

IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO.509 OF 1988



BETWEEN:

ANDERSON W. SOMANJE ..... PLAINTIFF

AND

THE RESERVE BANK OF MALAWI ..... 1ST DEFENDANT

AND

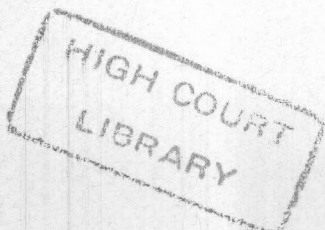
THE ATTORNEY GENERAL ..... 2ND DEFENDANT

CORAM: TAMBALA, J.  
Plaintiff present, unrepresented  
Mpango, Counsel for the First Defendant  
Chigawa, Counsel for the Second Defendant  
Chigaru, Official Court Clerk  
Phiri, Court Reporter

JUDGMENT

The plaintiff, who appears in person, brought this suit against both defendants claiming against them the following remedies:-

- (1) Recovery of his house built on plot No. NY.367 in Chirimba in the City of Blantyre;
- (2) Damages amounting to K15,000.00 in connection with loss of Insurance Policy No.308259;
- (3) Damages amounting to K18,000.00 for unlawful use of the house for a period of two years calculated at the monthly rent of K750.00;
- (4) Damages amounting to K7,000.00 for damage to his motor vehicle and other personal chattels;
- (5) Damages amounting to K52,340.00 relating to loss of salary from 6th March, 1976 to 5th July, 1988 plus gratuity calculated at the rate of 25% of the total salary.



- (6) Damages amounting to K35,000.00 for causing him and members of his family to live in fear and anxiety and also for "misrepresentation in the face of reasonable persons".

The pleadings suffer a great deal from lack of clarity. It is very difficult to discern the causes of action on which the plaintiff's claims are based. Since the plaintiff is not represented by counsel it may not be fair to speedily dismiss his action on the ground of bad pleadings.

It is now pertinent to turn to the evidence as it may be of some assistance in discovering the causes of action on which the plaintiff's case rests. The plaintiff told the Court that he had previously worked for the Malawi Civil Service from which he retired in 1971. He had risen to the rank of Chief Executive Officer in the Ministry of Finance by the time he retired. He got employment with the Reserve Bank of Malawi soon after the retirement. His new employers gave him responsibility over the banking hall, the Accounts and Notes and Coins Sections.

In 1973 the plaintiff secured from his employers a loan of K13,139.64 for the purpose of building a house on plot No. NY.367 in Chirimba in the City of Blantyre. As a condition for being granted the loan he was required to obtain an insurance policy for a capital sum of K15,000.00 which would act as a security for the housing loan. The loan attracted interest at 2½ per centum per annum. According to the plaintiff's pleadings the total principal sum with interest would immediately become payable upon the resignation, or dismissal on misconduct or detention of the plaintiff. Mr. Mambiya and Mr. Chikapa, then Deputy General Manager and Assistant General Manager of Reserve Bank respectively were aware of the terms of the loan agreement.

The plaintiff completed construction of his house in September, 1973. He said that Mr. Mambiya and Mr. Chikapa became jealous and hostile. They were provocative and ready to find faults with him. They tried to find grounds which could cause his resignation or dismissal from the Reserve Bank.

About November 1975 the plaintiff was told confidentially by the General Manager of the Reserve Bank to prepare himself for the move of the Reserve Bank from Blantyre to Lilongwe. On 5th January, 1976 he was called to the office of the General Manager. When he went there he found two special branch police officers. They told him that he was wanted by the Commissioner of Police. He was taken to Southern Region Police Headquarters where he was told that he was under detention. He was sent to Chichiri Prison. He asked the Officer in Charge Special Branch Police why he was detained. He told him that he did not know. He was transferred to Zomba Prison after two weeks.



On 25th February, 1976 he was released. The Police told him that they failed to prove the allegations made against him. They said that the reports made against him originated from his office and were actuated by jealousy. He went to his house where he was told that he should not go to his place of work.

About the end of February, 1976 he was asked to report at the Reserve Bank. He went to meet Mr. Mambiya at his office. Mr. Mambiya told him that the Central Bank could not keep in its employment a person who had been detained. He asked him to submit his resignation. Knowing that the sums outstanding on his loan with the Reserve Bank would become due and payable upon resignation he tried to resist; but Mr. Mambiya insisted that he should resign. He told Mr. Mambiya that he would not give up his house and wanted to seek clearance from the Government as he was not satisfied with the legality of his detention; he was also not satisfied that his detention warranted dismissal from his employment.

