

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 686 OF 2001**

**BETWEEN:**

**HYGHTEN LEMANI MUNGONI.....PLAINTIFF**

**and**

**THE REGISTERED TRUSTEES OF  
DEVELOPMENT OF MALAWI TRADERS  
TRUST (DEMATT).....DEFENDANT**

**CORAM: HON. JUSTICE A.C. CHIPETA**

**Mr Kasambara, of Counsel for the Plaintiff**

**Mr Mwala, of Counsel for the Defendant**

**Mr Balakasi, Official Interpreter**

**RULING**

By Originating Summons dated the 15th day of March, 2001 the plaintiff raised a number of questions for this court to determine. Inter alia, the plaintiff seeks severance pay for termination of employment and a finding that the said termination was wrongful or unlawful, as well as a determination that as such the plaintiff is entitled to compensation. The Originating Summons is supported by an affidavit.

The defendant has filed an affidavit in opposition to the plaintiff's claim. The affidavit has been sworn by the defendant's Administrative officer. There are annexed to it eleven exhibits. This affidavit disputes the plaintiff's claims. I have had full benefit of arguments from both the parties via their learned Counsel in the matter.

Before I can venture into an analysis of the arguments advanced herein, it strikes me that I need to address two points that have so far exercised my mind in this case. Looking at the issues raised in the Originating Summons it is clear that what exists between the parties herein is a labour dispute. Under Section 110(2) of the Constitution original jurisdiction for such and like matters lies in the Industrial Relations Court. There is no

indication that any attempt has been made to petition that court before bringing the complaint to this court. Much as this court enjoys unlimited original jurisdiction in any civil or criminal proceedings per Section 108(1) of the Constitution, I apprehend that procedurally this court should not assume original jurisdiction where that is exercisable by any of its subordinate courts including the Industrial Relations Court.

I have next noted that all arguments in this matter have proceeded on the basis of the Employment Act, 2000 (re. Act No. 6 of 2000). The termination of employment in issue is reflected in a letter dated 16th August, 2000, being exhibit “HLM1”, and the effective date of termination is the same 16th day of August, 2000.

This employment Act came into operation on 1st September, 2000 (See Govt Notice No. 47 of 2000). There is no indication that the Act was meant to have retrospective effect and where no such retrospectively is conferred an Act operates from the day it comes in force onwards. It is to be particularly borne in mind that severance pay which features highly in this case is a creature of this new Act and that it did not exist under the Employment Act (Cap.....) That was in force prior to 1st September, 2000. It appears to follow in my view that the Originating Summons herein is premised on law that was not yet in force at the time of termination and that some of the remedies it alludes to were then not legally available.

I think it will be wrong for me to go deeper than I have already so done in this case. I take the view that this matter should first have been filed in the Industrial Relations Court before being brought to this court. I also take the view that the case is premised on wrong choice of forum and wrong choice of law I dismiss the present Originating Summons and I do so with costs.

Made in Chambers this 4th day of May, 2001 at Blantyre.

**A.C. Chipeta**

**JUDGE**