

IN THE HIGH COURT OF MALAWI, BLANTYRE
PRINCIPAL REGISTRY

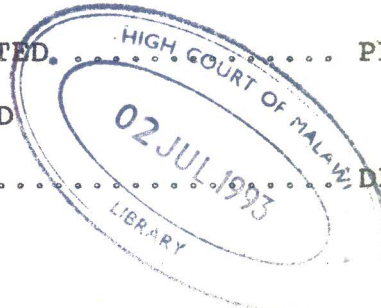
CIVIL CAUSE NO.88 OF 1987

BETWEEN:

TERRAZZO & BUILDING LIMITED. PLAINTIFF

AND

MANUEL DA A. SANTOS DEFENDANT



CORAM: MBALAME, J.

Saidi, Counsel for the Plaintiff
Msisha, Counsel for the Defendant
Namvenya, Official Interpreter
Phiri, Court Reporter

JUDGMENT

The plaintiff claims from the defendant a sum of K4,281.00 which, it is alleged, was paid to AMI PRESS (Malawi) Limited for the defendant and defendant's wife's air tickets at the defendant's request. The defendant denies owing the amount.

The first witness for the plaintiff was Mr. Alvano Freitas, the Managing Director of the plaintiff company. He said he knew the defendant for a long time as his friend's son and that the defendant is now married to his daughter. In September, 1985 on learning of the defendant's father's death in Portugal he went to the defendant's house to condole him. It was necessary for the defendant and his wife to travel to Portugal for the funeral and he procured two air tickets from AMI PRESS (Malawi) Limited through his company, Terrazzo and Building Limited. He said it was throughout the understanding that the money paid in respect of the tickets was a loan from the company to be repaid by the defendant. It is this money that the plaintiff is now seeking to recover, he concluded. Perhaps I should mention that I thought the witness was very highly temperamental and to put it in his own counsel's words, "confused". Be that as it may, this does not in any way affect my assessment of his evidence. PW2, Mr. Joseph Luhanga, is an accountant with the plaintiff. Suffice to say that his evidence was far from being helpful in that the events leading to the case took place before he joined the company.

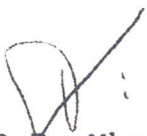
The defendant also gave evidence. He does not deny having received and used the tickets, but contends that these were given to him and his wife by Mr. Freitas as a gift. He



said when Mr. Freitas came to condole him, he insisted that the defendant should be accompanied by his wife on the trip. Although it was not his intention to take his wife along with him he finally agreed to do so since Mr. Freitas had kindly offered to meet the cost of the air tickets. He was adamant that he never dealt with the plaintiff company and that he, therefore, could not owe it the money now being claimed.

The plaintiff's claim really depends on PW1's evidence. The witness gave me the impression that he was not able to separate his own personality from that of Terrazzo and Building Limited as a limited company. On the evidence adduced before me, I find as a fact that in September, 1985 on learning that the defendant had lost his father, Mr. Freitas went to the defendant's house, in tears, to condole him and offered to pay for the air tickets. It is to be remembered that he was paying for his own daughter and son-in-law to go to a funeral of a very close friend and, as it emerged in cross-examination, for the daughter to go and see her mother who was then in Portugal. I also find as a fact that Mr. Freitas used his company, the plaintiff, to pay for the air tickets on his own account with the company. I am convinced that the tickets were a gift by Mr. Freitas to the defendant and his wife. There was, therefore, no agreement between the plaintiff and the defendant and the plaintiff's claim must fail with costs.

PRONOUNCED in open Court this 23rd day of February, 1988 at Blantyre.


R.P. Mbalame
JUDGE