

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 886 OF 1994



BETWEEN:

E. T. C. TAIMU PLAINTIFF
and
THE ATTORNEY GENERAL DEFENDANT

CORAM: W.W. QOTO, DEPUTY REGISTRAR
T. Nyirenda, Counsel for the Plaintiff
Defendant absent

RULING

QOTO, DEPUTY REGISTRAR

This is an application by the plaintiff for assessment of damages for conversion.

By a writ of summons and a statement of claim issued on 28 April, 1994, the plaintiff claimed against the defendant damages for false imprisonment, damages for conversion and costs of the action.

An interlocutory consent judgment was entered on 18 October, 1994. Damages had to be assessed. Damages for false imprisonment were assessed at K200,000.00 on 14th December, 1994. I now have to assess damages for conversion.

Let me digress here and say that I fail to see why the plaintiff decided to assess damages for false imprisonment and for conversion separately when the interlocutory judgment embraced both actions. Time and treasury would have been saved if assessment of damages for both actions was done once and for all. You cannot litigate by instalments.

Be that as it may, the evidence on assessment of damages for



conversion was given by the plaintiff himself only.

It was that he is in the employ of Controller of Stores, a Government Department and he is based in Blantyre. In 1988, he was still in the employ of Controller of Stores but then, he was based at State House in Zomba. Whilst he was there, he was accused of theft by a person employed in the public service. In consequence, he was arrested on 22nd October, 1988, and remanded in custody. Next day, and while he was still in custody, the Police from Zomba Police Station went to his house and seized all his household properties. They did not tell him the reason why they did so. They took the property to Zomba Police Station.

After a couple of days he was brought to Zomba Magistrate Court for trial. After the conclusion of the trial, he was found not guilty and he was accordingly acquitted. The Police were ordered by the court to return the household properties they had seized from him. They did not and they have not done so up to now.

The properties the Police seized and which they have not hitherto returned are:-

1. 3 piece lounge suite
2. 1 Dining set
1. 1 Display Cabinet
4. Fridge
5. 3 plate cooker
6. 1 Wardrobe
7. 1 Cupboard
8. Coffee tables
9. 5 beds
10. 5 mattresses (1 double, 1 three quarter size and 3 singles 4" size)
11. 25 blankets
12. 5 (three quarter) pairs sheets
13. mosquito nets
14. 1 dressing table

15. 2 singer sewing machines
16. 1 electric heater
17. 1 fan
18. 1 electric iron
19. 2 stereo systems
20. kitchen utensils
21. 1 role chicken wire
22. 30 metres curtain material

The plaintiff further told the court that when he was released in 1992, he demanded the return of these properties to him from Zomba Police but they did not give them back. The total value of the seized items at the time of seizure was K25,750.00. When he checked their values again in 1994, he found that their total value was then K120,000.00.

The plaintiff's evidence is undisputed and unchallenged. I accordingly make findings of fact relative to it.

Having set the cast, I turn to the law. I can do no better than refer to General and Finance Facilities Limited vs. Cooks Cars (Romford) Limited [1963]2 All E.R. 314. Diplock L.J. said at page 317:

"There are important distinctions between a cause of action in conversion and a cause of action in detinue. The former is a single wrongful act and the cause of action accrues at the date of conversion: the latter is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods or judgment in the action for detinue."

Thus, in conversion the cause of action accrues at the date of conversion and in the present case the date of conversion is 23 October, 1988.

As to measure of damages I again defer to Diplock L.J. in General

and Finance Facilities Limited v. Cooks Cars case at page 318. He said that the action in conversion is a purely personal action and results in a judgment for pecuniary damages only. The judgment is for a single sum of which the measure is generally the value of the chattel at the date of conversion together with any consequential damage flowing from the conversion and not too remote to be recoverable in law.

What the learned Judge said, in my view, accords with the principle that damages in tort are awarded by way of monetary compensation for a loss or losses which the plaintiff has actually sustained and the measure of damage awarded on this basis may vary according to the individual circumstances of each case. Indeed the learned authors, McGregor on Damages, 15th Edition, para 1308 submit that the soundest approach is to start off with the value at the time of conversion as the *prima facie* measure: this is in accordance with the general principle that damages must be assessed as at the date of the wrong. The effect upon this measure of damages, the learned authors argue, of increases or decreases in the value between wrong and judgment must then be considered. Increases must be divided into those that have happened without intervention by the defendant i.e. rises in the market value and those are due to acts done or expenses incurred by the defendant in relation to the goods. In the case of Sachs vs Miklos [1948]2 K.B. 23 (CA) there had been a rise in the value of the goods converted and the plaintiff claimed as damages their increased value. The court said that the question was what was the plaintiff's loss, what damage had he suffered, by the wrongful act of the defendants.

Turning to the present case the plaintiff is therefore entitled prima facie to the value of the goods at the time of conversion which is 1988. It is not through the fault of the plaintiff that the value of the goods has risen astronomically. The police kept him in prison until 1994 and even after they released him, they did not and have not hitherto handed over the properties to the plaintiff. He is, therefore, entitled to recover the value of

the goods as at the date of judgment because that represents the real loss he has suffered. It is impossible to say that he is not entitled to recover the value of the goods as at the time of judgment. This also is in accordance with the principle of restitutio in integrum.

I accordingly award the plaintiff K120,000.00 as the value of the converted goods at the time of judgment.

I also award him K10,000 as general damages for the detention of those goods.

MADE IN CHAMBERS THIS 17th day of December, 1996.


W.W. Qoto
DEPUTY REGISTRAR