

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.105 OF 1987



BETWEEN:

G. LOGEYA ..... PLAINTIFF

and

G.H. KADANGO ..... DEFENDANT

CORAM : MTEGHA, J.

Nakanga, Counsel for the Plaintiff  
Chisanga, Counsel for the Defendant  
Chigaru, Official Court Interpreter  
Gausi (Mrs), Court Reporter

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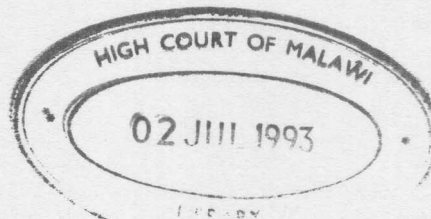
JUDGMENT

The plaintiff in this case G. Logeya, is claiming from the defendant a sum of K2,634.00 as loss of income and damages for conversion and in the alternative, for breach of contract. He is also claiming unliquidated damages for defamation. The plaintiff has pleaded that at all material times he was the owner and entitled to possession of two gas cylinders of oxygen and accetylene which he was using for welding his customers' vehicles. On or about the 2nd February, 1987, the defendant wrongfully deprived the plaintiff of the cylinders by removing them from his premises and by reason whereof the plaintiff has suffered loss and damage.

In the alternative the plaintiff has pleaded that on or about 31st July, 1986, the defendant agreed to sell the two cylinders to the plaintiff at a price of K2,500.00, but failed to deliver and has wrongfully repudiated the contract. The particulars of loss and damage have been itemised.

The plaintiff further pleaded that in the month of February, 1987, at Industrial Gases Ltd. the defendant falsely and maliciously spoke and published of and concerning the plaintiff to Mr. Gunde and Mr. Chauluka of Industrial Gases, Blantyre, and other unknown that he, the plaintiff "stole two bottles of gas".

The defendant denies these allegations. He pleaded that he bought the cylinders in 1982 at a deposit of K1,200 with Industrial Gases Limited for use at his



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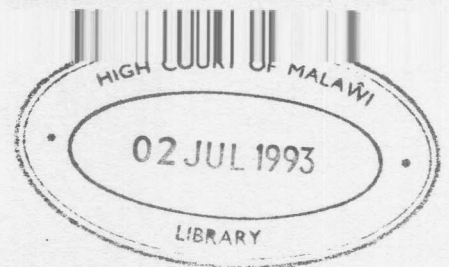
garage known as Garage Africa in Mulanje and since then he has been paying rentals to Industrial Gases. He further pleaded that in 1985 his building where the garage was situated collapsed due to heavy rains and he asked the plaintiff to keep the two cylinders until he rebuilt his building, but the plaintiff started using the gas for his own personal business, and as a result he removed them from the plaintiff on 3rd February, 1987 since the plaintiff ignored repeated requests to surrender them amicably. He denied to have uttered the defamatory words.

These then are the parties' pleadings, and each party called one witness to substantiate their case.

It was the evidence of PW1, the plaintiff, that he is a businessman at the market as a hawker selling secondhand clothes. It was his evidence that he bought two gas cylinders for oxygen and accetylene from the defendant at a price of K2,500.00. He paid K2,375.00 and the balance of K125.00 was paid on 31st July, 1986 as evidenced by Exh. P1. Indeed, Exh. P1 is a receipt signed by the defendant acknowledging receipt of K125.00 as final payment. At the bottom of the receipt there is a figure of K2,500.00 which the defendant says he wrote to show that the full amount has been paid. It was his evidence that what remained was the change of ownership. Indeed, the receipt also mentions about this. It was his evidence that he was demanding the necessary papers from the defendant to enable him to change ownership, but the defendant was dodging. As a result he went to Industrial Gases Limited to try to change; but he was informed by Gunde and Chauluka that the defendant had reported that these cylinders were missing, and he was told to bring the defendant there. When he told the defendant to go to Blantyre, the defendant said he had no fuel in his vehicle, thereupon the plaintiff filled in petrol worth K24.80, and they left for Blantyre. On the way the defendant said he had forgotten the Registration Book and they returned to the defendant's house, but the defendant could not find the book and that they would go to Blantyre the following day. The plaintiff then left for ~~Luchenza~~ <sup>Luchenza</sup>, and on his way back he found that the cylinders had been taken from his house by the defendant who left a note, Exh. P2 advising him of the same, dated 2nd February, 1987. The plaintiff did not go to the defendant's house as requested by Exh. P2, but went to see a lawyer instead.

