

C.J.

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 630 OF 1986

BETWEEN:

A.M.I. PRESS (MALAWI) LIMITED PLAINTIFF

- and -

D.E.E.N. SAUKILA DEFENDANT

CORAM: BANDA, J.

Mbendera, Counsel for the Plaintiff
Nakanga, Counsel for the Defendant
Manda, Court Reporter
Chigaru, Official Interpreter

J U D G M E N T

The plaintiffs' claim against the defendant is for a sum of K7,333.00 being the alleged damages for breach of contract in terms of conditions of employment and the training bond executed by the defendant in September, 1984. The plaintiff is a company engaged, inter alia, in the business of clearing and forwarding agents in Malawi and the defendant was at the material time their employee. It is not disputed that the defendant was taken on by the plaintiff company as a management trainee. The initial duties of the defendant required that he be attached to the different sections of the company.

It is the plaintiffs' case that on or about September, 1984, the defendant was sent for training by the plaintiffs to the United Kingdom to pursue a course leading to the Chartered Institute of Transport. Under the terms of conditions of employment of the plaintiffs company the defendant was required to enter into a training bond and this the defendant did on 24th September, 1984. Under that bond and in consideration of all expenditure incurred by the plaintiffs for the training the defendant bound himself to continue working for the plaintiffs for a period of three years upon his return from his training in the United Kingdom, and it was one of the conditions of the training bond that in the event of the defendant leaving the plaintiffs' employment within the period of three years he was to pay to the plaintiffs all the expenses incurred, including allowances, airfares, tuition fees, travel costs, etc., by the plaintiffs in connection with the defendant's studies.

It is the plaintiffs' case that the defendant completed his course of study and returned to Malawi in or about May, 1985. It is agreed by both parties that the defendant left the plaintiffs' employment one year after his return from the United Kingdom by terminating his employment with the plaintiffs on 30th day of June, 1986. It is upon this alleged breach of the terms of the training bond that the plaintiffs' case

against the defendant is founded. The defendant denies that he is liable to pay to the plaintiffs the sum claimed or any part thereof.

There can be no doubt on the evidence before me that the defendant admitted liability to pay the sum of K7,333 and his only contention for not paying it was that the plaintiffs owed him some money. Consequently the defendant has counterclaimed against the plaintiffs for the sum of K7,518.02 being alleged salary which the defendant contends the plaintiffs should have paid to him during the eight months of stay in the United Kingdom. There is also a claim of June salary 1986 in the sum of K318, pension contribution in the sum of K763.98 and leave pay in the sum of K338, giving a total counterclaim of K8,938.00.

The plaintiffs have stated in their pleadings and on the documents before this Court that they are prepared to give credit of one third of their claim because the defendant had worked for them for one year after his return from the United Kingdom. In view of the clear admission of liability by the defendant to pay the sum of K7,333 claimed by the plaintiff, it is now necessary to look into the basis of the counterclaim by the defendant. It is clear on the evidence before me that the plaintiffs do not dispute the defendant's claim in respect of the June salary, the pension contribution and leave pay. The only amount which is contested in the counterclaim is the sum of K7,518.02. It has been contended by the defendant that he went to the United Kingdom to work at a salary of £4,000 per annum. He contended that he was only required to attend lessons at the North London Polytechnic one day a week and that the remaining four days he worked for the plaintiffs' associates company called Transtec International Freight Services Ltd. He referred to Exh. 2 which is the work permit issued by the Department of Employment in the United Kingdom. He contended that the work permit shows that his remuneration was £4,000 per annum. The defendant accepts that his Malawi salary that the plaintiffs company sent was paid over to him while in the United Kingdom. He stated, however, that he had never requested his Malawi salary to be sent to him in the United Kingdom. It is important to note, however, that there is no evidence to show that the defendant at any time requested that his Malawi salary should not be paid to him in the United Kingdom. It should be remembered that the defendant became aware that his salary would be sent to him in the United Kingdom before he left Malawi albeit on the day of his departure.

