

## **Application 003/2011**

### **Summary of the Case (Prepared by the Applicant)**

1. I had been employed by the University of Malawi, as a French lecturer in the French Department of Chancellor College, from 1/12/1998 to 2/12/1999 when my employment terminated, on recommendation of Dr Boston Soko, the then Head of French department and Dr Francis Moto, the then Principal of Chancellor college, Letters dated 30/11/1999 respectively.
2. The latter wrote their letters on 30/11/1999 pursuing to an anomy petition dated 17/8/1999 alleged to be written by Dr Soko in connivance with a second year French class student, namely Mr. H.S. Tembo registered at University under the administrative number EH/43/98.
3. Mr. H.S.Tembo, the biological son of the Malawi Supreme Court judge, Justice Atanzio Tembo is from the same geographical location with two lectures in the French Department, namely, Dr Boston Soko and Mr. Yohane Chivwara. Mr. H.S.Tembo was not attending classes but was granted ex nihilo the highest grade by the aforesaid lecturers.
4. On 16 August 1999, Dr. Soko informed in private Mr. Herby Tembo behind the back of other students that his year mate will have to write a French assessment. I therefore decided to deny Mr. Herby Tembo a question paper for a French assessment that I gave to the second year French class on 16/8/1999. This had broken down my working relationship with Dr Soko.
5. As a result Dr Soko and the student Mr Tembo wrote on 17/8/1999 a petition and pasted it all over the campus in which they enjoined the University to dismiss me with immediate effect alleging that I am conducting my classes incompetently.
6. Further, I discovered that the Head of French Department Dr. Boston Soko in connivance with Mr. Yohane Chivwara had usurped a University' scholarship number: DCCCF-MLW-2C2-016 and awarded it to his biological daughter, Naomi Soko who has never been a member of staff of University, but went for further studies at Lyon 2 University (in France) as a lecturer in the French Department at Chancellor College.
7. As such, prior to the termination of my employment, I did not receive any notice to attend any disciplinary enquiry into various allegations made against me by Dr Soko and Dr Moto which should have furnished me with facts pertaining to the charge against me.
8. Consequently, the University Registrar' letter dated 2/12/1999 terminating my services did not contain any reason for termination of my employment owing to the fact that the said letter did not contain any charge proved as fact

by the disciplinary hearing. Thereby, I am contending that I had been prematurely constructively dismissed and that such dismissal constituted an unfair labour practice.

9. In terms of section 43 of the Constitution of the republic of Malawi, I contested the unconstitutional termination of my employment against the Council for the University in all national courts without any remedy.
10. In the High Court, I pleaded that:
  - a) I was not given the opportunity to appear before the Disciplinary Committee to refute the various allegations made by Dr. Soko in his letter dated 30th November, 1999 and also the allegations stated in Principal's letter of 30 November, 1999, upon which the decision to terminate my employment was based.
  - b) The University acted unfairly by depriving me of my two months salary in lieu of notice, other benefits and I have suffered damages at the termination of my employment with the University.
  - c) The University acted unfairly in treating me as a probationer in terminating my services while I was employed as a permanent member of staff.
  - d) The University acted unfairly by evicting me prematurely from the university house.
  - e) The University acted unfairly by protecting and promoting the prohibitive conduct of Mr. **H.S. Tembo**, EH/43/98 in terms of Sections 6 and 10.1(j) (iii) of *Students' Rules and Regulation (University of Malawi)*
  - f) The University acted unfairly by protecting Dr Boston Soko who usurped the University' scholarship number: **DCCCF-MLW-2C2-016**.
  - g) The University acted unfairly by protecting and promoting Dr Boston Soko and Mr Yohane Chivwara who used to grant grades to students for no work done for failing to teach prerequisite courses relating to French Linguistics.
10. The High Court disregarded the issue of Mr Tembo of not attending classes but being granted ex nihilo grades and the issue of Dr Soko and Mr. Chivwara' intellectual dishonesty. The High court only determined and its determination was in my favour on the issue of not being heard before the termination of my employment, the issue of being deprive of my two months salary and the issue of being treated as a probationer instead of a permanent member of staff. In the result the High Court awarded me MK 3,156,708.00 as damages. University appealed against the award after putting into the court account MK 684, 472, 12 to be refunded in case of success to the Malawi Supreme Court of Appeal (MSCA) before, inter alios, Justice

Atanazio Tembo the biological father of Mr.H.Tembo who is the cause of my delictual action against the University of Malawi.

