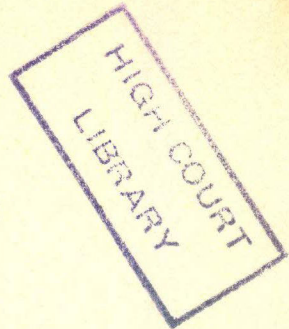


6 NOV 1992

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1025 OF 1990



BETWEEN:

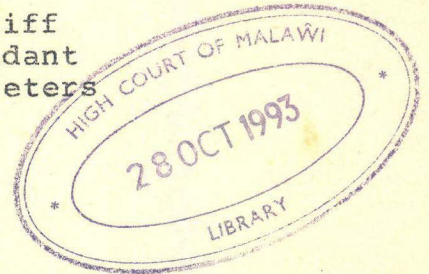
M NAPHAZI (FEMALE).....PLAINTIFF

- and -

CASALEE CARGO LIMITED.....DEFENDANT

CORAM: MKANDAWIRE, J.

Kapanda, of Counsel, for the Plaintiff  
Mbendera, of Counsel, for the Defendant  
Kaundama/Selemani, Official Interpreters  
Maore, Court Reporter



J U D G E M E N T

The plaintiff is claiming the sum of K17,280.00 arising from loss of ready market due to the defendant's alleged wrongful withholding of the plaintiff's goods. There is also a claim for K12,970.00 representing the market value of 6 cartons of pantihose and 2 pairs of pantihose allegedly lost by the defendant. The plaintiff also claims K504.00 due to paper work and bond charges every time she went to collect her goods. There is also a claim for general damages. The defendant denies to have wrongfully detained the plaintiff's goods and also denies to have lost any of the plaintiff's goods.

The plaintiff is a business lady and she operates under the name and style of M Importers and Exporters. As the business name shows, she imports and exports various goods. The defendant is a limited liability company and, among other things, carries on the business of shipping and forwarding agent, warehousing and customs clearing.

It is not in dispute that the plaintiff imported 26 cartons of pantihose from Messrs World Wide Commodities in South Africa and they were transported by the defendant into this country. This was not the first time that the two had business dealings. The goods arrived in the country in January 1989 and the defendant sent the plaintiff an advice note which was tendered as Exh.P2. As soon as the plaintiff got the advice note, she went to see Mr Majawa, DW1, who was the Imports Controller, with a view to collecting her consignment. To the plaintiff's disappointment, Mr Majawa told her that she could not collect the goods because her





suppliers, World Wide Commodities of South Africa, owed the defendant some money. The consignment would, therefore, only be released when World Wide commodities paid off the debt. It was the plaintiff's evidence that she made several trips to the defendant's premises to try and persuade them to release the goods, but to no avail. She even saw the Managing Director, but that too did not help. When the plaintiff was finally allowed to collect the pantihose, she discovered that they had been transferred to the Department of Customs and Excise warehouse. When the consignment was brought back to the defendant's warehouse, she checked with a Mr Momba and she found that one carton and 2 pairs pantihose were missing. In all, 264 pairs of pantihose were found to be missing and this was shown on Exh.P3. According to the plaintiff, Exh.P3 was prepared by Mr Momba who was the warehouse supervisor. The plaintiff then demanded compensation for the lost items and to this effect she wrote a letter dated 7th September 1989, which was tendered as Exh.P4. In that letter she was claiming the sum of K1,188.00, being the market value of 264 pairs pantihose at K4.50 each. The plaintiff got a reply dated 2nd October 1989, Exh.P5, and she was advised that the matter was under investigation. She did not hear the results of those investigations. It was the plaintiff's evidence that in all, 6 cartons, each containing 36 pairs of pantihose, and 2 pairs pantihose, missed at the hands of the defendant. Mr Majawa asked for time to look for the missing cartons, but the plaintiff was never told as to what might have happened to these cartons.

