

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.1518 OF 1994



BETWEEN

G. H. KADANGO.....PLAINTIFF

-and-

STAGECOACH MALAWI LIMITED.....DEFENDANT

CORAM: TEMBO,J.

Maulidi, of Counsel for the Plaintiff

Ching'ande, of Counsel for the Defendant

Chirambo (Mrs.), Official Court Interpreter

JUDGMENT

TEMBO,J. In this case, it is alleged that Kandango, the plaintiff, a maize mill businessman, was arrested by Limbe Police on the direction of the employees or agents of Stagecoach Malawi Limited, the defendant, on a false allegation that the plaintiff had



committed an offence of forgery. The plaintiff was, therefore, kept in a police cell for sometime before he was released on bail. In all, the plaintiff claims that he was continuously so kept for at least four days. In the circumstances, the plaintiff claims damages for false imprisonment, defamation and loss of business from the defendant. The defendant denies any liability therefor. In the main, the defendant denies that it caused or procured the police to arrest the plaintiff or to take him into custody as alleged by the plaintiff; and the defendant's case is that, in arresting the plaintiff, the police did so on their own responsibility and initiative.

During the trial, the court heard two witnesses only, one for the plaintiff and another for the defendant. On behalf of the plaintiff, it was the plaintiff himself who testified and Msusa did so for the defendant. It was not in dispute that the plaintiff was arrested at Chilowamatambe Trading Centre, his business place, in Kasungu district on 22nd August, 1993. That upon his arrest he was taken to Limbe Police in the City of Blantyre where he was kept in a police cell until he was released on bail four days later. It is further not in dispute that the plaintiff was so held in custody on allegation of forgery or attempting to obtain money by false pretences.

However, it is also the further testimony of the plaintiff that on 22nd August, 1993, at the time of his arrest at Chilowamatambe, it was the employees or agents of the defendant who effected his arrest. That in all, three persons had then arrived at the plaintiff's place of business in a vehicle, bearing registration number BJ4639, which the plaintiff recognised to belong to the



defendant. The plaintiff further stated that of the three persons who came to arrest him he only recognised a Mr. Mazunda who was at that time an employee of the defendant, in the capacity of Claims Manager. The atmosphere at the plaintiff's place of business, then, was one full of activity in that a number of people had called in to avail themselves of the plaintiff's maize mill services. Besides, the plaintiff had just finished loading his lorry with some commodities which he was about to drive off to some destination.

That upon the arrival of the three men, at the plaintiff's place of business, it was Mr. Mazunda who produced a document which he showed to the plaintiff. This was a document which had been received at the defendant's place of business. Mr. Mazunda then said that the document had been forged by the plaintiff in connection with the claim for damages or compensation which the plaintiff had then made to the defendant in respect of the damage done to the plaintiff's car in a road accident involving the defendant's bus. The plaintiff told the court that Mr. Mazunda said so in the presence of most people who were at the plaintiff's place of business then. Those people heard Mr. Mazunda say so. In addition, the plaintiff told the court that when he denied the allegation that he had forged the document in question, the three men, including Mr. Mazunda, forcibly took him in their car on their way to Limbe in Blantyre. They spent a night in a rest house in Lilongwe before proceeding to Blantyre.

On arrival in Blantyre, the three men took the plaintiff to Limbe police station where they handed him over to the police. In

doing so at Limbe Police station, Mr. Mazunda told the police that we are handing over to you this person because of what he has done. The police at Limbe kept the plaintiff in a police cell for four days. Thereafter, he was released on bail by the court. The plaintiff told the court of the subhuman conditions to which he was subjected in the police cell during the four days he was kept there. Thus, throughout his stay in the cell, the plaintiff urinated where he sat. No food was provided to him and at night no beddings were provided. On his part, the plaintiff was only able to cover his head with his jacket.

