

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 121 OF 1985

BETWEEN: H.R. KAMWANA PLAINTIFF

- and -

BLANTYRE & EAST AFRICA LTD. DEFENDANT

Coram: BANDA, J.
Nakanga of counsel for the plaintiff
Makhalira of counsel for the defendant
Longwe, Court Reporter
Chalunda Mvula, Official Interpreter

JUDGMENT

The plaintiff in this action claims damages from the defendants for wrongful dismissal and false imprisonment. There is also a claim for the loss of 200 chickens. The claim for wrongful dismissal was admitted by the defendants through Mr. Makhalira and there was, therefore, judgment by consent in the sum of K566.63, plus K75.00 costs. The only issues that went for trial were those arising from a claim for the loss of chickens and false imprisonment.

The plaintiff was working for the defendants as a clerk and typist from June 1982 until August 1984. He has been described as copy typist, head clerk and receptionist. It seems to me that it is not very material what description he carried for the job that he performed at the defendant's Estate.

It is the plaintiff's contention that on or about 31st August 1984, the defendants, through its servants or agents, wrongfully directed and procured the police to arrest and take him into custody on a charge of theft. It is the plaintiff's submission that the police after receiving such direction from the defendants arrested the plaintiff and took him into custody to Muloza Police Station where the plaintiff was detained until the 5th of September 1984. The plaintiff, among other duties, was responsible for compiling claims made by people who had supplied bricks or sand to the Estate. It would appear that one of such suppliers claimed that he had not been paid for a load of bricks which he had supplied to the Estate. The supplier's name is Mr. Biliati. The plaintiff's version of the story was that Mr. Biliati had received the money for the bricks he had supplied to the Estate and that such receipt had been made through Mr. Biliati's son. The evidence was that when Mr. Biliati made such a claim the plaintiff was called into the manager's office where he stated that the money was, in fact, received by Mr. Biliati's son.

It was after Mr. Biliati had denied his son receiving the money that the manager of the Estate decided to call the police to help investigate the matter. According to the evidence of Mr. Kapo, the accountant at the Estate, was that when the decision to call the police to investigate was made, the plaintiff was present and he made no objection to such a suggestion. It was Mr. Kapo's evidence that it was only after the manager saw that there was a conflict between what the plaintiff and Mr. Biliati said that he felt the police should be called in to resolve the conflict. It was Mr. Kapo's evidence that it was he who was given instruction to phone Muloza Police Station to ask the police to come to the Estate and that it was he who sent transport to collect the police officer. Mr. Kapo stated that when the police officer, C.I.D. Ndafakale, arrived at the Estate he asked Mr. Kamwana, the plaintiff, to explain how the payment was made and it was the evidence of the witness that the plaintiff said that it was Mr. Biliati's son who received the money, but Mr. Biliati repeated his denial that his son had received the money. It was Mr. Kapo's further evidence that when the police officer saw that the two explanations were not clear he decided to take the plaintiff and Mr. Biliati to the police. He stated that it was himself, the plaintiff, driver - Egesi, and Mr. Chifunga who went to Muloza Police Station. He further stated that Mr. Biliati's son also went to the police. Mr. Kapo stated that when they arrived at the police the plaintiff was again asked to explain and that his explanation was the same, namely, that the money was received by Mr. Biliati's son. He stated that when Mr. Biliati's son was being asked at the police, he, the witness, the plaintiff, Mr. Biliati, and Egesi were present. He further stated that Mr. Biliati's son denied receiving any money.

It was further the evidence of Mr. Kapo that it was in the afternoon when they went to the police and that he left the plaintiff behind together with Mr. Egesi, Mr. Biliati and his son. The witness stated that it was the manager, Mr. Ridpath, who said that the police should be called in to further investigate the matter. The witness did not agree with the suggestion that the manager, Mr. Ridpath, told the police to arrest Mr. Egesi and the plaintiff. He further stated that it was false for the plaintiff to suggest that he, the plaintiff, Mr. Biliati and Mr. Egesi, were locked up before they were asked any questions at the police; he said he heard the police ask the plaintiff to return the sum of K90. It was also the evidence of Mr. Kapo that they went to the police because the supplier complained that he did not receive his money. He stated that it was the police officer who said that "we should go to the police for further investigations".

