

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 157 OF 1989



**BETWEEN:** RODERICK OLOKA ..... PLAINTIFF

- AND -

THE RESERVE BANK OF MALAWI ..... DEFENDANT

**CORAM :** The Hon. Mr. Justice Banda, Chief Justice  
Mrs Kanyuka of Counsel for the Plaintiff  
Mpango of Counsel for the Defendant  
Kaundama, Official Interpreter  
Mrs. Gausi, Court Reporter

J U D G M E N T

The Plaintiff's claim against the defendant is for damages for false imprisonment and for loss of work. He is also claiming transport expenses which he incurred when attending the Court case in the Magistrate Court in which he was prosecuted for attempting to obtain money by false pretences. The judgment in which the plaintiff was acquitted has been produced and is marked Exhibit 1.

The facts of the case are not greatly disputed. The plaintiff was at the material time employed as a Driver by the Blantyre Water Board and that on the 22nd June, 1987, he went to the defendant's Branch Office in Blantyre to make some enquiries about a K10 note which was allegedly picked up by his wife. It was the plaintiff's case that the K10 note was picked up by his wife near their house as she came back from where she had gone to have a bath. The note was soaked wet and dirty. He decided to go to Reserve Bank, Blantyre Branch, to find out according to him whether the note was real or not. It was his own evidence that the note was dirty in colour and black and that he was suspicious about its authenticity and that it was for that reason that he decided to take it for verification to the defendant's office. It was his evidence that when he arrived in the defendant's office he went to the receptionist where he made known his reasons for going to the defendant's office. It is agreed that when he saw the receptionist he was invited to go and meet Mr. Samson Victor Chilaga now deceased who was at the material time the currency supervisor. This was after the receptionist had already sent the K10 note to the currency office. When the plaintiff was going to the currency office he was accompanied by a security guard.





The evidence of the receptionist was that when the plaintiff arrived he told her that he wanted to exchange the note which he had in his possession for a new one. She stated that on inspection of the note she noticed that the security line on the note was missing and that the capital city emblem was upside down. She also noted that the colour of the note was black as opposed to blue. She stated it was because of these irregularities that she decided to refer the matter to the currency office. All these facts are not disputed.

What is disputed is what happened after the police arrived in the currency office. The evidence of the plaintiff was that Mr. Chilaga told the police officers that he, the plaintiff, was a man who was making false money and that they should take him to investigate further. It is interesting to see what is actually pleaded in the statement of claim. In paragraph 4 of the statement of claim it is, inter alia, pleaded as follows:-

"Mr. Samson Victor Chilaga said "Take this man!  
he came here to exchange this K10 note, it is  
not Malawi Currency, and investigate."

One of the Police Officers who were called to the Reserve Bank is D/Sgt. Chafakasa and he testified before this Court. His evidence was to the effect that when he arrived at the Blantyre Reserve Bank office he was shown a black K10 note whose Capital Hill emblem was upside down and that he was also told that the K10 note was brought to the Bank by the Plaintiff. It was the evidence of this officer that after inspecting the note he became very suspicious and he decided to invite the plaintiff to go with him to Blantyre Police. He said he questioned the plaintiff at the Police Station and that after such interrogations he directed Constable Maliwa, now deceased, who had accompanied him to Reserve Bank, to deal with the plaintiff. The plaintiff, it would appear, was detained and remained in custody for nine days when he was released on bail. He was later prosecuted on a charge of attempting to obtain money by false pretences. He was acquitted on this charge. D/Sgt. Chafakasa also denied that he was directed to arrest the plaintiff by Mr. Chilaga and stated that only officers who are senior to him could give him directions to arrest anybody. Mr. Chilaga was not such officer.

The important factor to consider in cases of false imprisonment is whether on the facts it can be said that the defendants or their servants made a charge against the plaintiff. If, on the other hand, all the defendants or their servants did was merely to state the facts to the Police then no false imprisonment is committed. It is also accepted that conveying one's suspicion to the Police who, on their own judgment, take the plaintiff into custody is not making a charge. It is equally clear that where the defendants acting through their agents or servants, order the police to arrest the plaintiff it is imprisonment by the defendants and an action of trespass will lie against them. The test is whether the defendants' servant made a charge on which it became the duty of the police to act. But if the defendants merely gave information and conveyed their



suspicious and the police acted according to their own judgment, this is not false imprisonment. The issue I have to determine, therefore, is whether the defendants through their servants either made a charge against the plaintiff or whether they ordered the police to arrest the plaintiff. As I have said the plaintiff's own evidence was that Mr. Chilaga told the police that the plaintiff was one of the people making false money and that they should take him to investigate the matter further. Again as I have earlier on stated, the statement of claim itself only pleads that Mr. Chilaga said:-

"take this man, he came here to exchange this K10 note which is not Malawi Currency and investigate."

In making that statement was Mr. Chilaga laying a charge against the plaintiff or was he directing the Police to arrest the plaintiff?

I have carefully considered the evidence of this case. It is interesting to note in Ex.1 that the trial magistrate who acquitted the plaintiff found nevertheless that "the plaintiff had pretended as if he wanted to exchange the note instead of finding out its genuineness." That finding is paradoxal in view of that verdict of acquittal. It should be remembered that when the plaintiff was taking the K10 note to the Reserve Bank he was, according to his own evidence, suspicious about the K10 note. He must have been struck by something which was strange about this K10 note in order for his suspicions to be aroused. It was his evidence that it did not occur to him that he should have taken the K10 note to Party Officials or to the Police and the evidence of the receptionist was that the plaintiff wanted to exchange the K10 note he had for a new one.

In my judgment, it is clear to me on the evidence that the defendants' servants did not make a charge against the plaintiff nor did they direct the police to arrest the plaintiff. The defendants had a duty, especially on a case like this one where it was clear the plaintiff had a counterfeit currency note in his possession. It was appropriate for them to invite the police to investigate the matter further as there was a possibility that there could be some person or persons making such counterfeit currency notes. From the evidence of the plaintiff himself and from what is pleaded in the statement of claim, I find it difficult to say that the defendants, in asking the police to investigate the matter further were making a charge against the plaintiff. I am satisfied that what the defendants did in asking the police to take the plaintiff and investigate the matter further was conveying what was clear even to the plaintiff himself; that the note which he had in his possession was suspicious. The defendants were in effect conveying their suspicions to the police who would after due investigations unravel these suspicions. If he, Mr. Chilaga, was making a charge against the plaintiff, he would not have asked the police to investigate the matter further.

I am satisfied and I find that the plaintiff has not proved his claim and it is dismissed with costs.

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PRONOUNCED in open Court this 24th day of December, 1992, at  
Blantyre.

A handwritten signature in black ink, appearing to read 'R. A. Banda', written in a cursive style.

R. A. Banda  
CHIEF JUSTICE