

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 281 OF 1988

R. MATANDA

versus

SALES SERVICES LTD

CORAM: MTEGHA, J.

Nakanga, Counsel for the Plaintiff
Chigaru, Court Clerk

RULING

By a summons dated 31st August, 1990, the plaintiff in this case is applying to the court for an order for directions on costs.

The brief history of the matter is this: The plaintiff claimed against the first, third and fourth defendant (now deceased) for damages for false imprisonment. He also claimed damages against the first defendant for defamation. Finally, he claimed damages against the first defendant for malicious prosecution. At the end of the day, his Lordship Mr. Justice Unyolo disposed of the matter in these words:

"To recapitulate, the plaintiff has succeeded against the first defendant on three claims as follows: firstly, on his claim for false imprisonment for 2½ hours on 18th February 1986; secondly on his claim for false imprisonment for 7 days (on 19th February 1986) and thirdly on his claim for defamation relating to the incident at the first defendants' offices on 21st February, 1986. He has, however, failed on the remaining claims against this defendant. These are firstly, his claim for malicious prosecution; secondly, the two claims for defamation relating to the incident at Blantyre Police Station on 21st February, 1986 and the letter of 11th March, 1986. He has also failed on claims for special damages. Again he has failed in his claims against the second and third defendants."

The learned judge then turned to the "vexed question of damages" and costs.

In relation to the costs the learned Judge had this to say.

"This is a discretionary matter, but in general costs follow the event. The matter has given me most anxious moments. Considering the total facts, however, I am unable to find any reason why the parties must be deprived of costs on claims they have respectively succeeded. It may well be that it was not necessary for the plaintiff to add the second and third defendants as parties to the action. I only say this in passing. All in all, my order is that the plaintiff will have costs on the claims he has succeeded and the defendants too will have costs on the claims which they have each succeeded."

Subsequently, Mr. Jussab submitted a Bill of Costs to the Taxing Master for taxation in respect of all the defendants in the matter. Mr. Nakanga, on behalf of the plaintiff objected to the taxation of the Bill of Costs, contending that he is to apply to the judge to seek directions as to the effect of the order for costs, i.e. the order which I have cited above.

It was Mr. Nakanga's submission, before me, and his submission is supported by his affidavit in support of the application, that there should have been one bill of costs prepared, either by the plaintiff or by the defendants which should have been taxed and thereafter the parties should share the costs "fractionally", depending on what actions they have each succeeded.

He cited to me the case of Agricultural Development and Marketing Corporation (ADMARC) v H.D. Stambuli MSCA Civil Cause No. 6 of 1984 as his authority for his proposition.

On the other hand, Mr. Jussab, on behalf of the defendants, has submitted that the learned Judge's order is quite clear: each of the parties will have costs in causes of action in which each one has succeeded. He further went on to say that sharing of the costs would not reflect the work which counsel for the defendants did on behalf of the defendants.

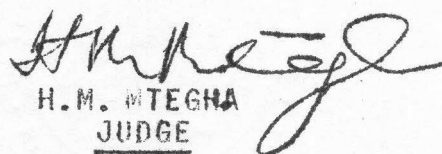
The general rule as to costs was correctly stated by the trial judge - that costs normally follow the event. A successful litigant should not be deprived of his costs except on very good reasons. Such as misconduct on the part of the successful litigant.

In the Stambuli case, cited above, there were only two parties to the action and the trial judge, in awarding the costs merely said "costs for the plaintiff". The respondent had succeeded in one cause and the appellant had successfully defended two causes of action. In the Supreme Court the respondent succeeded in two causes of action and the appellant succeeded on one cause of action. The court apportioned costs as to two thirds for the respondent and one third to the appellant. Mr. Nakanga submitted that this court should follow the same approach.

As stated on numerous occasions the question of costs is discretionary and each case must be examined on its own facts. In the Stambuli case, there were only two parties to the action; again the order on costs which the judge had made did not take into account that the defendant had succeeded on other causes of action.

In the present case, the 2nd and 3rd defendants had successfully defended each of the causes of action that were alleged against them. The first defendant had also partially succeeded. Why should the second and third defendants be deprived of their costs? If we leave out the first defendant, we shall see that the two defendants would have been entitled to all the costs and the costs would not be subject to apportionment. Perhaps sharing fractionary, as Mr. Nakanga put it, would be appropriate between the plaintiff and the first defendant. Moreover, the learned judge's order of costs was quite clear; each party will have costs on the claims which he has succeeded. I would therefore concur with Mr. Jussab that this is not a proper case where costs should be shared fractionary. I therefore order that the plaintiff should prepare his own bill of costs on causes of action which he has succeeded and those costs to be taxed. The defendants will also do the same and their costs should also be taxed. This is clearly what the learned judge meant in his order as to costs.

MADE in Chambers this 23rd day of November, 1990,
at Blantyre.


H.M. MTEGHA
JUDGE