

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 378 OF 1985

BETWEEN:

GODFREY E. MALEMIA ..... PLAINTIFF

- and -

OPTICHEM (MALAWI) LIMITED ..... DEFENDANT

Coram: MTEGHA, J.

Matipwili - Counsel for the Plaintiff  
Msaka - Counsel for the Defendant  
Longwe - Court Reporter  
Mkumbira - Official Interpreter

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J U D G M E N T

The plaintiff in this case Godfrey Malemia, is claiming from the defendant, Optichem (Malawi) Limited damages for wrongful dismissal, false imprisonment, malicious prosecution and defamation. The defendant denies these claims, except wrongful dismissal, to which the defendant has not pleaded, and the defendant's legal practitioner did not wish to be heard on it. Procedurally, therefore, the defendant admits wrongful dismissal and accordingly I enter judgment for the plaintiff on that claim.

It was the plaintiff's case that the plaintiff was employed by the defendant as an Accounts Clerk at a salary of K960.00 per annum - Exh. P1 refers. He started this job in February, 1975. It was his story that on 24th September, 1983, a Saturday, a friend came to his house to chat. They then decided to go to Cold Storage to buy some meat. They both went to Cold Storage and bought some meat and returned to his house at Chitawira. After lunch they decided to go and watch a football match at Kamuzu Stadium in Blantyre. Since he had no money on him he decided to

go to his office where he got his money from his drawer. His friend, who turned to be PW2, did not go into the office with him, but stood outside the gate. After taking his K10.00 from his drawer he went out and at the gate he met a Security Guard who told him that there was a vehicle which wanted to load fertilizer, and asked him if he could sign the truck to pick up the fertilizer. He refused to do so because it was not time to load vehicles or write requisitions. He went out and he and his friend went to watch the football match at the Stadium. That was the end of the day.

It was his evidence that on 27th September, 1983 two CID officers, a man and a woman, came to take him from his office. According to the plaintiff, these two people went to the factory Manager's office, a Mr. Botha. Mr. Botha opened the door leading to the plaintiff's office and directed them to his place. In the office there were four employees, three men and one woman. It was said that the policemen were arresting him because fertilizer was missing and that he stole it because he was on duty that day. Despite his protestations, and a request, which was denied, to see the Managing Director, and an explanation that he was not on duty on the 24th September, and a request to the arresting man to check the invoices if they were written by him on that day, he was told to get into the defendant's vehicle and taken to Police Blantyre. Apparently the same vehicle had gone to take the policemen. In the vehicle there were six people - the two officers, Pepeyao, a security officer, one securicor guard, the driver and the plaintiff. When they reached the Police Station the plaintiff and the security officer were questioned; the security officer was told to go but CID Chizinga said he, the plaintiff, should be locked up, and indeed he was locked up in a cell, only to be taken out to give statements on two occasions. During the interrogation he was beaten by Police. On 3rd October the Police and him went to his office, again in the defendant's vehicle, to look for k invoices, but none were found except his K62.00 - his monthly pay, which the police took. They returned to the

Station. He was given bail on 8th October, 1983. Subsequently, the security officer, Pepeyao and himself were prosecuted. The plaintiff was acquitted of stealing 160 bags of fertilizer, but Pepeyao, the security officer was convicted. Having been acquitted the plaintiff went to the defendant and requested to be reinstated. The defendant refused to take him on and up to now he has not got any letter of dismissal; but he was out of job - hence these claims.

It was the plaintiff's evidence, in cross-examination, that he saw the policemen coming into the Factory Manager's office and after some discussions, which he did not hear, they came to him, and the policemen were directed to him by Botha. Asked whether he knew that Pepeyao was the one who implicated him, the witness said he did not.

The second witness for the defendant was Edward Chiwanda. It was his evidence that on 24th September he went to the plaintiff's house. They went to Cold Storage together to buy some meat and in the afternoon they went to watch a football match at Kamuzu Stadium. The witness was present when the plaintiff went into his office to get some money, but he himself did not enter into the gate but stood outside the gate for about 15 minutes waiting for the plaintiff. When he came out of the gate they went to the Stadium.

