

Manda J.

IN THE HIGH COURT OF MALAWI, BLANTYRE

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 610 OF 1985

BETWEEN:

FLEXAN GIDEON BANYIRA ..... PLAINTIFF

- and -

MANICA FREIGHT SERVICES (MALAWI) LIMITED ..... DEFENDANT

Coram: UNYOLO, J.

Saidi, Counsel for the Plaintiff  
Wills, Counsel for the Defendant  
Manda, Court Reporter  
Mkumbira, Official Interpreter

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J U D G M E N T

By his amended statement of claim the plaintiff in this action claims damages from the defendant for false imprisonment. He pleads that one of the employees of the defendant wrongfully accused him in the presence of a Police Officer of having stolen goods belonging to a client of the defendant. He pleads further that consequent upon such accusation the defendant took him in its car to the Blantyre Police Station where he was detained for a period of eleven days. He avers that by reason of such detention he was deprived of his liberty and that he suffered shock, loss and damage.

In its defence, the defendant denies that any of its servants acting in the course of his employment made the accusation described by the plaintiff or at all. The defendant admits that the plaintiff was driven to the Blantyre Police Station in its car but states that the plaintiff requested the defendant to drive him there or alternatively that he consented to be so driven. The defendant denies having procured the police to arrest or detain the plaintiff and denies that the plaintiff is entitled to any damages.



I now turn to the evidence. The plaintiff testified that he was at all material times employed by the defendant as a driver. His main duties were to take goods from the defendant's warehouses and deliver them to the defendant's clients in Town. The plaintiff told the court that when he returned from his deliveries errand on the 22nd October, 1984, just before noon he learnt that certain porters had been taken into police custody in connection with an alleged theft of brassieres from the defendant's warehouse and that he too was wanted. He said that he was taken to the warehouse where he found the defendant's Invoice Officer, Kaliati, and a police detective. It was the plaintiff's evidence that when he got there he heard Kaliati tell the policeman: "This is the driver" and that the said Kaliati told him to report back at 1.30 p.m. He told the court that when he did report to Kaliati as requested the said Kaliati instructed another driver, Kambalame, to take him to the Blantyre Police Station and that he was thereafter driven to the Police Station where he was detained for eleven days. He said the police told him that he had stolen three pieces of suiting material. He said he denied the allegation. The plaintiff testified that upon his release he went back to his job and that he worked on the 3rd November only to be suspended the next day. He was later dismissed. It appears that the police failed to find any evidence upon which the plaintiff could be charged let alone prosecuted, hence his release on the 2nd November, 1984. The plaintiff testified that indeed it just was not possible for him to steal the suiting material or any item for that matter since all goods to be delivered to clients were counted by several members of staff before they were taken away from the warehouse. He said that it was unreasonable to even suspect him in the matter.

PW2 was a Mr. Chidothe. He was at all material times employed by the defendant as a Bonded Warehouse Clerk. He now works for Trans Maritime. This witness was also taken into police custody in connection with the goods which missed in this case but like the plaintiff, he too was later released. He testified that the plaintiff could not have stolen the suiting material which missed from the bonded warehouse in that the plaintiff did not have access into that warehouse. The witness conceded that a client from the Chinese shop in Zomba who had come to collect his consignment complained right there that having opened the consignment it was discovered that the contents were short compared to the quantity indicated on the packing lists and that some of the cartons were actually found to have been tampered with. It was the witness' evidence however that the plaintiff had had nothing to do with the cartons in question.

Such was the evidence called on the part of the plaintiff. I now turn to the defendant's evidence. Perhaps I should point out that the defendant originally intended to call two witnesses. However Mr. Wills dropped the second witness, quite properly in my view, upon discovering that the proposed witness had been sitting in court during the time the other witness, DW1, was testifying.



The said DW1 was a Mr. Kaliati who, as I have earlier indicated, was an Invoice Officer employed by the defendant. He still works for the defendant to this day. This witness testified that there were two separate reports of goods having missed at Manica. He said that the first report was made on the 22nd October, 1984, of a quantity of brassieres belonging to Uniform Supplies having missed from the temporary warehouse. He was asked to investigate the matter. He went to several markets within the City to check and as good luck had it, he came across a hawker at Ndirance Market selling brassieres similar to those that had missed at Manica. He reported this to the police at Blantyre Police Station and the hawker was arrested. Upon being questioned, the hawker disclosed that he had bought the brassieres from someone working for the defendant. He, the hawker, was brought to Manica and there he identified one Chipunga as the person who sold him the goods. The said Chipunga confessed and implicated seven other porters and all these eight persons were arrested and taken to Blantyre Police Station. It was DW1's evidence that the plaintiff was out on deliveries when all this happened. DW1 testified further that he received yet another report the next day that some pieces of suiting material were found missing from a consignment in the bonded warehouse. Having confirmed the report he again informed the police. A detective came who after visiting the place invited the witness and PW2 to the Police Station for statements. It was the witness' evidence that at the Police Station he gave a written statement simply narrating the events and that he did not say anything about the plaintiff in the statement in question. Thereafter he returned to Manica leaving PW2 at the Police Station.

Finally, DW1 testified that the next day he received a telephone call from the police asking him whether there was at Manica an employee by the name of Banyira. That being the plaintiff's name, the witness answered in the affirmative when he was told that the plaintiff was wanted by the police as a result of the information they had received from the other employees detained there. It was DW1's evidence that when the plaintiff returned from where he had gone for deliveries, he passed the information to him saying the plaintiff was wanted by the police. He said that the plaintiff then asked how he would go to the Police Station and that in reply he told him he could get a lift in the company's motor vehicle which routinely went to the defendant's head office at 1.30 p.m. to collect mail. He said that the plaintiff agreed to join that car which he did. The witness emphasized that he did not accuse the plaintiff of stealing any of the missing items or in anyway force the plaintiff to go to the Police Station. He said that indeed he was not present the time the plaintiff joined the car and left for the Police Station.