The defendant has referred to some letters, written by the plaintiffs company, in which the defendant has contended shows that he was going to the United Kingdom to work and not to study. The defendant has also referred to an article which appeared in the Daily Times of 26th September, 1984. His contention was that that article shows that he was going to the United Kingdom to work. It was interesting to note that when the article was being put to the defendant it was only the last paragraph of that article that was being referred to. It is clear, in my judgment, that when one looks at the whole of the article concerning the defendant's departure to the United Kingdom, the conclusion one reaches cannot be that the defendant was going to the United Kingdom to work. Indeed the first paragraph of the article makes it very clear that

the defendant and his colleague were management trainees for the plaintiffs' company and that they were going to the United Kingdom for training. Similarly, if one looks at the letters on which the defendant relies in contending he had gone to the United Kingdom for work, and if all the letters are read in their totality and not one sentence or one paragraph in isolation from the rest of the letters, it is clear, in my judgment, that the defendant and his colleague were being sent to the United Kingdom for training and that the attachment to Transtec was part of their training.

The £4,000 remuneration indicated on the work permit was explained as a requirement which must be completed on the permit to show the remuneration. It was stated by the first witness for the plaintiffs that the £4,000 was the total of the defendant's Malawi salary together with the allowances which Transtec paid to him while in the United Kingdom.

It is also interesting to note that Exh. 1, which is also a Department of Employment brochure and which sets out the conditions for overseas workers in the United Kingdom who go there under a scheme of training, and working experience makes it quite clear in Clause 9 of the Conditions that a permit does not constitute a contract of employment between an employer and an overseas national. Indeed the permit itself at the back of it under the conditions which govern the issue of payment and in particular under Clause 12(c), makes it again very clear that the permit does not constitute a contract of employment between the permit holder and the employer. Indeed if there was any contract of employment that contract would have been between the defendant and Transtec International Freight Services Ltd. and the plaintiffs would be strangers to that contract. It is also interesting to note that the permit makes it clear that the defendant was in fact a trainee and not a fully fledged worker for the permit shows that the occupation of the defendant was one of Trainee Freight Forwarder.

I am satisfied, therefore, and I find that there was no contract of employment between the defendant and Transtec and still less between the defendant and the plaintiffs. I am further satisfied and I find that there is no basis for the claim of salary of £333.33 which converted into Malawi Kwacha is K7,518.02.

It was contended by Mr. Nakanga for the defendant that the plaintiffs had not proved that they had paid the other heads of claim on behalf of the defendant to Transtec. It seems to me that that contention, with great respect, runs in the face of clear admissions by the defendant himself. The defendant admitted and this admission also appears in his own defence that he was paid a sum of £140 and he admitted that the £140 was paid for the whole of eight months he was in the United Kingdom. He has agreed that only £69 was spent on his personal effects and the plaintiffs are prepared to accept that. The defendant admitted certain sums specified in Exh. 15, which was on the basis of 50%. Mr. Nakanga did suggest during his submission that the plaintiffs had not proved that they had paid £1,154. The issue, in my judgment, and Mr. Mbendera was right when he submitted that the issue is whether the plaintiffs are liable to pay that amount of money. It is clear, in my view, that when the defendant was taken through the expenses indicated on Exhibits 13, 14 and 15 he admitted that those expenses were paid for him directly by

Transtec. These expenses include hotel accommodation, fees and tuition fees paid to North London Polytechnic and transport fares from December 1984 and if all expenses are added the total comes to K7,434.31. But the claim by the plaintiffs is only for K7,333 and it does not include the £200 which was paid to the defendant before his departure to the United Kingdom.

I am satisfied that the plaintiffs have on the balance of probabilities proved their claim against the defendant for the sum of K7,333. They are prepared to reduce that claim by one third and that would reduce the amount to K4,888.67 and if credit is given for the amounts payable to the defendant in respect of his June salary, pension and leave pay amounting to a total of K1,419.89 that would leave a sum of K3,468.69. It is clear from my findings that a substantial part of the defendant's counterclaim has failed and I would not think that he should be entitled to any costs on that part of his claim which the plaintiffs have consistently admitted. There will, therefore, be judgment for the plaintiff in the sum of K3,468.69 and costs of this action.

Pronounced in open Court this 16th day of June, 1988,
at Blantyre.



R.A. Banda
JUDGE