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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 553 OF 1987



BETWEEN:

S.R. KAMALA

PLAINTIFF

AND

SOUTHERN BOTTLERS LIMITED

DEFENDANT

CORAM:

BANDA, J.

Maulidi, Counsel for the Plaintiff
Chirwa, Counsel for the Defendant
Liyao (Mrs), Official Interpreter
Maore, Court Reporter

JUDGMENT

The plaintiff is suing the defendants for damages for false imprisonment.

The plaintiff was at the material time employed by the defendants as a salesman. On or about the 29th of August, 1986 the plaintiff started work at the defendants premises at 7.30 a.m. He worked until 12.00 noon when he left for lunch. He was working with four other people normally known as truck helpers. They also broke for lunch together with the plaintiff at 12.00 noon and all came back at 1.30 p.m. On his return from lunch it is alleged that the plaintiff found a safe in his office broken and a sum of K1,069.69 missing. He reported the matter immediately to his immediate boss who was Mr. Matache who was at the material time the Area Sales Manager. Mr. Matache went to the plaintiff's office where he found that a safe in the plaintiff's office was broken and confirmed that a sum of K1,069.69 was missing.

There are certain facts which are not disputed in this case. It is not disputed that the house sales office where the plaintiff was working was in a fence and had a safe. The house sales office had also a door and shutters. The fence had a gate and a lock. The salesman who was the plaintiff at the time kept the keys both to the fence gate and the door of the house sales office. The shutters also had locks which were lockable from the inside. Mr. Kamala kept the keys for the shutters as well. The evidence of the plaintiff was that after Mr. Matache

confirmed that a theft had occurred he called the Police to come to Southern Bottlers premises and told them to arrest the plaintiff and the four truck helpers. He stated that he was taken to Police Ndirande where he was locked up in a cell together with the truck helpers. He remained in custody for 15 days.

It is important, in my view, to carefully review the evidence relating to the manner in which the Police came to the defendants premises. The evidence according to the plaintiff was that a defendants' vehicle was sent to collect the Police with a Mr. Kamfosi, an employee of the defendants. The Police were brought to the defendants premises and that they asked the plaintiff some questions. It was also the plaintiff's evidence that Police made some investigations at the defendants premises before he and the four truck helpers were taken to Ndirande Police. That evidence is similar to what DW3 who was the Police Officer who investigated the case said. According to this witness he received a report from Southern Bottlers and Mr. Matache, in particular, to say that a sum of money had been lost. It was the evidence of this witness that Mr. Matache did not mention the name of the plaintiff when he was reporting the loss of money to the Police. The witness stated that he told Mr. Matache that the Police had no transport and that thereafter the defendants sent a motor vehicle to Police Ndirande to collect the officer. On the other hand, Mr. Matache's evidence was that he took the plaintiff and four truck helpers to Police Ndirande and after that the Police came to the defendants premises for investigations.

Mr. Maulidi seized upon this apparent contradiction between what DW3 said and what Mr. Matache said on how the Police came to the defendants premises. He contended that this was a crucial contradiction on a crucially important point and he submitted that the plaintiff's version was more probable than the defendants. But as I have already indicated above, the version of the plaintiff is exactly the same as that told by DW3, the Police Officer. It is clear, in my judgment, that one of the witnesses was mistaken on how the Police were invited to the defendants premises. Mr. Maulidi has contended that the correct way in which Police were invited was the version made by Mr. Matache and that in taking the plaintiff and four helpers to Police Mr. Matache had already made up his mind that the plaintiff and the four truck helpers were the suspects. It is interesting to note that in one instance Mr. Maulidi was castigating Mr. Matache as a liar and yet in another instance he is saying Mr. Matache is a witness of truth and his evidence must be accepted. Mr. Matache is either a witness of truth or not but he cannot be both at the same time. I will deal with this aspect of the matter later in this judgment.

But for now it is necessary to look at the set-up at the

house sales office. It is not disputed that the plaintiff kept keys of the main gate and the keys to the door to the house sales office. He also kept keys to the safe. There was some dispute on who kept the duplicate keys between Mr. Nkhonjera and the General Manager. The plaintiff's contention was that somebody had broken into the office to steal money and he stated that he suspected people who kept duplicate keys. It was suggested to him whether he also suspected the General Manager who is one of the people who kept duplicate keys. The plaintiff said he made no exception. As far as he was concerned he suspected all the people who kept duplicate keys. The plaintiff's position is that when he left the office at 12.00 noon the money was intact but when he came back at 1.30 p.m., an interval of 1½ hours, the money was stolen.