Having reviewed the evidence I must now determine whether the allegation of false imprisonment has been made out. It is clear from the facts that it is not disputed the plaintiff was taken into custody and detained at Blantyre Police Station for several days. It is further not disputed, I think, that the plaintiff was so detained and deprived of his liberty on account of the goods which missed from the defendant's premises. However such facts cannot, without more, give rise to an action for false imprisonment by the plaintiff against the defendant. The law on



this subject was correctly stated by Skinner, C.J. (as he then was) in C.S. Chintendere v. Burroughs Limited, Civil Cause No. 530 of 1981 (unreported) in the following passage at page 2:

"If the defendant, acting through its servants or agents, ordered the police to arrest the plaintiff, it is imprisonment by the defendant as well as by the police and is a ground for an action of trespass against the defendant; but if the defendant merely stated the facts to the police, who on their own responsibility took the plaintiff into custody, this is no imprisonment or trespass by the defendant. It comes down to this : if the defendant's servants made a charge on which it became the duty of the police to act, then it is liable; but it is not liable if they gave information and the police acted according to their own judgment."

Banda, J. summarised the law on this subject by saying that the basis of an action for false imprisonment is the laying of a charge against the plaintiff. See H.R. Kamwana v. Blantyre & East African Limited, Civil Cause No. 121 of 1985 (unreported). Of course it must also be borne in mind that in such an action, a reasonable and honest belief that the circumstances justified the laying of the charge or the arrest is a defence. I would refer to Agricultural Development and Marketing Corporation v. H.D. Stambuli, MSCA Civil Cause No. 6 of 1984 (unreported) for this proposition. And finally, it is important to bear in mind that the onus lies on the plaintiff to prove the allegations he has made in this action albeit on the preponderance of probability.

As indicated earlier, the first allegation made by the plaintiff in his amended statement of claim is that DW1, an employee of the defendant, accused him of having stolen goods belonging to a client of the defendant. It is pleaded that the accusation was made "in the presence of a Criminal Investigation Officer one Mr. Chidule." In his evidence on this aspect, the plaintiff testified that when he returned to Manica after doing deliveries on the material day he learnt that some of his workmates had been arrested for theft. He said that he later saw DW1 pointing him out to the police officer and saying "This is the driver." DW1 however challenged this piece of evidence. As I have indicated, the witness strenuously denied having accused the plaintiff of stealing any of the goods or having for that matter suspected him. It was DW1's evidence that in point of fact the plaintiff was out on deliveries the time the police officer came to Manica and took the eight porters. DW1 emerged firm and unshaken in his evidence. Surely, if DW1 had implicated the plaintiff in connection with the theft it is inconceivable that the police officer would have left him behind and take the porters only.



It is also to be observed that the police officer was not called yet he was a very material witness to back the plaintiff up in his allegation on this aspect. And it is also to be noted that no explanation was offered by the plaintiff as to why he did not have the witness called. On these facts I am disposed to think that the plaintiff feared the police officer would not have testified in his favour if called. That unhappily must adversely affect the weight the court would give to the evidence of the plaintiff. I will come back to this in a few moments.

There was then the allegation that the plaintiff was taken to the Police Station by the defendant in its car and that there he was locked up for eleven days. I have already recounted DW1's evidence on this point. The witness was unshaken in his evidence that the police had telephoned him saying the plaintiff was wanted by them at the Police Station and that what he did was simply a question of passing the message to the plaintiff. Indeed it is to be observed that the plaintiff conceded in cross-examination that he went to the Police Station because the police wanted him. It was also the unshaken evidence of DW1 that while it is true the plaintiff went to the Police Station in the defendant's car, the said car was already scheduled to go into Town to collect mail from the defendant's head office. The witness denied the car was sent specifically to take the plaintiff to the Police Station.

Further, it seems to me that the plaintiff's case is shot through with contradictions and inconsistencies. For example, the plaintiff's case upon the pleadings was that he was accused of having stolen the goods from a motor vehicle. However in his evidence the plaintiff's case was that it was alleged he stole the items from the bonded warehouse. Further, it was the plaintiff's case upon the pleadings that he was locked up on the 22nd October, 1984. But in exhibit D3 it was stated that he was locked up on the 25th October, 1984. He also alleged upon the pleadings that he was arrested in public but in cross-examination he conceded that this was not so. Indeed the plaintiff was not an impressive witness, with respect.

It is also significant that the defendant took the plaintiff back on his job after he was released from custody. To my mind, the defendant would not have allowed the plaintiff to resume his work if it had earlier accused him of stealing as the plaintiff would have the court believe.

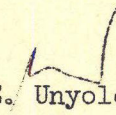
What in my judgment emerges from the evidence, considered as a whole, is that in the course of their enquiries following the arrest of the eight porters the police found it necessary to interview the plaintiff and consequently sent for him. I find that



in this the police acted on their own judgment and that neither DW1 nor the defendant played any part in the matter. I regret I am unable to find any evidence upon which it could be said that the defendant or DW1 laid a charge against the plaintiff.

In the result, the plaintiff's action must fail and it is dismissed with costs.

PRONOUNCED in open Court this 21st day of July, 1986,  
at Blantyre.

  
L.E. Unyolo  
JUDGE