

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 112 OF 1985

BETWEEN:

K. KADUYA PLAINTIFF

- and -

KILPATRICK (MALAWI) LIMITED DEFENDANT

Coram: UNYOLO, J.

Chiume, Counsel for the Plaintiff
Makhalira, Counsel for the Defendant
Manda, Court Reporter
Namvenya, Official Interpreter

J U D G M E N T

This is an action for damages in the sum of K8,483.40 for an alleged breach of contract of employment. It is pleaded that the plaintiff was in September, 1983, wrongfully suspended from his employment by the defendant and that he still remains suspended to date. The claim here is for loss of salary during the said period of suspension.

In its defence the defendant denies to have suspended the plaintiff as alleged. It pleads that what actually happened is that it lawfully terminated the plaintiff's services and paid him one month's salary in lieu of notice. In the alternative the defendant pleads that it was entitled to terminate the contract of employment in that the plaintiff wilfully disobeyed its reasonable orders.

It is common case that the plaintiff was employed by the defendant on 9th June, 1983, as an electrician at a salary of K160.20 per mensem. He was sent to work in Lilongwe. According to the plaintiff all seemed to be going well with him in his work until one day towards the end of August, 1983, when he was told by his supervisor, DW3, that the General Manager of the defendant company wanted to see him in Blantyre. In response he left Lilongwe by night bus on 31st August and arrived in Blantyre in the morning on 1st September. He then went to see the General Manager only to learn that DW3 had complained against him alleging that he had taken to dismissing workers at Lilongwe without the company's authority. He said that he flatly denied the allegation and that the General Manager, a Mr. Baily, said that there was nothing else he could do but to suspend him forthwith from duty until DW3 had advised otherwise. It was in the plaintiff's evidence that he left with a trouble mind and that when he heard nothing further he went to see the General Manager again in February 1984 when he was told no communication had been received from DW3. The plaintiff testified that he later reported the matter to the Ministry of Labour and then commenced the proceedings here. I will revert to the plaintiff's further evidence in a few moments. Presently let me say something about the defendant's evidence on the matters so far.

DW3, the defendant's then Electrical Supervisor in Lilongwe, said that not long after the plaintiff had taken up his post certain contractors the defendant worked for began complaining that the plaintiff was not following their instructions in the discharge of his work. It was in DW3's evidence that he advised the plaintiff to try and co-operate with these contractors but that the plaintiff did not take heed of the advice. Consequently, he reported the matter to the head office where an instruction was issued that the plaintiff should be sent to Blantyre immediately on transfer.

The defendant company's General Manager at the time was, as I have already indicated, a Mr. Baily. He has since left the country. His successor however gave evidence. He said that he first came to know the plaintiff in August, 1984. On that occasion the plaintiff came to the defendant's offices to ask for a copy of the company's conditions of service. The witness said that he spoke with the plaintiff who disclosed that he was an ex-employee of the company and his services had been terminated. The witness said further that when he checked the company's files he came across a personal file in the name of the plaintiff and that the same contained, inter alia, a petty cash voucher, Exhibit D1, showing that the company had paid the plaintiff the sum of K153.34 as one month's salary in lieu of notice. Also in the file was Exhibit D2, a reference letter dated 2nd September, 1983, showing that the plaintiff's services with the defendant company were terminated on 31st August, 1983. The other witness called on the part of the defendant was the General Manager's secretary, DW2. She said that one day in September, 1983, the plaintiff came to the defendant's offices to ask for a reference and that the General Manager wrote one, Exhibit D2, for him indicating the period the plaintiff worked for the company before his services were terminated.

Going back to the plaintiff's evidence it is to be observed that the plaintiff denies that his services were terminated as alleged by the defendant's General Manager. He denies having been given one month's salary in lieu of notice as indicated in Exhibit D2. This exhibit purports to have been signed by the plaintiff in acknowledgment of receipt of the money indicated there. The plaintiff however denies the signature there is his. He says it is a forgery. The plaintiff denies further that he went to the defendant's offices to ask for a reference. He denies having been given the reference in Exhibit D2. It is his case that this exhibit must have been written after he had reported the matter to the Ministry of Labour in order to create the false impression that his services had terminated when this was not so.

Such was the evidence. Perhaps I should point out here that I have considered the same with sufficient care. The first issue to be determined is whether the plaintiff was simply suspended from his duties as is alleged by him or whether his services were formally terminated as is alleged by the defendant. The defendant relies in the first place on Exhibits D1 and D2, the petty cash voucher and reference respectively. The former, as will be recalled, stipulates, inter alia, that the plaintiff was paid the sum of K153.34 on 31st August, 1983, representing one month's salary in lieu of notice. The latter, on the other hand, stipulates that the plaintiff was in the employ of the defendant company from 20th June, 1983, to 31st August, 1983, when his services were terminated. I have said that the plaintiff denies having received the K153.34, also denies having signed the said voucher. He further denies having been issued with the reference. It is to be noted here that the author of the reference did not give evidence in this case and the exhibit itself is not signed. I

did refer to the evidence of the secretary, DW2, who said that it was she who typed this reference. Frankly I would not accept the evidence of this witness without a pinch of salt. She did not quite impress me as a reliable witness. I would, therefore, place very little weight upon her evidence, so too the exhibited reference herein.

