

1 July 1992

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 123 OF 1990

BETWEEN:

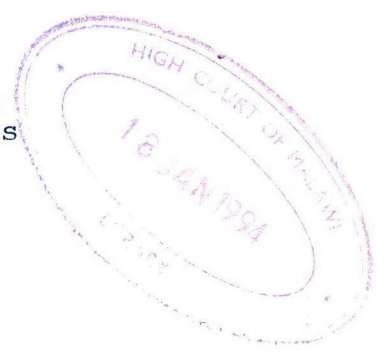
H MIKOMBE (MALE).....1ST PLAINTIFF
- and -
L CHITALA (MALE).....2ND PLAINTIFF

- and -

UNITED TRANSPORT (MALAWI) LIMITED.....DEFENDANTS

CORAM: MTEGHA, J.

Nakanga, of Counsel, for the Plaintiffs
Mbendera, of Counsel, for the Defendants
Kaundama, Official Interpreter
Maore, Court Reporter



J U D G M E N T

The two plaintiffs, H Mikombe and L Chitala, are claiming from the defendants, United Transport (Malawi) Limited, now Stagecoach (Malawi) Limited, salary for 21 months and 11 days, notice pay, leave grant, and a refund of provident fund contributions as a result of wrongful dismissal, and damages for false imprisonment. The defendants deny any liability and state that they were justified in dismissing the plaintiffs from their employment. The defendants also deny the allegation of false imprisonment.

It is common ground that both plaintiffs were employed by the defendants in 1986 as Stores Clerks. They worked in such a capacity and by 17th February 1988 their salary was K58.00 per month. It is also common ground that they were responsible for receiving and issuing stocks to various departments of the defendants' company.

Perhaps it would be prudent if at this juncture I would briefly state the procedure which was adopted at the stores belonging to the defendants. The Stores Department comprised six people. It was headed by a Stores Supervisor, who at the material time was Mr Kukada. Under him, there were Stores Clerks or Counter Clerks, and in this respect the people were the two plaintiffs and one, Mr Paliani. These three persons used to work in shifts. The first shift started at 5.00 am up to 1.00 pm. There was the second shift from 1.00 pm to 9.00 pm and the third shift was from

9.00 pm to 6.00 am. The three Stores Clerks would work according to these shifts. It meant, therefore, that there was one of these officers in the Stores all the time. Apart from general supervision of the staff under him, the Stores Supervisor also used to order goods which were needed in the Stores Department. When the goods arrived, he would count them and the Cardex Clerk would enter the goods on the cardex. Whenever anybody wanted an item from the Stores, he would complete a workshop requisition. It had three copies. The original copy is a pink one, the duplicate copy is a yellow one and the triplicate copy is a blue one. The triplicate copy remains in the book. The requisitioner would then take the original and duplicate copies to the Stores. He would hand these to the Stores Clerk, who, after verifying the authenticity of the requisition, would supply the item requested. The two copies of the requisition would then be sent to the Cardex Clerk. The Cardex Clerk, after entering them in the cardex, sent one copy to the Accounts Department and the other to the Audit Department.

It was the first plaintiff's evidence that on 16th February, 1988 he was on night shift from 9.00 pm to 5.00 am. On 17th February 1988 he was relieved by his friend at 5.00 am and he was told to go and see the Stores Supervisor; but since he was sleepy and tired, he informed them that he would come later. He went home to sleep and after having a bath he went back to the office and saw the Stores Supervisor, who advised him to wait for the Personnel Officer, who had, he was told, three requisitions alleged to have been forged.

Perhaps I should now turn to the 2nd plaintiff's evidence on this aspect. He stated that at about 8.00 am on 17th February 1988 he was confronted by the Stores Supervisor about forged requisitions. When he said he knew nothing he was told to wait for the Personnel Officer - Mr Siula. At this juncture, therefore, the two plaintiffs were together waiting for the Personnel Officer.

