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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL DIVISION

CIVIL CAUSE NO. 345 OF 2015

BETWEEN

LAMECK ULANDA..... CLAIMANT

-AND-

CHIRADZULU DISTRICT COUNCIL..... DEFENDANT

CORAM: The Hon. Mr. Justice D. Madise
Mr. W. Pearson Counsel for the Claimant
Mr. D. Zikagwa Counsel for the Defendant
Mr. Mathanda Official Court Interpreter

Madise J.

JUDGMENT

1.0 Introduction

1.1 The Claimant in this matter took out originating summons against the Chiradzulu District Council seeking several declarations and orders. When the Court sat on 28 May 2021 only the Claimant was present. Counsel for the Claimant Mr. W. Pearson informed the Court that the Attorney General had failed to travel because of lack of fuel. No official communication was made to the Court to this effect. I allowed the Claimant to present his case. I now pass judgment on the merits.

2.0 The declarations sought

2.1 A determination of the question whether on the true construction of sections 3,4,5,6 and 7 of the Riots Damages Act Cap 14:10 of the Laws of Malawi, the District Commissioner of the Defendant being an employee and or an agent of the Defendant breached his statutory duties by failure to declare the riot area a restricted area and reporting the same to the Minister of Government of Malawi responsible for security matters and to cause the Defendant to be compensated from the riot fund and the consolidated fund for the loss of property to wit, the matrimonial house with all matrimonial properties.

2.2 A declaration that pursuant to the determination of the question in (1) hereof, the Defendant is liable for the damages for breach of statutory duties and for committing a constitutional tort of misfeasance of a public offence.

2.3 An order for costs.

3.0 Affidavit in support of the summons

3.1 I will reproduce the affidavit in full.

I, Lameck Ulanda of C/O Messrs Pearson Tax Chambers, P.O. Box 572, Blantyre, do hereby make oath and state as follows:

1. That I am the Plaintiff herein and I depose this affidavit in that capacity on information based on personal knowledge of all matters of fact deponed herein and I present the same to the Court conscientiously believing them to be true in fact and in terms of the Oaths, Affirmations and Declarations Act.
2. That at all material time I was a resident of Nkosawanga Village, T/A Mtamba in Chiradzulu District and I had my matrimonial home and I was living with my family.
3. That on 21 April 2014, a riot occurred within the District of Chiradzulu and my matrimonial house was demolished together with all matrimonial properties and other valuables were extensively damaged beyond and stolen, the particulars of which were brought to the attention of the Defendant through Chimwamwa Police Unit under Chiradzulu Police Station.
4. That I refer to paragraph 3 above and further dispose that the Defendant failed to do anything having received a due notice of the occurrence of the said riots.
5. That I am advised [by] my lawyer which advise I verily believe to be true that the failure to act in [such] circumstances amounted to breach of statutory duties and I'm entitled to a right to an effective remedy for the violation of my property rights, economic rights and administrative justice in the manner in which the Defendant's District Commissioner decided not to act in respect of the riot for my benefit arising from the property which was damaged.
6. That it will be in the interest of law, equity and justice that I be entitled to the reliefs being sought

3.2 As I earlier stated the Attorney General did not defend this action on behalf of the District Commissioner for Chiradzulu. On the appointed day the Attorney General did not show up.

4.0 The Issues

There are three main issues for determination before me.

1. Whether the Defendant was duty bound to take steps to prevent the riots.
2. Whether the Defendant was duty bound to alert the Claimant of the impending riots.
3. If the answers to the above are in the positive, whether the Claimant is entitled to an effective remedy to wit damages for the loss of his house and household properties.

5.0 The Law

5.1 Burden and standard of proof in civil matters

This is trite law and I need not say much. The burden and standard of proof in civil matters is this. He/she who alleges must prove and the standard required by the civil law is on a balance/scales of probabilities. The principle is that he who invokes the aid of the law should be the first to prove his case as in the nature of things, a negative is more difficult to establish than an affirmative. As Denning J, stated in Miler vs. Minister of Pensions [1947] 2 A II E.R. 372.

