REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NUMBER 543 OF 2016

BETWEEN:
DAVIE KAPONDA .....FIRST CLAMANT

-AND-

ROBERT CHINGWALU.....SECOND CLAMANT

-AND-

LACKSON MEKE.....THIRD CLAMANT

-AND-

PETRODA MALAWI LIMITED.....DEFENDANT

CORAM: Hon N'riva Judge
Mr. Chimwemwe Kalua for the claimant
Mr., Sudi for the defendant
Mrs. Mtegha Court Clerk

JUDGMENT

Background

Petroda (Malawi) Limited were owners of premises known as Keza Office Park. They had a tenant known as Maranatha International School. Problems arose between the parties in 2013: Maranatha had problems paying rentals. Petroda was about to evict Maranatha.

On 5th September 2013, Maranatha obtained an injunction, from the High Court, retraining Petroda from evicting them from the premises.

In relation to the case before me, due to the injunction, Maranatha chased Petroda guards from Keza. Both Maranatha and Petroda were providing security guards at Keza. Upon learning that their guards had been chased from Keza, the defendant (Petroda) decided to hire security guards on a temporary basis, to guard the premises.

The claimants were the guards that the defendant hired. Upon arriving close to Keza, police arrested the guards. Apparently, this was pursuant to the order of injunction.

The Claimants' Claim

The claimants commenced this case against the Petroda claiming negligence resulting in their arrest. The claim of negligence arises on the basis that the arrest of the claimants was a result of the defendant's failure to warn them of the risks of the work they were sent to perform. Further, the defendant placed the claimants on the premises when they (the defendant) knew they had no right to do so. The other particular of negligence is that the defendant deliberately induced the claimants to trespass on the premises.

Issue and the Law

Whereas the claim is for false imprisonment, the claimant's statement of case and the submission are mostly about negligence. The claimant's logic is that the defendant's negligence led to their arrest.

False imprisonment is the illegal restraint of a person's liberty. This wrongful act lies against a person unlawfully making a charge or an arrest against another.

False imprisonment, as a tort, involves inflicting unauthorised and unlawful bodily restraint. This means bodily restraint without lawful authority. To succeed, a claimant need not prove actual imprisonment in the sense of imprisonment in a

confinement. The imprisonment can be in an open field, or in the stocks in the cage or in the streets as well as in the common jail - *Meering v Grahame-White Aviation Co* (1919) 122 LT 44, CA. For an action of false imprisonment to lie, the captivity must be commenced by a defendant or by his orders. Where the defendant does no more than state the facts to a police officer, who, exercising his discretion, decides to make an arrest, one cannot succeed on an action for false imprisonment against the person making the charge. Where there is reasonable and probable cause for suspicion that a felony has been committed a police officer can arrest a suspect: See *Walters v WH Smith & Son Ltd* [1914] 1 KB 595. The burden of proving the existence of reasonable and probable cause is upon the defendant: *Hicks v Faulkner* (1881) 8 QED 167 at 170.

On the evidence before me, I do not see how the claim of false imprisonment has to arise against the defendant. It does not seem to me that the defendant was directly involved in arresting and detaining the claimants. The evidence shows that the police also arrested the defendant's representative who took the claimants to Keza. It would, therefore, appear to me that it would not proper to accuse the defendant of involvement in the wrongful detention of the claimants.

Let me consider whether the defendant's negligence caused the arrest of the claimants. Going by the statement of case, the defendant let the claimants to go to the Keza when it knew it was illegal to do so.

Otherwise, the argument is that the defendant induced the claimants to trespass on Keza premises.

The basic law of negligence is that a defendant must have failed to exercise a duty of care leading to the claimant suffering an injury. To succeed in a claim of negligence a claimant must show that the defendant owes her or him a duty of care; that the defendant has breached that duty, and that as a result of that breach, the claimant has suffered loss and damage: *Donoghue and Stevenson* [1932] AC 562: *Makala v Attorney-General* [1998] MLR 187 (HC).

In *Kalolo v National Bank of Malawi* [1997] 1 MLR 421 (HC), the Court said:

> To maintain an action for negligence it must be shown that there was a duty on the part of the defendant towards the person injured, *Donoghue v Stevenson* [1932] AC 562; *Hedley Byrne and Company Ltd v Gellerd and Partners Ltd*

> [1964] AC 465 and that the defendant negligently performed or omitted to perform his duty, and that such negligence was the effective cause of the injury or damage to the plaintiff, *McDowall v Great Western Railway* [1903] 2 KB 338.

Traditionally, the Courts have held that the test, whether a defendant owes a claimant a duty of care, is that of foresight of a reasonable man. It is an objective test: *Caparo Industrial Plc v Dickman* [1990] 1 AER 668. In order to answer the question of foreseeability, the question is whether the injury to a claimant was a reasonably foreseeable consequence of the defendant's acts or omissions.

The claimants' predominant allegation is that the defendant failed in its duty of care by allowing the claimants to go to Keza when there was an injunction.

The question one can ask is whether the defendant knew of the injunction or ought to have known about the injunction. The question is whether the defendant reasonably foresaw that the claimants would suffer arrest if they went to Keza.

I have seen the injunctive order. First, I doubt if the injunction restrained Petroda from providing security guards to the premises. The injunction was about restraining Petroda from evicting Maranatha from Keza.

The defendant's witness told the Court that both Petroda and Maranatha were providing security at Keza. Be that as it may, assuming that Petroda was barred from going to Keza, it does not appear to me that it is reasonable to conclude that Petroda had knowledge of the order. Further to that, even if they knew, I do not think that they had to interpret the order as barring them from providing security guards at the site.

Maranatha obtained the injunction, or filed for the order, on 5th September 2013. The Judge signed the order on behalf of the Registrar on 7th September. Petroda received the order on 9th September.

Consequently, even reading the order widely enough to include barring Petroda guards from Keza, it does not seem to me that Petroda was aware of the order on 5th September, the day the police arrested the claimants. On that point, I do not appreciate that the defendant knew, or they had to know, that it could be illegal to go to Keza. Therefore, I fail to reach a conclusion that the defendant could reasonably foresee that going to Keza premises would result in an arrest. I also do

not find that the defendant knew that going to Petroda would lead to the offence of trespassing. I do not agree that Petroda induced the claimants to trespass at Keza.

In closing, I find that the claimants are not successful against the defendant. I dismiss the claim. Each party shall meet its costs.

The claimants have a right of appeal.

DELIVERED the 28th day of February, 2018

J N'RIVA

JUDGE