It was his evidence that he kept the cylinders and was using them from 1985 to February 2, 1987 when the plaintiff took them away. He produced Exh. P3-11 which clearly showed that he was refilling the cylinders at Industrial Gases Limited and also buying welding rods from there. It was his evidence that he used to make about K1,200.00 per month, and taking into account of K76.00 transport to Blantyre, K86.00 charging the





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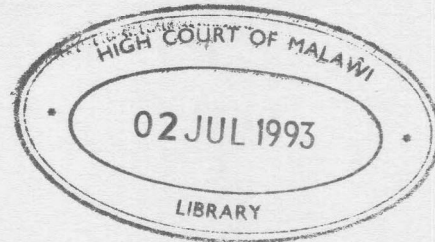
cylinders, he used to have a profit of about K1,000.00 per month.

It was his evidence in cross-examination that he was doing the welding himself. It was his evidence that he never bought anything else from the defendant - but that he did buy a motor cycle from Mr. Kalonga at K1,200.00 and paid by instalments of K600.00, and two for K300.00, and it is not true that Exh. P1 relates to the motor cycle. It was also the plaintiff's evidence in cross-examination that he used the name of Garage Africa when recharging the cylinders and purchasing welding rods because they had not yet changed the names. He denied to have rented these cylinders when the defendant's building collapsed.

In his defence the defendant, DW1, said that he is a businessman running a garage business known as Garage Africa since 1969. He also makes burglar bars, chairs and carries on the business of welding vehicles and in this regard he bought these cylinders in 1971 at K1,500.00. He used to pay annual rent, at first at the rate of K35.00 and then at K48.00 and later on the rent was higher than this.

It was his evidence that Exh. P1 was in relation to the sale of a motor cycle, and it was the balance. It was his evidence that the plaintiff got possession of these cylinders because in November, 1985, there was heavy rain and his garage collapsed. The plaintiff offered the defendant to work at his house. As a result he moved the cylinders to the defendant's house where he was doing welding business through his employees. It was his evidence that Exh. P3-11 were kept by the plaintiff because he used to get the money for welding and buy materials since he was the older amongst the employees and he himself used to go to South Africa. To prove that he was the owner of the cylinders he produced Exh. D1-4. He further went on to say that he took the cylinders from the plaintiff, firstly, because the plaintiff did not give him money which he was collecting from the business. Secondly, he heard rumours that the plaintiff was saying he bought the cylinders.

In cross-examination he stated that he told the Legal Aid that he sold a motor cycle to the plaintiff, that he did not give the motor cycle's registration book to the plaintiff. It also transpired that the registration book bore the name of Kalonga. It was also his evidence, in cross-examination, that he gave the cylinders to the plaintiff to keep for him. When further pressed he said he used the cylinders to do some work at the plaintiff's premises because he rented the premises at K15.00 per month. The defendant further said, in cross-examination, that his employees used to work at the plaintiff's premises and since he frequently went to South Africa, the money the boys collected on the business was being



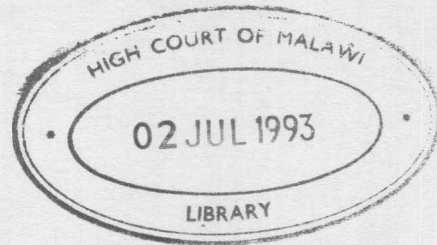
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given to the plaintiff and when he discovered shortages, amounting to K320.00 he decided to get back his cylinders and then Exh. P3-P11 were kept by the plaintiff because the premises belonged to him. The defendant also stated that the plaintiff was not using the cylinders for his own use and so that the statement of claim, where it says the defendant used the cylinders for his own use, is not correct.