In cases of false imprisonment, the law, as both Counsel submitted, is well settled. The defendants will be liable for false imprisonment if they laid a charge against the plaintiff on which it became the duty of the Police to arrest the plaintiff. They will not be liable if all they did was to give information to the Police about the loss of money at their premises. See the case of M.J. Hauya v. Cold Storage Co. Ltd. Civil Cause No.274 of 1987 (unreported). As I have already indicated, it is the contention of the plaintiff that Mr. Matache told the Police to arrest him and the four truck helpers. Mr. Matache denied telling the Police to arrest the plaintiff. He stated that he had no powers to do this and that all he did was to inform the Police that there had been a loss of money at the defendants premises. He told the Police that the salesman in the section where the money was lost was Mr. Kamala. The Police Officer himself stated that Mr. Matache did not tell him to arrest the plaintiff and the four truck helpers. He stated that when he arrived at the defendants premises he made initial investigations. He asked the plaintiff some questions and he also asked the four truck helpers; that he checked on the fence near where the house sales office was and that he decided on his own to take Mr. Kamala and the four truck helpers to Ndirande Police. He stated that after further investigations he was satisfied that the plaintiff was involved because he was unable to give a satisfactory account of how the money was lost. The witness released the truck helpers from custody after he conducted his investigations.

I have carefully reviewed the evidence adduced in this case. I have also carefully considered the arguments and the authorities both Counsel have advanced and cited before me. There can be no doubt that a breaking had occurred at the defendants premises and a sum of K1,069.69 was stolen. The breaking and theft must have taken place during the 1½ hours lunch break. It was during broad day light at or about noon. Equally there can be no doubt that the defendants sent their


transport to fetch the Police and brought them to the defendants premises. Mr. Matache categorically denied ever ordering the Police to arrest the plaintiff. He stated that he had no powers to order the Police. It is significant to note from the evidence of the Police that when Mr. Matache phoned him to report the theft no names of suspects or of the plaintiff were mentioned. It is also significant to note that in the letter the defendants wrote to the plaintiff suspending him from duty and subsequent dismissal there is no accusation of theft against the plaintiff. I am, therefore, satisfied, on the evidence, and I find that the defendants did not lay a charge against the plaintiff upon which it became the duty of the Police to arrest the plaintiff. In my view even if the defendants had conveyed their suspicions to the Police that by itself would not have been sufficient to ground a claim of false imprisonment. Indeed I believe that, in the instant case, there would have been sufficient basis for those suspicions as the plaintiff kept the keys to the house sales office to the safe and to the gate of the fence.

I have considered the cases which Mr. Maulidi cited to support his case. In the case of D.M. Sindi v AMI Rennie Press Civil Cause No.197 of 1982 (unreported) it was held that there was evidence that the defendants had laid a charge against the plaintiff. It was found that when a report was made to the Police it was suggested that the plaintiff had misappropriated funds. There was also the additional evidence that the plaintiff was taken to Police while he was resisting and two members of staff of the defendants accompanied the plaintiff to Police. Similarly in the case of Fordson Banda v Southern Bottlers Civil Cause No.41 of 1987 there was evidence that the defendants told the Police that the plaintiff was a thief. It was the evidence of the Police that on that information they had no choice but to put the plaintiff in a cell. It was also found in that case that the plaintiff was put into custody before any investigations were made. In the case of Malemia v Optichem (Malawi) Ltd. Civil Cause No.378 of 1985 there was evidence that the defendants had accused the plaintiff of stealing fertilizer. All these cases can, therefore, be distinguished from the present case.

I am satisfied that the provision of transport by the defendants to fetch the Police cannot on its own be construed as making a charge. There must be evidence to show that the defendants did make a charge against the plaintiff. There is no such evidence in the case before this Court. I find therefore that the plaintiff has not proved his claim, on a balance of probabilities, against the defendants. I would

therefore dismiss his claim with costs.

PRONOUNCED in open Court this 24th day of December, 1990,
at Blantyre.



R.A. BANDA
JUDGE