

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2010 OF 1994

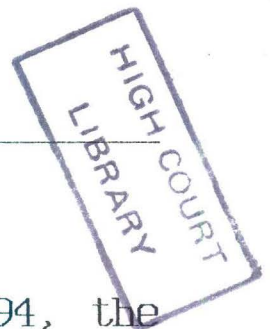
BETWEEN :

D.R. KALONGA PLAINTIFF

AND

THE ATTORNEY DEFENDANT

CORAM : W.W. QOTO, DEPUTY REGISTRAR
R. MHOI OF COUNSEL FOR THE PLAINTIFF



RULING

By a writ of summons dated 24th October, 1994, the plaintiff claimed against the defendant "salary arrears from April, 1992 to October, 1994, notice of pay for unilateral termination of contract and costs."

There being no notice of intention to defend given the plaintiff entered a default judgement against the plaintiff on 9th December, 1994. It was adjudged that the defendant do pay the plaintiff damages to be assessed and cost to be taxed.

The matter comes for assessment of arrears of salary from April, 1992 to October, 1994.

The plaintiff gave the following evidence which is uncontroverted. He was employed by the defunct Malawi Young Pioneers as a telephone operator in 1980. He later become a driver and on 27th April, 1992, whilst

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he was driving his employer's motor vehicle from Lilongwe, he got involved in an accident . As a result of which accident his employers suspended him for a period of 30 months. The suspension ended in September, 1994.

During the suspension, his employers had asked him to get a letter of clearance from the Road Traffic Department in relation to the accident so that they lift the suspension. That he did but the suspension was not lifted and instead in September, 1994, he was asked to go to Lilongwe and get his terminal benefits. This was said to be in view of operation "Bwezani".

The letter of suspension, exhibit P1, reads as follows:
"I write to inform you that you have been suspended from Malawi Young Pioneers services with effect from 26th April, 1992 on the grounds of being involved on a road accident with Malawi Young Pioneers vehicle registration No. 383.

In this respect you are asked to surrender all Malawi Young Pioneers equipment including uniforms which were issued to you by virtue of your appointment with the movement and obtain a Goods Return Voucher from the store.

Your case will be reviewed upon the information from Motor Examiner and Police findings on the issue.

By copy of this letter the Chief Accountant/Salaries Officer is asked to take note and deal accordingly."

The plaintiff testified that after a query from his employers, he did supply them with information from the road traffic examiner. Instead, in 1994, and in September, he was asked to go to Lilongwe and get his terminal benefits. He was told that his employer had been abolished as a result of Operation Bwezani. He got his gratuity and other terminal benefits for a period covering 1980 to 1994. The payment voucher on which these benefits were paid is marked exhibit P2.

He also testified that during the suspension he was not paid any salary and he claimed such salary during suspension and also three months notice pay.

As I said my duty is to assess the salary due to him on suspension and also his salary in lieu of notice. I must say at once that my task has been made easy because there is already such computation from his employer which also shows his salary progression. That computation is part of exhibit P2. From 1st April, 1992 to 19 April, 1993, his salary was K3,192 per annum. From 1st April, 1993 to 1st July 1993 it was still K3,192 per annum. From 1st July 1993 to 1st March 1994, it was K4,944 per month. The suspension was with effect from 26th April, 1992. For that month the plaintiff was, therefore, entitled to

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K26.61. From 1st May 1992 to 1st April, 1993, it is twelve months and the plaintiff was entitled to K3,192.00 from 1st April 1993 to 1st July 1993 it is four months and the plaintiff, at K3,192 per annum, was entitled to a salary of K1064.00. From 1st July 1993 to the last day, October 30 1994, it is 14 months. At K4,944 per annum it works out to a salary of K5,768.00.

There is again the uncontroverted evidence that for unilateral termination of the contract, the plaintiff was entitled to three months salary in lieu of notice. In 1994, his salary was K4,944.00 per annum. For three months that salary is K1,236.00.

The total arrears of salary plus salary in lieu of notice comes to K11,286.61. I award this sum to the plaintiff subject to tax it is subject. I also award him costs of the action.

MADE IN CHAMBERS this 20th day of March, 1996, at Blantyre.


W.W. GOUY
DEPUTY REGISTRAR