On the other hand, it was Msusa's testimony that he was defendant's Claims Officer at the material time when the plaintiff had brought to the defendant his claim for compensation in respect of the damage caused to his car arising from a road accident involving the defendant's bus. That in his view, Mr. Mazunda did not travel to Kasungu with any other employees or agents of the defendant to arrest the plaintiff. It was his testimony that then Mr. Mazunda was on leave in the North. In any case, this was an issue which the police had pursued on their own following a defendant's report to the police at Limbe that the plaintiff was claiming compensation by use of a forged document, purportedly issued by Lotus Motors, from whom the plaintiff had said he had bought the accident damaged car. The forged document had shown a much higher value for the damaged car, at the time it was damaged, than its actual value then. That the plaintiff's car had been imported into Malawi by one Nkanda who sold it to the plaintiff for K15,000. That the forged document had sought to show that the plaintiff's car was sold to the plaintiff by



Lotus Motors at K77,000. That in the circumstances the plaintiff was seeking compensation on the basis of the forged document when he asked his legal practitioners to claim such compensation from the defendant.

On the other hand, Msusa conceded the fact that he had not traveled to Kasungu himself at the time the plaintiff was arrested. Besides, no evidence was produced to indicate that Mr. Mazunda had in fact proceeded on leave then. It is expedient to look at the demand letter which was issued to the defendant by the plaintiff's legal practitioners, which letter, Msusa told the court, had prompted the defendant to report to the police in Limbe that the plaintiff had claimed compensation in respect of his accident damaged vehicle by use of and reliance on a forged document. This was *Exhibit D4* which, in the relevant part, reads as follows-

**"YOUR CLAIM NO. SCM/92/1H/OCRA  
MAZDA 626 BJ 800 FOR G.H. KADANGO**

*We have been instructed to demand from you the immediate payment of damages in respect of our client's vehicle abovementioned which was involved in an accident with your bus.*

*We are instructed that when the matter was reported to you it took you almost one year before you finally decided to compensate our client. However it appears that you have not fully compensated our client in damages. Our*

*clien's vehicle was extensively damaged and declared a write off wreck beyond economic repair. Our client's estimated value of the vehicle was K77,027.00 but you opted for Government valuation who put the value of the vehicle at K30,000. You without any or proper reason decided to pay to our client K7,500 which our client received under protest and refused to sign your discharge form. Even going by the Government valuation you are liable to pay our client K30,000 and not K7,500. There is a balance of K22,500 which we hereby demand although our client's claim should be more than this figure."*

The plaintiff denies that he procured or forged the invoice indicating the value of K77,000. It was his evidence that this was a document which he got from the defendant. To the extent that it indicated the value of his vehicle, the plaintiff sought the defendant to pay to him compensation to that extent. On his part, Msusa sought to impress upon the court that this document had been brought to the defendant by the plaintiff. In another twist, it is the testimony of the plaintiff that Mr. Mazunda and Nkanda had conspired to have that value put in so that they could cash in the deal. To this, Msusa's reaction was a flat no.

Upon listening to and seeing the two witnesses testify, it is the considered view of the court that the version of the story by the plaintiff must be accepted by the court as rightly offering a true account on who effected the arrest of the plaintiff at his place of business in Kasungu on that fateful day. The plaintiff has had



a number of occasions at which he has seen a Mr. Mazunda so as to be able to tell the court if indeed he would know of whom he is talking about, when it comes to his knowledge of Mr. Mazunda. By the date of his testimony in court, the plaintiff had had opportunity to see and identify Mr. Mazunda several times. Thus he met Mr. Mazunda at his office at the defendant's place of business, in Kasungu upon the plaintiff's arrest, and in court in Limbe when Mr. Mazunda testified in a criminal case against the plaintiff. It is a clear view of the court that the plaintiff has met Mr. Mazunda on so many occasions that he cannot be held now to be mistaken as to who Mr. Mazunda is or has been.

