

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1705 OF 1993**

BETWEEN

O.D.J. NYIRENDA

PLAINTIFF

AND

THE ATTORNEY GENERAL

DEFENDANT

CORAM: MWAUNGULU, Registrar

Bazuka Mhango, for the plaintiff

Chimasula Phiri, for the defendant

Chigaru, Official Interpreter

Mwaungulu. R

ORDER

The plaintiff took out this action on 6th December, 1993. He claims damages for inducement of breach of a contract. He sues the Attorney General as the one who induced the breach of a contract between the plaintiff and his employer, the Blantyre City Council. Judgment was obtained in default of notice of intention to defend. The Attorney General abandoned his application to set aside the judgment. The only matter that remains for the Court is the assessment of damages.

The plaintiff, an engineer, was employed by the Blantyre City Council since he graduated from the Polytechnic. On 22nd August, 1987 the City Council acting on a directive from the Ministry of local Government transferred the plaintiff from the City Council to Kasungu. The plaintiff contends that The City Council could not do that. In so doing it was in breach of the contract between it and the plaintiff. At the time of transfer the

plaintiff had secured a scholarship to go to the United Kingdom for further studies. In his stead another officer was sent. He contends that the transfer was to facilitate the other parson to go in his stead. He contends that the matter was handed to discriminate him. When he went to Kasungu, his salary was reduced. He was not given enough accommodation. He was suspended for no reason. He was dismissed forty-nine months later. He has not been paid for the time that he was on suspension. The action, therefore, is for damages for inducement of breach of a contract. The plaintiff claims exemplary damages as well.

The Attorney General has raised many points which it is necessary to look at. Some ignore the fact that the judgment was obtained in default of notice of intention to defend. The effect of such a judgment is that the matters concerning liability raised in the pleadings are conceded. The defendant cannot submit that without the contract of employment, there is no basis to show that the defendant breached all or any of the contractual terms. Anyway the plaintiff is not suing the employer. He is suing the Attorney General not on the contract of employment but in torts. The plaintiff's action is for inducement of breach of a contract.

The defendant submits that the plaintiff has not produced any evidence to prove or show what his income was when he was employed either at City of Blantyre or Kasungu Town Council. He contends that the plaintiff has produced no pay slip. The Attorney General submits that the plaintiff is a fairly educated man and he ought to have known that the onus was upon him to show his level of income. There is no document to show a drop in his salary following his transfer from City of Blantyre to Kasungu Town Council. The plaintiff did say on oaths that his salary was K600. He also said on oaths that his salary had been reduced by K100. It was not necessary to bring documents to prove the salary. There is no rule that documentary evidence should be preferred to oral testimony. The Attorney General referred to the remarks of Erle, J, in *Beckham -v- Drake* (1849) 2 H.L.C. 579,607-608:

“The measure of damages...is obtained by considering what is the usual rate of wages for the employment here contracted for, and what time would be lost before a similar employment could be obtained. The law considers that employment in any ordinary branch of industry can be obtained by a competent for the place, and that the usual rate of wages for such employment can be proved and that... it is the duty of the servant to use diligence to find employment.’

The judge only said that wages can be proved. He did not state how they may be proved. A man can prove his wages by his testimony or by producing his salary slip. To require him to produce documentary evidence is to resurrect, the best evidence rule. That rule is now past gone (*Kajala -v- Noble* (1982) 75 Cr. App. R. 288).

It is said that the plaintiff is not looking for employment to mitigate damages. The damages for inducement of breach of a contract are at large. If the plaintiff has suffered damage because of the tort, he is entitled to damages. “ The damage,” said Neville, J., in *Goldson -v- Goldman* [1924] 2 Ch. 603, 615, “ may be inferred, that to say, that if the breach which has been procured by the defendant has been such as must in the ordinary course of business inflict damage upon the plaintiff, then the plaintiff may succeed

without proof of any particular damage which has been occasioned him.” In any case the onus of proof on the question of mitigation is on the defendant. If the defendant cannot show that the plaintiff should have taken certain steps to reduce the damage, the normal measure of damages applies (Garnac Grain Co. -v- Faure & Fairclough [1968] A.C. 1130, 1140). The defendant has not discharged such duty. He called no evidence himself. He never succeeded to discredit the plaintiff either. It is unnecessary in this sort of action to prove any specific damage.

The plaintiff has actually demonstrated the losses that he suffered because of the action of government to force the City Council to end the plaintiff’s employment with the City Council. He had a reduction in wages. Eventually he was suspended. He is entitled to these as damages flowing from the defendant’s wrongful action. On proof of this the plaintiff is entitled to more. In Pratt -v- British Medical Association [1919]1 K.B. 244, 281-282:

“The plaintiffs are not limited to actual pecuniary damages suffered by them. The court or jury, once actual financial loss be proved, may award a sum appropriate to the whole circumstances of the tortious wrong inflicted ... I cannot ignore the deliberate and relentless vigour with which the defendants sought to achieve the infliction of complete ruin. I must regard not merely the pecuniary loss sustained by the plaintiffs but the long period for which they respectively suffered humiliation and menace.”

The plaintiff also claims damages by way of exemplary damages. The remarks should not therefore be considered as empowering the Court to award damages where the defendant has not sought to benefit from the tort. Indeed, the government gained nothing from the wrong. The action, however, was oppressive by Government. The action is covered by one circumstance mentioned in Rookes -v- Barnard [1964] A.C. 1129.

There will therefore be judgment for the plaintiff for K31,500 for special damages for loss of salary in the time he was on suspension. There will be general damages for K30,000.

Made in Chambers this 15th Day of September 1997.

D.F. Mwaungulu

JUDGE