

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 221 OF 1985

BETWEEN:

PRESS TRANSPORT (1975) LIMITED PLAINTIFF

- and -

K.N. PINTO DEFENDANT

Coram: Mbalame, J.

Msaka, Counsel for the Plaintiff
Mhango, Counsel for the Defendant
Manda, Court Reporter
Namvenya, Official Interpreter

JUDGMENT

The plaintiff in this case, Press Transport (1975) Limited, a registered company with limited liability, is claiming from the defendant, K.N. Pinto, a transporter, trading as Ndilekeni Transport, the sum of K6,038.10 which is said to be due and owing by the defendant to the plaintiff being the price of motor fuel sold and delivered to the defendant by the plaintiff during the period starting from 31st January to 30th September, 1983. In his defence the defendant denies owing the sum of K6,038.10. He contends that the plaintiff already deducted the amounts from monies which were due from the plaintiff to the defendant. In the alternative, he contends that since the fuel was sold to him on credit the sale of such motor fuel was illegal in that it was in contravention of Government Regulations made under section 3 of the Preservation of Public Security Act, Cap. 14:02 which prohibits the sale of fuel at any fuel station otherwise other than for cash.

I will now proceed to evaluate the evidence as adduced by both parties. The first witness for the plaintiff was Baxter Lameck Kayambe, a Credit Controller in the plaintiff company. He was in fact the only witness called for the plaintiff. It was his story that in 1983 the plaintiff had a contract with the Import and Export Company of Malawi to haul raw sugar for that Company to diverse Chipiku Depots in the country. They had a similar arrangement with Hardware and Gneral Dealers Limited to transport various

goods. He said because of the size of the plaintiff's fleet it was found necessary to subcontract with other transporters and the defendant was one of them. As he did not have enough fuel for his trucks to do the haulage an arrangement was made whereby the defendant drew fuel from various stations on account of the plaintiff. This fuel had already been paid for in advance by the plaintiff. In order to effect this, whenever there was a trip to be made, the defendant would take a waybill from the plaintiff's transport Manager. On production of this document to the Credit Controller the latter would then write out an L.P.O. which the defendant took to a fueling station where the plaintiff had diesel paid for. There he would draw the amount on the L.P.O. and the filling station would accordingly debit the plaintiff in that amount. After the goods had been transported the defendant would then take the waybill to the Credit Controller who would arrange for payment less the price charged for the diesel drawn by the defendant.

He went on to say that for them to determine how much diesel the defendant had drawn they used to receive an invoice from the fueling station from which the fuel had been drawn. They would then compare that with the L.P.O. they had earlier issued to the defendant. They then issued a debit note to the defendant in that amount. Perhaps I should mention at this juncture that various L.P.O.s, invoices and debit notes were exhibited in respect of the fuel the defendant is said to have drawn amounting to K4, 826.01.

It was further the evidence of this witness that after a few transactions the plaintiff recovered money in respect of the first L.P.O. and was thereafter surprised to learn from Import and Export Limited that the defendant was no longer transporting their sugar. It was then discovered that although the defendant took the L.P.O.s and drew the fuel he never undertook the trips he was supposed to and therefore never bothered to come and claim his money as he had not made the trips. He concluded that the defendant has since not paid for the fuel.

The defence called one witness. It was the defendant himself. His testimony regarding how he drew the fuel was the same as that of PW1. It was however his story that he actually made all the trips in question, took the waybills back to the plaintiff who in turn paid him for the work done after deducting whatever was owing in payment of the fuel. He said he could not produce the waybills to prove that he had made the trips because these were sent to the offices of the African Businessmen Association. He could not produce the payment vouchers as well because, he said, these had been left with the plaintiff's paymaster. He said he could not get these back because the paymaster had since been dismissed.