If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not

Similarly the degree of probabilities will depend upon the subject matter. When a civil court is deciding on a charge of fraud, it naturally follows that a higher degree of probability is required than when deciding an issue of negligence. However the standard does not reach as high as that required in a criminal

court which is beyond a reasonable doubt. The general principle is that the court must require a degree of probability which suits the occasion and is commensurate with the law and facts.

5.2 Section 3 of the Riot Damages Act Cap 14:10 of the Laws of Malawi

1. Where a riot has occurred and by reason thereof any shop, house or other building has been damaged or destroyed, or any property or article has been damaged or destroyed, or any personal injury has been caused, the District Commissioner of the District in which such riot occurred may define any area in which, in his opinion;
 - (a) the riot occurred at,
 - (b) The persons reported to have taken part in such riot were residing at the time of such riot,and may declare such area or areas to be a restricted area for the purposes of this Act.

2. The District Commissioner shall cause the declaration of a restricted area to be published in such manner as he may think a necessary in order to bring it to the notice of all persons who, in his opinion, ought to have notice thereof.

3. Where any area has been declared under subsection (1), sections 4 and 5 shall apply thereto for such period, not exceeding twenty-eight days, as the District Commissioner concerned shall specify.

Provided that the Minister may at any time terminate such period as aforesaid.

4. Wherever a District Commissioner exercises any of the powers conferred by this section he shall forthwith make a report to the Minister.

5.3 Section 4 of the Riot Damages Act Cap 14:10 of the Laws of Malawi

1. A District Commissioner may, subject to any general or special directions of the Minister, take such steps as may appear to him to be necessary to prevent or regulate ingress to and egress from any restricted area for such steps as may appear to him to be necessary to prevent or regulate ingress to and egress from any restricted area for such period as may be reasonably required to enable authorized officers to obtain the name, addresses and identifying particulars of all persons found within such area.

2. Any person who-

- a. uses force to enter or leave, or to attempt to enter or leave, any restricted area; or
- b. obstructs any authorized officer in the performance of his duties; or
- c. fails to obey any reasonable order given to him by an authorized officer for the purposes of this section; or
- d. fails to answer any question put to him by an authorized officer for the purposes of this section; or returns an untruthful answer to any such question;

shall be guilty of an offence and may be arrested by an authorized officer without warrant.

3. For the purposes of this section, "authorized officer" means any administrative officer, police officer, or such other person, or class of persons, as the Minister may, by notice published in the Gazette, appoint.

5.4 Section 5 of the Riot Damages Act Cap 14:10 of the Laws of Malawi

1. No person residing within a restricted area shall change his residence, within or without such area, without the written permission of the District Commissioner, or of any person authorized by the District Commissioner in that behalf.
2. The District Commissioner may, before written permission is given under subsection (1), require any person or class of persons who wishes to change his residence without a restricted area to deposit with such District Commissioner a sum not exceeding £5 to be used to defray any levy which may be imposed upon such persons.
3. Any portion of such deposit remaining after the payment of any levy imposed under section 8, or, if no such levy be imposed, the whole of such deposit shall be repaid to the person making the same upon application being made to the office of the District Commissioner in that behalf.

5.5 Section 6 of the Riot Damages Act Cap 14:10 of the Laws of Malawi

1. Where any riot has occurred and by reason thereof any shop, house or other building has been damaged or destroyed, or any personal injury has been caused, the Minister may define the area in which, or in the neighbourhood of which, the riot occurred and the areas in which he has reason to believe that substantial numbers of persons who were present at the riot were resident at the date thereof and may, by notice published in the Gazette, declare such area or areas to be a riot damage area for the purposes of this Act.

2. The Minister may, by notice published in the Gazette, direct that section 5 shall apply mutatis mutandis to any riot damage area for such period as may be specified in such notice.