Certainly, in the view of the plaintiff, which the court accepts, it was Mr. Mazunda who produced a document and showed it to the plaintiff at the time of plaintiff's arrest in Kasungu. And it was Mr. Mazunda who alleged that the same had been forged by the plaintiff. Mr. Mazunda must have taken part in effecting the forcible arrest of the plaintiff on that day. Besides, the court accepts the plaintiff's account on what Mazunda had said when handing over the plaintiff to the police at Limbe police station. The testimony of Msusa cannot be accepted by the court. He was not present when the plaintiff's arrest was effected in Kasungu and he was not present when, upon arrival in Blantyre, the plaintiff was handed over to the police at Limbe police station by Mazunda. The court was not satisfied why the defendant could not have brought Mazunda to testify in the case. Msusa's testimony can at best be described as complete hearsy when it comes to his purported attempt at contradicting the direct admissible evidence of the plaintiff on what happened in Kasungu upon the plaintiff's

arrest and also when the plaintiff was placed under police charge at Limbe.

Further, an objective perusal of the plaintiff legal practitioner's demand letter, in particular the passage quoted above, does not give the impression that in their letter the plaintiff's legal practitioners were going to insist on seeking plaintiff's compensation on the basis of the valuation in the so called forged document. To the contrary, it is quite clear that henceforth, plaintiff's legal practitioners were seeking compensation based on Government valuation. In the premises, Msusa's testimony and defendant's contention that the defendant had reported to the police because the plaintiff legal practitioners had sought to rely on a forged document in making plaintiff's claim for compensation, to the defendant, cannot be sustained.

Reverting to the law on false imprisonment, the position is as follows. A defendant is liable to a plaintiff in respect of a tort of false imprisonment where the plaintiff is completely deprived of his or her liberty for any time, however short, at the instance of the defendant without lawful cause. In the words of **Banda, J.**, as he then was, in *S.R. Kamala v. Southern Bottlers Limited* Civil Cause no.553 of 1987, *the defendant will be liable for false imprisonment if they laid a charge against the plaintiff on which it became the duty of the police to arrest the plaintiff. They will not be liable if all they did was to give information to the police about the loss of money( property) at their premises.* Further, in the words of **Unyolo, J.**, as he then was, in *James Saulosi and Goodwell Paketi v. Bata Shoe Company( Malawi) Limited* Civil Cause No.569 of 1987, *the*



*crucial issue in false imprisonment is to decide whether the defendant's servant merely stated the facts to the police or whether they made a charge against the plaintiff. It is accepted that conveying one's own suspicion to the police who, on their own responsibility, take the plaintiff into custody, is not making a charge. However, where the defendants acting through their agents or servants order the police to arrest the plaintiff, it is imprisonment by the defendant as well as the police and an action for trespass would lie against the defendant; but if the defendant merely stated the facts to the police who, on their own responsibility took the plaintiff into custody, this is not imprisonment or trespass by the defendant. The test is this: if the defendant's servant made a charge on which it became the duty of the police to act then the defendant will be liable but they are not liable if they merely gave information and the police acted according to their own judgment.*

***Chintendere v. Burroughs Ltd*** 10 MLR 215 is a case where the plaintiff's claim for false imprisonment had been dismissed because the plaintiff had failed to prove to the satisfaction of the court that the defendant had either directly ordered the police to arrest the plaintiff or that the defendant had laid a criminal charge against the plaintiff.

In the instant case not only was a charge laid, but the defendant's servants had actually themselves effected the arrest of the plaintiff at Kasungu. They then took the plaintiff to Limbe police where they handed him over to the police. In handing him over, words were used by defendant's servants which amounted to an order to the police to continue to keep the plaintiff in their custody for what allegedly was done by the plaintiff. Can it be

said that the servants of the defendant had lawful cause for doing so? A serious attempt was made by Msusa to impress upon the court that the defendant had a good reason for doing so. However, an objective examination of the alleged reason for which the defendant did so, thus that the plaintiff was to rely on a forged document in his claim for further payment of compensation, cannot be sustained. The passage quoted above from the plaintiff's legal practitioners' demand letter to the defendant speaks volumes to the contrary. Henceforth, the plaintiff was to rely on a Government valuation in his claim for additional payment from the defendant. I would, in the circumstances, hold the view that the defendant had no lawful cause to subject the plaintiff to their false imprisonment.

