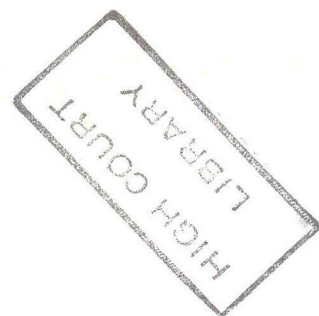


IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 41 OF 1987



BETWEEN:

FORDSON BANDA PLAINTIFF

AND

SOUTHERN BOTTLERS LIMITED DEFENDANT

CORAM: MAKUTA, CHIEF JUSTICE

Nakanga of Counsel for the Plaintiff
Makhalira of Counsel for the Defendant
Namvenya, Court Interpreter
Longwe, Court Reporter

JUDGMENT

By a specially endorsed writ dated 22nd January, 1987, the plaintiff claims damages from the defendant for wrongful suspension, dismissal and false imprisonment.

In 1985 the plaintiff was employed by the defendant as a security guard. On 28th November, 1985 he started at 6 p.m. and worked up to the next morning when he handed over to another security guard. He then went home to sleep. Between 9 and 10 a.m., i.e. on 29th November, a fellow security guard arrived at the plaintiff's house and told the plaintiff that he was wanted at the office. The plaintiff was not told why. Having arrived at the office he was asked by the defendant's Security Officer, Mr. Membe, whether he knew about a bag which was found at a banana plant by a passer-by who had gone to the banana plant to pass urine. It would appear the passer-by took the bag and handed it to the Security Officer. The plaintiff denied any knowledge of the bag. The bag contained 15 bottles full of green beer, 3 bottles full of brown beer, 6 bottles full of gold beer, 2 bottles full of cocopina, 1 bottle full of raspberry, 1 bottle full of cherry plum and 2 empty beer bottles; a total of 30 bottles. The banana plant is across a road which passes by the main gate which the plaintiff was guarding. The banana plant is not within the premises of the defendant. Since the plaintiff was on guard the whole night it was alleged that he knew something about the bag and its contents. The plaintiff was then asked to write a report. He wrote the report to the Chief Executive.

After writing the report he was told by the Personnel Officer, Mr. Bwanaisa, that he was to be taken to Police. He remained in the Personnel Officer's office waiting for the Police to come and collect him. When it became apparent that the Police were not coming the defendant provided a vehicle

which transported the plaintiff to Ndirande Police. This was between 3 and 4 p.m. He was accompanied by Mr. Membe, the Security Officer, and the driver of the vehicle. On arrival at the Police the Security Officer is alleged to have said that they had brought the thief. The plaintiff was put in cell and a statement, on an allegation of theft, was recorded from him on 2nd December, 1985. He was not released from custody until 30th December, 1985. On release he was given a letter, Exhibit P1, to take to the defendant. The letter stated that the case against the plaintiff was closed due to insufficient evidence. When the letter was handed to the defendant the plaintiff was told to come the following day. When he returned the following day, he was told to wait for Personnel Officer who later on handed to him a letter of dismissal, Exhibit P2. Prior to that he had received a letter of suspension, Exhibit P3, dated 2nd December, 1985.

The plaintiff claimed for his pay for the 30 days he was in custody. He also claimed for notice pay, leave pay and bonus. He did not get anything. The plaintiff told Court that while in custody he had problems of getting food and having a bath. Toilet facilities left much to be desired. When the defendant were informed about these problems they dismissed them and said that that was his concern and not theirs.

The defendant called four witnesses. Mr. J.R. Chatsika, D.W.1, is Regional Personnel Officer and he testified that the plaintiff was dismissed because bottles went through his gate while on duty. He also testified that on 6th June, 1984 the plaintiff was warned for negligence of duties because he had forgotten to enter mileage details of vehicle No. 0/06 on a gate sheet. He however conceded that the dismissal was not based on this since the plaintiff continued to work after the warning.

Mr. Humphrey Kamwendo, D.W.2, told the Court, in effect, that he is a stock controller; he loads the vehicles. When a check was made on loaded vehicles which were to go out on sales on the morning of 29th November, 1985 it was discovered that some bottles were missing from the trucks. According to him the trucks were parked next to the gate which the plaintiff was guarding and the missing bottles must have passed through that gate. He, therefore, was of the view that the plaintiff was answerable. Asked what he meant by being answerable he stated that the plaintiff stole them and that is why he was handed to the Police. This witness, however, told the Court that there are always six security guards on duty at night.

Mr. Frederick F. Nyirenda, D.W.3, is an Assistant Accountant. His job is daily administration of the accounts department. He also administers day to day work of the warehouse. He told the Court, in effect, that he saw the bag and the bottles which were found on the banana plant and the impression was that they must have come from the Southern Bottlers because Southern Bottlers use industrial sugar from SUCOMA. According to him industrial sugar is contained in

bags made by Blantyre Netting Company, other sugar is contained in sisal sacks. There were sixteen trucks loaded on the morning of 29th November, 1985 and when a reconciliation of the bottles was made it was discovered that more than 100 bottles were missing from the trucks. No other person than the plaintiff was suspected to have stolen the bottles.

Second Sergeant B.M. Lamya, D.W.4, of Ndirande Police, told the Court that while on duty on the morning of 29th November, 1985, he received a call from Southern Bottlers saying that 30 bottles were found on some banana plant next to their premises and they suspected the plaintiff who was on guard the previous night. Since there was no Police transport, Southern Bottlers drove the plaintiff, in the afternoon, in their vehicle to Ndirande Police where he was put in cell. This witness conceded in cross-examination that the plaintiff was suspected of theft by servant and on those allegations he had no alternative but to detain him.

