

IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY: CIVIL DIVISION
Civil Appeal Cause No 18 of 2016

(Being Civil Cause No 88 of 2016 in the First Grade Magistrate Court Sitting at
Mzuzu)

Between

Nyambosi ChibukoAppellant

-and-

Austin MaloyaRespondent

GORAM:

HONOURABLE JUSTICE D.A. DEGABRIELE

Mr Chilukondi Duke

for the Applicant

Austin Maloya

absent, no cause but duly served

Mr. A. Kanyinji

Official Interpreter

DeGabriele, J

JUDGEMENT

Introduction

The appellant herein is appealing against the decision of First Grade Magistrate Court sitting at Mzuzu. The decision, where the lower court awarded the sum of MK117,000.00 to the respondent plus costs of action, was made on 17th September 2016.

The court record has no outline of the facts. The brief facts presented herein are from the appellant's application in this Court. Briefly the appellant had engaged the respondent to produce tobacco on a contract and the payment for the service would be based on the harvested and graded tobacco. The respondent farmed and harvested MK714 kilograms of tobacco but did not grade the same. The appellant then graded the tobacco and produce 302 Kilograms. The respondent then filed a civil suit against the appellant claiming MK117,00.00 on the basis of 714 kilograms which was obtained before grading of the said tobacco and contrary to the agreement. The lower Court ordered that the appellant pay the sum of K117,000.00 before it gave the defendant a chance to present his case and evidence.

Grounds of appeal

The appellant is appealing on the following grounds, that

1. The Magistrate erred in law by not allowing the appellant to enter his defence depriving the appellant the right to defend or respond to allegations in a court of law below.
2. The Magistrate erred in law by ordering the appellant to pay K117,000.00 the amount claimed by the respondent without merit.
3. The Court erred in admitting the amount of K16,000.00 per bale alleged by the respondent without establishing the quality grade of tobacco supplied by the respondent to the applicant and including sales regulations provided by TAMA.
4. In all circumstances of the case the Magistrate erred in entering judgment for the respondent.

Issues for Determination in this Court

The Court is called upon to determine whether in these circumstances the appeal can succeed.

The lower court record

I have looked at the court record. The whole court record can be summed as follows;

"In the First Grade Magistrate Court 1

Sitting at Mzuzu

Civil case no 88 of 2016

Between

AUSTINE MALOYAPlaintiff

And

Nyambosi ChibukoDefendant

Coram: *H/W S.M.G. Chimaliro, First Grade Magistrate*

M. Nyirōngo, official interpreter

Plaintiff present

Defendant, present

Claim: Demand of 117,000.00

Defendant:

I understand the Claim and admit the plaintiff cultivated my tobacco but did not process it. But we have processed it now.

Order: *The defendant should pay the sum of K117,000.00 plus costs immediately so that the plaintiff should go back home.*

Dated this 17th day of September 2016 at Mzuzu

S.M.G. Chimaliro

FIRST GRADE MAGISTRATE"

It is not clear from the record whether the defendant, having partly admitted liability was allowed to explain. The order itself is not clearly explained as the costs ordered to be paid have not been quantified.

From the scanty report, I have surmised that the appellant was admitting that the respondent had indeed cultivated the tobacco. He also said the respondent had not processed the tobacco but that 'we have processed it now'. It is not clear who the 'we' referred to was. To this end, it is my considered opinion that the court below would have heard the case more fully and record the process more substantively to remove any vestige of doubt.


It is my view that the admission was qualified and the lower court ought to have heard the appellant and the defendant to understand the said qualification. Each party should have been allowed to give evidence on their claims. In any case, a proper hearing means that parties have the right to be heard, the right to cross-examine the other party and the right to be given the reasons for any decision made. I find that rules of natural justice were not followed herein. The appellant was deprived his right to be heard.

I find therefore that the lower court did not establish on merit the awarding of the MK117,000.00. To this end, the appeal succeeds on all grounds. I hereby quash the judgement of the lower court and set aside the order of Mk117,000.00 and the order for costs.

Having established that there was an admission, albeit qualified, I order that the matter be reheard before another magistrate so that the award, if any, can be made based on merit, after both parties have been heard.

It is so ordered

Made in Chambers at Mzuzu Registry this 24th day of April 2017


D.A. DeGazere

JUDGE