Perhaps I should pause here and comment on the demeanor of this witness. I had the opportunity of hearing and seeing him in the witness box. I thought he was, to say the least, a very unreliable witness. He had a flare for telling lies. For example in his examination in chief he said he had never seen the debit notes before and he was seeing them for the first time in Court. In cross-examination he was made to admit that he had seen them before at the plaintiff's offices. Again asked why he could not produce the waybills to prove that he had actually made the trips all he was able to say was that he did not go to take them. He made a very poor impression on the Court.

I now turn to the facts. It is not in dispute that the plaintiff subcontracted the defendant to transport sugar to diverse places in Malawi on its behalf. It is also not in dispute that because the defendant was unable to pay for the fuel there was an arrangement whereby the plaintiff sold him some fuel from various petrol stations for which the plaintiff had already paid. It is also not in dispute that the defendant drew diesel amounting K4,826.01 and I so find. What I have to decide however is whether the defendant actually did make the trips in question. The plaintiff was able to show trips which the defendant made. It was also able to show and prove how much fuel the defendant drew using what L.P.O.s and what debit notes it issued to the defendant. On the other hand while conceding that he took the L.P.O.s and drew the fuel the defendant was unable to prove that he actually made the trips. He was unable to produce the waybills which he said were lying at the offices of the African Businessmen Association in Limbe. Again if it is true that he actually made the trips and that he was paid and deductions for the fuel were made from such payments he was not able to produce the payment vouchers in respect of such payments. I do not believe him when he says that the plaintiff's paymaster took them. What for? Surely if there had been such payments at all the plaintiff should have had copies of the vouchers. In the circumstances I find as a fact that the defendant drew the diesel amounting to K4,826.01 and did not make any trips in respect thereof.

This, however, is not the end of the story, in his defence the defendant has pleaded illegality. He contends that the sale of the diesel on credit was illegal in that it was in contravention of Government Regulations made under section 3 of the Preservation of Public Security Act, Cap. 14:02 which prohibits the sale of fuel at any fuel station otherwise than for cash. I have already herein before outlined the circumstances under which the fuel was supplied

by the plaintiff to the defendant. Mr. Msaka has submitted that the sale took place at the plaintiff's offices when the defendant was given the L.P.O.s. He argues that what took place at the fueling station was not a sale but mere delivery. With respect to Counsel, there might have been an agreement of sale at the said offices - but I do not think that was a sale. The L.P.O.s were just mere authority to buy. They are in fact Local Purchase Orders; an authority to order. I hold that the sale was at the filling stations where the petrol attendants sold the fuel on credit to the defendant on behalf of the plaintiff. Such sales were contrary to the provisions of the Preservation of Public Security (Conservation of Motor Fuel) Regulations made under section 3 of the Preservation of Public Security Act, Cap. 14:02 and were therefore illegal. The claim in respect of the sales at the filling stations therefore fails.

By regulation 5 of the Preservation of Public Security (Conservation of Motor Fuel) Regulations any person who, at any fuel station, buys or sells any fuel other than for cash is guilty of an offence. Under the same regulations "fuel station" is defined as:

"..... a petrol filling station where fuel is sold by retail direct to the customer."

It is also important to note that in the definition of "fuel" diesel is included. In my judgment the sales which took place at the plaintiff's premises, Oilcom Depot and Mobil Oil Depot were not caught by the regulations. These sales were:

(a)	On delivery note No.9156 from the plaintiff	K81.50
(b)	On delivery note No.9183	K122.25
(c)	On Mobil Oil Depot Cash Sale	K352.40
(d)	On Oilcom Cash Sale No.034014	<u>K352.40</u>
	Total	K908.55

I enter judgment for the plaintiff in that amount with costs.

The question of whether I should award the costs at High Court or Subordinate Court level has exercised my mind. This was not a case of a deliberate breach of the regulations. As a matter of fact the plaintiff

throughout thought the transaction was perfectly legal.
Be that as it may ignorance of the law is no defence. I
award costs at Subordinate Court level.

PRONOUNCED in open Court this 13th day of September,
1988 at Blantyre.



R.P.Mbalame
JUDGE