



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE No.889 OF 2005

BETWEEN

I. MALIPA (MRS)1ST PLAINTIFF
S.A. PHIRI 2ND PLAINTIFF
M.M. PHIRI3RD PLAINTIFF

-AND-

THE ATTORNEY GENERAL..... DEFENDANT

CORAM : T.R. Ligowe : Assistant Registrar

Kadzakumanja : Counsel for the Plaintiff

Chulu : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiffs commenced action against the defendant by writ of summons claiming for

- (i) Damages for breach of contract;
- (ii) Further or in the alternative
 - (a) Notice pay
 - (b) Gratuity
 - (c) Leave days not taken; and
- (iii) Costs of the action.

The facts of the matter as claimed are that the plaintiffs were at the material time employed by the Defendant's Ministry of Local Government

and Rural Development and were based at the Decentralization Secretariat as Secretary and Drivers respectively. Prior to 2003 they would be offered yearly contracts whose terms were reduced in writing. The contracts would run from January to December every year. But from 2003 to 4th April 2005 no such contracts were offered to them but they continued working in their respective capacities. On 4th April 2005 they were written letters of termination of their services with effect from 31st March 2005. The plaintiffs contend that the termination was unlawful in that (i) it was made to operate retrospectively and (ii) they were not given due notice. That it was in breach of their contracts as they [the contracts] would have expired in December.

No notice of intention to defend having been given by the defendant, the plaintiffs entered a judgment in default. The Judgment is in the following terms:

“No notice of intention to defend having been served by the defendant herein, it is this day adjudged as follows:

1. That the defendant does pay the plaintiffs damages for breach of contract to be assessed by the court.
2. That the defendant be condemned in cost of this action.”

I therefore have to assess the plaintiffs’ damages for breach of the contract in this case.

Hearing of the notice of appointment to assess the damages took place in the absence of the defendant as no reason for their non attendance was given despite having been duly served with the notice.

Three witnesses testified by way of witness statements. Let me comment before I proceed that I found the witness statements in this case wanting in some way. The written statement of the witness is the equivalent of

the oral evidence which that witness will give if called, in his evidence in chief at the trial. It therefore has to be treated as such. It should be stated in a clear, straightforward narrative form, and should use the language of the witness, his *ipsissima verba*. If it mentions any document or documents, the reference to each of them should, where possible, be given in the margin. (Para. 38/2A/8 R.S.C.) It is on this point that I found the witness statements wanting. Good practice requires that any documents in a witness statement should properly and clearly be identified and referred to.

Reading the statements, I find that their testimony is almost similar. Mrs. Ireen Malipa, the first plaintiff, was employed on 2nd February 2001 as a secretary. On 1st March 2001 she was given a contract letter for the period between 1st February and 31st December 2001 with a gratuity of 25% of her total earnings. Mr. Sefu Abraham Phiri, the second plaintiff, was employed on 15th March 1998 as a driver. On 2nd April 2001 he got a contract for 1st January to 31st December 2001 with 25% gratuity of total earnings. What happened to Mrs. Ireen Malipa and Mr. Sefu Abraham Phiri after their first contracts is the same. On 30th January 2002 they got other contracts for 1st January to 31st March 2002 with a similar condition on gratuity. On 31st January 2002 they were given other contracts for 1st January to 31st March 2002 and 25% gratuity. And on 21st January 2003 they were given other contracts for 1st January to 31st March 2003 with the same condition on gratuity. All the above contracts were honoured by the defendant. Mr. Mathews Masanya Phiri, the third plaintiff was employed on 20th February 2003 as a driver. His contract was for one year subject to renewal.

Now, as it turned out to be, from 1st April 2003 no contract was issued to any member of staff at the Decentralisation Secretariat until 31st March

2005 when contracts were issued to the rest of the members of staff except the plaintiffs herein. The contracts were for the period, 1st April 2005 to 31st December 2005. The plaintiffs were instead, on 4th April 2005 issued with letters ending their contracts with the defendant with effect from 31st March 2005.

One thing I have noted is that the contracts for the first and second plaintiffs were not for a continuous period of time. The first contract were for 1st February to 31st December 2001, the second for 1st January to 31st March 2002 and the third for 1st January to 31st March 2003. One wonders therefore whether the plaintiffs continuously worked for the defendant after 31st March 2003 up to 31st March 2005. That does not clearly come out of the evidence. However, it would appear they did. How then do we treat their contracts during this period? The original contracts appear to be for specified periods of times which according to Section 28(2) of the Employment Act 2000, automatically terminate on the dates specified for their termination. If tacitly renewed or prolonged, which is the case in the present matter, notice is required before termination. But the plaintiffs' contracts were terminated without notice. The plaintiffs are therefore entitled to payment in lieu of notice and to gratuity, and leave days not taken.

No specific term as to notice was shown to court, so I will use the statutory one month notice where the contract is to pay wages at a monthly rate. (Section 29(1)(a) Employment Act 2000). No evidence has been given as to the leave days and so I will award nothing on leave days.

Now I can assess the damages for each plaintiff.

Mrs. Ireen Malipa

Her salary at the time of termination of her employment, as shown in her payment voucher attached to her witness statement, was K148 507 per month. That is awarded to her in lieu of notice less tax. Her 25% gratuity for the period from 1st April 2003 to 31st March 2005 is $24 \times K148\,507 \times 25\% = K891\,042$. I award her that much less tax. So in total she is awarded K1 039 549 less tax.

Mr. Sefu Abraham Phiri

His salary at the time of termination of his employment, as shown in his payment voucher attached to his witness statement, was K68 627.83 per month. That is awarded to him in lieu of notice less tax. His 25% gratuity for the period from 1st April 2003 to 31st March 2005 is $24 \times K68\,627.83 \times 25\% = K411\,766.98$. I award him that much less tax. So in total he is awarded K480 394.81 less tax.

Mr. Mathews Masanya Phiri

In his witness statement he has stated that he was employed on contract for one year subject to renewal, but that has not been proved in any way. He only has attached his payment voucher for March 2005 to the witness statement. His salary was K56 882.50. I award him that in lieu of notice.

I make no order for costs. This matter should have been brought before the Industrial Relations Court which has original jurisdiction over labour disputes and other issues relating to employment. In that court costs are normally not awarded.

Made in chambers this 19th June 2007.

T.R. Ligowe
ASSISTANT REGISTRAR