

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.672 OF 1988



BETWEEN:

WILSON CHIMOWA 1ST PLAINTIFF :

- and -

CHARLES MASAMBO 2ND PLAINTIFF

- and -

HERMES CHIMOMBO 3RD PLAINTIFF

- and -

PROPRIETARY MANUFACTURING CO. LTD. DEFENDANT

CORAM: UNYOLO, J.

Kaliwo/Zimba (Miss), Counsel for the Plaintiff
Mbendera, Counsel for the Defendant
Kadyakale, Official Interpreter
Maore, Court Reporter

JUDGMENT

In this action the plaintiffs claim damages from the defendant for false imprisonment.

The broad facts of the case were not in dispute. The 1st and 2nd plaintiffs were at all material times employed by the defendant Company as electricians. The 3rd plaintiff on the other hand was a friend of the 1st plaintiff and at one time he worked for a Company situated next door to the defendant Company. Directly relevant to the case are the events of 4th August, 1987. On that date the 1st and 2nd plaintiffs reported on duty and set about their work in the usual manner. They were placed at the same distribution point to wire panel boards. They worked up to 12.00 noon and then broke off for lunch. The 1st plaintiff told the Court that when he later came back and resumed work he discovered that a switch was missing from where he had left it. He tried to look for it but could not find it. He then reported the matter to the workshop supervisor, DWI, upon the latter's return from lunch. The supervisor advised that the switch should be found else he would report the matter to the General Manager. The 1st plaintiff and his colleagues tried their hardest but again to no avail; the switch was nowhere to be seen. The supervisor then referred the matter to the General Manager as he had earlier indicated he would. The General Manager called all

2/....



the electricians including the 1st and 2nd plaintiffs and gave them two hours to find the switch else he would report the matter to Police. The group ransacked the workshop but again the switch was not found. The General Manager then instructed his Administration Manager to telephone the Police and call them. This was done. The Police said they had no transport and asked the Company to send a motor vehicle. The General Manager thereupon instructed the workshop supervisor to drive to the Police station. The supervisor did so; he collected one Police officer from there and brought him to the workshop. The officer first went to see the General Manager and then went to the workshop. According to the General Manager he did not accuse anybody before the Police officer. He said that he merely explained what had happened concerning the missing of the switch and that the four electricians including the 1st plaintiff who were working at the distribution point the switch missed were accusing each other. It was common case that the Police officer entered the workshop on his own; unaccompanied either by the General Manager or the workshop supervisor. The 1st plaintiff told the Court that when the Police officer entered the workshop he asked "Who is Chimowa here?". Chimowa is the 1st plaintiff's surname as will be seen from the names of the parties atop this judgment. The 1st plaintiff went on to say that he answered it was he whereupon the officer put in a further question viz "How has the switch missed?". He said that he told the officer that he did not know whereupon the officer said "come" meaning he and three others should join the Police officer to the Police station. It was common ground that then and there the 1st and 2nd plaintiffs and two others namely Nyirenda and Mbewe were taken away to Blantyre Police station, using the same motor vehicle asked to bring the Police officer. Again the workshop supervisor drove it on this occasion as well. But he simply dropped these men at the Police station and returned to his work.

The 1st plaintiff told the Court that when they got to the Police station they were ushered into a room where they were interrogated by several Police officers regarding the missing switch. It was his evidence that all the four of them denied stealing the thing. He said that the Police officers were insistent they had stolen it and took them into another room and began beating them so they should confess. They still denied. The 1st plaintiff told the Court that two of his colleagues namely Nyirenda and Mbewe were released soon thereafter but he and the 2nd plaintiff were locked up and were released on bail only 7 days later. Finally the 1st plaintiff testified that the person who stole the switch was later discovered and that the switch was indeed retrieved and returned to the defendant. This bit of evidence was however denied by the defendant's witnesses. All the same to date the plaintiffs have not been charged with or prosecuted for any criminal offence relating to the switch.