- 11.The MSCA refrained itself to adjudicate upon the issue of not being heard, delivered a perverse judgment based on distortion of facts and law, set aside MK 3,156,708.00 awarded to me as damages by the High Court and did not order that the sum of MK 684,472.15 should be refunded to the University.
- 12.Since, the Malawi Supreme Court of Appeal delivered a perverse judgment based on distortion of facts and law, I appeal to the same MSCA for judicial reviewed which was rejected by Justice Duncan Tambala on the ground of time-barred.
- 13.Then, I decided to assail the said MSCA perverse judgment based on distortion of facts in the Constitutional Court. The latter ordered that the matter should be referred to the Industrial Relations Court (IRC) and the Registrar of the Industrial Relations Court to list it under their cause list and to set it down for hearing.
- 14.Madam Rachel Sophie Sikwese, ex Rachel Zibelu Banda, the Chairperson of the IRC, now Judge of the High Court, disregarded the issues as I circumscribed in the pleadings, fabricated evidence on behalf of the University, falsified court record and made a judgment in favour of the University, which was given facts which were not pleaded and in respect of a cause of action not before her.
- 15.I appealed to the High Court for being denying justice the Chairperson of the IRC. The High Court, per Judge Anaclet Chipeta the biological young brother of the signatory of my dismissal letter, precluded me from addressing the Judge in the High Court so as to argue my appeal against the decision of the Chairperson of the IRC because I am not a licensed Legal Practitioner.
- 16.I appealed to the MSCA seeking an order of setting aside the order of the High Court precluding me from addressing my appeal against the chairperson of the IRC in the High Court, and also for an order entitling me to argue my appeal against the Chairperson of the IRC in the High Court.
- 17.The MSCA presided, inter alio, by Justice Atanazio Tembo, Justice Duncan Tambala who sat in the previous seating, disregarded the issues as circumscribed in the pleadings, fabricated evidence and declared my matter res judicata.
- 18.My legitimate grievance haven't being accommodated by the MSCA, I referred my communication to the African Commission on Human and peoples' Rights in the Gambia via the Malawi Human Rights Commission on 5 February 2008 because I considered that judicial officers who presided

over my matter, Judge Duncan Tambala, Justice atanzio Tembo, Madam Rachel Sophie Sikwese, ex Rachel Zibelu Banda, inter alios, violated the duty of trust and confidence in their arbitration on the charges that I preferred against the University of Malawi.

19. The secretariat of the said commission registered it sub nomine, Communication 357/2008 – Urban Mkandanwire vs Malawi. Madam Irene Desiree Mbengue Eleke, Dr Robert Eno and Dr Mary Maboreke were the Legal Counsels of the Secretariat of the African Commission who handled my communication.
20. During its 43<sup>rd</sup> Ordinary Session held from 13 to 29 May 2008 in Ezulwine, in the Kingdom of Swaziland the Commission decided in my favour and my communication was seized.
21. However, from June 2008 to June 2009, in the course of handling my communication, these mentioned three Legal Counsels did not advise me about the status of my Communication but embarked on a dilatory tactics and on an undertaking which infringed directly the relationship of trust. This versatile conduct prompted me to complaint to the next level of management about their integrity. On 18/8/2009, I presented my petition to the President of the Commission who compelled Madam Irene Desiree Mbengue Eleke, Dr Robert Eno and Dr Mary Maboreke to submit before the Commission my communication for its admissibility during the 46<sup>th</sup> Ordinary Session held from 11-25 November 2009.
22. During its 46<sup>th</sup> Ordinary Session held from 11-25 November 2009, the Commission decided in my favour and my communication was declared admissible. However the three Legal Counsels of the Secretariat removed from the text of admissibility presented to the Commission the charges that I preferred against intellectual dishonesty of Judges who presided over my matter in court.
23. Furthermore, the said Legal Counsels remanded my communication to November 2010' Session. I formally asked the Secretariat to furnish its reasons for its removal from my communication the charges that I preferred against judges who fabricated evidences and relied in their judgments on matters which were not before them also its reasons for remanding my communication to November 2010, these were not given and the said Secretariat resolved to not communicate to me any status of my communication.
24. After about eight months of waiting in vain for the reasons and status of my communication, I gave up and I ended up having the view that there is collusion between the Secretariat and the State and this latter contrived to have my communication ending at admissibility stage. For, the Secretariat

conveniently failed to inform me of the fact that it would exclude from my submissions all allegations regarding judicial officers who did not presided ethically over my case in court. By its silence, the Secretariat deceived me in believing that it will properly and lawfully arraign my communication before the Commission for arbitration on the charges that I preferred against the State. This was nothing else but a stratagem to shield judicial officers and cannot be regarded as fair treatment.

25. On 7/2/2011, I applied to the Chairperson of the Commission for a clearance of withdrawing my communication in order to transfer it to another International tribunal for my matter to be arbitrated impartially.
26. The Commission ruled in my favour and on 13/3/2011, I filed my application to the African Court for determining the palpable result of my cause.
27. I am praying for nine reliefs to the African Court in terms of articles 4, 7, 15 of the African Charter to:
  - a) Restore my social security unconstitutionally usurped by Dr Soko and Dr Moto by reinstating me in my erstwhile position as a lecturer at Chancellor College as an appropriate relief for me who wishes to pursue my career.
  - b) To be paid my two months' salary in lieu of notice to the tune of MK56, 813.40, including professional and housing allowances, as well as devaluation since 1999.
  - c) To be paid the remuneration that i would have received during the counseling period, from 2/12/1999 to 31/8/2000, to the tune of Mk 1,350,000.00.
  - d) To be paid of immediate loss to the tune of MK 3,416,845.60.
  - e) To be paid of damages and legal costs to the tune of MK 8,000,000.00.
  - f) Preclude Dr Soko, Mr. Chivwara from barring Malawian National to learn French language from highly qualified French teachers as an appropriate relief for me who wishes to pursue my career in a conducive environment and to contribute to the world I am living in.
  - g) Preclude Judicial Officers namely, Justice Atanzio Tembo, Justice Duncan Tambala and Judge Rachel Sophie Sikwese from denying justice to Malawian National as an appropriate relief for me who wishes to bring the transgressor of the society's rule of conduct to court.
  - h) Be refunded the sum of MK 15, 400.00 being the balance of rental paid to Mrs. Eurita Ibrahim Khofi.

- i) Deprecate the stultifying conduct of Madam Eleke, Dr Eno and Madam Maboreke so too the ill treatment of the African Commission.

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