In 1978 he wrote a letter to Malawi Congress Party National Headquarters; the letter requested that his matter should be taken to the Minister responsible for the preservation of public security for consideration that he should be cleared and be a free man. The reply which came from the Malawi Congress Party National Headquarters was that he was dismissed from his employment because of theft of a sum of K50.00. That was the first time that he heard that he was locked up for the theft of K50.00. He wrote back saying that he was amazed that it was alleged that his detention was related to a case of theft. He requested for a meeting. The request was granted.

A meeting was held in Delamere House. Present at the meeting were Mr. Bakili Muluzi, then Administrative and Secretary General of the Malawi Congress Party, Mr. John Tembo, then Governor of the Reserve Bank and the plaintiff. The matter was discussed and at the end of the discussion Mr. Muluzi said that he was taking the matter to His Excellency the Life President the following day. While he was waiting for the President's decision Special Branch Police Officers visited his house on 5th February, 1979. They arrested him and took him to Chichiri Prison on the order of the late Kamwana, then Inspector General of Police.

About March, 1979 he was called to Southern Region Police Headquarters where he met Mr. Kamwana. The latter told him that he ordered his arrest on the instructions of His Excellency the Life President following a report submitted to Him by Mr. Muluzi. The plaintiff told Mr. Kamwana that he was telling a lie because his petition could not cause the President to order his arrest. He was taken back to prison.

On 18th September, 1979 Mr. Kamwana visited the prison and interviewed the plaintiff. He asked the Inspector General about his position. He was told that there were people who

were still jealous of him. In October, 1979 the Inspector General came back to the prison. He released 95 prisoners who included remanded prisoners and those who were on detention. He was not released. He was told by Mr. Kamwana that there were people who were still jealous of him. The plaintiff told the Police Chief that it was wrong to detain a person on that ground. He was released on 25th February, 1980.

It was the evidence of the plaintiff that while he was in detention Messrs. Wilson and Morgan brought a Writ to the office of Mr. Billy Gama then Assistant Commissioner of Police and Officer in Charge Police Southern Region Headquarters for the purpose of serving it on him. He was called from prison and served with the writ in the office of Mr. Billy Gama. He contends that the service of the writ on him in those circumstances was unlawful.

He said that when he was released from prison he found a ruling that he should repay the outstanding debt to the Reserve Bank. He made an application before a Judge of the High Court. The application came before Justice Skinner C.J. as he then was. The ruling was that the house, the subject of the loan, should be leased and the rent should go towards the repayment of the loan and the balance should support him. He was unable to find a suitable tenant. In 1985 he was summoned before the High Court when the Reserve Bank applied to the Court that the house should be sold and that the proceeds of the sale must be applied towards the repayment of the loan. Justice Unyolo eventually made a ruling in favour of the Reserve Bank and ordered that the house should be sold on public auction. The plaintiff was ejected from the house on 19th August, 1986.

After the plaintiff concluded giving his testimony counsels for both defendants made a submission of no case to answer. They elected to call no witness to support their case. I bear in mind that a submission that the plaintiff has failed to make out sufficient case requiring the defence to answer may be made if no case has been established in law. That would be the case in a case of public nuisance if the plaintiff fails to give evidence showing that he suffered special damage. The same plea may also be made if the evidence adduced by the plaintiff is so unsatisfactory or unreliable that the court should hold that the burden has not been discharged: See Supreme Court Practice paragraph 35/7/2.

Regarding the claim for the recovery of the house built on plot No. NY.367 in Chirimba, Blantyre, counsel for the Reserve Bank has pleaded the doctrine of "res judicata". There is evidence from the plaintiff himself that following an application by the Reserve Bank Justice Unyolo made a ruling that the house should be sold and the proceeds of the sale should be applied towards repayment of the plaintiff's outstanding loan with the Reserve Bank. The plaintiff was ejected from the house following that ruling. He did not appeal against that ruling. The plaintiff has termed Civil

Cause No.150 of 1979, in which the ruling was made, unlawful. This shows that the plaintiff is a confused person. I have a feeling that he has a wild temper. He is capable of calling a decision of the High Court of the land unlawful without challenging it in an appellate court. In civil proceedings an unsuccessful party is debarred from challenging the correctness of the judgment entered against him in subsequent proceedings. He is precluded from doing so by the doctrine of "res judicata". This doctrine is also termed estoppel by judgment or estoppel per "rem judicatam": See Phipson on Evidence, 13th Edition, 28-22/23.