Mr. Egesi also gave evidence. Mr. Egesi was the driver who apparently took delivery of the bricks from Mr. Biliati to the Estate. He stated that he accompanied the plaintiff, police officer Ndafakale and Mr. Biliati, in going to the police station. It was his evidence that at the police, Ndafakale asked them one by one and he was asked what he knew about Mr. Biliati's money and that he told him that he knew nothing about the money because he had left the book regarding the bricks which he had delivered to the Estate with the plaintiff. The witness stated that the police officer was asking them separately because the police officer was investigating the matter. He said he slept at the police station until about 4 o'clock the following day when he recorded a statement and was later released. It was his evidence that he and Kamwana slept at the police. He denied that Mr. Ridpath, the manager, told the police that he and the plaintiff should be arrested.


I must now consider whether the facts on record and those which I have reviewed in this case constitute false imprisonment. There can be no doubt on the evidence before me that the plaintiff was taken to the police station and was detained there for a number of days. There can be no argument that detention at the police station was a total restraint of the plaintiff's liberty; but what I have to decide is whether that restraint is actionable against the defendants. If the defendants, acting through their servants or agents, ordered the police it would be a ground for an action of trespass against the defendants; but if the defendants in doing what they did was merely to state the facts to the police who, on their own initiative, took the plaintiff in custody this would be no imprisonment or trespass against the plaintiff. Put it differently, if the defendants' servants made a charge on which it became the duty of the police to act then the defendants would be liable but they would not be liable if all they did was to give information to the police who acted on their own judgment. The important issue which I must resolve in this case is whether what the defendants did was merely stating the facts to the police or they made a charge against the plaintiff. There can be no doubt, and this is admitted by both parties, that there was an allegation that a sum of K90 which was due to be paid to Mr. Biliati, a supplier of bricks, had been stolen. The plaintiff contended that Mr. Ridpath, the manager, told the police to arrest him and Mr. Egesi. However, that contention is in sharp contrast to the evidence which has been adduced by the defendants on the same issue.

I have carefully considered those versions of the story and I took the view that the plaintiff was not an impressive witness. He was evasive in his answers to some of the questions and generally his story did not carry a ring of truth about it. On the other hand, I formed a distinct impression that Kape and Egesi were telling the truth and their stories carried a high degree of credibility. I am satisfied that what the defendants said happened is consistent with the conduct of the police officer. If, indeed, it is true, as the plaintiff alleges, that Mr. Ridpath ordered the police to arrest him and Egesi, then surely the only people who should have gone to the police should have been the plaintiff and Egesi alone, but the evidence was that in addition to Egesi and the plaintiff, Mr. Biliati and his son were also called to the police. That clearly shows in my judgment that the police officer was still investigating the matter and had not decided who should be charged with any offence. In my judgment, the fact that a defendant suspects a plaintiff of any criminal offence does not amount to laying a charge against him. The basis of an action for false imprisonment is the laying of a charge against the plaintiff. I am satisfied therefore that on the basis of the evidence in this case the defendants did not charge the plaintiff with any offence. What they did was merely to inform the police that there was a matter involving a sum of K90 which should have been paid to the supplier of bricks and had not been. For reasons I have given above, I am satisfied that the claim for false imprisonment cannot succeed and must fail with costs.

In so far as the claim for the loss of 200 chickens is concerned the only evidence I heard on this issue was that the plaintiff was keeping chickens for sale. There is no evidence to show how the 200 chickens died and how that was connected to the imprisonment of the plaintiff.

However, I have already found that the claim for false imprisonment cannot succeed. In view of this finding, it seems to me that the claim for the loss of chickens cannot succeed against the plaintiff. The whole of this action, apart from the claim for wrongful dismissal, must fail and it is dismissed with costs to the defendants.

Pronounced in open court this 3rd day of June, 1986 at Blantyre.

A handwritten signature in dark ink, appearing to be 'R. A. Banda', written in a cursive style.

R. A. Banda
JUDGE