

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 502 OF 1987

BETWEEN:

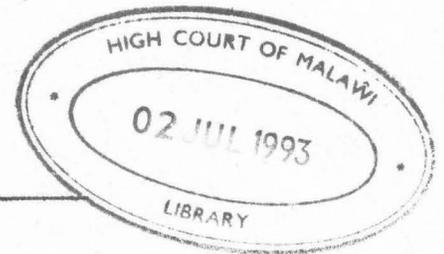
GIFT MWAMONDWE.....PLAINTIFF

- and -

WOOD INDUSTRIES CORPORATION LTD.....DEFENDANT

Coram: MTEGHA, J.

Nyirenda, Counsel for the Plaintiff
Chirwa, Counsel for the Defendant
Manda/Longwe, Court Reporters
Mkumbira/Liyao (Mrs), Court Clerks



JUDGMENT

The plaintiff in this case, Gift Mwamondwe, is claiming from the defendant damages for trespass to the person occasioned by the defendant's agents without the plaintiff's consent.

In his statement of claim, the plaintiff avers that on the 26th day of May, 1987, at the main gate of the defendant's premises, the defendant's security guards wrongfully assaulted and seized the plaintiff by the armpits and violently and forcibly pushed him towards the gate for a distance of about 20 metres, and as a result, he suffered discomfort, inconvenience, injury to feelings and injury to dignity. In addition, he is claiming aggravated damages for being humiliated and ridiculed in the presence of members of the public.

The defendant, which is a public corporation dealing in furniture and wood industries, denies the allegations, pleading, inter-alia, that the right of admission to their premises is reserved, and that, in brief, the plaintiff forced himself into the premises whereupon the defendant's security guards held him and told him not to proceed. The defendant further pleads that since the plaintiff refused to obey the security guards' orders to leave the place, he was a trespasser, and without using any unnecessary force, its servants laid their hands on him in order to remove him.

The plaintiff's evidence was that in May, 1987 he was working for Noor Agencies as a debt collector and on 26th May, 1987 he was detailed to collect debts from the defendant which had been outstanding for sometime. Having phoned the credit clerk the day before, he went there between 3.00 and 4.00 p.m. Having reached the gate, he found security guards - one being a Mr. Muleka. He told them why he was there, that he wanted to see the accountant or the credit controller. At that juncture, Mr. Muleka asked him why he wanted to see one of them. The plaintiff told Mr. Muleka that it concerned debts, but Mr. Muleka was not satisfied because he, the plaintiff, did not tell him the name of one of them. According to the plaintiff, having failed to give a specific name, Muleka started ostracising him. He tried to reason with him but to no avail. He asked if he could see the receptionist, but Muleka said the duty to find out whom he wanted to see was his. After he said he wanted to see the receptionist, he started being pushed; Muleka caught him by the armpits and on the chest and was pushed for a distance of 10 yards until another security man came on the scene. That other security guard enquired as to what was going on and after he got the explanation, he took Muleka to their offices and the plaintiff was allowed to go and see a Mr. Chipofya, and he explained the incident to him. Mr. Chipofya directed the plaintiff to see the Personnel Manager, but he was not there. Eventually he transacted his business with the credit controller's department. When he got back to his offices he phoned Mr. Kunje, the workshop manager, who advised the plaintiff to go there so that the guards could apologise to him. He did not go, instead he wrote a letter dated 27th May, 1987, in which he demanded an apology and compensation, or else he would take them to court. It was further the plaintiff's evidence that he was not rude to them; neither did he pass the gate without permission. Further, his evidence was to the effect that the security guards were not gentle to him.

It was the plaintiff's evidence in cross examination that prior to this day, he had been there on two occasions and on this day he had an appointment with the credit controller's clerk, only that he was not present, and that the whole area had a fence around its perimeters, that he demanded money and apology because of what the guard did to him. He admitted that he did not suffer loss as such, but humiliation. This, in brief, is the plaintiff's story.

The defendant called three witnesses. The first witness was Modesto Hilario who in May, 1987 was the defendant's security guard at its Blantyre Sawmills. He told the court that on the afternoon of 26th May, 1987 he saw the plaintiff coming to the gate. The witness asked the plaintiff if he could help him. The plaintiff replied that he would be helped where he was going. As this was contrary to the instructions which the defendant gave them, he persisted that he could not let him in without knowing where he was going, but the plaintiff said that he goes

anywhere he wants without being questioned. Meanwhile they had been walking side by side. The witness then decided to block his way after a few yards. The witness explained to the plaintiff that if he (the plaintiff) continued, he (the security guard) would be in trouble with his employers. The witness explained to the plaintiff that the rules stipulate that a visitor has to be asked at the gate why he has come there, and if a visitor wants to see someone, that someone is rung. If he has come for business, they direct him to the right place. But the plaintiff did not listen and when he stopped the plaintiff from proceeding any further, DW2, Muleka, appeared on the scene. When Muleka asked what was the problem, he explained. As they thought the visitor had no manners, Muleka pushed the visitor back to the gate. As the witness was senior to Muleka, he instructed Muleka not to push the plaintiff, but to let him proceed. After a few days, he heard that the plaintiff had complained and had written a letter, after which he explained to the relevant authorities. It was his evidence that he had been at the gate for a very long time, and had never met a man like the plaintiff and if he only complied with their requests to stop, he would never have been pushed.

It was this witness's evidence that the plaintiff never said that he had an appointment, never told them that he was a debt collector, and when they were quarrelling, he had already passed the gate, saying the witness was not the right person to talk to him.

