

Chatika

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NUMBER 123 OF 1993

BETWEEN:

ROMAN WYSON	PLAINTIFF
- and -	
PRINCIPAL SECRETARY (LABOUR HQTS)	1ST DEFENDANT
- and -	
THE ATTORNEY GENERAL	2ND DEFENDANT

CORAM: MTAMBO, J.

Movete (Mrs) Counsel for the Plaintiff
Maluwa (Mrs) Counsel for the Defendant
Mpesi (Mrs) Law Clerk
Manda (Mrs) Court Reporter

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J U D G M E N T

By his originating motion for judicial review the applicant prays the court for a declaration that the decision of the Principal Secretary for the Ministry of Labour, Mr. Mvambakulu then, hereinafter referred to only as the Principal Secretary, to seize his tools of trade and to withhold his pension is wrong and invalid.

During the hearing of the application both the Principal Secretary and the Attorney General were not present nor were they represented, and there was no communication of any kind to both the court and counsel for the applicant. I, therefore, decided to hear the application under Order 35 r.1 (2) of the Rules of the Supreme Court 1965, hereinafter referred to as the Rules, because I was satisfied that they both had sufficient notice of the date of hearing.

The motion is supported by affidavits but the applicant was also examined in court. It is common ground that the applicant has retired from the Malawian Civil Service and that on his retirement he occupied the position of copy typist

in the Ministry of Labour. He now owns and runs a cinema business styled "Black Hawk Cinema". He told the court that some two years before his retirement, the government loaned him some money which was to be repaid in six years and that the balance of that loan stood at K19611.60 when he retired. He further told the court that when he received his gratuity, he invested the whole of it in the business; he acquired one generator, one projector, six reels and three films. Upon hearing about this, he said, the Principal Secretary decided that the tools be seized and that the payment of his monthly pension be withheld. He also stated that until the said decision he had been repaying the loan regularly.

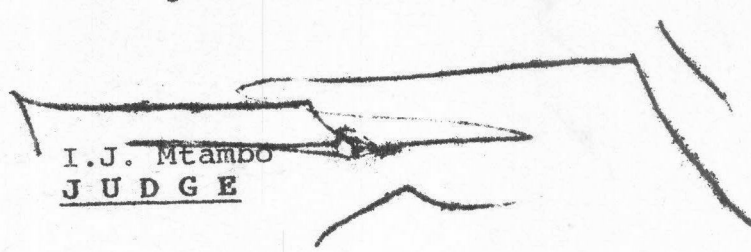
Such are the material facts. It is common case that the Principal Secretary made the decision in his official capacity as the Ministry's administrative head. And it appears, clearly, that the decision was prompted by the applicant's failure to use his gratuity towards the liquidation of the loan. That, however, does not appear to have been a condition of the loan, and all I have is that it was to be repaid in six years, which period had not expired, nor had the applicant defaulted in the repayments, when the decision was made. In the circumstance, I hold that it was not within the power of the Principal Secretary to make the decision to seize the applicant's tools of trade and to withhold his monthly pension. Accordingly, that decision cannot be allowed to stand, and it is reversed. I order that all the applicant's tools of trade, namely, one generator, one projector, six reels and three films be returned to him and that the payments of his monthly pension be resumed (plus such arrears as may have now accrued) forthwith.

The applicant also claims for damages for loss of business and for trespass to goods. I have no doubt that both of these claims are legitimate and I would not, therefore, have hesitated to hold the Principal Secretary liable in respect of both of these but for the applicant's failure to have included them in the statement in support of his application for leave under rule 3: see Order 53 r.7 of the Rules. The claims for damages under these two heads, therefore, fail and I dismiss them.

I award costs to the applicant.

PRONOUNCED in Open Court this 18th day of November, 1993 at Lilongwe.

I.J. Mtambo
J U D G E

A handwritten signature in dark ink, consisting of several sweeping, connected strokes, is written over the typed name and title.