

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3088 OF 2000**

BETWEEN:

CHARLES MATAYA.....PLAINTIFF

and

SECURICOR (MW) LTD.....DEFENDANT

CORAM: HON. JUSTICE F.E. KAPANDA

Mr Masiku, of Counsel for the Plaintiffs

Counsel for the Defendant, Absent

Mr Balakasi, Official Interpreter/Recording Officer

Kapanda, J

JUDGMENT

Introduction

By a way of Writ of Summons issued on the 28th of September 2000, to which there is attached an amended statement of claim, the Plaintiff has commenced a legal action against the Defendant. In the said legal suit the Plaintiff is claiming damages for: false imprisonment, personal injuries, loss of earning capacity, and loss of amenities. It is further prayed by the Plaintiff that he be awarded the costs of this action. In paragraph 4 of his amended statement of claim the Plaintiff is also claiming the sum of K2,000.00 being cash allegedly lost during an assault on him and damages for lost items which it is claimed were also lost during the fracas of 30th April 2000.

The Defendant filed its notice of intention to defend the action and proceeded to serve its defence on the Plaintiff. In its statement of defence the Defendant has denied each and every allegation of fact made by the Plaintiff. As a consequence of this denial the parties have joined issues on the law suit commenced by the Plaintiff. In view of this it is necessary that the relevant parts of the pleadings that were exchanged, between the parties herein, should be set out in this judgment.

Pleadings

The Plaintiff, pursuant to an order of the court made during the trial of this action on 13th June 2001, has made the following allegations of fact in his amended statement of claim:-

“1. On or about 30th April 2000 at around 5.40 p.m. the--- Plaintiff was lawfully cycling along a path inside Sucoma sugarcane fields at Nchalo in Chikwawa district when at or near D8 he was stopped by one Mailosi and three others, the Defendants’ servants or agents who assaulted the --- Plaintiff and beat him up with baton sticks for no just cause.

2. By reason of these matters the--- Plaintiff sustained personal injuries

PARTICULARS OF PERSONAL INJURIES

- (a) fractured tibia
- (b) head injury
- (c) fractured mandible at temporal mandibular joint.

The--- Plaintiff now walks with a limp and suffers from headaches---

LOSS OF CASH AND OTHER PERSONAL ITEMS---

5. The--- Plaintiff repeats paragraph 1 hereof and states that during the said assault he lost cash amounting to K2,000.00 and diverse other items.

PARTICULARS OF LOST ITEMS

- (a) 1 bicycle
- (b) 2 blankets
- (c) 2 wrap clothes (zitenje)
- (d) 1 leather bag
- (e) 3 pairs of children’s suits.

And the Plaintiff claims the said sum of K2,000.00 and damages for loss of the items particularised under paragraph 5 above.

FALSE IMPRISONMENT

6. The--- Plaintiff repeats pagraph 1 hereof and states that [he was] falsely imprisoned and deprive of [his] liberty by the said Mailosi and three others, the Defendant’s servants or agents from about 5.40 p.m. to about 8.00 p.m. when the Plaintiff [was] taken to Nchalo Police station in the Defendant’s motor vehicle and the policemen thereat declared [his] innocence and ordered [his] immediate release.

And the Plaintiff claims:-

- 1. Damages for false imprisonment
- 2. Damages for personal injuries

3. Damages for loss of earning capacity
4. Damages for loss of amenities
5. Costs of this action---”

The Defendant, on the other hand, as already stated above, has denied all the averments of fact in the Plaintiff’s amended statement of claim. As a matter of fact the Defendant has made its own allegations of fact. The apposite parts of the Defendant’s Statement of Defence are as follows:-

“1. The Defendant refers to paragraph one and two of the Statement of Claim and agrees with the contents therein except that the agents did what they did outside their scope of employment.

2. The Defendant refers to paragraph 3 and 4 of the Statement of Claim and agrees with the contents therein except that the assault and beatings were not in the course of employment and puts the Plaintiff to strict proof thereof.

3. The Defendant refers to paragraph 5 of the Statement of Claim and denies the allegation made therein and puts the Plaintiff to strict proof thereof.

4. The Defendant refers to paragraph 6 of the Statement of Claim and denies the allegations therein and puts the 1st and 2nd Plaintiffs to strict proof thereof.

The Defendant avers that whatever actions their servants took they did so outside their scope of employment.

5. The Defendant denies being liable for false imprisonment and puts the Plaintiffs to strict proof thereof.

6. The Defendant denies each and every allegation made herein as if the same was denied in seriatim.

7. The Defendant claims costs for this action.”

After the exchange of pleadings it became necessary for the Plaintiff to cause the matter to be set down for trial so that he could offer evidence in support of the allegations of fact made in his statement of claim. In this regard the Plaintiff caused this matter to be set down for hearing on 13th and 14th of June 2001. A formal notice of hearing was issued and served on the Defendant, through its legal practitioners, on the 4th day of May 2001.

When the case was called for hearing on the said 13th of June 2001 the Defendant’s Counsel was absent. So too was the Defendant’s appointed representative. The court proceeded to hear the Plaintiff’s case, in the absence of the Defendant, pursuant to Order 35/1/11 of the Rules of Supreme Court.

