

MALAWI GOVERNMENT

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All Communications should  
be addressed to the District  
Labour Officer.



In reply please quote Ref. No. RDLO,

Ministry of Labour,

Rumphi District Labour Office,

P. O. Box 55,

Rumphi,

Northern Region,

Malawi.

REF. RU/INT. 216/2013/5

14<sup>th</sup> January, 2014.

RE: LABOUR COMPLAINT (DISMISSAL): ALICE KANYIKA OF SELEMANI VILLAGE, T/A MWABULAMBIA, CHITIPA DISTRICT VERSUS THE DIRECTOR, EVA DEMAYA CENTRE, P.O. BOX 55, BOLERO, RUMPHI.

This labour complaint case No. Ref. RU/INT. 216/2013 involves Alice Kanyika of Selemani village, T/A Mwabulambia, Chitipa District versus The Director, Mrs Jacqueline Kouwehoven, Eva Demaya Centre, P.O. Box 55, Bolero, Rumphi. Alice approached Rumphi labour office on 2<sup>nd</sup> September, 2013 and complained of unfair dismissal / termination from work by her employer, Jacqueline of Evademaya Centre. Alice filed two claims against the employer: 1. to know why she was unfairly dismissed, and 2. to be paid her terminal benefits for 10 years she had served for the employer.

The employer was summoned to present her side of the story at labour office. The first joint discussion took place on 4<sup>th</sup> September, 2013. Both parties were present at labour office during when the employer stated that Alice was dismissed from work because she had mismanaged finances that was in her control at work and argued that the dismissal was fairly done and that she was thus not reliable, as employer, to pay the complainant her terminal benefits.

This office was therefore responsible to check: 1. whether the complainant had indeed mismanaged the employer's finances or not, and, 2. whether the dismissal / termination was fairly done or not. To do this, both parties were asked to present their details of which they did. Furthermore, the employer requested for case adjournment for her to bring more evidence for her defense. Thus the second and third joint discussions took place on 11<sup>th</sup> November, 2013 and on 28<sup>th</sup> January, 2014 respectively. After the 3<sup>rd</sup> meeting, every party finished by maintaining their earlier stands i.e. complainant still felt she was unfairly dismissed and wished her case be referred to court for intervention and the employer too felt her dismissal action against the complainant was fairly done.

The following is a summary of my view as a Labour officer regarding this case of Alice Kanyika versus Evademaya in attempt to provide responses to the two questions put forward as above.

**First**, from the complainant's own presentation, I learned that Alice Kanyika was employed in 2003 and first worked as a registration officer, second as a pharmacy assistant responsible for handling cash and then in 2006 became a cashier responsible to keep receipts and handle received petty cash. Finally, in 2013, Alice became a cashier and a leader of other 9 fellow employees. These 10 employees including Alice could be given second hand materials for sale to go out into the field to sell for the employer. The 10 could be given sale materials packed in cartons by the employer of which they could share so that one could become responsible for each carton. Both, the employees and employer neither could count the pieces of sale materials packed and given to each employee nor could they record how much was the total sale income to be realized from each carton. Alice was to collect uncounted sales revenue packed in cartons as a leader from her 9 fellow employees, put them together with her own carton and

deliver such cartons to her office at the workplace. Alice too could not count the sales revenue when receiving from her fellow employees and when delivering to her office. All the employees could meet on Mondays to count the cash. Each had to count money from her own carton, records the total amount and then hands it to Alice who could thus total them all to get one total figure and then hands it to the employer at which point the receipt was being written and kept by the employer. The employees had to do this job for several days. This complainant's presentation was verified correct by the employer during our joint proceedings at labour office. In addition, the complainant's presentation regarding her latter work as sales team leader was verified by two others (Glades Luhanga and Lilian Gausi brought by the employer as witnesses) as a true procedure which they were doing to discharge their day to day work.

