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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 601 OF 1987



BETWEEN:

H. A. KAIME (FEMALE) PLAINTIFF

- AND -

NATIONAL BANK OF MALAWI ANDDEFENDANT
TWO OTHERS

Coram: UNYOLO, J.

Nakanga of Counsel for the Plaintiff
Mandala of Counsel for the Defendant
Chigaru, Official Court Interpreter
Gausi, Court Reporter

J U D G M E N T

This is an action for damages for false imprisonment.

The plaintiff was at all material times working for the 1st Defendant, the National Bank of Malawi, hereinafter referred to as "the Bank", as a bank clerk and was stationed at the Bank's Churchill Road Branch in Limbe, in the City of Blantyre. The other two defendants were also working for the Bank. The 2nd Defendant was an accountant at this very branch and the 3rd Defendant was a security officer stationed at the Bank's head office in Blantyre.

It is common case that at the end of the day's operations on 26.6.87 the principal cashier at the branch, the Churchill Road Branch, aforementioned, one Chipofya came up with a shortage to the tune of K2100. The matter was reported to the branch manager and to the Head Office whereupon the 2nd Defendant in his capacity as accountant was requested to investigate the loss. Dutifully the 2nd Defendant carried out a check in the matter but was unable to find any culprit(s) or trace the shortfall. A formal report was submitted to the Head Office and on 22nd July, 1987, that office sent the 3rd Defendant, in his capacity as the Bank's security officer, to the branch herein to investigate the shortage further. And in his investigations, apart from checking records and documents, the 3rd Defendant also interviewed all the seven cashiers at the branch including the said principal cashier, Mr. Chipofya and the plaintiff. It was the 3rd Defendant's evidence that he also visited sister banking institutions

in the City and that when he came to Limbe Branch he discovered that the plaintiff had a savings account there.

He found too that the plaintiff had deposited into this account the sum of K900 belonging to this man, Chipofya. It is also common case that later that day the 3rd Defendant instructed the 2nd Defendant to tell the plaintiff and Mr. Chipofya not to knock off but wait as he, the 3rd Defendant, wanted to see them. The 2nd Defendant complied; he told the plaintiff to go and wait for the 3rd Defendant in the staff room, also known as "the rest room". The plaintiff had balanced her books then and was going to sign off. She then went to the rest room as requested and after a while Mr. Chipofya joined her and the two waited there for some time. According to the plaintiff at about 4.55 p.m., having been in the rest room for some 50 minutes, the 3rd Defendant called her to the 2nd Defendant's table (the 2nd Defendant was not there at the time, having left in his car), where she found two men who introduced themselves as detectives from Limbe Police Station and said they had been called to come and pick her and Mr. Chipofya because the Bank's money had gone missing and that the two were involved in the matter. The 3rd Defendant's evidence on this aspect was that when he returned to the branch from the New Building Society that afternoon he continued with his interviews of the cashiers and that he interviewed, of the remaining 3 cashiers, one Gwengwe first and then the plaintiff and Chipofya together. The 3rd Defendant said that in the end he decided to ask for police assistance in the matter. He said that he suspected the plaintiff in this matter firstly because on the day the K2100 shortage came about, the plaintiff had withdrawn the sum of K1950 from Mr. Chipofya without signing for it as required under the Bank's standing rules; secondly because the New Building Society account showed that the plaintiff had made several deposits therein during the relevant period. It was also discovered that the plaintiff had deposited Mr. Chipofya's money into this account which was odd or at least showed that the two were intimate friends. It was the 3rd Defendant's evidence that when the two detectives came he simply narrated the story to them and asked if the police could investigate the matter whereupon he was requested to submit a written report and the plaintiff and Mr. Chipofya were then taken away. It is common case that the two were taken to Limbe Police Station where they were detained for two days; they were released on 24th August. Subsequently, in September to be precise, the police wrote to say they had found no evidence to connect the plaintiff with the missing of the K2100 and that they had accordingly closed their file.

Such are the facts. I wish to pause here and say something concerning the 2nd Defendant. It will be recalled that according to the proffered evidence this defendant merely carried out the preliminary investigations initiated by the bank when the shortage was reported to management. Then he submitted his findings to head office,

saying he was unable to tell who precisely was responsible or trace the difference. It was then the head office, independently, which sent out the 3rd Defendant, the Bank's security officer, to the branch to mount a further investigation. And the only other thing the 2nd Defendant did thereafter was simply to tell the plaintiff to go to the rest room as the 3rd Defendant wanted to see her before she knocked off. The 3rd Defendant confirmed having asked the 2nd Defendant to pass this message to the plaintiff. Indeed there is no controversy on this aspect. That was all the 2nd Defendant did in this matter and it is to be observed that he did all this in the course and by virtue of his employment. On these facts I am unable to see how the 2nd Defendant can be faulted and I would non-suit him. The plaintiff's claim against the 2nd Defendant accordingly fails and is dismissed.

