

# **IN THE HIGH COURT OF MALAWI**

## **PRINCIPAL REGISTRY**

**Civil Cause No. 3284 of 2006**

**BETWEEN**

**JOHN KAIDOKÉ.....PLAINTIFF**

**AND**

**DEMETER AGRICULTURE LIMITED.....DEFENDANT**

**Coram: Manda, J**

**Kalua for the plaintiff**

**Defendants Absent**

**Mrs Nthunzi Court Clerk**

## **JUDGMENT**

This matter turns on the facts. The question being whose side of the story should the court believe? The case involves an allegation that the plaintiff was unlawfully detained by the defendant company's security officer for some hours when he went to the company to serve court process.

The court process that the plaintiff sought to serve on the defendant company was apparently an injunction which was meant to stop the company from evicting the plaintiff and others from a contested piece of land. From the facts presented the plaintiff and his fellow villagers had been convicted in the magistrate court sitting at Balaka, presumably for trespass and

were ordered to vacate the land within 60 days. Thinking aloud, I did wonder how the magistrate could have entered a conviction for trespass on land whose title is contested. Indeed a question can be raised as to whether the court assumed jurisdiction over a matter which it had no mandate to hear in the first place. However this is not a matter for this judgement but perhaps it is something that needs to be considered. This is in view of the fact that one cannot be found guilty of trespass or encroachment on land which is legally theirs.

Suffice it to say that there seems to have been some acrimony between the plaintiff and the defendant company as evidenced by the fact that the plaintiff and his fellow villagers refused to obey the magistrate's order to vacate the land within 60 days. Further to that DW1 admitted in his evidence that he had been arresting the plaintiff on several occasions for encroachment and that their relationship was a sour one. I should also note that DW2 did describe the plaintiff as being a leader of the most difficult group encroachers on their farm. DW2 did also state that their relationship with the plaintiff was not rosy and that they were not happy. It is in these circumstances that the plaintiff went to the defendant company to serve court process.

The facts surrounding the day that the plaintiff went to the defendant company's premises are also contested with the plaintiff stating that he went there twice, once with two of his friends and then alone on the day he was detained. This apparently was to serve an ex parte injunction order, initially, and then the inter parties injunction order was served on the second occasion. From the plaintiff's evidence it was on the second occasion that he was detained by the Chief Security Officer, Mr Gandazeya (DW1) for about four hours.

From the defendant's perspective they informed the court that the only occasion, on which the plaintiff went to serve them with an injunction, he was in the company of two of his friends, Mtika and Malikita. It was DW1's evidence that when the three persons got to his office they asked to meet the manager of the farm DW2,

who at the time had left for the farms. DW1 told the court that he offered the plaintiff and his friends a bench to sit on whilst they waited for DW2. According to DW1 the plaintiff and company only waited for one hour before the farm manager arrived and that when he did they proceeded to give him an envelope which contained the injunction. Apparently both the manager and DW1 were surprised when they saw the injunction since according to them the matter had been resolved in the magistrate's court with the plaintiff and his friends being convicted for trespass. Further the two were also surprised by the fact that it was the plaintiff and not a court messenger who was serving them with the court process. In view of this, the manager requested for the phone number of the plaintiff's lawyer to get confirmation that the plaintiff had been given the order of injunction to serve on the defendant company, which he did and that the plaintiff and his friends left at that point.

At this point of course I did ask myself as to why would the plaintiff lie that he was unlawfully detained by the Security Officer for a few hours? I ask this because, being represented by counsel, the plaintiff is assumed to be aware of the fact that the damages that one can recover for being unlawfully detained for four hours or thereabouts, are not that substantial so as to cripple the operations of the defendant company. After all, the main concern from the plaintiff's perspective is the issue of land and I do not honestly think that the plaintiff will just make up an allegation of false imprisonment against the defendant company just to make them look bad or for any other ulterior motive for that matter. Indeed I do not think that the plaintiff possesses such capacity to come up with such an elaborate plan to hurt the image or indeed the operations of the defendant company.

On the other hand, the defendants did admit to have been arresting the plaintiff and his colleagues on several occasions prior to the allegations of false imprisonment. Indeed from all indications the defendants viewed the plaintiff and his friends as being difficult encroachers on the land that was legally theirs, hence an annoyance. This apparently was also exacerbated by

the fact that the plaintiff and his friends were, according to the defendant, ignoring the decision of the Balaka First Grade magistrate court to vacate their land. Indeed it is the finding of this court that the defendant's must have been greatly aggrieved by the fact that the plaintiff refused to vacate the land following the decision of the Balaka First Grade Magistrate Court.

The fact that the defendants were greatly aggrieved would, in my view, lead them to detain or arrest the plaintiff when he went to serve the injunction on them on his own. This would be on the second occasion when the plaintiff was alone and therefore no one to witness what had happened. Whether the plaintiff was indeed detained or not is the subject matter of this judgement. Indeed while I am inclined to find that there is a suggestion that the plaintiff was unlawfully detained by DW1, I did also note that the plaintiff did state when cross-examined that at the time that he went to the defendant's premises and was in DW1's office, the door was open and he told the court that he would have gone out had he wanted. Apart from this, the plaintiff also talked of having a discussion with Mr. Chris and then handing over the injunction to him. Further there is also the assertion that the plaintiff had to wait for Mr. Chris to come to the office for about two hours so that he could serve him with the injunction personally. Indeed it would seem that the plaintiff's false imprisonment occurred during the time that the plaintiff was **waiting** [emphasis mine] for Mr. Chris. Thus in as far as we are talking of 'waiting' I do not think that we can assume that the same constituted false imprisonment, especially if the plaintiff admitted (albeit in cross-examination) he felt that he could have left the office at any time.

From the foregoing, it was thus the view of this case that the evidence was inconclusive in as far as the claim of false imprisonment was concerned. I thus proceed to dismiss the claim.

Regarding the issue of costs, this court makes the observation that the same are supposed to be within the discretion of the court. In looking at this case, I was of the view that this is not a

matter that should have gone for a trial. If anything this matter should have been resolved through mediation. I am of this view because in as far as cases of false imprisonment go; this might be considered to be a minor infraction since the alleged time the plaintiff was supposedly detained was only two to four hours. Surely matters like these should not be allowed to take up valuable trial time for more deserving matters. In view of this I proceed to order that each party should bear its own costs.

Made in Open Court this.....day of.....2010

K.T. MANDA

**JUDGE**