



JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 2893 OF 2005**

BETWEEN:

ANDREW PETANI BANDA.....PLAINTIFF

-AND –

**MALAWI TELECOMMUNICATION LTDDEFENDANT
MALAMULO HOSPITAL.....3RD
PARTY**

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

Mr Hara, of Counsel for the plaintiff
Mr Malijani, of Counsel for the defendant
Mrs Gangata – Official Interpreter

J U D G M E N T

Twea, J

The plaintiff claim is for the sum of K478, 650 being the price of goods sold and delivered and services rendered to the defendant. Further he claims legal fees and costs for this action. The defendant denies to have received or requested any goods or services from the plaintiff.

The plaintiff is a private individual who was an employee of Malamulo Hospital, the third party, at the time in issue.

The defendant is limited company dealing in telecommunication.

The facts in this case are not disputed.

It was the plaintiff's evidence that he was working in the Eye Department of the third party. The defendant company used to refer its employees with eye problems to the third party. They would come for examination and supply of eye glasses. Some would be requested new frames in keeping with the current fashion.

It is not disputed that such clients would come to the Eye clinic with letters of introduction from the defendant. In the course of time the third party run out of stocks. Many clients were turned back, or referred to other clinics.

The plaintiff told this court that the situation persisted. The third party did not give priority to the Eye Department's supplies. He therefore decided to open his own clinic. The Clinic was called Angellas Optical Shop. It was his evidence that the defendant was aware of his clinic. He referred clients from the defendant company to his clinic whenever the third party's clinic could not carter for their needs. It was also his evidence that the defendants' employees would, at times, request for his services at their offices. He did eye examination and provided services directly to the defendants employees at their offices.

In this respect, the plaintiff said the defendant issued letters of introduction to his optical shop directly. It was admitted, in this case, that documents marked PB27 to 50 were not disputed. All these documents were letters of introduction addressed to the plaintiffs shop. I wish to observe however, that Exhibit PB27 was an introductory letter addressed to Dr. Bhojani. This was cancelled and endorsed with the plaintiff's optical shop.

It was the evidence of the plaintiff that he never diverted clients from the third party, he referred them in order to render service. This, he said, was well known to the defendant and the third party. He contended, and it was not disputed, that the defendant paid him in part for the services that he rendered. There never was any accusation of wrong doing on his part until the third party accused him of forging the defendant's letters of introduction.

The defendant contended that they only dealt with approved and listed health

service providers. Further, that the plaintiffs' optical shop was neither an approved or listed service provider. It was the evidence of the defendant that whenever the listed service provider was unable to provide services, the letters of introduction were supposed to be returned for re - issue to another service provider. The defendant further contended that it was not aware of the referrals made by the plaintiff. It was also argued that the cancellations and endorsement on their letters of introduction were forgeries.

This case is a sad example of poor administration. To begin with there is no dispute that the letters of introduction in issue were issued by the defendant to its employees for them to seek medical attention. Neither is it disputed that the employee accessed the medical attention required. There is no dispute that the defendant had a list of approved service providers of which the plaintiff was not. However, it is admitted that the defendant issued letters of introduction to the plaintiff.

I have considered the argument that letters of introduction were supposed to be returned for re issue to other service providers. In my view, this was mere opinion of defence witness two, Mr Gonhi. He did say in his evidence, that the referral system was determined by the service provider. It is clear that there was no fixed system or internal control system in place in respect of referrals. I am fortified in this view by the fact that the defendant paid the plaintiff for his invoices on Exhibits PB2, PB3, PB4 and PB5. There was no evidence that these payments were in respect of letters of introduction addressed to the plaintiff's shop directly or indirectly. Further, it is clear on record that the defendant had no problem with paying the plaintiff until they received the so called letter about forgery from the third party. This is a clear indication that the cancellations and endorsement were never an issue. Lastly, as I had pointed out earlier, exhibit PB27 was a letter of introduction addressed to Dr Bhojan. It was cancelled and endorsed to the plaintiff. The defendants have admitted this document without any reservation or comment on the cancellation and endorsement.

With this in mind I do not find merit in the defendants defence that the plaintiff breached their regulations on referrals so as to disentitle him from payment. In the same vein I do not find that they can claim that the plaintiff forged the referral letters. In any case, the claim for forgery came from the third party who did not cause an appearance. No evidence was called in

respect of any such forgery. It is a mere assertion passed on from a third party. It may be reprehensible that the plaintiff, as an employee of the third party, referred the clients to his own business but there is nothing to suggest that he did anything criminal.

It is my judgment therefore, that the defendant is liable to pay the plaintiff for the services rendered with costs.

The file is remitted to the Registrar for assessment of the monies in issue if the parties fail determine the amounts due.

Pronounced in Open Court this 25th day of April, 2008 at Blantyre.

E. B. Twea
JUDGE