

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.519 OF 1987



BETWEEN:

BLANTYRE WATER BOARD PLAINTIFF

- and -

MANOBEC LIMITED DEFENDANT

Coram: The Hon. Mr. Justice Unyolo
 Nakanga, Counsel for the Plaintiff
 P.T. Banda, Counsel for the Defendant
 Maore, Court Reporter
 Namvenya, Official Interpreter

JUDGMENT

By its writ of summons and statement of claim served therewith the plaintiff claims from the defendant the sum of K1,260 and damages for trespass to goods. It is pleaded that the defendant wrongfully drew water from the plaintiff's water mains and that in consequence the plaintiff lost the value of the said water namely the said sum of K1,260 and suffered further loss and damage. By its defence the defendant denies the allegations herein and puts the plaintiff to strict proof thereof.

The plaintiff is a statutory corporation and engages in the supply and distribution of water to the public in the City of Blantyre and the surrounding area. The defendant on the other hand is a building construction company. The facts show that before the supply of water is connected by the plaintiff an application form has to be completed by the owner or occupier of the premises and a fee paid. Thereupon the plaintiff arranges to connect the supply of water from its mains to the premises concerned and a meter is installed at that point. It is the said meter which indicates how much water the occupier has consumed and the plaintiff then sends out monthly bills to such occupier based on the volume of water so consumed, as per the meter reading, and the applicable tariff.

Reverting to the present case it is common case that on 2nd April, 1986 the defendant applied for water connection at a plot in Limbe where the defendant was constructing a building for Hardware and General Dealers. The defendant duly completed the relevant form and paid the requisite deposit. According to the plaintiff's witnesses it was only on 13th June, 1986, when a

meter was installed and water connected to the said premises. PW3, a plumber in the employ of the plaintiff Board, testified that it was actually him who installed the meter in question. It was his evidence that thereafter he communicated the meter number and its reading as at that date to the plaintiff Board's accounts department so that the information should be fed into the computer. What then remained to be done upon installation of the meter was for one or other of the plaintiff's meter-readers to visit the site and note down the meter reading and the defendant would then be billed accordingly, month in and month out. It is, however, the plaintiff's case that due to an oversight the premises were not visited and nobody ever went to read the said meter for almost one year. Interestingly, the plaintiff sent out monthly bills to the defendant during all this period. It is said that those bills reflected only the meter charge at a standard rate of K2.10 per mensem. It is the plaintiff's case that it was only in March, 1987, when the anomaly herein was discovered. That was when DW4, the Managing Director of the defendant company, telephoned asking the plaintiff to instal the meter as a matter of urgency. Immediately the plaintiff sent one of its employees, PW4 to the site to investigate the matter. It was PW4's evidence that he did not find the meter there. A dispute then flared up between the parties in this case. The plaintiff on the one hand claimed that a meter had been installed at the site in 1986 and alleged that the defendant had removed the same and proceeded fraudulently to draw water from the mains, using a straight pipe connection, without the plaintiff's knowledge or consent. The defendant on the other hand vehemently denied these allegations and denied having seen the alleged meter at the site. Several meetings were held but the parties failed to resolve the matter. In the end the plaintiff caused the present proceedings to be instituted. It is the plaintiff's case that the sum of K1,260 claimed is its estimate of the value of water the defendant must have used to construct the building in this case.

I pause here to turn to the defendant's case. DW4 told the Court that the defendant company began constructing the Hardware & General Dealers building in March, 1986. This was one month before the defendant company applied for water connection and some three months before the plaintiff allegedly installed the meter at the site. It was this witness' evidence that all this time the workers at the site were using water drawn from a tap situated on the defendant's own premises a few yards away. He said that there was, therefore, no pressing need on the part of the defendant for water and that the defendant applied for water connection simply because eventually water would have to be connected to the newly constructed building before the same was handed over to the owners. This witness testified that it was



