

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 126 OF 1987

VALBAR LIMITED t/a HONDA CENTRE PLAINTIFF

- AND -

F. OSMAN DEFENDANT

Coram: MKANDAWIRE, J.

Osman of Counsel for the Plaintiff

Msaka of Counsel for the Defendant

Manondo (Mrs), Court Clerk

Gausi (Mrs), Court Reporter

J U D G M E N T

The plaintiff's action against the defendant is for the sum of K2,725.41, representing the price of goods and services rendered between 23rd May, 1983, and 20th February, 1984. There is also a claim for K2,000.00, being money advanced on or about the 20th day of May, 1983, by the plaintiff to the defendant at the latter's request. The plaintiff therefore claims a total of K4,725.41 and it is stated in the statement of claim that particulars of these claims were already known by the defendant.

In his defence, the defendant denies to have bought any goods from the plaintiff and it is also denied that the plaintiff had rendered any services to the defendant during the period mentioned or at all. The defendant further denies to have been advanced the sum of K2,000.00 or at all by the plaintiff.

The defendant was not present at the hearing. I shall briefly explain what happened. Up to the date of hearing the defendant was represented by Messrs Savjani & Co. When this case was set down for hearing, Mr. Msaka had sent a letter to the defendant, advising him of the date of hearing. In that letter Mr. Msaka also reminded the defendant to pay a deposit of K1,000.00 towards the costs of the action. As a matter of fact, several letters had been written about the costs and Mr. Msaka made it quite clear in his last letter that if the costs were not paid, Messrs Savjani & Co. would cease acting for him. Upon getting no response, Mr. Msaka had filed a summons praying that Messrs Savjani & Co. be discharged from acting for the defendant as he was being unco-operative. Mr. Osman then submitted that if Messrs Savjani and Company were discharged, the plaintiff was prepared to proceed with its case.

On the basis of what Mr. Msaka submitted I agreed that the defendant was indeed unco-operative. He wants to get legal service for nothing. That cannot be. I therefore order that Messrs Savjani & Co. be discharged from acting for him. I was further satisfied that the defendant was well aware of the date of hearing. He deliberately stayed away in an attempt, I think, to frustrate the course of justice. In these circumstances, I ordered that the plaintiff should proceed with its case. After all, if the defendant is dissatisfied, he can always apply to have the judgment set aside.

The first witness for the plaintiff was Mr. I.A. Osman. He is a Chartered Accountant by profession and he is the General Manager of Honda Centre. He joined Honda Centre in April, 1987, but previously he was working for Coopers & Lybrand. In his capacity as General Manager of Honda Centre he came across the account of F. S. Osman, the defendant. The defendant did not work for Honda Centre, but he worked for Mobile Motors Limited. At that time, Mr. Stephens was the Managing Director for Mobile Motors Limited and the General Manager was Mr. Isaacson. These two gentlemen had some business connection with Valbar Limited which trades as Honda Centre. So there was a loose connection between Valbar Limited and Mobile Motors Limited and so the defendant used to introduce some customers to Honda Centre.

Mr. I.A. Osman testified that on 20th May, 1983, the plaintiff loaned a sum of K2,000.00 to the defendant. To this effect, he produced a paid-up cheque No. 150519 dated 20th May, 1983, drawn by the plaintiff and payable to the defendant. It was Mr. Osman's evidence that the defendant has not yet repaid the loan and it is still outstanding. Mr. Osman further testified that on 23rd May, 1983, the defendant bought on credit from the plaintiff a Honda Water Pump at a price of K1,323.00. There was tendered an invoice No. 1789 dated 23rd May, 1983. The said sum of K1,323.00 still remains unpaid. Then on 12th July, 1983, the defendant, again on credit, bought from the plaintiff a used Honda Motor Cycle at a price of K500.00. Invoice No. 1822 dated 12th July, 1983, was tendered as evidence of the transaction. The Motor Cycle remains unpaid for up to date. After purchasing the Motor Cycle, the defendant took it to the plaintiff's garage on five occasions for repairs. The total repair charges for the five occasions came to K902.41 and this amount was not paid. Job Card Numbers 8071, 8152, 8196, 7319 and 8394 were tendered in evidence. The total indebtedness of the defendant came to K4,725.41 and it was Mr. Osman's testimony that this sum remains unpaid up to date despite several demands. There was tendered a letter of final demand dated 12th September, 1986, and this was sent by registered post. The actual debt was K4,779.03 and this is what is shown in the final demand letter, but Invoice No. 8458 for K53.62 could not be traced and that is why the claim is in the sum of K4,725.41.

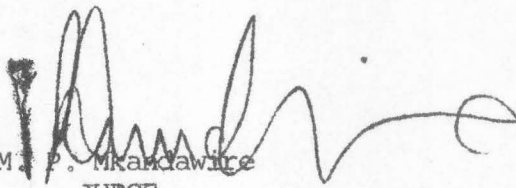
Mr. Alfred Mbendera, who was the Foreman for Motor Cycles, testified that from time to time the defendant used to take his motor cycle to Honda Centre for repairs. At that time the General Manager was Mr. Peter Chevy.

Such was the plaintiff's case. The evidence is simple and straightforward. It is evident that a sum of K2,000.00 was indeed loaned to the defendant. The only defence to such a claim would be that the money was repaid. I have no reason to doubt Mr. Osman's evidence that the money remains unpaid. Again, the purchases of the

water pump and motor cycle, as well as the repair charges, appear to be clear. I have all reason to believe that all these debts were indeed incurred by the defendant and that they remain unpaid.

The plaintiff has therefore proved its case and so I enter judgement against the defendant in the sum of K4,725.41. The defendant is condemned in costs.

PRONOUNCED in open Court this 18th day of February, 1991,
at Blantyre.


M. P. Mkwawire
JUDGE