I shall now move on to review, in a narrative form, the evidence that was adduced by the Plaintiff to prove the allegations of fact in his amended statement of claim.

Evidence

The Plaintiff told this court that he was working for Sucoma and upon being discharged

from employment, on the 30th of April 2000, he decided to move his personal belongings from the company house to his new home. It was his further testimony that in the course of moving his said personal effects, at around 5.40 p.m. at a place called D8 he met four Securicor guards who stopped and inquired from him what he was carrying on his bicycle. They searched the items he was carrying but there was nothing that they found belonging to Sucoma.

The Plaintiff further testified that when he stopped the guards from continuing with the search, after they found no property belonging to Sucoma, the Securicor guards started beating him. He further told this court that he got injured in the head and the leg. It was further given in evidence, by the Plaintiff, that the guards took away his bicycle and the other items that he was carrying. The Plaintiff has further told this court that he was thereafter taken into police custody but the police released him. It is his further testimony that at the time he was stopped he was not free to go where he wanted.

It is the further testimony of the Plaintiff that the police referred him to hospital for treatment at Chikwawa hospital where he was admitted for one day then thereafter he was transferred to Queen Elizabeth Hospital. He was admitted at Queen Elizabeth Hospital until the 9th of May 2000 when he was discharged from the said hospital. As a matter of fact the medical report, exhibit P1, that the Plaintiff tendered in court shows that he was in hospital from the 30th day of April 2000 to the 9th of May 2000. The said medical

report further indicates that the Plaintiff suffered a fractured tibia and mandible at the temporal mandibular joint. Further, it is stated in the medical report that as a result of the injuries he sustained the Plaintiff has suffered a permanent incapacity of 40% (forty percent).

The Plaintiff has further testified that as a result of the injuries he sustained he is not able to provide for his family. It has further been put in evidence that he can no longer do what he was capable of doing before he got injured. It was the further testimony of the Plaintiff that he is unable to do his produce business because his bicycle was taken away from him.

The foregoing is a synopsis of the evidence that was adduced by the Plaintiff in order to prove the allegations of fact in his amended statement of claim. It must be observed that the foregoing facts, as disclosed by the Plaintiff's testimony, are undisputed and unchallenged.

Let me now isolate the issues that require this court's determination.

Issues for Determination

In my judgment, after looking at the Plaintiff's pleadings and the evidence that he has offered to prove the allegation of fact in the amended statement of claim, the questions that have to be determined by this court are as follows:-

(a) Whether or not the Defendants' servants or agents assaulted and beat up the Plaintiff

for no justifiable cause.

(b) Whether or not the Plaintiff sustained any injuries as a result of the said assault and beating.

(c) Whether or not, during the assault, the Plaintiff lost cash amounting to K2000 and the items particularised in paragraph 3 of his amended statement of claim.

(d) Whether or not the Plaintiff was falsely imprisoned, and/or was deprived of his liberty, by the Defendant's servants or agents.

(e) If the Plaintiff's case, against the Defendant, is made out what quantum of damages, if any, would adequately compensate him for the injury and loss suffered.

I wish to observe that although I have singled out the questions for determination in this action I will not specifically refer to them when I am making my findings of fact. Moreover, it must be pointed out that the said issues for determination will be decided on the basis of the evidence on record and the relevant law.

I will now move on to adjudicate upon the issues for determination in this matter before me. It is trusted that at the end of this opinion all the questions that arise and fall to be decided will have been determined even though, as earlier stated, I will not specifically refer to the said issues for determination.

Law and Findings of fact

The burden and standard of proof

It is trite law, and I need not cite an authority for it, that he who alleges must bear the burden of proving what he is alleging. Further, it is a settled principle of law that in civil actions, like the present case, the standard of proof is on a balance of probabilities. These maxims of the law will be borne in mind when deciding on the issues for determination in this matter.

Moreover, I have taken note of the fact that the Defendant did not make an appearance at the trial hearing of this action. Accordingly, the Plaintiff will only be required to prove his claim so far as the burden of proof lies on him and the said proof will be limited to the allegations of fact in his amended statement of claim - *Barker -vs- Furlong* [1891]2 Ch. 172. This rule of practice will also be borne in mind when I am deciding on the facts in issue in this action. It must be pointed out that when deciding on the said issues I will consider and evaluate the evidence of the Plaintiff in the same manner as I would have done if the Defendant was available.

Battery

It is settled law that if a person applies force to the person of another, without lawful justification, then that amounts to a civil wrong of battery. The Plaintiff has told this court that he was beaten up by, four Securicor guards, employees of the Defendant. There is

evidence to prove that the four Securicor guards assaulted and injured the Plaintiff whilst carrying out their duties as guards employed by the Defendant. As a matter of fact there is no evidence to disprove the fact that at the time the four guards beat up and injured the Plaintiff they were acting in the course of their employment. I therefore find it as a fact that the Defendant's servants and/or agents assaulted and beat up the Plaintiff without lawful justification in view of the fact that there is no evidence offered by the Defendant to prove that there was such lawful justification for the application of force on the person of the Plaintiff. Moreover, having found as a fact that the Defendant's servants and/or agents committed the wrong of battery against the Plaintiff, it is the further finding of this court that the Defendant is vicariously liable for the actions of the four guards who beat up and injured the Plaintiff. It is so found.