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only after the construction work was completed when he discovered that no meter had been installed. He said that this was when it was intended to connect the pipes and check whether water was coming through the taps within the building. He immediately telephoned the Board and informed PW1 about this state of affairs. This witness told the Court that the plaintiff sent a plumber who, having gone around at the site, pointed at one of the meters on the adjacent plot as the reportedly missing meter and advised the defendant to connect the pipes. After the said plumber was gone, the defendant's men proceeded to connect the pipes only to discover that this was not the meter as the same was seen to be turning even when all the taps within the newly built building were turned off. The witness said that he ordered his men to disconnect the pipes and the plaintiff was again notified of this development. This witness agreed that the defendant paid the monthly bills submitted by the plaintiff for the meter the defendant had applied for. He said that the bills in question were settled by the defendant's bank as a matter of routine. Finally the witness tendered in evidence three sets of water bills to the account of the Plot the defendant says it drew the water from during the construction of the Hardware & General Dealers building. As already indicated, this is the defendant's own Plot and there is a big building there where the defendant's own offices are and there are also several tenants in that building. The first set, Exhibit D3, contains water bills for the period before the defendant started construction of the new building. The second set, Exhibit D4, contains water bills raised during the period of construction and the third batch, Exhibit D5, contains bills submitted after the period of construction. What the said bills depict is that water consumption at the Plot was low before the defendant began construction of the Hardware & General Dealers building. The highest bill paid during that period was for K44.49, in January, 1986. Then the consumption surged drastically thereafter and throughout the period construction of the building was going on. The bills for this period range from K107.32 to K205.45. And thereafter the consumption went down, the highest bill being for K40.56. The witness said that this confirms the defendant's assertion that the water used in the construction of the new building was drawn from this other Plot. The witness denied vehemently the defendant illegally drew water from the plaintiff's mains as alleged by the plaintiff. He said that the defendant is a company of considerable repute and could not afford to indulge in acts of impropriety as those alleged herein.

Three other witnesses gave evidence on the part of the defendant. These were two builders and a plumber employed by the defendant at the material time. It was their evidence, in support of DW4, that the water the defendant company used in constructing the Hardware & General Dealers building was indeed

drawn from the tap behind the defendant's own offices.

I have carefully reviewed the evidence and I remind myself that the burden rests upon the plaintiff to prove its case against the defendant. I indicated earlier the defendant concedes that the plaintiff did send out monthly bills for the standard meter charge and that the defendant duly paid for those bills. The plaintiff contends that this circumstance shows that the meter was installed only that due to an oversight the meter was thereafter not checked and read. With due deference I find it difficult to accept this story. The Court visited the site and it was there noted that the defendant's building, otherwise known as "Globe Settlement Trust Building", and the Hardware & General Dealers plot are very close - less than ten feet apart. If the meter were installed, I would find it hard to imagine that the meter-readers were able to read the meter at the defendant's building but overlooked, from that close range, the meter at the Hardware & General Dealers building. I also find it difficult to believe that the plaintiff's meter-readers would have over-looked the said meter for almost one year considering the total facts.

It is also not without significance that it was the defendant itself which alerted the plaintiff that the meter had not been installed. With respect, I do not think that a cheat or swindler would have behaved in this manner. If, as was alleged by the plaintiff, the meter was installed and that the defendant fraudulently wrenched it and proceeded to draw water from the mains I would expect the defendant in the end to have simply installed the meter back.

I would also refer to the evidence given by the defendant's three employees all of whom said with one voice that the water used during the construction of the Hardware building was drawn from the tap at the defendant's premises. These were ordinary workers and I thought that they were witnesses of truth. I accept their testimony. Indeed the sudden rise in the water consumption as reflected in the water bills in Exhibit D4 does in my view support the defendant's contention that the water used in constructing the Hardware building came from the source given by the defendant, from the defendant's tap. As a matter of fact, I saw the tap in question during the visit to the site.

The defendant conceded having at one stage connected a straight pipe to the mains. That was after DW4 had telephoned the Board about the absence of the meter. It was DW4's evidence that this was done on the instruction of the plaintiff's plumber who thought that one of the meters at the defendant's premises was the meter DW4 had inquired about. As already indicated it was DW4's evidence that it immediately turned out that this was not the meter and the pipes were disconnected. Mr. Nakanga, in argument, asked the Court to find for the plaintiff at least with regard to the water used by the defendant at that point in time. With respect I am unable to accept this argument. In my judgment such use of the water in those circumstances could not constitute


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an act of trespass.

Put shortly, I am not satisfied the plaintiff has proved its case against the defendant and I consequently dismiss the action with costs.

PRONOUNCED in open Court this 5th day of December, 1988 at Blantyre.


L.E. Unyolo
JUDGE