The second witness for the defence was Elia John Muleka. He too was a security guard on the defendant's premises at the material time. It was his evidence that on the material day he was reporting for duty when he saw DW1 talking to the plaintiff. It was his evidence that he asked DW1 what was happening, but before he answered, the plaintiff said he, DW2, was not the person to talk to him. Despite explaining to the plaintiff that he should follow their rules, the plaintiff could not listen, instead, the plaintiff pushed DW1 to the drain and as a result he grabbed him in order to get support and avoid falling. At that stage, DW1 told him to stop and allowed the plaintiff to go to the offices. The witness explained that when a visitor comes to the gate, he is asked whom he wants to see. When the name has been given, they telephone the person and a guide is given to the visitor to escort him to the offices. Apart from security reasons, this witness said, these rules were made to prevent accidents in the factory. In cross examination he denied to have pushed the plaintiff; he denied to have held him in the arm-pits; he denied pushing him out of the gate; he denied to have heard a word "appointment". He finally said all this happened because the plaintiff could not comply with their requests.

The third and last witness was Alfred Macheyo, the Personnel Officer, but at present acting as Personnel Manager. He told the Court that at their premises there is a gate manned by guards and these guards are given rules;

these rules, according to the witness, are that every visitor must stop at the gate, where he is asked by the guards where he is going so that the guards can inform the person he wants to see, or section where he wants to go. This is so because there are two roads from the gate; one going to the factory and the other to the offices, and a visitor must be directed to the right section. Moreover, the factory is a busy place and there are machinery there; there is also a fence to control people when getting into the factory and, consequently, when the guards were preventing the plaintiff, they were doing their duty.

This then is the evidence before me. But before I evaluate the evidence, I wish to briefly state the position on the law regarding trespass to the person. There are three recognised kinds of trespass to the person, namely, battery, assault and false imprisonment. In the present case, according to the evidence before me, we are really dealing with battery. The direct application of physical force to the person of another is a battery and may be actionable. The physical application of force must be accompanied by an intention. Such battery may be justified in certain circumstances, for such an assault must be unlawful. I will now turn to the evidence.

From the evidence which is before me, it is quite clear that at the defendant's premises there are positioned, at the gate, security guards. According to the undisputed evidence, these security guards are given instructions as to how to handle visitors who go there because of various reasons. These rules, inter-alia, are to the effect that when a visitor comes to the gate, he is asked the purpose of his visit by the guards. After explaining the purpose of his visit, the guards telephone to the required individual or section. If it is all right for the visitor to proceed, he is escorted to his destination. The evidence of DW1 is to the effect that when the plaintiff arrived at the gate, he was asked these questions, but he preferred not to tell them, as a result, he forced his way through the gate, only to meet DW2. The evidence as to what happened between the plaintiff and DW2 is not clear. It is, in effect, that when they met, and DW1 explained what was going on between him and the plaintiff, the plaintiff pushed DW2, and in order to avoid falling, he held onto the hand of the plaintiff. On the other hand, the plaintiff said he was held in the armpits and pushed by DW2. In my assessment of the evidence, whatever happened between the two of them, there was an assault on each other. There was, in the circumstances, an absence of consent by both of them. There was, therefore, an assault, or to be specific, a battery.

It is Mr. Chirwa's submission that the defendant's guards were lawfully on duty at the defendant's premises and whatever happened there after exchanging words, were as a consequence of the plaintiff's act, because, according to the procedure adopted by the defendant at its premises,

the plaintiff should not have passed the gate to go to the reception. The plaintiff was, therefore, a trespasser. The general principle regarding the eviction of a trespasser from land is that when a trespasser enters someone's land with force and violence, the person whose land is entered may justify turning him out, using no more force than was necessary, without previously asking him to depart.

In the present case, no leave was given to the plaintiff to pass through the gate. If leave was given, I see no reason why there should have been an altercation and there was no need for DW2 to push him towards the gate. The plaintiff was, therefore, a trespasser and forcing him back towards the gate was justifiable.

The next question I have to decide is whether the force was commensurate. I think it was; he was not injured in any way. Neither were his clothes torn. No unreasonable force was used.

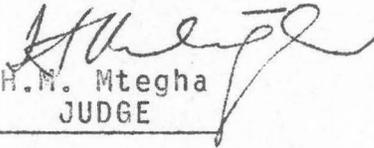
Mr. Nyirenda has submitted that according to DW3, the rules given to the guards were to serve two purposes, namely, to facilitate the movement of people and to prevent interference with production in the factory. In the present case, so Mr. Nyirenda has submitted, the plaintiff informed the guards that he was a debt collector and that he wanted assistance from the reception, he could not have been a trespasser. As I have already pointed out earlier on, even if he explained his business to the guards, he should not have passed them before the guards had phoned the parties he wanted to see. Doing so as he did was a breach of the rules given to the guards.

Mr. Nyirenda has also submitted that since the defendant was in the business of supplying timber, furniture and its byproducts, the nature of the defendant's business is such that people like the plaintiff could not be prevented from entering the area unless certain requirements are met. The plaintiff was not, therefore, a trespasser - he had leave and licence to go into the area. This is a formidable argument. However, if I accept it I have to examine the law on this aspect. If the original entry was by leave and licence and subsequently the plaintiff was requested to return, but the plaintiff desisted, the plaintiff immediately became a trespasser, and the defendant was entitled to eject him from the area.

For all these reasons, I do not think this action can succeed - the defendant has properly justified the assault to the person.

Accordingly, I dismiss the action with costs.

Pronounced in open Court this 19th day of April,
1991 at Blantyre.


H.M. Mtegha
JUDGE

