

Justice (Nyolo J.A)

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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1855 OF 1993

BETWEEN:

ALIMOHAMMED WAKA PLAINTIFF

and

THE ATTORNEY GENERAL DEFENDANT

CORAM: QOTO, DEPUTY REGISTRAR
Msisha, Counsel for the Plaintiff
Defendant and his representative absent

RULING

By originating summons issued on 23 December 1993, the plaintiff sought the determination of the court on the following questions:-

- (1) Was the Forfeiture Act in accordance with the Constitution of Malawi?
- (2) Did the Forfeiture Act offend the United Nations Universal Declaration of Human Rights and the Constitution of Malawi?
- (3) Did the application of the Act to the plaintiff amount to an infringement of the Constitution and the plaintiff's fundamental rights?

- (4) Was the Malawi Government under a legal duty to protect the fundamental rights of the plaintiff?
- (5) Is the Malawi Government under a legal obligation to return all the properties seized from the plaintiff and/or to account for the same or the proceeds of the sale to the plaintiff?
- (6) That the plaintiff is entitled to orders and declarations for the restoration of his property and rights.

In the affidavit in support of the originating summons the plaintiff deponed that he used to carry on business in Malawi and on November 27, 1973, an order under the Forfeiture Act was made against him as a result of which the provisions of the Forfeiture Act were applied to him. In consequence of that order, he lost all his property. He said he was not told the reasons for the application of the Forfeiture Act to him.

On July 8, 1977, again without specifying the reasons therefore, the forfeiture order was rescinded. He again depones that the said forfeiture was unlawful and unconstitutional and contrary to natural justice. He again depones that the Forfeiture Act and its application to him constituted breaches of the Universal Declaration of Human Rights. He finally deponed that he has received no full account from the Administrator General for his property which was unlawfully seized from him.

There is an inventory of the property which was seized from him attached to the affidavit in support of the originating summons.

The State opposed the application mainly on two grounds, namely; that (1) the action is statute-barred and (2) the plaintiff exaggerated the value of the forfeited property.

The issue whether the action was statute-barred or not was determined as a preliminary matter. The learned Judge held that the plaintiff's action was not covered by Section 4 of the Limitation Act and as such it was not statute-barred. That ruling effectively removed the anchor of the State's defence and the plaintiff accordingly obtained an interlocutory judgment against it. It was adjudged on 9th January, 1996, that the defendant do pay the plaintiff damages for loss of property and further general damages to be assessed by the Registrar.

I heard evidence in relation to the assessment of damages for loss of property and general damages in the absence of a representative of the State. It was duly served with the notice of adjournment and no reasons were furnished to the court for its failure to attend the hearing.

The plaintiff himself gave evidence.

It was that he now resides in Mangochi and he runs a butchery business there.

In 1973, he was subjected to a Forfeiture Order and in consequence of which he lost all his property. By then he had a transport business. He used to transport rice and other agricultural produce from Chilumba to Ndola in the Republic of Zambia. He had four Toyota trucks with which he transacted his business and these were new. He had bought them at

K9,000 each. These were of D6 thousand and 7 tonner type and the similar ones are still available in the country. In 1995, each was at K881,000.00 as shown on the invoice attached to his supplementary affidavit sworn on 22 October, 1991 marked exhibit 'AMW1'. Their prices now are over one and quarter million Kwacha each.

He used to make a profit of K5,000.00 on each truck per month and by then, he had been in business for six years.

Another motor vehicle which was taken away from him was a Mazda pick-up which he had bought at K3,500.00. The price in 1994, he said, was K85,482.00 as shown on the invoice marked 'AMW2' attached to his supplementary affidavit.

He also had a boat which was six months old. He had paid K1,500.00 for its engine and by November 1994, the same engine was K74,000.00, according to the quotation marked AMW3 'attached to his supplementary affidavit. According to the current prices as shown on exhibit PY, a similar boat plus its trailer costs K149,000.00 but he did not have a trailer. He also had a four bedroom house on a plot of seven acres. The plot is still there but the house has been rehabilitated and there is now a market on one side and a PVHO centre on the other. The land had been given to him by Chief Kalonga as it was customary land. The house he had built on it was of burnt bricks plus cement and iron sheets. There was also a borehole near the house and a water pump to pump the water into the 500 litres tank at the house. The house and the water pump cost him K70,000.00. To build a similar house today would cost about a quarter of a million Kwacha.

His bank accounts were also frozen. He had a Commercial Bank Account with a credit balance of K10,000.00. He also told the Court that the money he realised from the Ndola business and he did not tell the Court how much it was, must have been taken by the Administrator General. He said he had again made several trips on behalf of ADMARC carrying cassava and maize from Nkhotakota to Salima and the money made from ADMARC was not paid to him because of the forfeiture order.

The life span of the motor vehicle he said was 5 years after which he had intended to sell his trucks after that period and he was going to buy bigger ones and expand his business operations internationally.