It was the evidence of DW1, Elwin Botha, the defendant's Factory Manager, that on 26th September, 1983, in the morning, he decided to look at the records kept by the security guards at the gate to see vehicles leaving Optichem. He asked for the book to be brought and when he checked it he came across an invoice which did not appear to be correct because at that time the invoices which they were using were numbered 33880 upwards, but this one was from 39000 series. He called the Chief Security, one Pepeyao to produce the gate permit for this strange invoice. Pepeyao came back to say that the gate copy was missing, so were accounts copy and factory copy. As a result of this report he suspected that something was fishy. He instructed Pepeyao to report to Police. Pepeyao went to Police to give a statement and the following day Police came and took the

plaintiff, much to the shock of everybody. He denied to have directed the police to arrest the plaintiff since he had nothing to do with the accounts. In cross-examination the witness said that Pepeyao brought the police into his office and he made a statement; he denied to have led the police into the plaintiff's office. This was the close of the defendant's case.

I will first start with the claim of false imprisonment. The evidence adduced by the plaintiff is that the Police Officers went into the Factory Manager's office, who opened the door and showed them his place. The Police Officers said they were arresting him because he has stolen fertilizer and despite his protestation, took him to the Station and after questioning him he was locked up by Police Officer Chizinga, and was released on 8th October, 1983 on bail. Now, a false imprisonment is complete deprivation of liberty for any time, without lawful cause, for any period of time however short. It was defined, in the well known case of *Terms de la Ley* that

"Imprisonment is no other thing but the restrain of a man's liberty, whether it be in the open field, or in the stokes, or in the cage in the streets or in a man's own house as well as in the common goale; and in all the places the party so restrained is said to be a prisoner so long as he had not his liberty freely to go at all times to all places whether he will without bail or remainprise or otherwise."

It has been pleaded by the plaintiff that the defendant wrongfully directed, procured, Police Officers to arrest the plaintiff and take him into custody on a charge of, then made by the defendant, that the plaintiff had stolen 160 bags of fertilizer and as a result Police took him into

custody at Blantyre Police Station where the plaintiff was detained from 28th September to 8th October. Now, there is no dispute at all that the plaintiff was under total restraint from the time he was arrested by Police Officers to the date he was released on bail.

It has been submitted by Mr. Matipwili, on behalf of the plaintiff, that there is nothing on the evidence to show that the defendant had an honest belief or reasonable cause. On the other hand, Mr. Msaka for the defendant submitted that the evidence of the plaintiff was to the effect that Chizinga said to the plaintiff that he was going to be detained when they were at the Police Station. It could not, therefore, be said that the defendant procured the Police to arrest and detain the plaintiff. To determine this question one has to look at the evidence of Botha, the Factory Manager. It was his evidence that when all copies of the invoice were found to be missing as reported to him by Pepeyao, he instructed Pepeyao to report to Police who gave a statement to Police. What Pepeyao said to Police is not known except that they came into the plaintiff's office and arrested him saying he had stolen 160 bags of fertilizer. Certainly, Botha's evidence is such that he did not procure the Police; but by arresting the plaintiff, without asking him what happened, only saying that the plaintiff had stolen bags of fertilizer, Pepeyao must have told the Police that the plaintiff stole the same; otherwise they could have first made enquiries at the office; yet this was done subsequently a few days later after his arrest. Pepeyao was an employee or agent of the defendant, therefore the defendant is vicariously liable for his acts. I hold therefore that the restraint of the plaintiff's freedom from the office to the Police Station was false imprisonment. I am fortified in my findings also by the fact that the defendant provided the transport to the Police Officers to be collected, after Pepeyao's statement, to come and collect the plaintiff. The period of detention from the office to the Police Station has not been well established; but I do not think that it took them more than 30 minutes to reach the Station. I therefore hold that the plaintiff

was detained for not more than thirty minutes from the office to the Station.