It was the evidence of both plaintiffs that after the Personnel Officer arrived they were taken to him by the Stores Supervisor, and Mr Siula, the Personnel Officer, told them the forged requisitions were at the Police in Ndirande. The Personnel Officer then took them to Police in Ndirande in a company vehicle driven by a woman driver. When they arrived at the Police in Ndirande, Mr Siula and his friend went into the office of the Officer-in-Charge, and after sometime they came out and drove off, leaving them there. The Officer-in-Charge then came out and said to them that if they did forge the requisitions, they should admit. The plaintiffs denied any involvement and explained the procedure. However, the Officer-in-Charge ordered them to take off their shoes and clothes and he put them in a cell where the conditions were appalling. On the third day they were taken to Chichiri Prison, where they stayed for

seventeen days and were released on bail. They were taken to the Magistrate's Court and charged with the offences of forgery and theft, and on 10th November 1989 they were acquitted by the Court. When they went back to the place of their employment, the Personnel Officer told them that they were dismissed on the 17th February 1988 and he refused to pay them their salary for 21 months and 11 days' notice pay, leave grant and provident fund.

It appears, however, in cross-examination of Mr Siula, that the defendants are not refusing to pay them their salary up to 17th February 1988, their leave pay and provident fund contributions. I, therefore, enter judgment for the plaintiffs in these sums, which are to be calculated.

The defendants, however, are strongly disputing the claim for 21 months and 11 days' pay and the claim for false imprisonment. It was the evidence of DW1, Mr Kukada, the Stores Supervisor, that during early February 1988 he got a number of tubes from the Head Office into the Stores. These tubes were counted by him and were entered in the cardex by the Cardex Clerk, Mr Samson. Having received the tubes and entered them in the cardex, he passed them on to the Stores, from where they were being issued. On 15th February 1988 he got information from the Tyre Supervisor that something was wrong at the Stores, in that the Tyre Supervisor issued a requisition for a tube, but the Stores returned it, saying there were no tubes. He checked his records, but the number of tubes he had requisitioned could not tally with what the Stores had indicated they had issued to him. A thorough check was made and it was discovered that on requisition No. 10830, dated 7th February 1988, the triplicate copy which is left in the book showed that only one tube was requested; but the original and duplicate copies, which went to the Stores Clerks were tippexed to show that two tubes were supplied. The same thing was observed on requisition Nos. 10826 dated 6th February 1988 and 10853 dated 12th February 1988. It followed, therefore, that the Tyre Supervisor received only three tubes, while the Stores Clerks issued out six tubes, making a discrepancy of three tubes. On these days the plaintiffs were on duty, and logically they were suspected of forging the requisitions. A report was made to Mr Howe, the Regional Engineer and then to Mr Siula. Mr Siula took the requisitions to Ndirande Police and reported, according to him, that the plaintiffs were suspects. According to Mr Siula, the Police instructed him to bring the plaintiffs there and, as a result, he came back to the office and took the plaintiffs, who were waiting for him, to Police. It was Mr Siula's evidence in cross-examination that he told the Police that the plaintiffs were the people who forged the requisitions. This then is the evidence before me.

I will first examine the allegation of false imprisonment.

There is no doubt that the plaintiffs were taken by Mr Siula to the Police Station at Ndirande. The plaintiffs were incarcerated at Ndirande Police and three days later were sent to Chichiri Prison where they were released on bail on 5th March 1988. They had been in custody for seventeen days. The law regarding false imprisonment was stated in the case of **Chintendere v. Burroughs Ltd, Civil Cause No. 530 of 1981** (unreported), and it is this:

"If the defendant acting through its servants or agents ordered the police to arrest the plaintiff, it is imprisonment by the defendant as well as the police and is a ground for an action of trespass against the defendant; but if the defendant merely stated the facts to the policemen, who, on their responsibility took the plaintiff into custody, this is no imprisonment or trespass by the defendant. It comes down to this: if the defendant's servants made a charge on which it became the duty of the police to act then it is not liable if they gave information and the police acted according to their own judgment."