5.6 Section 7 of the Riot Damages Act Cap 14:10 of the Laws of Malawi

1. The Minister may appoint any person to be a Riot Damage Commissioner in respect of any riot damage area.

2. It shall be the duty of a Commissioner to ascertain, in respect of the riot which resulted in the declaration of the riot damage area concerned and in so far as is practicable;
 - (a) the total monetary value of the damage or destruction caused by, or the expenses incurred by reason of any personal injury received in, such riot;
 - (b) the total expenses which have been or may be incurred in connection with such riot and the collection of any levy;
 - (c) the numbers of persons over the apparent age of seventeen years present or resident in such riot damage area at the time of such riot, with their names, addresses and identifying particulars;
 - (d) the number of persons who were present at such riot and the number of persons who were resident in such area at such time;
 - (e) the extent to which persons in the riot damage area failed to prevent the riot or failed to assist in the apprehension of those persons who were riotously assembled;
 - (f) the names of persons in the riot damage area who endeavoured, in the course of such riot, to prevent damage, destruction or personal injury or to apprehend persons riotously assembled;
 - (g) such other matters as the Minister may direct or the Commissioner may consider expedient.

3. Sections 9,10,11,12,13 and 15 of the Commissions of Inquiry Act shall apply to a Commissioner and the proceedings before him as if he had been appointed under that Act.
4. Any proceedings before a Commissioner shall be held in public but he may exclude any person or persons if he deems it expedient in the interests of public order, justice or for any other sufficient reason.
5. Upon completion of his inquiry, a Commissioner shall forthwith make a full report of his findings to the Minister.

5.7 The Claimant's arguments

5.7.1 The Claimant has cited Jackson vs. British Medical Association (1970) 1 All ER 1094 in which Drummond J. stated the requirements for a breach of statutory duty;

- (a) The claimant must show that the damage he suffered falls within the ambit of the statute.
- (b) It must be proved that the statutory duty was breached.
- (c) It must be proved that the breach of statutory duty caused his loss.
- (d) Whether there are any defences available to the action.

5.7.2 The Claimant has further cited Sunrise Pharmaceuticals Ltd and Another vs. Attorney General Civil Cause No. 474 of 2012 where it was stated that the provisions in the Riot Damages Act are obligatory and create a duty on the part of the Defendant to compensate riot victims where riots have occurred and have resulted in damage to property and personal injury. From the foregoing provisions, the Claimant argued that failure to act by a public officer following the Notice of the Riot in terms of the Act is actionable.

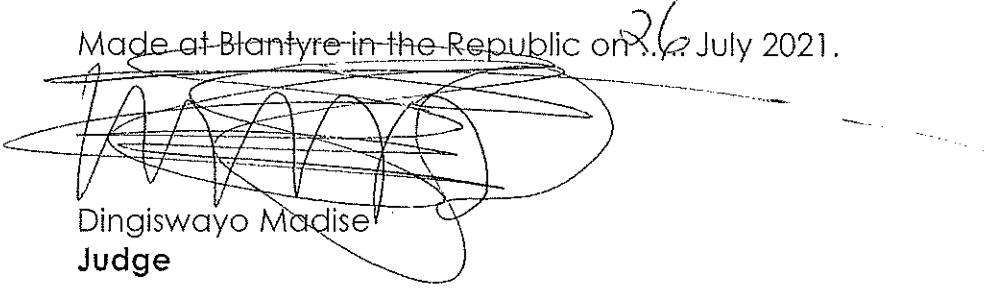
6.0 Finding

6.1 The provisions in the Riot Damages Act under sections 3,4,5,6 and 7 are very clear and I need not go into details. The provisions have explained themselves. However, in this matter there is no police report that says indeed a riot occurred on this particular day. There is no report of the items that were damaged on this particular day. There are no photos of the damaged house or properties. There is no report as to the cause of the riot. There is nothing apart from the version of events as narrated by the Claimant in paragraph 3. In the absence of the above mentioned information I'm unable to make any finding as to a breach of statutory duty by the Defendant as the events which are alleged to have taken place are not recorded at the District Commissioner's Office or Chiradzulu Police Station.

6.2 On a balance of probabilities I'm unable to make any finding of fact as the events were not recorded anywhere. The case stands dismissed with costs for failure to substantiate the claim.

I so order.

Made at Blantyre in the Republic on ²⁶ July 2021.



Dingiswayo Madise
Judge