



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 255 OF 1998**

BETWEEN:

ARNOLD KAMPENI & 5 OTHERS.....PLAINTIFFS

-v-

ELECTRICITY SUPPLY COMMISSION OF MALAWI.....DEFENDANT

Coram: Hon. Justice M L Kamwambe

Micheus of counsel for the Plaintiffs

Chibwe of counsel for the Defendant

Phiri.....Official Interpreter

JUDGMENT

Kamwambe J

This is a claim for aggravated damages for false imprisonment and damages for wrongful dismissal and costs of this action.

On or about the 6th December, 1996 the Defendant took the Plaintiffs to police who put the said Plaintiffs into custody allegedly on a charge made by the Defendant that the Plaintiffs had wrongfully erected a power line at BCA Hill in Limbe. The Plaintiffs were released on 10th December, 1996. At the hearing of the criminal proceedings against the Plaintiffs at the Resident Magistrate Court at Limbe, they were discharged on the ground that there was no enough



evidence implicating them. As a result of the arrest and incarceration, the Plaintiffs sustained severe shock and mental anguish and they have suffered loss and damage.

Arnold Chimpeni who testified on his own behalf and on behalf of his colleagues informed the court that on 6th December, 1996 they reported at the work place of the Defendant as usual when they were incarcerated one by one by the security guards of the Defendant. They protested the arrest but to no avail. They were not allowed to leave the place they were being kept by the Defendant's guards while waiting for the other Plaintiffs and the vehicle to take them to police. The witness testified that it was the Chief Security Officer of the Defendant and his security guards who took them using the Defendant's vehicle and left them at Limbe Police Station on allegations that they had erected illegal power lines at BCA. At court the case failed to proceed due to lack of evidence.

In re- examination to a question how the witness knew about Chitete, he said that the police said 'you (the arrested persons) have come because of Chitete who is coming at 12: 00 noon to give statement'.

The Defence witness A L Chitete testified that he carried out the investigations before and after the Plaintiffs were arrested. Preliminary inquiry showed that Chingwalu and Howa were the culprits. He said that police, using their powers and after independent investigations proceeded to arrest the Plaintiffs. He said also that their investigation report was concluded after the Plaintiffs were arrested. In respect of this, he said that he was not sure that the wrong people were arrested. They did not give the report to police.

The court will not look into the claim for wrongful dismissal since the Plaintiffs have conceded that the dismissal was not wrongful as they were allowed back to work up to the date of expiry of the contract of employment, the 20th August, 1996. This is now not an issue.

The only ground that remains is one of false imprisonment. The issue to grapple with is whether the Defendant or his servants made a charge against the Plaintiffs on which it became the duty of the police to arrest. This is what Chatsika J had to say in **Tembo –v – Industrial Development Group (1)** 919930 16 (2) MLR 865:

“...It should be noted that that it is the duty of every citizen to give information of an alleged commission of a crime to the police. If while acting on the information so given, the police mount investigations, and the investigations result in the arrest of the suspect, if the suspect is eventually found to be innocent, he cannot entertain an action in false imprisonment against the citizen who initially supplied the information to police. If, on the other hand the citizen, instead of merely supplying information makes a charge to the effect that the suspect has committed a crime, and on the strength of the charge, the police arrest the suspect, the suspect would have a cause of action if false imprisonment against the citizen who made the charge if it is subsequently found that the suspect is innocent...”

In **Matanda –v- Sales Services Limited and others** [1990] 13 MLR 219 at 229 the court said that:

“The crucial issue in cases of false imprisonment is to decide whether the Defendant’s servants or agents merely stated facts to the police or whether they made a charge on which it became the duty of the police to act then the Defendant will be liable, but he will not be liable if he or his servants or agents gave information by merely conveying their suspicion and the acted according to their own judgment.”

It was stated in **Maula -v- Norse International Limited** [1992]15 MLR 331 that:

“That the Defendant will not be liable if all they did was to give information about the loss of goods and asked the police to investigate.”

