

REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO.241 OF 2016

BETWEEN:

MICHAEL PHETEMBE AND 4 OTHERS.....CLAIMANTS

-AND-

SHAYONA CEMENT CORPORATION.....RESPONDENT

CORUM: R.M CHINANGWA JUDGE

- | | |
|----------------|-----------------------------------|
| Zapinga | Counsel for the Claimant |
| Chinula | Counsel for the Respondent |
| Chitao | Court Clerk |

JUDGEMENT

Introduction

1. The claimants claim damages for false imprisonment for 6 days and the rigors of trial amounting to K4,000,000.00 and costs of this action.
2. The respondents opposed the claim.
3. During hearing the claimants opted to parade one witness whose evidence would reflect the testimony of all the other witness as their evidence was similar. The respondents did not object to this application and the court proceeded to hear one witness for all the claimants and one witness from the respondents. Both witnesses filed and adopted in evidence their witness statements upon which they were cross- examined.

The Claimants Evidence

4. The claimants witness was Michael Phetembe, a Receiving Clerk in the Stores Department.

5. He stated that whilst working, between the 27th and 28th day of June, 2015 they were informed that certain items were missing from the Stores. A search was made for injector pump, welding rods and other items.
6. On 1st day of July, 2015 Mr. Mvula Human Resources Manager invited one by one employees from the stores Department except the claimant and Joseph Mhango who was also a Clerk in the said Stores Department.
7. After the said questioning, Mr. Mvula reported the matter to police who later that afternoon came and took Maclean Mwale (also a stores Clerk) and Sankhani Kafulukuta who was a stores helper to Police Station for further questioning.
8. At around 5:00 pm, the police came again and asked the claimant, Joseph Mhango and Chimwemwe Soko who was also a clerk to accompany them to the said Police Station where they were all asked to explain what they knew about the missing items of which they told the Police that they knew nothing about the said missing items and they were let to go.
9. After a few minutes, the said Police men came back and took Joseph Mhango and the claimant and then later detained them in custody where they stayed until the 3rd day of July 2015.
10. It is argued that the reasons for detaining them longer was that they were waiting for communication from their office and later that afternoon the respondent provided a vehicle which was used to transfer them to Kasungu Police Station where they stayed until the 7th day of July, 2015 when they were granted Court bail.
11. After hearing the matter, the Kasungu Magistrate Court acquitted them. It is argued that the lower court record shows that it was the respondent which pointed out that they were the ones who stole the items contrary to the respondents assertions that the Police conducted their own independent investigations and then later arrested us.

The Respondents Evidence

12. The respondent witness was Austin Mvula, Human Resource and Administration Manager.
13. He stated that on or about 30th June, 2015, they received a report from the stores that some items were missing. The items reported missing by the stores Manager, Mr. K. Ramesh, were 30 kilograms welding rods, 3 rolls of 100 metres electric wire cable 1.5mm² and one fuel injector pump all valued at MK2,277,754.83.

14. It is argued that as a normal procedure, they instituted an internal search hoping that the items were only misplaced within our vast stores. They involved all stores personnel including the claimant and his workmates. The search yielded nothing. As such, it was confirmed that the aforementioned items were illegally taken out of stores by some unknown people.
15. A written complaint, with no name of any suspect, was submitted to the police on 1st July, 2015 for them to help investigate the matter. Exhibit "AM1" after which by the end of 1st July, 2015, they arrested Sankhani Kafulukuta and Maclean Mwale. The respondents were informed that the arrested two had mentioned three others who, it was claimed, were involved in the missing of the items.
16. It is argued that the respondents never took anybody to police as it was just very difficult for them to form a basis for strong suspicion against anyone of their employees.
17. When the matter was taken for hearing at the Kasungu Magistrate's Court, the respondents were not summoned as State Witnesses.

Issue for Determination

18. This court has to determine whether the claimants were falsely imprisoned.

Analysis of Law and Evidence

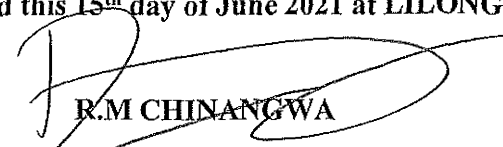
19. In *Hauya v Cold Storage Co Ltd* [1994] MLR 92 (SCA) it was held that where the defendant merely informs the police that a fraud has been discovered, and there is no evidence that the defendant laid a charge against the plaintiff, and the police carry out their own investigations and decide to arrest the plaintiff, the defendant is not liable for false imprisonment.
20. In this case the claimants argue that false imprisonment arises because a) the lower court record shows that it was the respondent which pointed out that they were the ones who stole the items contrary to the respondents assertions that the police carried out their investigations b) the lower court acquitted them of the charges c) the police detained them longer as they were waiting for communication from the respondents and d) the respondent provided a vehicle which was used to transfer them to Kasungu Police Station.
21. The respondents on the other hand argue that they did not falsely imprison the claimants because they gave a written complaint to the police with none of the claimants names recorded in it b) the police carried out their own investigations and made arrests.

22. It is this courts view that the claimants evidence regarding how the arrest was carried out has not been substantiated. The evidence simply boils down to the claimanst word against the respondnets word. There is a written complaint which negates the possibility that the respondents initiated the arrest. There was need for claimants to provide the court with additional evidence to support their claim that it was indeed the respondents who laid a charge to the police. The police would have come in handy to build their case but they were not present in court.
23. The lower court record which the claimants seem to rely on was not presented in court as part of evidence as such the court cannot consider evidence which was not presented before it.
24. Regarding the acquittal in the criminal court, it is this courts view that an acquittal from criminal charges does not automatically entitle one to a claim for false imprisonment. An acquittal simply means that there wasn't evidence beyond reasonable doubt to prove the case. At the time one is being arrested there out to be reasonable suspicion that an offence has been committed. It has not been disputed that item were indeed missing from the respondents company. The respondents deny having led any charge against the claimants which is a key element in a case of false imprisonment.
25. Regarding the police using the respondents transport, it is this courts view that by police using the respondents transport to ferry the accused persons would not automatically mean that the respondents laid a charge against the claimants. The claimants themselves mention the sequence in which the events took place and clearly it shows the police were carrying out investigations as the claimants were called to police at different intervals.
26. In conclusion it is this court's finding that the totality of the evidence does not substantiate the claim on a balance of probabilities. The police who made the arrests are the missing link in the evidence.

Finding

27. The claim for false imprisonment is dismissed having not been substantiated.

Pronounced this 15th day of June 2021 at LILONGWE


R.M CHINANGWA
JUDGE