



THE REPUBLIC OF MALAWI  
IN THE INDUSTRIAL RELATIONS COURT SITTING AT LILONGWE  
MATTER NUMBER IRC 336 OF 2021

BETWEEN:

NEDSON NGOLEKA.....1<sup>ST</sup> APPLICANT  
JOSEPH CHIKOPA.....2<sup>ND</sup> APPLICANT

AND

MUNORURAMA INTERNATIONAL PASSENGER TRANSPORT LTD.....RESPONDENT

CORAM:	His Hon. H. Pemba	Deputy Chairperson
	Mr. Taulo	Counsel for the Applicants
	Mr. Nyanda/Maele,	Counsel for the Respondent
	Ms Saidi	Court Clerk and official interpreter

RULING

1. This is the ruling of this Court upon hearing both parties on the Respondent's motion for an order setting aside the order of an interim relief dated 20<sup>th</sup> August 2021 obtained by the Applicants. The motion is supported by an affidavit sworn by Brian Banda, Operations Manager for the Respondent, and there are also skeletal arguments filed by Counsel for the Respondent.
2. The Applicants oppose to the motion and each one of them also filed an affidavit in opposition.

3. The brief background is that both Applicants were employed by the Respondent on 27<sup>th</sup> November 2016 and 10<sup>th</sup> March 2017 respectively. Later, on 27<sup>th</sup> April 2020, they were both verbally informed by the Respondent that they were temporarily laid off. It is revealed by the Applicants that the layoff was for only two months and was expiring on 30<sup>th</sup> June 2020. However, after the lapse of the said two months, the Respondent neither recalled the Applicants back to work nor did they resume paying them their salaries despite several reminders.
4. This is what prompted the Applicants to commence the matter herein by way of an IRC Form 1 filed with the Court on 10<sup>th</sup> January 2021 alleging that the Respondent's conduct meant that the Applicants were terminated and this amounted to unfair labour practice and/or unfair dismissal. Hence they claim for their unpaid salaries in full, leave pay for all the years of their service, overtime pay for unpaid overtime that was worked, and damages for unfair labour practices or unfair dismissal.
5. On 25<sup>th</sup> June 2021, the Respondent replied to the Applicants' claims by way of an IRC Form 2 in which they generally denied all claims and prayed for the matter to be dismissed.
6. It was upon receiving the said response from the Respondent that the Applicants applied for and were granted an interim relief in a form of an order directing the Respondent to place them on half salary from the date they were laid off to the date of conclusion of the substantive matter. It is this interim relief that the Respondent now applies to set aside.
7. This far, this Court is tasked to determine on whether the interim relief granted in favour of the Applicants herein should be set aside.

8. The law relating to the present application is clear and unambiguous. This is an interlocutory application and rightly commenced by way of an **IRC Form 3** in accordance with **Rule 16** of the IRC (Procedure) rules.
9. In the same vein, **Rule 25 (1) (m)** of the IRC (Procedure) rules empowers this Court on application or of its own motion, at any time, to (i) grant an interim relief pending a decision by the Court after a hearing and to; (ii) grant an interdict or any other order in the case of any action that is prohibited by law regarding any trade dispute.
10. It is in reliance of **Rule 25 (1) (m) (ii)** that the Applicants applied for and were granted an order for an interim relief directing the Respondent to place them (the Applicants) on half salary from the date they were laid off to the date of the conclusion of the substantive matter.
11. In their affidavit as well as skeleton arguments in support of this motion, the Respondent has premised their arguments on the grounds that (i) there was inordinate delay by the Applicants in making the application (ii) the Respondent was not served with the application and (iii) the order essentially granted the Applicants their substantive claim.
12. Having heard the arguments by both parties and having gone through all documentation filed in support as well as in opposition to the motion herein, this Court declines to grant the motion on the following grounds:-
  - (a) The rules of the IRC do not specify the time limit within which an application like the present one can be made or granted. Actually, **Rule 25(1)** is to the effect that such applications can be made and granted by the court at any time. Thus the issue of delay does not arise in the present case.

I have read the case of **Sunduzwayo Madise vs ESCOM, IRC Matter 293 of 2002** (Blantyre Registry) which has been heavily relied upon by the Respondent in advancing their argument that the Applicants delayed in making their interim application. I wish to point out, in agreement with Counsel for the Applicants, that this case is indeed distinguishable to the present case in that in the former, the Applicant was actually terminated and was seeking an urgent interim relief in a form of an order that he should be reinstated or that his privileges as an employee of the Respondent be restored to him. With the guidance of English case principles, the court held that he was supposed to make the application expeditiously from the date of termination. In the present case, however, the Applicants are not terminated. They have just been put on temporary laid off and still regarded as employees of the Respondent. Hence a delay of 12 months, and more so when the evidence shows that they were in negotiations with the Respondent, would not be surprised considering that they are still in the employment system of the Respondent. Moreover, the **Sunduzwayo Madise case**, being made by the court with similar jurisdiction with this Court, cannot be binding upon this Court.

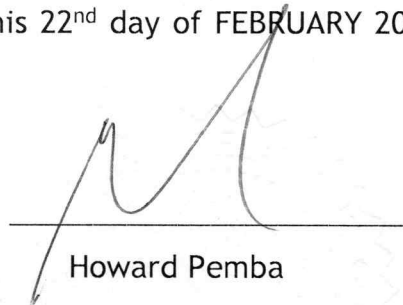
- (b) The ground that the Respondent was not served with the application is not a ground on its own to persuade this Court to set aside this interim relief. This is so because neither **Rule 16** nor **Rule 25 (m)** cited above restricts such applications to be made *inter partes*. Such applications, as we have seen, can even be granted on the Court's own motion. In my view, what matters most in applications for urgent interim relief as sought by the Applicants is whether the Applicants had good chance of succeeding at the hearing of the main claims which, to me, was answered affirmatively.
- (c) The order of an interim relief that was sought and granted did not and does not essentially grant the Applicants their substantive claim. The IRC Form 1 shows that the Applicants' main trade dispute is not only withheld salaries

but also unfair labour practices and/or unfair dismissal. Corollary to that, the Applicants claim for their unpaid salaries, leave pay, overtime pay and damages for unfair labour practices and/or unfair dismissal. Hence, granting an interim relief herein, in the circumstances it was applied for, did not necessarily mean granting the substantive claim. Moreover, the order for an interim relief herein was only with regard to payment of the Applicants only half of their salaries until the conclusion of the main matter. It was not that they should be paid in full as the substantive claim is.

13. It is in view of the foregoing reasons that I deem it fit not to grant the Respondent's motion herein. The application for an order setting aside the order for an interim relief herein is accordingly dismissed.

14. Any aggrieved party has the right of appeal to the High Court in accordance with section 65(2) of the Labour Relations Act.

Made in Chambers, this 22<sup>nd</sup> day of FEBRUARY 2023 at the Industrial Relations Court, Lilongwe.



Howard Pemba  
**DEPUTY CHAIRPERSON**