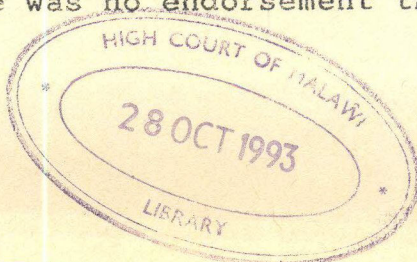
The plaintiff told this Court that at first she had a buyer who was prepared to buy her entire consignment at K5.00 a pair. She lost this buyer because the defendant had wrongfully detained her goods. It was difficult to find an alternative market, so that she ended up selling at K3.00 a pair, thereby making a loss of K2.00 per pair. For the lost market, the plaintiff is claiming K17,280.00. As for the 6 cartons plus 2 pairs that missed, the plaintiff is claiming K12,970.00. That has been calculated at K5.00 per pair. The plaintiff also said that each time she went to collect her goods, she paid K36.00 bond charges.

In cross-examination, She conceded that her consignment came without a packing list and that the contents of each carton were not checked. She, however, said that each carton contained 36 dozen, because they were all marked "36 dozen". The plaintiff's explanation about the figure 10920 pairs she wrote on Exh.P3 was that, that was the number of pairs of pantihose she expected. She told the Court that she could not have collected all the pantihose at once, as the market was flooded. So she made a total of 14 collections from May 1989 to August 1990. When the bills of entry were put to her, she conceded that in all she collected 25 cartons. She also conceded that there was

an error on the bill of entry dated 31st January 1990, in that the balance was shown as 7 cartons, when it should have been 3. That error continued on the next bill of entry dated 27th August 1990 which put the balance of cartons as 5, when the correct balance should have read 1 carton. It was also her evidence in cross-examination that although the signatures on the delivery notes look somewhat different, all were in fact hers.

Mr Majawa gave evidence as DW1. He told the Court that when the plaintiff's goods arrived in January 1989, he had tried to contact her, but failed. The plaintiff, however, reported in February 1989. He then calculated transport and handling charges which the plaintiff had to pay. He then told her that there was some speculation that her goods might be withheld, as her suppliers owed the defendant some money. He said he told the plaintiff this because of the business relationship that had developed. He, however, advised her that if she wanted she could clear the goods as he had not received any instructions to withhold the goods. In reply the plaintiff said she had a buyer whom she was going to consult and would come back to him. She did not go back until March 1989. He then told her that the speculation to withhold the goods was not true, as some importers who had imported from the same suppliers had cleared their goods. He then asked the plaintiff to give instructions relating to clearance, but her reply was that her consignment had arrived at a time when the market was flooded. As a result, she gave no instructions. The plaintiff went there again in May, but by that time her goods had been transferred to the Department of Customs and Excise warehouse. Mr Majawa told the Court that they were allowed to keep goods in their warehouse for only 30 days. If goods were not cleared within that period they were transferred to the Department of Customs & Excise. The plaintiff was well aware of this regulation. Her goods, comprising 26 cartons, were transferred to Customs and Excise on 26th April 1989. The 26 cartons were transferred intact. According to Mr Majawa, if any cartons had been tampered with, there should have been an endorsement to that effect on the delivery note, Exh. D2. At a later stage, the cartons were taken back to the defendant and the plaintiff started collecting them little by little, although she did not pay the transport and handling charges. Each time the plaintiff collected, there was a bill of entry prepared and according to the bills of entry - Exh.D5, she collected a total of 25 cartons. Mr Majawa told the Court that it was not true that 6 cartons had missed.