I now move on as respects the Bank and the 3rd Defendant. The first limb of the plaintiff's claim relates to the 50 minutes or so she was made to wait for the 3rd Defendant in the rest room. I am mindful on this aspect that false imprisonment is simply the restraint or deprivation of a person's liberty, in any place, without lawful cause. Here, I find on the evidence that the plaintiff was requested to go to the rest room and wait there because the 3rd Defendant wanted to interrogate her, like he interrogated the other cashiers, regarding the undisputed shortage in this matter. Surely the Bank was entitled to investigate the matter and much as I appreciate that the request was made by a person in the position of the 3rd Defendant who was senior in rank to the plaintiff I think that it would be going too far to say that she went to the rest room involuntarily, strict sensu, or that she waited in there against her will, in all the circumstances. The claim on this aspect must therefore fail and it is dismissed.

I now turn to the second limb. As already indicated, the plaintiff's evidence was that just before she was taken away the police officers told her that they had been called specifically to pick her because she was connected with the missing of the K2100. She contended, in other words, that it was the defendants who directed and procured her arrest and detention. The 3rd Defendant denied this. If I may recap, his evidence was that he called the police simply so they could assist in the investigations pertaining to the missing money. He said that when the police came he simply told them about the shortage and the other facts, already mentioned, which aroused suspicion around the plaintiff. It was his evidence that the two policemen on their own then decided to take her into custody.

Pausing there it is to be observed that the crucial issue in false imprisonment is to decide whether the defendant or his servants made a charge or accusation on which it became the duty of the police to arrest and detain the plaintiff or whether they merely gave information and the police acted according to their own judgment. The defendant would be liable in the former case and not liable in the latter. See *Hauya v Cold Storage Co. Ltd.*, Civil Cause No. 274 of 1987, unreported. See also *Chintendere v Burroughs Ltd.*; Civil Cause No. 530 of 1981. It was argued in argument that in cases of this kind the court must consider the total facts closely in order to determine whether or not the police indeed acted on their own judgment. With respect, I would agree in this submission. It was then contended that on the facts obtaining in the present case the only conclusion to be drawn is that the defendants made a charge against the plaintiff upon which the police had no other option but to take her into custody. With respect, I am inclined to prefer the 3rd Defendant's evidence to that of the plaintiff. To start with the plaintiff's evidence on this aspect related to what she heard from the police officers, not the 3rd Defendant and none of the police officers concerned was called to confirm the story. The letter from the police which I have referred to earlier and which was tendered in evidence on behalf of the defendants is instructive. The body reads:

"TO WHOM IT MAY CONCERN

The bearer of this note Mrs. H.E. Kaimé was on 22nd July, 1987, brought to this police station for questioning in connection to an allegation which was suspected to involve her. After being interviewed, she was released since there was no evidence to connect her to the allegation. The matter has since been closed."

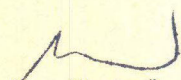
To my mind this letter supports the 3rd Defendants contention that he simply proffered the facts in regard to the missing money and conveyed his suspicion to the police whereupon the latter on their own responsibility then took the plaintiff to the police station for interrogation. Finally, I think that it would be going too far to say that the police had no option but to arrest the plaintiff then and there. Indeed the 3rd Defendant emerged firm in his evidence on this aspect. I appreciate that it was the principal cashier who incurred the shortage but the 3rd Defendant did explain why suspicion also fell upon the plaintiff particularly as regards the several deposits she made into her savings account with the New Building Society at around the same time the K2100 missed. I sympathise with the plaintiff, I really do, for what she went through during the 2-3 days

she was in custody but all in all I am unable to say that the 3rd Defendant made a charge against the plaintiff or that he ordered her arrest. I also think that it cannot be said that there wasn't an iota of suspicion about her in this matter. To my mind the 3rd Defendant merely conveyed his suspicion and that on the facts it was the police according to their own judgment who took the plaintiff into custody.

Accordingly, the plaintiff's case against the 2 defendants must also fail and it is dismissed.

Costs of the action to the Defendants.

PRONOUNCED in open Court this 26th day of October, 1990, at Blantyre.


L. E. Unyolo
JUDGE