False Imprisonment

The position at law is that the civil wrong of false imprisonment arises where a person is arrested or imprisoned, by another person, without lawful justification or where a person is prevented, by another person, from exercising his right of leaving the place in which he is. Indeed, it is trite that to constitute this wrong there need be no actual imprisonment in the ordinary sense for it is enough if the Plaintiff has been in any manner wrongfully deprived of his personal liberty.

Turning to the present case it is an undisputed fact, supported by the uncontradicted evidence of the Plaintiff, that notwithstanding the fact that the Plaintiff was not carrying any property belonging to Sucoma, the four guards did not allow the Plaintiff to proceed to where he wanted to go. After they stopped and beat him up they took him, in the Defendant's motor vehicle, to a police Station where he was later released. It is obvious that from the time he was stopped to the time he was taken to the police station the Plaintiff was not a free man. It is, therefore, the finding of this court that on the uncontroverted evidence on record a wrong of false imprisonment has been substantiated. There was no lawful justification for detaining the Plaintiff due regard being had to the fact that he was not found with any property that belonged to Sucoma.

Trespass to Property

It is observed that in paragraph 5 of his amended statement of claim the Plaintiff is claiming the sum of K2,000.00 being cash that was lost at the time he was being assaulted by the Defendants' servants and/or agents and damages for loss of items particularised thereunder. In point of fact, the Plaintiff is essentially alleging that there was trespass to his properties mentioned in the said paragraph 5 of his amended statement of claim. In my judgment the Plaintiff has only proved trespass to his bicycle. The testimony of the Plaintiff did not allude to the other items particularised in the said paragraph 5. It is so found that the Defendant, through its servants and/or agents, took away the Plaintiff's bicycle.

Damages

The Plaintiff is claiming damages for: false imprisonment, personal injuries, loss of amenities, loss of earning capacity and lost items. There is a medical report tendered in evidence which shows that the Plaintiff suffered a fractured tibia, and fractured mandible

at the temporal mandibular joint. The medical report further indicates that the Plaintiff suffered head injuries. Moreover, the said medical report shows that the Plaintiff was admitted in hospital for a period of more than one week when he was receiving treatment for the injuries that he sustained at the hands of the Defendant's servant's and/or agents. Further, the Plaintiff has told this court, and same has not been contradicted by any evidence, that he was in the business of selling produce. It was his further evidence that in this business he was using the bicycle for transporting the produce. The taking away of his bicycle, by the Defendant's servants and/or agents, has resulted in his failure to continue with his produce business and thereby failing to provide for his family. Furthermore, it is also in the testimony of the Plaintiff that he is no longer able to do things that he was capable of doing before the injury. As a matter of fact, the medical

report tendered in evidence also shows that the Plaintiff has suffered a permanent incapacity of forty percent (40%). Thus it goes without saying, that indeed he can no longer do things he was doing before he was injured by the Defendant's servant's and/or agents.

Having analysed the injury and loss suffered by the Plaintiff the question that arises and falls to be decided is: what quantum of damages will nearly as possible compensate the Plaintiff?

As regards damages for loss of bicycle I am unable, at present, to come up with an award that would compensate the Plaintiff for the loss of his bicycle having regard to the fact that the Plaintiff did not lead any evidence in respect of the current market value of a bicycle. I therefore order that the damages in respect of trespass to the Plaintiff's bicycle should be assessed by the Registrar.

In respect of the claim for battery I am mindful of the well recognised principle of law that where physical injury has been occasioned, as in the instant case, the damages are recoverable under the major headings of pain and suffering, loss of amenities, loss of expectation of life and loss of earning capacity - McGregor on Damages 15th ed., page 1025 para. 1615.

In my judgment, bearing in mind the evidence on record and the awards that have previously been made by this court, an award of K30,000.00 as damages for personal injury and loss of amenities would be adequate to compensate the Plaintiff on his claim for battery. Regarding damages for loss of earning capacity I am at a loss as to what amount of damages would indemnify him for the said loss of earning capacity. This is so because the claimant did not offer any evidence in respect of the moneytory loss actually suffered as a result of his failure to continue in his business of selling produce. Further, there was no evidence adduced to indicate what his earnings were from the produce business he was carrying out before the bicycle was taken away from him. In the premises I will not award him any damages in respect of his claim for damages for loss of earning capacity.

With regard to the Plaintiff's claim for damages for false imprisonment I am of the view that, going by the awards made by this court in similar cases, an award of K30,000.00 would be sufficient to compensate him for his loss of liberty. The short of it is that the Plaintiff will get a total award of K60,000.00 with costs to be taxed by the Registrar.

Pronounced in open Court this 2nd day of July 2001 at the Principal Registry, Blantyre.

F.E. Kapanda

JUDGE