For all the forgoing reasons and regard being had to the law, the plaintiff's claim for false imprisonment must succeed. It is so ordered.

The plaintiff is also claiming damages for defamation. A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers: *Salmond and Heuston on the Law of Torts 19th Ed* at page 155 cited with approval by Tambala, JA., in a Supreme Court of Appeal decision in *PTC v. Joyce Ng'oma* MSCA Civil Appeal NO. 30 of 1996. The essential feature of defamatory matter is, therefore, its tendency to damage the reputation or good name of the plaintiff, Tambala JA further stated in that case. It is therefore not what the plaintiff feels about himself upon a defamatory matter. There has to be publication of the defamatory statement to some person other



than to the plaintiff. And what matters is the effect of the defamatory matter on that other person, in particular as to whether that statement in that person tends to injure the reputation of the person to whom it relates. To succeed the plaintiff ought to adduce evidence of publication of the defamatory statement to persons other than the plaintiff, himself. Besides, evidence ought to be adduced by those persons that upon the defamatory matter having been published to them respecting the plaintiff, they, since such publication, no longer hold the plaintiff in high estimation. Thus, that the reputation of the plaintiff has been injured. To such people, the plaintiff is henceforth held in contempt and he suffers from ridicule.

Although in his writ and statement of claim the plaintiff has made a claim for damages for defamation, during trial, the plaintiff did not adduce evidence to prove his claim. It is trite that he who asserts the affirmative of an issue must adduce evidence to prove his claims, to the satisfaction of the court, on balance of probabilities. The plaintiff not having done so in respect of his claim for damages for defamation, he cannot succeed. The claim for defamation must fail and it is dismissed accordingly.

Similarly, the plaintiff did not adduce evidence to substantiate his claim for loss of business during the four days he suffered false imprisonment at the instance of the defendant. Yes, it was in evidence that at the time of his arrest he had employed 2 workers at his maize mill in Kasungu. No evidence was adduced to show the loss incurred. It is the view of the court that mere mention by the the plaintiff that he used to make K300 to K400

per day without further proof will not suffice. What, if anything, would have prevented the 2 workers from continuing to operate the maize mill successfully and profitably during those 4 days is not shown or indicated to the court. In the premises, the plaintiff's claim for loss of business must fail and it is dismissed accordingly.

It is the position, therefore, that the plaintiff has only succeeded in his claim for damages for false imprisonment. In the light of the Supreme Court of Appeal decision in *Malawi Railways Limited v. Rabson Magombo* MSCA Civil Cause No.3 of 1993, the defendant should not be held liable for the entire period the plaintiff was imprisoned. The police were under a duty to bring the plaintiff to a court of law within 24 hours of his arrest. That was the law then. In not having done so the police were in breach of the law for which the defendant ought not to be liable. In the circumstances, the defendant must be held liable for 24 hours plus such additional period within which the plaintiff would have been brought before a court of law as soon as possible, thereafter. Bearing in mind that the defendant had arrested the plaintiff in Kasungu and took him to Limbe, and further that upon handing the plaintiff over to the police, the police would have quickly taken him before a court of law within Limbe, without delay, I hold that the defendant should be held liable for false imprisonment for 48 hours only. In 1993, for that period, Magombo was awarded K10,000. Since then the value of the Kwacha has gone down quite considerably, in fact by several fold. In the circumstances, and bearing in mind the subhuman conditions to which the plaintiff was subjected, an award of K15,000 would adequately



compensate the plaintiff in the circumstances. It is so ordered.  
Costs too are for the plaintiff.

**PRONOUNCED** in open court this 31st day of January,  
2000, at Blantyre.

  
**A.K. TEMBO**  
**JUDGE**