**Second**, I learned from the employer's presentations including her written dismissal letter for Alice that Alice was accused to have mismanaged employer's finances i.e. stolen petty cash, clinic revenue and sales revenue under her control through some of her work processes as outlined above; that Alice was thus dismissed from work on 11<sup>th</sup> July 2013 on grounds of serious misconduct. Furthermore, I learned from the employer's presented cash and stock records, that prices of most clinic medicines increased with effect from February, 2013 by almost 60 % on average; that patronization of patients were steadily increasing as from January 2013 (336), February 2013 (395), March 2013 (629) through to April and May 2013 which recorded 791 and 786 patients respectively; that medicine orders to the clinic also increased as shown by an increase in the order values rising from Mk195,400.00 in February 2013 to Mk745,449.76 in May 2013 indicating more medicines in stock for sale for increased revenue; and that the employer was surprised that despite such several changes at the workplace, there were no corresponding increase in revenue collection at the centre during the time when cash was under control of the complainant, but that the revenue increases started being experienced after the complainant was suspended or stopped from handling the cash. I also learned from the employer that the cashing and finance transaction system was improved at the centre from the one using no receipts or receipts without numbers before May 2013 to the one using receipts with numbers from May 2013. Finally, the employer failed to produce receipts that she had stated that they were being used fraudulently by the complainant to siphon the received cash saying they have discovered now that the receipts were destroyed.

**Third**, a close analysis of the complaint summary documents tendered at labour office clearly shows that the employer was not sure on exactly how much in cash (Mk) did the complainant misuse, both out of second hand material sales as well as out of clinic revenues. The total amount of Mk950, 000.00 claimed by the employer as restitution to Evademaya centre from the complainant was neither supported by any document of audit or receipts nor was it verbally demonstrated by the employer herself. The sales and revenue collection system was so weak that the employer could not exactly establish with it how much the complainant might have misused in cash if indeed they was a misuse or I could not use it to establish whether or not the complainant was pocketing part of the sales revenue. I am of the view that due to the employer's weak sales instituted system, both Alice and her fellow employees could have decided to steal or not to steal part of the sales revenue. I also observed on the complainant's presentation, however, that Alice as a cashier was very much aware on how she would have been responsible enough to account funds despite the employer's failure to put in place good accounting procedures for them, so that she would use such a skill to determine whether her fellow employees stole some sales money or not. Why did the complainant negligently kept on receiving sales revenue from her fellow employees without counting? This is an element of an employee who does not want to take care of the employer's income. Certainly, the complainant should not have continued with such a procedure. In other words, she should have suggested to the employer of the need to count and record all received sales materials for easy and transparent records. She indeed displayed an element of carelessness or negligence. As a result of this, the employer might have ended up losing some sale proceeds that of course cannot be determined in absence of proper records.

However, in absence of an audit report or accounting receipts (failed to be produced by the employer) that would have shown how much finances were lost under the control of an employee, it is very difficult

or rather not practical to conclude that the employee misused finances otherwise the conclusion would be a mere speculation.

**Fourth**, on the 2<sup>nd</sup> issue of dismissal from work, I was interested and keen to check from two main angles as follows: one on issue of substantive justice and two on issue of procedural justice. I am aware that: **1.** Alice Kanyika had finally entered and signed a two year fixed contract of employment with the employer on 10<sup>th</sup> December, 2012 which effected on 1<sup>st</sup> January, 2013; **2.** clause 8 of their said signed employment contract provides that their employment relationship could be terminated by either party with one month's written notice or one month's salary in place of notice service; **3.** that gratuity of 2 wks salary per full year worked could be paid out to the employee on completion of their fixed employment contract (provided under clause 5 of their employment contract); and **4.** Alice Kanyika was summarily dismissed from work with immediate effect on 11<sup>th</sup> July, 2013 by the employer's letter dated the same date of dismissal.

The employment Act No. 6 of 2000 under section 25(2) (b) allows employment parties to enter into a fixed employment contract i.e. a contract for a specified period of time. And sections 27(1) & 27(3) (g) of the same employment Act, provide that every employer shall give to each employee a written statement of particulars of employment {27(1)} and that [this] statement shall include, among other things, any provision for the termination of the contract other than those provided by the Employment Act {27(3)}. This provision gives legal effect of any conditions of employment agreed and signed between two parties for their own employment relationship provided such conditions are not in conflict with the provisions of the Employment Act and indeed of any other labour laws in Malawi.

