

First Merchant Bank Limited v. Eisenhower Mkaka and Others

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Mkandawire
Cause Number:	Civil Appeal No. 1 of 2016
Date of Judgment:	February 01, 2017
Bar:	appellant unrepresented Allan Chinula, Counsel for the Respondents

The Appellant appealed to the High Court, Lilongwe District Registry, against the assessment of compensation by the Industrial Relations Court (IRC) following a finding of unfair dismissal. The dispute originated from the Appellant's dismissal of the Respondents, which the IRC initially found to be unfair on 13th December 2012. The Appellant's subsequent appeal to the High Court and a further appeal to the Malawi Supreme Court of Appeal were both dismissed, upholding the finding of unfair dismissal. The matter was then returned to the IRC for an assessment of compensation, which resulted in an order dated 21st October 2015, awarding each Respondent 48 months' salary. The Appellant contended

that the IRC erred in law by assessing damages under the unfair dismissal provisions of the Employment Act, rather than for a mere breach of the terms and conditions of service. Conversely, the Respondents cross-appealed, arguing the compensation was too low, claiming entitlement to compensation up to their retirement ages, and faulting the IRC for failing to treat each Respondent separately.

The principal issues before the Court were whether the IRC was correct to assess compensation based on the concept of unfair dismissal under sections 57 and 63 of the Employment Act, and whether the IRC was right to make a blanket award of 48 months' salary without individual consideration. The Court held that the IRC was correct in approaching the assessment of compensation under the Employment Act, as the Supreme Court of Appeal's decision, which relied on the terms and conditions of service, ultimately concluded that the Appellant's conduct amounted to **unfair dismissal**. The Court affirmed that compensation does not include future losses up to the date of retirement, as this is not the spirit of the Act. However, the Court found the IRC's blanket award of 48 months' salary for all 17 Respondents, despite varying lengths of service and separate evidence, to be "wanting" and not satisfying section 63(5) of the Employment Act, as it lacked supporting material or justification for exceeding the minimum scale. The appeal was allowed in part on the issue of assessment methodology. The Court remitted the matter back to the Industrial Relations Court for a re-assessment of compensation, which was to be done individually for each Respondent within **30 days** of the judgment. The Court ordered that each party should bear their own costs.