

# Major Harry Soko v Mota Engil

## Summary

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<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice Zione Ntaba
<b>Cause Number:</b>	Civil Cause Number 283 of 2013
<b>Date of Judgment:</b>	February 13, 2017
<b>Bar:</b>	Dr. M. Nkhata, Counsel for the Plaintiff Mr Mussa, Counsel for the Defendant

The Plaintiff commenced an action by way of a writ of summons in the High Court of Malawi, seeking damages for constructive dismissal. The Plaintiff, a retired army officer, was employed as a Human Resources Manager by the Defendant, a construction company. The dispute arose from a series of events, including a quarrel with a Project Manager, multiple transfers between projects and cities, a demotion in designation, and public embarrassment. The Plaintiff alleged that these actions by the Defendant amounted to a fundamental breach of his employment contract, making the continuation of his employment unreasonable and intolerable. The Defendant argued further that the case was brought to the wrong forum, as the Industrial Relations Court has original jurisdiction over labour disputes.

The Court held that the High Court has concurrent original jurisdiction with the Industrial Relations Court in labour matters, further, its jurisdiction is unlimited and was therefore a proper forum for the case. The Court had to determine whether the Defendant's conduct constituted a fundamental breach of the employment contract, thereby entitling the Plaintiff to claim constructive dismissal. The Court considered whether the changes to the Plaintiff's designation, responsibilities, and working conditions were unilateral and substantial, and if they created an intolerable working environment. The Court also had to assess whether the Plaintiff had discharged his burden of proving that a fundamental breach had occurred.

The Court held that the Plaintiff was constructively dismissed. The Court found that the Defendant had made unilateral changes to the Plaintiff's employment, which constituted a fundamental breach of his contract. These changes, including the sudden transfers, the demotion in status and designation, and the withdrawal of his official vehicle, amounted to conduct that made the employment relationship intolerable. The Court found that the Defendant's actions were not in line with good industrial practice.