This then in brief is the evidence for both parties. I am aware that this is a Civil Case, and the standard of proof is on a preponderance of probabilities. I will now have to evaluate the evidence and relate it to the law. It is quite clear that the two cylinders were in the possession of the plaintiff from 1985 to 2nd February, 1987 when the defendant removed them from him. The question I have to decide is how did they come into the plaintiff's possession? It was the plaintiff's evidence that he bought them from the defendant at K2,500.00 and produced Exh. P1 as evidence. The defendant says Exh. P1 was in respect of sale of a motor cycle which he, the defendant, sold to the plaintiff. It will be noted from the pleadings that in the defendant's pleadings, the defendant did not plead that he sold a motor cycle to the plaintiff. As Mr. Nakanga has rightly pointed out, that piece of evidence does not support his pleadings. I, therefore, disregard this piece of evidence that the defendant sold the motor cycle to the plaintiff. The evidence of the defendant is that he took the cylinders to the house of the plaintiff because his garage had collapsed, and he was using them there for his business at a rent of K15.00 per month and that the plaintiff used to keep money which his employees received from customers. In his pleadings he pleaded that he took the cylinders there for safe keeping. Again here, the defendant's pleadings are not supported by the evidence. It was the defendant's evidence that even on the date when he collected the cylinders from the plaintiff, all the documents relating to them were in his name: he was paying the rental, etc and that Exh. P3-11 were his. The plaintiff's reply is that the defendant was dodging to give him the necessary papers to enable the plaintiff to register them in his name. As a result he used his name to charge the cylinders at Industrial Gases.

I have carefully looked at the evidence adduced before me. I have also looked at the demeanour of the parties. The evidence adduced by the defendant does not appear to me to be the truth. It was very different from his pleadings, and he was very evasive when answering questions, both from his own counsel and from the plaintiff's counsel. On the other hand, the evidence of the plaintiff was consistent all the time. I am, therefore, satisfied that the cylinders were sold to the plaintiff by the defendant, and that is why they were found



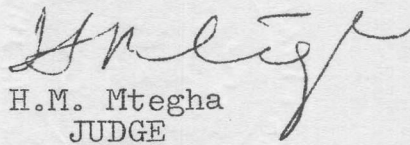


in possession of the plaintiff. By the time the plaintiff paid the last K125.00 on 31st July, 1986, the whole contract of sale was completed. At that stage the plaintiff had not only possession, but ownership of the cylinders. It follows, therefore that when the defendant removed them on 2nd February, 1987, he committed an act of conversion; therefore I hold that there was conversion. The action in respect of the conversion succeeds.

As regards the claim of defamation, I am afraid there is no evidence whatsoever to support it. I dismiss it.

I will now consider the question of damages. Apart from the cost of the cylinders, cost of recharging them and rental which amount to K2,634.00 the plaintiff is also claiming loss of profit of K1,000.00 per month from 3rd February, 1987. These are special damages and they must be strictly proved. I am afraid there is no evidence to show how much money he was making per month apart from what he said himself that he was making K1,200.00 gross. There is no evidence to substantiate this figure. The general rule is that the damages to which a plaintiff is entitled on proof of conversion is the value of the goods converted together with any special loss which is the natural and direct result of the wrong. The value of the cylinders is K2,500.00. In addition he paid K38.00 for recharging them and K96.00 for rentals. I, therefore, award him the sum of K2,634.00. As I have pointed out earlier, the special damages have not been proved to my satisfaction, but there is no doubt that he had suffered some damage. It is difficult to come to a realistic figure without the assistance of documents, but in my discretion, a sum of K1,000.00 would adequately compensate him for not using his cylinders. I, therefore, enter judgment for the plaintiff in the sum of K3,634.00 with costs.

PRONOUNCED in open Court this 20th day of July, 1989,  
at Blantyre.

  
H.M. Mtegha  
JUDGE