I now turn to the 3rd plaintiff. This plaintiff told the Court that on the material day he went to Barrows Engineering, the place he had previously worked, in order to look for a sample

of an electrical appliance he wanted a friend of his to buy for him in South Africa. As earlier indicated this place is next door to the defendant Company's premises. It was the 3rd plaintiff's evidence that on his way back he passed by the defendant's premises and that as he did so he saw the 1st plaintiff and waved at him. He said that he simply waved and continued on his journey home. He had just arrived home when he saw a motor vehicle pull in and there was the defendant's workshop supervisor, a Police officer and Nyirenda the defendant's electrician I have just referred to above. The 3rd plaintiff told the Court that the Police officer informed him they had come because he had bought a switch (the missing switch) from the 1st and 2nd plaintiffs. He said that he denied the allegation but the Police officer proceeded to enter the house and conducted a search. He said that although the switch was not found the Police officer nevertheless took him to the Police station where he was detained until the next day when he was released. Such are the broad facts of the case.

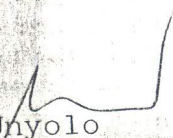
Let me pause here and say something about the law. It is trite that the central issue in cases of false imprisonment is to decide whether the defendant merely stated facts to the Police conveying his suspicion and the Police acted on their own responsibility or whether the defendant made a charge on which it became the duty of the Police to act. In the former case the defendant will not be liable but will be liable in the latter case. See Saulosi Paketi & Another v. Bata Shoe Company Civil Cause No.568 of 1987, unreported.

Reverting to the case in hand it is pertinent to note that upon being told of the mysterious missing of the switch the workshop supervisor was patient enough to give the 1st plaintiff and his colleagues time to look for the item. There is no evidence that the supervisor pointed any accusing finger at anybody. And when it was reported that the switch was not found he did not immediately report the matter to the Police. On the contrary he referred the matter to the General Manager. It is then significant that even the General Manager himself exercised restraint initially. Instead of reporting the matter to the Police straight-away he called all the electricians including those who had on the material day worked on distribution points other than the distribution point the switch missed (the 1st plaintiff conceded this in cross-examination). He too gave the group time, two hours as a matter of fact, to look for the missing switch. In other words even the General Manager was basically only interested to have the switch retrieved and the matter settled amicably without recourse to the Police. The evidence clearly shows that it was only after all these steps came to nought that he finally caused the matter to be reported to the Police. I am mindful of the fact that the defendant's motor vehicle was used to bring the Police officer to the defendant's premises. It could be argued on these facts that the General Manager directed and procured the resultant arrest of the plaintiffs. It was the General Manager's evidence on this point

that when it was reported to him that the switch was still not found he felt that there was nothing else he could do but call upon the Police who were the competent authority to assist. It was also conceded that when the electricians were called before the General Manager the 1st and 2nd plaintiffs were accusing their colleagues, Nyirenda and Mbewe. These too were in turn accusing the plaintiffs. It was the General Manager's evidence that the situation was therefore too complicated for him, hence the decision to call in the Police. And as I have earlier pointed out it was the 1st plaintiff's own evidence that when the Police officer came into the workshop he did not just proceed to arrest the plaintiffs or anybody. On the contrary the Police officer asked the plaintiffs how the switch missed and it was only when he was not satisfied with the answers that the 1st and 2nd plaintiffs plus their two colleagues were arrested and taken to the Police station. Further it was the 1st plaintiff's own evidence that even at the Police station he and his colleagues were not locked up straight-away. Rather the Police first interrogated them and at the end of the day two of the plaintiffs' colleagues were released. And concerning the 3rd plaintiff there was absolutely no evidence that either the workshop supervisor or the General Manager knew anything about his having passed by the defendant's workshop earlier that day. There was also no evidence that either of these two men directed or procured the Police to arrest him, let alone mention his name to the Police. It appears it was the 1st plaintiff and/or the 2nd plaintiff and Nyirenda who mentioned the 3rd plaintiff's name to the Police. Whoever it was, the defendant cannot in my judgment be held responsible for this information which the Police on their own obtained from suspects in the course of their investigations.

To make a long story short what to my mind comes out clearly from the evidence is that the defendant's servants in this case merely gave information to the Police and that in arresting the plaintiffs the Police acted according to their own judgment. I sympathise with the plaintiffs for the inconvenience and humiliation they suffered but for the reasons I have given their case must fail and it is dismissed with costs.

PRONOUNCED in open Court on this 2nd day of April, 1992, at Blantyre.


L.E. Unyolo
JUDGE