

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO.707 OF 1989



BETWEEN:

M. CHIUMIA PLAINTIFF

AND

SOUTHERN BOTTLERS LIMITED DEFENDANT

CORAM: UNYOLO, J.

Nakanga, Counsel for the Plaintiff
Msisha, Counsel for the Defendant
Chigaru, Official Interpreter
Phiri, Court Reporter

ORDER

The plaintiff brought the action in this matter against the defendant claiming damages for false imprisonment. The plaintiff contended that the defendant, through its servants, got him wrongfully arrested and imprisoned for a period of six days. The defendant denied the allegations. The case eventually came for trial before me and I heard evidence called by both sides.

There is a preliminary issue which, in my view, ought to be dealt with here and now. It arises thus: The plaintiff was at all material times employed by the defendant as a stores clerk. It is not disputed that an audit inspection of the stores there revealed a shortfall to the extent of K2,200.00. Then the plaintiff and his fellow stores clerk were taken to Ndirande Police Sub-Station by the defendant's servants and turned over to the police there. Then the police, without much ado, proceeded to take the two into custody and as I have already indicated they remained locked up for six days. The plaintiff was later arraigned before the Resident Magistrate's Court, Blantyre on a charge of embezzlement.

And here is the rub. It was disclosed during the trial, towards the end as a matter of fact, and only then, that the criminal proceedings in the Magistrate's Court have not yet been concluded. So the question that has exercised my mind is whether I should in these circumstances proceed to render my final decision in the civil proceedings herein or stay the same until the criminal proceedings have been concluded.

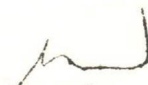


I have said that the action here is one of false imprisonment. This tort is defined as restraint of a person's liberty without lawful cause. Accordingly one of the issues the court will have to decide in the present case is whether the plaintiff's arrest and incarceration were without lawful cause. This is where the concurrent criminal proceedings before the Magistrate's Court become extremely pertinent to the civil proceedings in the present case. Supposing, and I am simply thinking aloud here, I proceed to give judgment in the instant case and found for the plaintiff and then the criminal court subsequently found the plaintiff guilty and convicted him of the charge. What situation would be thereby created? On the one hand the conviction would mean that the plaintiff's arrest and imprisonment were justifiable whileas the finding of this court would, on the other hand, give a diametrically opposite meaning. Plainly, that would be anomalous.

Although the magistrate's court is subordinate to this court I think that this is a proper case where it was open to the defendant, immediately it was disclosed the criminal proceedings were still pending, to apply for a stay of the proceedings here, regard being had to the nature of proceedings in the lower court and considering also the manner in which the two concurrent proceedings relate to each other.

All in all it seems to me that the balance of justice in this case lies in favour of staying the proceedings in this court as I think it would be wrong and premature to proceed to give judgment on the merits before the criminal trial has been concluded. Accordingly it is the order of this court that the civil proceedings here be stayed until then.

DONE in Chambers this 15th day of October, 1990 at
Blantyre.


L.E. Unyolo
JUDGE