Counsel for the Reserve Bank told this Court during his submissions that since the Court's ruling the house was sold and it has subsequently changed several hands. The plaintiff does not seem to dispute that the house was sold following the Court's order. I am satisfied that the plea of "res judicata" succeeds. The plaintiff's claim for the recovery of the house built on plot No. NY.367 is dismissed.

The plaintiff seems also to be seeking damages for unlawful dismissal from his employment with the Reserve Bank. According to his testimony he was requested to submit his resignation in March, 1976. He instituted the present proceedings in September, 1988; that was over 12 years after he stopped working for the Reserve Bank. Both counsels have submitted that the plaintiff is debarred from bringing an action for unlawful dismissal by section 4(a) of the Limitation Act. I have examined the relevant provision of the Limitation Act and I am satisfied that the period limited for bringing an action of this nature is six years. The plaintiff is firmly caught by section 4(a) of the Limitation Act, Cap.6:02. He cannot succeed on this claim.

Then in the course of giving his evidence the plaintiff said that Mr. Mambiya requested him to resign because the Reserve Bank could not retain in its employment a person who had been detained. He did not say that the Reserve Bank dismissed him after he refused to resign. He said that he regarded the request that he should resign as being tantamount to a dismissal. There is no evidence, in my view, showing that the plaintiff was dismissed from his employment. He did not produce before this Court a letter of dismissal. I have a feeling that he tendered his resignation as he was requested. I am not prepared to regard resignation under those circumstances as being tantamount to dismissal. The plaintiff was given a choice to resign on his own or to be dismissed. He chose the former. He cannot take advantage of the latter for purposes of bringing a suit against his former employers. I am satisfied that the evidence adduced by the plaintiff failed to make out a case of unlawful dismissal. The plaintiff's action based on this claim fails and is dismissed. The claim for damages for loss of insurance policy is closely connected with the claim for unlawful dismissal. This claim is statute barred and it must fail. It is dismissed.



The claim in connection with damage to a vehicle or vehicle parts was not substantiated by evidence. The plaintiff simply gave no evidence relating to this claim. The claim for K7,000.00 is dismissed.

The claim for loss of rent amounting to K18,000.00 cannot succeed. Since the Court ordered the house to be sold by public auction and that the proceeds of the sale should be paid to the Reserve Bank, there was no house available for the plaintiff which could be let out by him. Then the plaintiff told the Court that he was failing to find a suitable tenant for the house. He now claims rent for the house for two years at a monthly rent of K750.00. The plaintiff seems to contradict himself. His own evidence contradicts the pleadings. He has failed to establish his entitlement to the sum of K18,000.00. His claim for this amount fails and it is dismissed.

The plaintiff's action against the second defendant is based on the alleged breach by Mr. Kamwana, then Inspector General of the Malawi Police of a civil duty owed to the plaintiff. It is contended by the plaintiff that Mr. Kamwana had a duty to report to the Minister responsible for the preservation of public security each time that he was detained. He said that the Inspector General failed to discharge this duty.

I must say that I have grave doubts about the legal basis for this civil duty to report a detention to the Minister responsible for public security. The first detention covered only 41 days which is just about six weeks. It would seem to me that this period was necessary to enable the Police to carry out investigations before deciding whether a recommendation should be made to the Minister responsible for public security to make a detention order in terms of regulation 3-(1) of Public Security Regulations. I am satisfied that the conduct of the Police cannot be faulted in respect of the first detention.

As regards the second detention the plaintiff was kept in custody for about a year and three weeks. The Police had to be careful with the plaintiff since he was being detained for a second time. Their investigations had to be thorough. They were in my view entitled to keep him for that length of period before they finally released him. As I have already said, the plaintiff seems to be a person of unruly temper. He probably provoked both detentions and brought the consequences of such detentions upon himself.

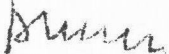
I am also satisfied that any action brought against the second defendant is, on the facts of this case, statute barred in terms of section 4-(a) of the Limitation Act, Cap.6:02.

I bear in mind that this is a civil case and the duty rests on a plaintiff to establish his case on a mere balance of probabilities. In the instant case I have been satisfied

that the plaintiff has even failed to make out a case requiring the defendants to defend themselves by adducing evidence in support of their case.

The plaintiff's action is dismissed in its entirety. The defendants are granted costs of this action.

PRONOUNCED in open Court this 12th day of September, 1991 at Blantyre.

  
D.G. Tambala  
JUDGE