Furthermore, in **Meja –v- Cold Storage Company Limited** the court held that one cannot be held liable for false imprisonment by merely providing a vehicle for the police to transport suspects.

Whether one merely raised some suspicion or made a charge against the suspect is a matter of fact. The court has to look at all the circumstances of the case carefully as it can be tricky and confusing. The court has also to consider the conduct of the defendant in the circumstances. In **Chiumia –v- Southern Bottlers Limited** [1991] MLR 38 at 46 Unyolo J as he was then said that:

“I also wish to add here that in final analysis this is a factual matter. All the available evidence must be considered with religious care. The court should not only look at what the reporter said. As everyone knows actions speak louder than words.”

In the **Meja** case (supra) the court pointed out that false imprisonment commences at the moment of one’s arrest. It said:

“The Plaintiff’s imprisonment commenced at the moment of his arrest, as that was the moment at which his personal liberty came to be curtailed. The issue before the court hinged on credibility, was if the Defendant who carried out the arrest out of their own volition after the contribution made by the Defendant had been no more than to convey information to the police? In the event of the former the Defendant would be liable, in the latter case not.”

So, what really happened in this case? When each suspected person arrived in the morning for work, immediately he was apprehended by the Chief Security Officer and his guards and kept at the gate under the surveillance of the guards until all the Plaintiffs were arrested. No reason then was given until later when they were told that they were arrested because they erected poles at BCA against rules of Escom, the Defendant Company. Evidence shows that they were not allowed to leave or go anywhere and that they were guarded with guns. From there they were taken by the Defendant’s vehicle to police where they were left in the hands of the police. The arrest was effected in the absence of any police officer. After police asked them questions the police told them to wait for Mr Chitete, the Defendant’s Chief Internal Auditor to give a statement to

police. The police told Plaintiffs that 'since their boss did not come to give statement they would go to Chichiri prison, and they were sent there. Mr Chitete who was internally investigating the matter was crucial to police whether to release the Plaintiffs or not.

My analysis of the above facts shows that the Plaintiffs were arrested upon their arrival at the Defendant's work place. There and then they lost their liberty. The Defendant was under the belief that the Plaintiffs had worked with Mr Chingwalu (who was convicted later) at BCA. Defendant witness said that Plaintiffs were arrested before internal investigations were concluded. One wonders why they referred them to police without establishing any reasonable suspicion that they engaged in illegal acts like Mr Chingwalu and Mr Howa who were named by customers to have assisted them to get power. These two were later convicted.

There is no evidence that the police instructed the Defendant to bring them the Plaintiffs. Instruction from the Police would amount to lawful justification. The Defendant did not merely transport the Plaintiffs. The police would not have prior knowledge of the Plaintiffs without being informed by the Defendant about them. This is why it took the Defendant on its own volition to isolate and arrest the Plaintiffs whom they suspected to have fraudulently supplied power lines together with Chingwalu, who was a foreman. They were mistaken though. That they just damped and forgot them at the police explains that they were convinced the suspects were involved in their malpractice, otherwise they would have gone to police to bail them out as they had no evidence. They had a duty to protect innocent employees from hardship.

In re-examination Mr Chitete as Defence witness said that he was aware of the arrest when Mr Phaka (a police officer) said that Howa was arrested and he asked who else was arrested. This means that the police was relying on the Defendant to feed it with information leading to arrests, thereby not acting independently. It follows then that on its own knowledge, power and volition the Defendant arrested those others that they believed to be involved and took them to police. Mr Chitete also said he did not know who took the Plaintiffs to police. This means that he does not even know that Plaintiffs were arrested at

the instance of the Chief Security Officer. Mr Chitete therefore has no capacity to refute the arrest.

On a balance of probability, I find that the Defendant laid charges against the Plaintiffs and therefore they are liable for false imprisonment.

There are no arguments for aggravated damages and I therefore order that ordinary damages are payable for false imprisonment and unfair dismissal.

Pronounced in Open Court this 15th day of August, 2016 at Chichiri, Blantyre



M L Kamwambe

JUDGE