pay for each completed year of service as this Court deems the said award as just and equitable award in the circumstances of the within matter. At the time of dismissal. the Applicant was earning a salary of MKl, 024, 638.95 and he worked for 8 years hence his compensation for unfair dismissal comes to MK24,591,334.8.

DAMAGES FOR UNFAIR LABOUR PRACTICES

Section 31 (1) of the Constitution of the Republic of Malawi provides that every person shall have the right to fair and safe labour practices. The right to fair and safe labour practices is a constitutional right. The Constitution does not specifically provide for the manner in which compensation for any violation of its provisions are to be calculated. However, the Court in Kachinjika v. Portland Cement Company provided some useful guidance in a passage occurring at page 181 as follows:

"We, much like the Court in the Nkhwazi and Magola cases, are of the view that in so far as the Constitution never gave much guidance in respect of levels of compensation beyond effective remedy such compensation should be what the court seized of the matter thin/ts just and equitable in that particular case guided, if need be, by jurisprudence from beyond our borders."

It is a settled principle of law that when awarding compensation/damages, the Court has to consider awards of a similar nature. This Court has considered three recent decisions in relation to awards of damages for unfair labour practices as comparative awards. The first case is the case of Patrick Mumbo v. Opportunity International Bank of Malawi: Civil Cause No. 49 of 2016 where the defendant violated the claimant's right to privacy by wrongfully advertising his house for sale and forcibly allowing potential buyers to get into the house and inspect it including the bedrooms. The High Court awarded the claimant the sum of MK 5,000,000.00 under this head on 17th November 2023.

The second case is the case of Brian Banda v. Attorney General (State Residences): Matter No. IRC 1001 of 2022, where the Industrial Relations Court awarded the Applicant the sum of MKS,000,000.00 as compensation for unfair labour practices. The award was made on 22nd December 2023. The third case is that case decided on the 15th November 2024 being the case of Alex Malikebu & others vs. Admarc; IRC Matter Number 554 of 2023 where the Court awarded MK 5,500,000.00 to each of the Applicants as compensation for unfair labour practices.

Having considered the circumstances of the present case, this Court deems an award of MK4,000,000.00 as appropriate hence the Applicant is awarded a sum of MK4,000,000.00 as damages for unfair labour practices.

SEVERANCE ALLOWANCE

The Applicant worked for 8 complete years. The formula for payment of severance allowance is provided for under Section 35 of the Employment Act and under the said Section, an employee is entitled to two weeks' pay for each completed year of service for the first five years; three weeks' pay for each year of service from the sixth year up to and including the tenth year and four weeks' pay for each year of service from the eleventh year onwards. The calculation of severance allowance payable to the Applicant is as follows;

For the first five years

MK1, 024, 638.95 / 2 = MK512,319.475

MK 512,319.475 * 5 = MK2,561,597.38

From 6th year to 8thyear

Three weeks' pay= MK768,479.212

MK768,479.212* 3 = MK2,305,437.64

The total severance pay payable to the Applicant comes to a sum of MK4,867,035.02.

NOTICE PAY

The Applicant is hereby awarded a sum of MKl. 024, 638.95 being one month salary as notice pay.

The total sum awarded to the Applicant as compensation for unfair dismissal; severance pay and notice pay comes to MK34,483,008.00 and the Respondent has a period of 7 days to make the payment. As per Section 65(2) of the Labour Relations Act, any aggrieved party has the right of appeal 30 days from the date of this judgment.

Dated the 8TH Day of JULY 2025 at Mzuzu.