It will be observed that it is not disputed that the plaintiff was on duty on the night of 28th/29th September, 1985. But there is no evidence to show that it is the plaintiff who took the bottles out and put them on the banana plant. Although he was manning the main gate it is in evidence that there were six guards on duty and, in my view, anyone, a guard or an outsider, fiddling with the bottles could easily be detected. According to Mr. Nyirenda more than 100 bottles were missing and only 30 were found. There is no evidence as to where the other bottles are. The person who is alleged to have found the bottles was not called to give some light to the case. In the absence of this, one wonders whether the story is not 'frame up' in order to implicate the plaintiff. It must also be borne in mind that the defendant sell drinks to the public. Someone could have collected them from some other place and dumped them where they are alleged to have been found. There is nothing to show that the bottles came from Southern Bottlers Limited. Proximity of the place where they are alleged to have been found is not sufficient evidence that they are from Southern Bottlers Limited. In the circumstances of this case is it any wonder that the Police sent back the plaintiff with a letter to the defendant stating that the case against him had been closed due to insufficient evidence?

In my judgment the dismissal was unjustified. Although the plaintiff was warned earlier on on a different matter the dismissal was based on an offence which he is alleged to have committed. If he is to be deprived of his entitlement there must be good ground for doing so and not just mere conjecture. Mr. Makhalira, on behalf of the defendant, submitted that the plaintiff misconducted himself by allowing the bottles to pass through the gate. As already pointed out above, there is no such evidence and there is no certainty that the bottles were from the defendant's stock.

During the trial the defendant admitted that they had no objection to paying K35.00 for suspension as set out in the particulars of claim. On leave pay they admitted 10 days

since he earned one day leave for every month he worked. The counting started from March to December 1985. He had already got his previous year's leave pay up to February, 1985. The calculation on the ten days leave amounted to K12.50. So far as the other particulars are concerned, namely loss of salary for one month and 14 days' bonus, they were not admitted. The loss of salary was not admitted on the ground that it was a summary dismissal. In my view although it was a summary dismissal there was no justification for that. He is therefore entitled to one month salary in the sum of K35.00. On bonus, it was not admitted because it is paid at the discretion of the company. It is not stated as to what the management looks for in order to pay the bonus. It is up to the management to decide. Although one may still remain on the company's employment, management may, in their view, decide not to pay the bonus. I therefore do not know how the Court can make a company exercise its discretion. In my considered opinion this particular claim fails.

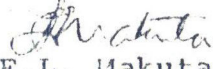
I now turn to false imprisonment. False imprisonment consists of inflicting bodily restraint which is unauthorised and without lawful justification. In order to succeed he need not prove actual imprisonment in the sense of imprisonment in gaol; for imprisonment is no other thing but restraint of a man's liberty, whether in open field, or in the case in the streets as well as in the common gaol. An action for false imprisonment will lie even where the victim is not aware that he is being detained. Thus, even where the detainee is asleep, drunk, unconscious or a lunatic the action will lie: see Burton v. Jayne (1960) 1 WLR 783.

In the instant case the plaintiff was called from his house and after questioning by the Security Officer, Mr. Membe, and the Personnel Officer, Mr. Rwanaisa, he was not allowed to go back home. He was kept in the Personnel Officer's office for more than three hours waiting for Police to come and collect him. When the Police did not arrive he was driven in the defendant's vehicle to Police. The Police were told by the Security Officer, Mr. Membe, that they had brought a thief. As already mentioned above, Second Sergeant B.W. Lanya, D.W.4, conceded in cross-examination that on that information he had no alternative but to put the plaintiff in cell. It is pertinent to mention that the plaintiff was put in cell before he was even interrogated by the Police. The Police must have been satisfied with what the defendant's servant, Mr. Membe, told them. Had the defendant gone to the Police and stated that they suspected that an offence had been committed and requested the Police to investigate, that would be leaving an information because any arrest subsequently would have taken place on the Police discretion after examining the facts. That was not the case here because it would appear the information by the Security Officer was sufficient to incarcerate the plaintiff: see Agricultural Development and Marketing Corporation v. H.D. Stambuli, M.S.C.A. Civil Cause No.6/84.

I have already found that there was no justification for holding the plaintiff either at the defendant's premises or in cell. The circumstances do not show that there was reasonable and probable cause for the arrest and imprisonment of the plaintiff. He was in custody for thirty days and three hours. While in custody he had problems having a bath and food. Toilet facilities at the Police were also a problem. On the whole the conditions while in custody were unsatisfactory.

On damages, I would like to observe that a person's liberty is a very precious thing. It should not be interfered with without any justification whatsoever. There is no doubt at all that the plaintiff was put to a lot of inconvenience and embarrassment. He must have had a lot of mental strain while in custody. His reputation and dignity must have suffered. In D.M. Sindi v. D. Ross & Co. and Others Civil Cause No.128 of 1982 the plaintiff was awarded K700.00 for false imprisonment for 30 minutes. In ADMARC v. Stambuli M.S.C.A. Civil Cause No.6/84 the respondent was awarded K4,000.00 for false imprisonment for three days. I am of the view that in the present case a fair compensation of K40,000.00 would be appropriate. It follows that the plaintiff will get K40,000.00 plus K35.00 for loss of salary, K35.00 for suspension and K12.50 leave pay. The total amount comes to K40,082.50. The defendant will pay the costs of this action.

PRONOUNCED in open Court this 30th day of November, 1988 at Blantyre.


F.J. Makuta
CHIEF JUSTICE

