

Finca Malawi Limited v Sellah Kambilinya Mtsekwe

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice M.A Tembo
Cause Number:	Civil Appeal Case Number 13 of 2024 (Being IRC Matter No. 618 of 2019)
Date of Judgment:	October 02, 2025
Bar:	Mr. Chikavumbwa, Counsel for the Appellant Mr. Msuku, Counsel for the Respondent

The Appellant appealed to the High Court, Principal Registry, Civil Division, against the decision of the Industrial Relations Court (IRC), which had found for the Respondent on her claim of constructive dismissal. The Respondent, a long-serving employee, initially claimed a conditional loan approval tied to a transfer to Kasungu in 2017, followed by a subsequent demotion to a junior position at the Limbe Branch, constituted a series of events forcing her resignation. She continued in the demoted role for two years. In June 2019, the Appellant transferred the Respondent to Mangochi, which she refused, citing the lack of

adequate health facilities for her asthmatic child. Following a meeting with the Chief Executive Officer, the Appellant reversed the Mangochi transfer but re-posted the Respondent to Lilongwe, which she also rejected, stating the dusty environment was unsuitable for her child's condition. The Respondent viewed this final transfer as the ultimate repudiatory breach, prompting her resignation and subsequent claim.

The High Court had to determine whether the Respondent's resignation constituted constructive dismissal, particularly considering the **time lapse** between the initial breaches (demotion/loan) and the final act (transfer to Lilongwe), and, secondly, what constitutes a **just and equitable** basis for assessing compensation under the Employment Act. The Court held that the constitutional definition of constructive dismissal under the Employment Act prevails over common law definitions.

The appeal was allowed. The Court held that the initial breaches, the demotion and the conditional loan, occurred two years prior to the resignation, meaning the Respondent did not resign within a **reasonable time** and was therefore deemed to have waived those breaches. Addressing the final act, the Court found that the subsequent transfer to Lilongwe, which the Appellant made as a compromise and which offered better medical facilities than the rejected Mangochi, was not an unreasonable action by the Employer or a breach going to the root of the contract. The Court found that the constructive dismissal claim failed on both the delayed resignation and the lack of a final, unreasonable act by the employer. Furthermore, the Court clarified the principle for compensation assessment: where delay and currency erosion have occurred, the just and

equitable standard under section 63(4) of the Employment Act requires the Court to use the **prevailing wage** for the claimant's grade at the time of assessment, expressly rejecting the arbitrary 30% boost for devaluation used by the IRC as prejudicial. The Court set aside the compensation award, and in line with statutory practice for employment matters ordered that each party shall bear its own costs of the appeal.