

# Arnold Malinda & 55 Others v Carlsberg Malawi Limited

## Summary

<b>Court:</b>	Supreme Court Of Appeal
<b>Bench:</b>	The Honourable Justice L.P Chikopa SC JA, Hon. Justice H.S.B. Potani, JA, Hon. Justice J. Katsala, JA, Hon. Lady Justice I. Kamanga, JA, Hon. Justice M.C.C. Mkandawire, JA, Hon. Justice S.L. Kalembera, JA, Hon. Justice R. Mbvundula, JA
<b>Cause Number:</b>	MSCA Civil Appeal No. 4 of 2023
<b>Date of Judgment:</b>	May 13, 2025
<b>Bar:</b>	appellant unrepresented respondent unrepresented

The Appellants appealed to the Supreme Court of Appeal against the judgment of the High Court, which had reversed the Industrial Relations Court's (IRC) finding that the Appellants were employees of the Respondent. The fifty-six Appellants had their engagements terminated on 31st December 2015 due to the Respondent's operational requirements, having worked in the Sales Department for extended periods. The Claimants alleged unfair treatment, citing a substantial disparity in monthly remuneration and the denial of benefits that were provided

to other workers on the same grade performing identical tasks. The Claimants further asserted a shortfall in statutory severance allowance and unpaid gratuity contrary to the Employment Act. The Respondent consistently argued that the Claimants were independent contractors, not employees. The IRC originally found in favour of the Claimants and awarded compensation for the shortfalls. The Respondent's appeal to the High Court was allowed, with the High Court ruling that the Claimants were independent contractors, thereby invalidating their claims for terminal benefits. Before the Supreme Court of Appeal, the Respondent filed a preliminary objection and sought to rely on skeleton arguments from the High Court, having failed to comply with the Court's procedural protocols for the appeal hearing.

The principal issues before the Court were the correct classification of the Appellants' status, the validity of the release and discharge agreements signed upon termination, and the claims for discriminatory pay and benefits. The Court held that the Appellants were indeed employees, having applied the total relationship test and finding that the totality of the circumstances, including the lengthy duration of service, established a contract of service. The Court, however, dismissed the Appellants' claims for payment shortfalls and benefits, reasoning that employment contracts are private agreements and that the presence of different terms for similarly graded colleagues does not, in itself, constitute unlawful discrimination, absent evidence to rebut the presumption of a lawful contract. The claims that the final release and discharge agreements were signed under duress or amounted to an illegality were also dismissed. The appeal was thus partially allowed. The Court struck out the Respondent's preliminary objection and refused to admit their old skeleton arguments due to blatant non-compliance with the Supreme Court of Appeal's procedural rules and practice

directions. The Court confirmed that appellate courts possess the discretionary power to award costs in labour matters, unlike the IRC. Given the Appellants' limited success and the Respondent's procedural default preventing it from being declared the successful party, the Court ordered each side to pay its own costs.