In this case, I see that the complainant's employment with the employer was terminated based on clause 8 in their signed fixed contract of employment and that the clause in question is not in conflict with the Employment Act or with any other labour law in Malawi. In this respect, I find that the employer, to terminate the complainant's services, had followed what they had agreed upon and thus I do not see any elements of unfair termination.

There is evidence in this complaint that the employer suspended the complainant on 19<sup>th</sup> June 2013 pending investigations according to employer's letter to the complainant dated 19<sup>th</sup> June, 2013. This was just an additional action by the employer probably to demonstrate more fairness of her action as it was a step not even provided for according to their signed employment contract apart from instant termination with notice pay or with notice service. All in all, I take it that this was an additional fair action against the complainant before any administrative action was meted out. I am therefore satisfied that the Complainant's termination was justifiable. And the implication of the Employer's termination action against the complainant according to the same quoted clause of their signed fixed employment contract is that she, the employer, must pay the complainant one month notice pay in place of notice service which according to the employer's monthly wage rate is equivalent to Mk39,320.00.

I have however been at total disagreement to appreciate how the employer came to arrive and mention the amount of Mk950, 000.00 as restitution demand from the complainant to the employer-Evademaya centre. The Audit report, if it were indeed done, was not presented to labour office which would have shown the exact amount of money being mismanaged while under the control of the complainant. The two witnesses representing the employer were not even in a position to mention how much cash the complainant, Alice might have stolen. The employer herself was also at pains to answer questions on how much cash was stolen and on how the Mk950, 000.00 claim came to be that amount. She could not even explain as to what logical procedural events she had used in order to come to such amount. I thus find this amount claim to be very strange. Much as I do not rule out that there was a mismanagement of funds, the specific evidence as to how much was lost should have been well articulated by the audit report.

I have also observed that the employer was likely putting the full blame of negligence on the applicant. But my findings are that to some extent, the employer too should share the blame. It is very clear and quite amazing that the Employer did not provide the necessary sales work procedures for the complainant and her fellow employees which was indeed her responsibility as employer. Second hand materials for sale were being given to the complainant by the employer without being counted. I find such irresponsibility on the part of the Employer to have given an advantageous loophole on part of the complainant to do whatever she might have done regarding the employer's alleged missed income property. Whilst as the Complainant must have exercised her competent skill and common sense on how she could handle or manage employer's income through use of good and updated records when receiving sales revenue from her fellow employees, but instead she decided to do very unprofessionally, something which even any other person cannot ignore to do (the counting of received money) even if it means receiving such money from a known devoted religious and born again person. All this was because of the complainant's own unknown plans as well as employer's own weaknesses or problems. Thus I find that, the Employer too should be liable to some extent for whatsoever damage caused by the Complainant.

For every other benefits that might have fallen due to the Complainant for the past years of her work with the employer, that is before January 2013, I take them to have been closed and paid accordingly before the two parties had planned to enter into the next contractual period of employment that effected on 1<sup>st</sup> January, 2013 and which is the subject of this complaint. Based on this, it is also taken / presumed that the employer had been satisfied with the Complainant's work performance during those first years hence the employer's decision to sign the next other employment contract with the same employee. Based on this, I have not tackled anything to do with the employee's terminal benefits that fall outside the employment contract which is the subject of this case. If they were not cleared, it is the employer's responsibility to pay such benefits and that the Complainant is free to state so and her intention on the same. Similarly, the employer is free to proceed with her restitution claim if she so wishes and if she indeed feels not satisfied with labour office's mediated outcome.

Finally, as I indicated, earlier on that on the last 3<sup>rd</sup> day of our joint discussions, both parties finished by maintaining their earlier stands. And having summarized everything that transpired at labour office, I advise either party to proceed to court, within the earliest time possible from this date of 14<sup>th</sup> February, 2014, if not satisfied with the case conclusions proposed in this office.



Thus all, (signed) Kalani Malema, District Labour Officer for Rumphi Labour office.

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