



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBERS 568 AND 569 OF 1987

BETWEEN:

JAMES SAULOSI 1ST PLAINTIFF

- and -

GOODWELL PAKETI 2ND PLAINTIFF

- and -

BATA SHOE COMPANY (MW) LIMITED DEFENDANT

CORAM: UNYOLO, J.

Ng'ombe, Counsel for the Plaintiffs
Chirwa, Counsel for the Defendant
Kadyakale/Katunga, Official Interpreters
Maore/Manda, Court Reporters

JUDGMENT



This is a consolidated action. By their respective writs of summons and accompanying statements of claim the two plaintiffs, James Saulosi and Goodwell Paketi, claim damages against the defendant for false imprisonment. The defendant put in a defence denying the claim.

The following facts emerge. The two plaintiffs were at all material times employed by the defendant, a shoe manufacturing company, as machine operators. They worked in the production department. The story begins on Friday 24th July, 1987. On that day the two plaintiffs and several other work-mates were requested to come and work during the week-end namely on the following Saturday and Sunday, the 25th and 26th July. On the Saturday, they worked from 2 p.m. to 10 p.m. and on the Sunday they reported for duties at 7 a.m. It was in the evidence that soon thereafter the factory Superintendent, DW2, complained that 13 pairs of shoes were missing from the lot of shoes made on the previous day. The Production Foreman, DW1, was informed. He came to the factory and after hearing the full story he contacted the guards on duty at the material time to find out what they had to say concerning the missing of the shoes. These were guards from the organisation called Safe Guard Services. The guards were however not very helpful and so the matter was reported to the police, the first thing on the following day, Monday. The Supervisor and the security



- 2 -

guards were taken into custody at Ndirande Police Station on the same Monday. The plaintiffs and the other work-mates continued working, though. In point of fact they went on working up to Thursday when they were taken to the Police station, in the defendant's motor vehicle, and there detained in connection with the very allegation that 13 pairs of shoes had missed from the defendant's factory. They spent the night there and were only released the following day in the afternoon after, according to them, they had been subjected to extreme torture and beating. Both plaintiffs continued to work for the defendant after their release and it was only later in September when they were dismissed and this was after they had instituted the proceedings here against the company. There is no serious dispute upon these facts. I will deal with the disputed facts shortly.

This appears to be a convenient juncture to say something about the law in cases of false imprisonment. Here, I can do no better than simply quote with approval the following passage from a Judgment of Banda, J. in a very recent case, namely Hauya v. Cold Storage Co. Ltd. Civil Cause No.274 of 1987, unreported, where at page 5 the learned Judge had this to say:

"The crucial issue in false imprisonment is to decide whether the defendant's servants merely stated the facts to the Police or whether they made a charge against the plaintiff. It is accepted that conveying one's suspicion to the Police who, on their own responsibility, take the plaintiff into custody, is not making a charge. However, where the defendant acting through their agents or servants order the Police to arrest the plaintiff, it is imprisonment by the defendant as well as the Police and an action for trespass would lie against the defendant; but if the defendant merely stated the facts to the Police who, on their own responsibility took the plaintiff into custody, this is not imprisonment or trespass by the defendant. The test is this: If the defendant's servant made a charge on which it became the duty of the Police to act then the defendant will be liable but they are not liable if they merely gave information and the Police acted according to their own judgment."

In my judgment the foregoing is a correct exposition of the law on this subject. This brings me to the area where

the facts are in dispute. In the main the dispute concerns the events on the day the two plaintiffs were taken to the Police station. PW1's, the first plaintiff's, evidence on this aspect was that the Production Foreman, DW1, called him and the other workmen at about 7 a.m. and said "You thieves, come with me to the Police". He said that when he asked for an explanation the Foreman continued "You are thieves, you have got to go and there is company transport outside." It was this witness' evidence further that when they got to the Police station the defendant's driver who drove them there said to the Police "These are the people who have stolen the shoes" and that they were then ushered into the office and put in cell.

DW1, on the other hand, denied strongly having uttered the words complained of. He said that he would have reported the plaintiffs to the Police on the very Monday and would not have allowed them to continue working up to Thursday if at all he had entertained the view that it was they who had stolen the shoes. According to this witness it was the Police who rang on the Thursday to say they wanted the two plaintiffs and the other two workmen, DW3 and DW4, and that since the Police had no transport of their own, the company was requested to assist. The witness said that he did not know why the Police wanted the plaintiffs and denied having for that matter accompanied the plaintiffs to the Police station.

And the evidence given by DW2, the Supervisor, was illuminating. As already indicated, this witness and several guards were the first to be taken into custody on Monday, 27th July. It was his evidence that during his interrogation on Tuesday, the Police asked him who else had worked on the Saturday shift and that it was there he mentioned the two plaintiffs and the two others, DW3 and DW4. Then two days later, on Thursday, these four were brought in at the Police station.

Taking the evidence all round, I am inclined to believe DW1 and would prefer his evidence to that of the first plaintiff/PW1. To my mind it is DW1's story which has the ring of truth. Surely if the witness had opined that the plaintiffs were the thieves he would have reported them to the Police on that very first day, on the Monday, and indeed he would not have taken them back on the job upon their release. Observably, too, the witness emerged unshaken in his evidence. Secondly, the witness was, as I have endeavoured to show, supported in his evidence by DW2. It is also to be observed that this latter witness was himself supported in material particular by DW5, the Police Officer who investigated the reported missing of shoes herein. The officer denied DW1



- 4 -

ever accused the plaintiffs of being thieves. He denied further having acted on DW1's words or orders. It is also to be noted, and this is very significant, that neither the second plaintiff nor the two other workmen, DW3 and DW4, supported the first plaintiff in their evidence on the question that DW1 accused them of being thieves. According to the second plaintiff, it was the Police who said this and that was long after they had been brought in at the station. Again DW3 denied that DW1 called them thieves. The witness denied further that the defendant's driver said anything to the Police accusing them of being thieves. According to these two witnesses what DW1 said on the Thursday was simply that the Police wanted them so they could "give evidence".

To cut a long story short the defendant's servants cannot on the evidence be said to have made a charge against the plaintiffs or to have ordered the Police to arrest the plaintiffs. On the contrary, the picture which emerges is that the defendant's Production Foreman merely informed the Police about the missing of the shoes and that in calling the plaintiffs to the Police station and detaining them there the Police acted according to their own judgment in the course of their investigations into the matter. Observably, there can be no doubt on the evidence that the shoes missed in circumstances suggesting a theft. Perhaps I should also mention that there was some suggestion in the plaintiffs' statements of claim that the plaintiffs were also falsely imprisoned at the defendant's offices before they were brought in to the Police. With respect there is not even a scintilla of evidence to support the allegation.

This was no doubt a sad case. I sympathise with the two plaintiffs for the suffering and humiliation they went through in this matter. But for the reasons already given their actions must fail and are dismissed with costs.

PRONOUNCED in open Court this 6th day of April, 1990 at Blantyre.


M.E. UNYOLO
JUDGE