Mr Martin Momba, DW.3, was the warehouse supervisor at the material time. He is now working for Transglobe. His evidence was that when the 26 cartons were transferred to the Customs and Excise warehouse, they were in good condition. There was no endorsement that any of the cartons





was either torn or damaged. It was Mr Momba's evidence that the cartons were not all one size. There were 23 cartons of one size, big, so to say; 2 of a medium size; and 1 small. He said the small one was marked "16 dozen". When the consignment was transferred back to the defendant's warehouse, it was discovered that the small carton was open. The plaintiff was present when the goods were being removed from the Customs and Excise warehouse. The plaintiff together with Mr Momba, physically counted the pantihose and found that there was a shortfall of 4 dozen in the small carton that was found open. There were only 12 dozen, and not 16 dozen. It was Mr Momba's evidence that the plaintiff then emptied this small carton and placed the pantihose in the big cartons, which meant that after the re-packing exercise, there were 25 cartons containing pantihose and 1 empty carton. Turning to Exh.P3, Mr Momba testified that the figure 10920 was written by the plaintiff, but there was no basis for this. The figure 10920 represented the number of pantihose the plaintiff expected. The defendant did not agree with the figure given by the plaintiff and so they wrote the suppliers for a packing list, but none was supplied. When the plaintiff started collecting the cartons, it was this witness who prepared the bills of entry. He told the Court that on bill of entry dated 24th October 1989 the plaintiff collected 4 cartons, leaving a balance of 7. The next bill of entry was dated 31st January 1990 and the plaintiff collected 4 cartons. The balance should have been 3, but by error he again showed the balance as 7. This error went on to the next bill of entry dated 21st April 1990 which, after collecting 2 cartons, showed a balance of 5 instead of 1. It was his evidence that the one carton was the empty one from which the plaintiff had removed the pantihose.

As it happened, Mr Momba left the defendant's employ before the plaintiff collected all the cartons. So he handed over to Mr Kafere, who was DW.2. Mr Kafere's evidence was that warehousing was handed over to him on 24th January 1990. In so far as the plaintiff's goods were concerned, 7 cartons of pantihose were handed over to him. Of these 7 cartons, one was completely empty. He later released 6 cartons to the plaintiff. Firstly, the plaintiff got 4 and finally 2, leaving the empty carton. Mr Kafere told the Court that when he prepared the final bill of entry on 27th August 1990, there was a row with the plaintiff. According to the witness, after that bill of entry, the balance was 1 empty carton, but the plaintiff insisted that the balance was 5. This was reported to Mr Majawa. The plaintiff insisted that she had seen the balances at Customs warehouse. The result was that Mr Kafere and the plaintiff went to the Customs warehouse to verify the balance. When they went through the records at the Customs, it was discovered that the Customs people had missed one entry.

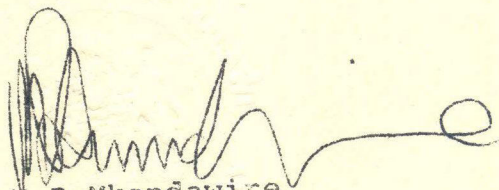
pair. The alleged buyer was not called in evidence and there was not even a document to show that such a buyer existed. As I said before, most of the plaintiff's evidence could not be believed and I do not believe that she had such a buyer. I, therefore, dismiss this claim.

I now move onto the claim for loss of 6 cartons plus 2 pairs. I hasten to say that I find this claim to be absolutely frivolous and without merit whatsoever. The bills of entry, the delivery notes, as well as the evidence of Mr Momba and Mr Kafere, make it very clear that the plaintiff collected 25 cartons, and not 20. In cross-examination, she admitted that she had collected 25 cartons. She also conceded in cross-examination that there was an error on the bills of entry, in that the balance of 7 was duplicated. I think I would be justified to say that this claim is opportunistic, intended to make a fortunate out of a genuine mistake. The one carton that the plaintiff did not collect was the empty one from which she had removed the pantihose. Mr Momba did mention that there was a shortfall of 4 dozen in the small carton. The 4 dozen pantihose missed at the Customs warehouse. The defendant did not control the Customs warehouse and they cannot be held responsible for this loss. This claim must, therefore, fail.

Finally, I come to the claim for K504.00 representing bond charges. There is no evidence that this amount was paid, as there is not even a single receipt. This claim also fails. I find no basis whatsoever for awarding general damages.

In the result, this action fails in its entirety with costs.

PRONOUNCED in open Court this 6th day of November 1992, at Blantyre.

  
M. P. Mkandawire  
JUDGE