Now, it was the evidence of the plaintiff that when they reached the Police Station, the plaintiff and Pepeyao were questioned; after that Pepeyao was released, but Police Officer Chizinga said he was detaining him and he did so. Clearly, the Police were at that time acting on their own, and then subsequent detention of the plaintiff cannot be attributed to the defendant. Apart from the thirty minutes I have said were attributable to the defendant, the subsequent detention by the Police cannot be maintained.

I will now turn to the question of malicious prosecution. As I have pointed out earlier, the plaintiff was jointly charged with one Pepeyao, prosecuted before the Magistrate's Court. He was acquitted but Pepeyao was convicted. It is trite law that for a plaintiff to succeed in an action for malicious prosecution, he must prove, among other things, that he was prosecuted and that there was no reasonable or probable cause for the prosecution. In the present case, prosecution and acquittal were established; but the question is; did the defendant set the law in motion maliciously.

It would appear, from the evidence, that it was the decision made by the Police to prosecute that led to the prosecution. I therefore agree with Mr. Msaka's submission that the defendant merely reported the allegation of theft of fertilizer to the Police and decided to prosecute after they questioned the plaintiff. It is well established in our law that where Police make investigations and prosecute later on, the defendant cannot be liable - Nakhumwa vs. Hogg Robinson. This claim cannot stand. It is dismissed.

I will now turn to the question of defamation. According to the plaintiff, on the day he was arrested the Police Officers went into his office, where there were four other employees, and said he is being arrested because he stole fertilizer. It has been argued by Mr. Matipwili that these words were defamatory. Indeed these words were defamatory. The imputation of a criminal offence is actionable per se. Indeed when the Police Officers said

this in front of the plaintiff's fellow employees, they defamed him. But was it the defendant who said these words, which are actionable per se without proof of damage? Certainly, Mr. Botha did not say these. It cannot therefore be said that the defendant uttered these words. This claim must also fail.

As I pointed out earlier in this judgment, the plaintiff succeeds in respect of wrongful dismissal. As Skinner, C.J. as he was then, in the case of R.E. Chingwalu vs. Ruo Estates Limited, Civil Case No.580 of 1979 a defendant who wants to plead justification in an action for wrongful dismissal, he must plead the grounds upon which he relies upon. This was not done and it appears to me that Mr. Msaka did not wish to pursue this defence otherwise he would have applied for an amendment of pleadings earlier on during trial. The only question which falls before me to determine is that of damages. It is unfortunate that the date of the plaintiff's dismissal is not known because no evidence was adduced as to when the defendant dismissed the plaintiff. Up to now there is no letter from the defendant to the plaintiff dismissing him; the only evidence I have is that of the plaintiff himself who said that when he reported at the defendant's offices to resume work after his acquittal, they refused to take him back. I think it would be prudent to state that it was on that date that the plaintiff was wrongly dismissed. I therefore award him damages at the rate of K80.00 per month from 28th September, 1983 until on the date when he reported after his acquittal. In terms of conditions of service, I also award damages in respect of bonus of two weeks pay calculated up to the time he was dismissed. The Registrar to assess the period and calculate the amount.

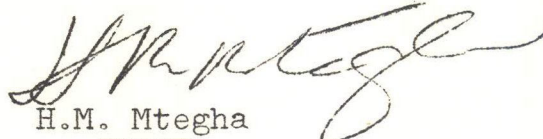
In respect of false imprisonment, I have held earlier that at most the plaintiff was unlawfully imprisoned for a period of not more than thirty minutes. I take it as the period. According to the authorities now prevailing, damages of between K700.00 and K1,000.00 are the standard

for this period - see Sindi vs. D. Ross Limited and three others Civil Cause No. 128 of 1982; Wasili vs. Clan Transport (Malawi) Limited Civil Cause No. 506 of 1981 AND D.M. Sindi vs. AMI Rennie Press (Malawi) Limited Civil Cause No. 197 of 1982.

In the present case I consider K800.00 as the correct figure. I award him K800.00.

The action then succeeds in respect of wrongful dismissal and false imprisonment only. I order that the defendant pay the costs for these proceedings.

PRONOUNCED in open Court this 21st day of June, 1988 at Blantyre.



H.M. Mtegha  
JUDGE