

IN 'THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 474 OF 1994

BETWEEN:

PROTAZIO D. KANYENGAMBETA PLAINTIFF

and

THE ATTORNEY GENERAL DEFENDANT

CORAM: JANE MAYEMU ANSAH, DEPUTY REGISTRAR
MSISHA, COUNSEL FOR THE PLAINTIFF
CHIMASULA, CHIEF STATE ADVOCATE FOR THE DEFENDANT

RULING

This is a summons for summary judgment brought under Order 14 of the Rules of the Supreme Court. It is duly supported by an affidavit. The basis of the application is that the defendant has no defence to the action of false imprisonment. The summons is strongly objected to, and there is an affidavit in opposition.

It is common case that the plaintiff, Mr. Kanyengambeta was imprisoned at Chichiri and Zomba Prisons from 25th May 1992 to 31st July 1992 when he was released without being charged. Mr. Msisha for the plaintiff contends that the plaintiff was arrested without a Warrant of Arrest and or no reason for his arrest was given; neither was there any investigation. He, therefore, submitted that although the Plaintiff was arrested under the Act, those effecting the arrest has no authority to do so. Therefore, the arrest was unlawful. False imprisonment was defined in the case of O.M.M. Sindi Vs. D. Ross and Company and Others Civil Cause number 128 of 1982 (unreported), page 3. The learned Judge quoting Termes de la ley said:

"imprisonment is no other thing but the restraint of a man's liberty whether it be in the open field or in the stocks or in the cage in the streets or in a man's own house as well as in the common gaol and in all the

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places the party so restrained is said to be a prisoner so long as he have not his liberty freely to go at all times to all places whether he will without bail or main prize or otherwise."

Mr. Chimasula for the defendant contended that the Plaintiff was arrested under Regulation 3(7) of the Preservation of Public Security Act; which does not make it a prerequisite that someone must be charged in order to justify an arrest or that there must be a warrant of arrest.

For me to consider whether the Plaintiff can obtain the prayed summary judgement or not, I must first look at the provision of Order 14/3-4/2 of the Rules of Supreme Court which provides as follows:

"The purpose of Order 14 is to enable a Plaintiff to obtain summary judgment without trial, if he can prove his claim clearly, and if the defendant is unable to set up a bonafide defence, or raise an issue against the claim which ought to be tried"

I now come to the question; does the Defendant have a bonafide defence? It is not denied by the defendant that the Plaintiff was arrested without warrant, imprisoned for 2 months and was released without a charge. However, the Defendant contends that he has a defence and that the imprisonment was justifiable because the arrest was made under Regulation 3(7) of the preservation of Public Security Act. Chief Justice Skinner dealing with Regulation 3(7) of the Preservation of Public Security Act, in the case of Solomon Sole Vs. The Republic Misc. Criminal Application No. 12 of 1981, page 3, said:

It will be seen that the purpose of the arrest and detention under the sub-regulation is to hold the person in custody pending a decision whether a detention order should be made against him. In my

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judgment the period during which a person may be held in custody can be no longer than would be reasonably necessary to obtain a decision from the appropriate authority as to whether or not a detention order should be made against him. This of course, does not mean that the advice to the appropriate authority has to be put forward without the Police having an opportunity to carry out some investigation. But again the time for such investigation must be reasonable and should not be excessive".

What the Chief Justice set down in the above case has been followed in subsequent cases. From these precedents, it is clear that the deciding factor as to whether imprisonment is lawful or not depends on the period, and the period varies from case to case in accordance with the circumstances of the case. I, therefore, find that there is a triable issue.

The application for summary judgment fails with costs to the defendants.

Pronounced in Chambers this 28th day of July, 1995.

Jane Mayemu Ansah (Mrs)

DEPUTY REGISTRAR

Delivered on her behalf on day of 1996.


E. B. Twa
REGISTRAR