Exhibit D7 is, however, of some significance. This is a letter dated 25th June, 1984, from the Ministry of Labour to the defendant company. It was written by the Ministry in reaction to the complaint made herein by the plaintiff to the Ministry against the defendant. The first two paragraphs of the said letter are particularly relevant and are as follows:

"I write to inform you that the above-named ex-employee of your company has drawn my attention to a labour complaint lodged by him at the regional labour office in Blantyre, the particulars of which are that he was employed by your company on 20th June, 1984, as working foreman in Lilongwe and dismissed in early September without sufficient notice or pay in lieu thereof, and without even being informed of the reasons for which he was dismissed.

The regional labour office in Blantyre was reportedly unable to complete the necessary investigations into the complaint on the ground that your other employee who was closely associated with the circumstances which led to the dismissal - Mr. Joloza - could not be easily found for the purpose of giving his testimony."

As I understand the tenor of this letter the plaintiff must have told the Ministry of Labour that he had been dismissed from the defendant company's employ and that he was therefore no longer its employee at that point in time. It must also be mentioned here that the contents of this letter were not challenged in any way by the plaintiff. There was also another letter, exhibit D6, written by the Ministry of Labour on behalf of the plaintiff on 2nd August, 1984, where it was again indicated that the Ministry's understanding was that the plaintiff's services had been formally terminated. Paragraph 1 of the letter in question refers. On these facts I would prefer the defendant's assertion to that of the plaintiff on this aspect. I find, therefore, that the plaintiff's services were terminated by the defendant. As regards the actual date of such termination I find that this must have taken place not on 31st August but on 1st September, 1983, the date the plaintiff reported at the head office and met the then General Manager of the company.

The next question is whether the plaintiff was or was not paid the K153.34 indicated on the petty cash voucher, Exhibit D1. This exhibit is the only document the defendant has in support of its case. As I have already indicated the plaintiff vehemently denies having received the money herein and denies authorship of the signature indicated thereon. With respect I find it unsafe to accept the defendant's story without a pinch of salt. To start with the actual person who allegedly paid the money to the plaintiff was not called as a witness. Neither was Mr. Baily, who is supposed to have authorised the payment. Furthermore the document is dated 31st August, 1983. But as I have already found it must have been on 1st September, 1983, when the plaintiff's services were terminated. There could be an explanation on this aspect perhaps but all the same no explanation was offered.

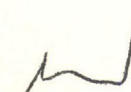
It also appears to me that the signature of Mr. Bailey in this particular document, Exhibit D1, differs from Mr. Bailey's signature in Exhibit P1, the letter of appointment. All in all I find it safer to prefer the plaintiff's evidence to that of the defendant. I accordingly find that the K153.34 was not paid to the plaintiff.

The final question relates to how long a notice the plaintiff was entitled to in terms of the contract of employment. The letter of appointment is silent on this aspect. The plaintiff's position is that he was told verbally by the then General Manager that the appointment was terminable by three months' notice on either side. This has been the plaintiff's case throughout. DW1 on the other hand simply said that this could not be true because every employee of the defendant's regardless of rank is entitled to only one month notice. DW1 was however unable to produce the company's conditions of service and I found it strange that these were not so produced. Anyway the plaintiff's contention that Mr. Bailey mentioned three months' notice was not positively challenged. In short I am inclined to accept the plaintiff's case. I therefore find that the plaintiff was, upon termination of his services, entitled to three months' notice or three months' salary in lieu. The plaintiff should, therefore, have been paid three months's salary in lieu of notice. His salary was K160.20 less K9.26 tax - a net salary of K150.94 per month. This works out to an aggregate gross salary of K480.60 and an aggregate net salary of K452.82.

Subject to payment of tax as indicated herein, I find for the plaintiff in the sum of K480.60 and enter judgment for the plaintiff in the said sum of K480.60. What this means is that the plaintiff will actually get the sum of K452.82 only and the sum of K27.78 will be paid by the defendant to the Tax Authorities. To this extent but to this extent only the plaintiff's claim succeeds.

I award the plaintiff the costs of this action but on the subordinate court's scale.

PRONOUNCED in open Court this 6th day of May, 1988,
at Blantyre.


L.E. Anyolo
JUDGE