In the instant case, can it be said that the defendants laid a charge against the plaintiffs? According to the plaintiffs, they were asked about the requisitions, only to be taken to Police; but in cross-examination, Mr Siula, the Personnel Officer, said that he reported to Police that the plaintiffs had forged requisitions. If he did this, he certainly did lay a charge against the plaintiffs, and in my considered opinion, he did so.

Mr Mbendera submitted that the defendants' agent or employee, Mr Siula, took them to Police because they were suspects and after he had left them there, it was the Police on their own who arrested the plaintiffs. I do not agree with this submission. Mr Siula, before he even met or questioned the plaintiffs, went with the vouchers to Police. Whatever the Police told him there is not admissible, but the fact is that he came back and took the plaintiffs to Police. At that stage, Mr Siula arrested the plaintiffs. Mr Mbendera has submitted that the plaintiffs went voluntarily to Police. I do not agree with this submission. False imprisonment is complete deprivation of liberty for any time, however short, without lawful cause. In the old classic case of **Termes de la Ley** it was stated:

Imprisonment is no other thing but the restraint of a man's liberty, whether it be in the open field, or in the stocks, or in the cage in the streets or in a man's own house, as well as in the common gaole; and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places....."

In the instant case, did the plaintiffs have the liberty to go wherever they wanted? The answer is in the negative. Therefore, by taking them to Police, the defendants deprived the plaintiffs of their liberty.

According to the evidence, we do not know what transpired between the Officer-in-Charge and Mr Siula. What is clear is that the plaintiffs were locked up and statements were taken from them. There is no evidence that Police made any investigations before the plaintiffs were locked up. It is, therefore, clear that Mr Siula told the Police that the plaintiffs had forged the requisitions - he made a charge. Therefore, from the time the plaintiffs were arrested until their statements were recorded on the third day, they were falsely imprisoned. However, when they were taken to Chichiri Prison, from that time until they were released on bail, it was the Police acting. I, therefore, hold that the plaintiffs were unlawfully imprisoned for three days.

I now come to the question of damages. Damages in this tort are awarded for loss of liberty, humiliation and mental suffering. I have looked at other cases, e.g. **Fordson Banda v. Southern Bottlers, Civil Cause No. 41 of 1987**, **Stambuli v. Admarc, Civil Cause No. 550 of 1981**, and **Kuwa v. BAT (Mw) Ltd, Civil Cause No. 332 of 1987** (all unreported). I am aware that these cases are not binding on me, but they are of great help in assessing damages. In my considered opinion, and taking into account all circumstances of the case, I would award K4,000.00 each as damages for false imprisonment for three days.

I will now turn to the question of wrongful dismissal. As can be seen on the evidence, the defendants lost some tubes. All the evidence points to the plaintiffs as well as other members of staff. As has been pointed out on several occasions, there is no fixed rule of law setting out the degree of misconduct which will justify the dismissal. The general rule is that anything which is incompatible with the due or faithful discharge of his duty to his employer, the employer is justified in dismissing him, even though the incompatible thing is done outside the service. In my view, the defendants were right to dismiss them for at least causing the loss of the tubes. The question is: when were they dismissed? Mr Siula says they were dismissed on the 17th of February 1988, the day the plaintiffs were taken to Police. However, this information was never communicated to them until 11th November 1989, when they reported their acquittal and requested to be taken back. It is trite law that dismissal cannot be retrospective. Mr Mbendera has submitted that they never performed their duty from 17th February 1988 to 11th November 1989 and, therefore, there was failure of consideration. In my view, because of failure of consideration, the defendants were entitled to dismiss them

earlier; the contract of employment still subsisted. Again, it was the defendants who took them to Police and, obviously, without being cleared by Court, they could not have been taken back. I would, therefore, award damages of K1,249.91 each for the 21 months and 11 days.

I, therefore, enter judgment for each of the plaintiffs as follows:

21 months and 11 days' salary - K1,249.91,
Provident Fund to be determined,
Leave pay to be determined,
and K4,000.00 damages for false imprisonment,

and costs for this action.

PRONOUNCED in open Court this 1st day of July, 1992,
at Blantyre.


H M Mtegha
JUDGE