Since the forfeiture order, he was not allowed to transact any business nor was he told the reasons for the order.

On the document marked Receipts and payments exhibited to the affidavit of Mr. Chimasula Phiri, the plaintiff told the Court that it does not represent a full inventory of the business assets which he had. It only shows one truck, there are no payments in and amounts in the bank account are not shown. So too receipts from ADMARC, his house and other buildings at the plot.

Some money from ADMARC which was owing to him was used by the Administrator General to pay school fees for his children for one year only and maintenance allowance of K200.00 per month was given to his wife.

He wrote a petition to the President and after two years, he received a letter from the Registrar General advising him that the Forfeiture Order

had been rescinded. His money and property were not, however, returned to him. They have not hitherto been returned hence the action.

In the affidavit in support of the application, the plaintiff depones that the current prices for the items which were forfeited are as follows:

4 Toyota Trucks 1972 (7 tonnes) at K881,000 each = K3,524,000.00

1 Mazda B1600 Van K 60,000.00

1 Payne 19 foot fibre boat with 100 HP

Yamaha outboat engine K 74,000.00

There are various proforma invoices showing these prices and these are exhibited as AWM1 to 3 inclusive.

There is also a three bedroomed house situate on 7 acres of land at Salima valued K155,000.00.

1 borehole valued at K10,000.00

1 water pump and engine valued at K 8,000.00

15,000,000 litre tank valued at K 2,000.00

The evidence of the plaintiff is undisputed and unchallenged. I saw him testify and I have no doubt that he gave me an accurate account of what happened. I further find that his evidence is corroborated in most material respects by the documentary evidence on record.

There is no doubt that the plaintiff's property and money were converted by the Government through the forfeiture order.

It is surprising that although this order was later rescinded the forfeited goods or their value were never returned to the plaintiff. The plaintiff transacted a business of exporting rice to Ndola from Chilumba apart from his farm business. It is clear from his uncontroverted evidence that he made profits of K5,000.00 from his business operations. It is again clear from his evidence that for a period of twenty years he has lost these profits.

The judgment on record enjoins me to assess damages for loss of his property and general damages.

This was a case of conversion of the plaintiff's property and money by the Government. The normal measure of damages for conversion is the market value of the goods converted. According to Green L.J. in Hall V Barclay [1937], 3 All E.R. 620, 623 this principle is based upon the ground that "where you are dealing with goods which can be readily bought in the market, a man whose rights have been interfered with is never entitled to more than what he would have to pay to buy a similar article in the market". There is abundant authority for the proposition that the time of the conversion is the time at which the market value of the property is to be assessed. But that is only a prima facie measure as the courts also do take into account increases or decreases in the value between the wrong and the date of the judgment. In the instant case it is clear that since the wrong complained of by the plaintiff there have been astronomical increase in the value of the property. This rise in the market value of the goods has happened without the intervention of the defendant. In Sachs V Miklos [1948] 2 K.B. 23 the Court of Appeal at first stated that the measure of damages is the same in conversion as it

is in detinue where the facts are only that the defendant has possession of the goods in his possession but could not hand them over. The Court later said,

"The value of the goods converted, at the time of their conversion is one thing ... but it does not follow that that sum is the measure of the plaintiff's loss. The question is what is the plaintiff's loss, what damage has he suffered by the wrongful act of the defendants."

The increase in value of the property in this case is without, was without the intervention of the plaintiff. He could not, he said, have brought the action for conversion after the forfeiture was rescinded in view of the prevailing political atmosphere prevailing then. He is therefore not guilty of undue delay and as such the rise in market value of the property cannot be treated as consequential damage.

I think in the present case I should assess the value of property at the time of the judgment because when I ask myself the question what is the plaintiff's loss, what damage has he suffered by the wrongful act of the defendant, that is the answer I get. I am fortified in this view by the reasons of the Court of Appeal in Rosenthal V Alderton [1946] K.B. 374. In this case there was a conversion by sale of the goods left for wartime care with the defendant. The Court assessed the value of the goods at the time of the judgment although it made the reservation that the election to sue in detinue despite a conversion was available to a plaintiff "at any rate where he was not aware of the conversion at the time."

I accordingly assess damages for the plaintiff's loss of property as follows:

4 Toyota Trucks (7 tonnes) at K881,000.00 each	K 3,524,000.00
1 Mazda B1600 Van	K 60,000.00
1 19 feet fibreglass speed boat with wind shield	K 146,000.00
1 3 bedroomed house on 7 acres of land	K 155,000.00
1 borehole	K 10,000.00
1 Water pump and engine	K 8,000.00
1 5,000,000 litre water tank	K 2,000.00
Bank Credit balance	K 10,000.00

Tot total comes to K3,915,000.00. I award this to the plaintiff as damages for loss of property. I also award him K500,000.00 as general damages.

MADE IN CHAMBERS this 10th day of March, 1997, at Blantyre.


W. Ooto
DEPUTY REGISTRAR