



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 365 OF 2006**

BETWEEN

R.E. MWENITETE PLAINTIFF

-AND-

THE ATTORNEY GENERALDEFENDANT

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CORAM : T.R. Ligowe : Assistant Registrar

Nankhuni : Counsel for the Plaintiff

Chulu : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff got a default judgment against the defendant for the defendant to pay;

- i) Damages for false imprisonment
- ii) Damages for malicious prosecution
- iii) Damages for defamation
- iv) Damages for wrongful termination of service
- v) Damages for unfair termination of service
- vi) Severance pay
- vii) Salaries up to the time e would have reached retirement age
- viii) Proper retirement benefits calculated up to the time he would have reached the retirement age
- ix) Costs of the action

The judgment was entered on a statement of claim which avers as follows.

1. The plaintiff was at all material times employed in the Civil Service then Department of Customs and Excise as a Principal Customs Officer.
2. Some time in 1997 the Controller of Customs and Excise interdicted him on unfounded allegations of corruption.
3. The Department was aware he was not involved in the alleged transaction but still interdicted him and reported him to the Anti-Corruption Bureau.
4. Consequently the plaintiff was tried by the Senior Resident Magistrate's Court at Blantyre of the alleged charges and acquitted on 19th March 2004.
5. Following the acquittal the plaintiff was reinstated on 16th July 2004 but was retired immediately with effect from 13th February 2000.
6. He was not given an opportunity to be heard nor was he given any reasons for the false retirement.
7. The letter of retirement had retrospective effect.
8. At the time of the false retirement he had not reached the mandatory retirement age of 55 and was still energetic.
9. In view of the foregoing the plaintiff holds the termination wrongful and claims the following from the defendant:
 - i) Damages for false imprisonment
 - ii) Damages for malicious prosecution
 - iii) Damages for defamation
 - iv) Damages for wrongful termination of service
 - v) Damages for unfair termination of service
 - vi) Severance pay
 - vii) Salaries up to the time he would have reached retirement age

- viii) Proper retirement benefits calculated up to the time he would have reached the retirement age
- ix) Costs of the action

Before I go further with this judgment I think I need to comment on the statement of claim.

Under O.18, r.7, of the RSC a pleading must contain a statement in a summary form of the material facts on which the party pleading relies for his claim. It is essential that a pleading, if it is not to be embarrassing, should state those facts which will put those against whom it is directed on their guard, and tell them what is the case which they will have to meet (per Cotton L.J. in ***Philipps v. Philipps*** (1878) 4 Q.B.D. 127, p.139. "Material" means necessary for the purpose of formulating a complete cause of action; and if any one material statement is omitted, the statement of claim is bad (per Scott L.J. in ***Bruce v. Odhams Press Ltd*** [1936] 1 All E.R. 287 at 294). So the statement of claim must contain all the material facts.

O.18, r.15 (1) states that a statement of claim must state specifically the relief or remedy which the plaintiff claims. Practice note 18/15/2 states:

“The plaintiff must specify in his statement of claim the relief or remedy which he claims, the practice being for the prayer for the relief or remedy to come to the end of the statement of facts and to start "The plaintiff claims ... ", and then to set out separately and distinctly in numbered paragraphs the items of relief or remedy which are claimed.”

This means the relief or remedies sought have to be such as are supported by the pleaded material facts.

Looking at the statement of claim before me, there are no material facts supporting the claims for damages for false imprisonment, damages for

malicious prosecution and damages for defamation. The judgment therefore should not have been entered with respect to the said claims. Under the authority of O.19, r.9, I therefore vary the default judgment to exclude the said damages for false imprisonment, damages for malicious prosecution and damages for defamation.

I now have to do the assessment with respect to the rest of the damages claimed in the statement of claim.

The plaintiff's evidence was given by way of his witness statement which he adopted on the date appointed for the hearing of the notice of the appointment for assessment of damages. The defendant was not present on that date despite having been duly served with the notice. No reason for the non attendance having been given the court proceeded in the absence of the defendant.

In as far as the plaintiff's witness statement is material to the claims accepted in this judgment; he was indeed a Principal Customs Officer at Mwanza Customs Border Post. He was interdicted without pay with effect from 30th September 1998 on allegations of corruption. After being acquitted he was reinstated in his employment on 16th July 2004 and retired with effect from 13th February 2000.

The plaintiff states that he was retired before he was due for retirement in October 2000 and the same was done without consulting him. So he was paid a pension of K374 217.07 instead of K411 095.02 and a gratuity of K324 317.30 instead of K389 341.00. He also states he was not paid severance pay upon retirement. His salary was K5 624 per month. It appears from the documents exhibited to his witness statement the plaintiff was retired after having worked for 28 years and

10 months. Reading the letter of reinstatement which also retired the plaintiff, it shows the plaintiff was not retired on 13th February 2000 because he had reached his mandatory retirement age, but because the Department of Customs and Excise was abolished that day.

Under section 28 of the Employment Act, Act No. 6 of 2000, an employment contract may be terminated by either party but subject to sections 29 and 57. Section 29 requires the party terminating the contract to give notice to the other party and it sets out the required minimum periods of notices. In lieu of notice, section 30 provides that the employer shall pay the employee a sum equal to the remuneration that would have been received and confer on the employee all other benefits due to the employee up to the expiration of the required period of notice. Section 35 provides for severance allowance which an employee is entitled to be paid upon mutual or unilateral termination of employment. Section 57(1) provides that the employment of an employee shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking. In this case it appears the plaintiff's employment was terminated due to the abolishment of the Department of Customs and Excise. It appears to me section 57 was complied with and the plaintiff's termination of employment cannot be termed an unfair dismissal in terms of section 58. The plaintiff however is entitled to payment in lieu of notice and severance allowance which appear not to have been paid.

In the absence of any evidence to the contrary the plaintiff is entitled to payment of K5 624 being one month's salary in lieu of notice. He worked for 28 complete years of continuous service, and so his severance

allowance is four week's wages for each completed year of continuous service, thus K147 000.

I therefore award the plaintiff K152 624 in damages plus costs of the action and nothing else.

Made in chambers this 23rd day of November 2007.

T.R. Ligowe
ASSISTANT REGISTRAR