

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1479 OF 1999

BETWEEN:

PATRICK TINDO..... 1ST PLAINTIFF
OLIVER MALINDIMA.....2ND PLAINTIFF

- and -

TRANSGLOBE PRODUCE EXPORT.....DEFENDANT

CORAM: CHIMASULA PHIRI J.

Dr Mtambo of Counsel for the plaintiffs.

Raymond and Hughes – absent - Counsel for the defendants

.....- Official Interpreter.

JUDGMENT

Chimasula Phiri J.

The plaintiffs claim is for wages wrongfully withheld by the defendant and interest on such sums to the date of judgment at the rate of 3% above bank lending rate. The plaintiffs also claim notice pay and costs for this action.

At the hearing of the case only the plaintiffs and their counsel appeared. The defendant and its counsel neither appeared nor sent any explanation for their absence.

In terms of Order 35 rule 1 (2) of the Rules of the Supreme of Court if, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of the action or any counterclaim in the absence of that party. If however, the plaintiff appears but the defendant does not appear at the trial the plaintiff may prove his claim, so far as the burden of proof lies on him.

The defendant did not even prepare a court bundle while the plaintiffs submitted all the relevant process to qualify the case for hearing. It is therefore not surprising that I ordered the hearing to proceed in the absence of the other party.

PLEADINGS

The Amended State of Claim pleads as follows:-

1. ***THE PLAINTIFFS*** aver that they were all material times employed by the defendant as a driver and assistant driver respectively.
2. ***THE PLAINTIFFS*** aver that on or about 27th June 1998 they were accused of stealing 80 bags of soya beans worthy MK20,000.00 belonging to the defendant and were thereafter arrested of the same.
3. ***THE PLAINTIFFS*** aver that they were later charged of forgery contrary to section 353 of the Penal Code and theft by servant contrary to section 286 as read with section 271 of the Penal Code of which they were convicted by the Limbe First Grade Magistrate court on the 9th October 1998.
4. ***THE PLAINTIFFS*** also aver that on appeal to the High Court, they were exonerated from the charges outlined under paragraph 3.

5. **THE PLAINTIFFS** further aver that being innocent their normal expectation was that they would be reinstated and paid their salary and benefit from the time they were arrested to the time of reinstatement, but to their surprise, on or about 8th March 1999 they were served with letters of dismissal.

6. **WHEREFORE** the plaintiffs claim:
 - a. That they must be paid their salary and benefit from the time they were arrested to the time of dismissal amounting to MK 19,500.00.

 - b. (i) Interest on the sums due from 27th June 1998 to date of judgment at 3% above bank lending rate.

 - c. Costs of this action.

The defence is couched in the following terms:-

1. The defendant admits paragraphs 1 to 3 of the Statement of Claim.

2. The defendant makes no admission as to paragraph 4 of the Statement of Claim.

3. The defendant makes no admission as to paragraph 5 of the Statement of Claim. The defendant avers that the plaintiffs' employment with the defendant was lawfully terminated and the plaintiffs were paid all their terminal dues.

4. The defendant therefore denies paragraph 6 of the Statement of Claim.

5. *The defendant therefore prays to the honourable court that the plaintiffs' action be dismissed with costs.*
6. *Save as herein before specifically admitted every allegation of fact is denied as if the same were herein set forth and traversed seriatim.*

FACTS AND EVIDENCE

The evidence in this matter came from Patrick Tindo of Nyalugwe Village, T.A. Kadewere, Chiradzulu who adopted his witness statement. He tendered the letter of dismissal which reads as follows:-

Our Ref: LBC/YC/104/TGC

*Mr Patrick Tindo
C/o Transglobe Produce Exports Limited
P. O. 5035
Limbe.*

Dear Sir,

RE: DISMISSAL ON THEFT BY FORGERY

Following your court conviction on forgery of Admarc document and theft of 40 bags of soya beans which you were transporting from Lilongwe to Blantyre warehouse you are instantly dismissed from work.

Yours faithfully,

L. B. Chadzandiyani

PERSONNEL MANAGER

He is claiming loss of salary at the rate of K650.00 per month for 11 months.

The other witness was Oliver Malindima of Mwanamvula Village, Traditional Authority Mkanda, Mulanje who also adopted his statement witness and tendered his dismissal letter which is worded like that of Patrick Tindo. He is claiming salary for 11 months allegedly representing the period from time of arrest up to 8th March 1999. Both plaintiffs indicate that they were not given pay in lieu of notice and hereby claim the same. The uncontroverted evidence from the two plaintiffs clearly establish the following facts:

The plaintiffs were employed by the defendant as truck driver assistant and truck driver respectively.

On or about 27th June 1998, the plaintiffs were arrested by Limbe Police on suspicion of stealing 80 bags of soya beans belonging to the defendant. The Limbe Magistrate Court convicted the plaintiffs on charges of forgery, contrary to Section 353 of the Penal Code and theft by servant contrary to Section 286 of the Penal Code as read with Section 271 of the same code.

On 28th January 1998, the High Court quashed the plaintiffs' conviction and exonerated them from all charges.

On 8th March 1999, the defendant dismissed the plaintiffs from their employment on the basis of their earlier conviction. The dismissals were effected despite the earlier acquittal by the High Court.

The plaintiffs were not paid their salaries from 27th June 1998 the date of arrest to 8th March 1999 the date of dismissal. The first plaintiff's salary was K1,300.00 per month and the 2nd plaintiff's salary was K650.00 per month.

THE LAW

The effect of an acquittal/exoneration as in the present case is to clear any allegation of wrongdoing. The law requires that once an employee has been exonerated by a court of law, he must be reinstated and paid his salary and benefits from the time of arrest to the time of reinstatement.

The law is clear that dismissal cannot have retrospective effect. See the case of Phambala vs Admarc civil cause no. 1601 of 1996. Therefore, a dismissed employee is entitled to wages to the time of dismissal.

Interest on sums owing may be awarded at the discretion of the court. See the case of Zgambo vs Kasungu Flue Cured Authority (12 MLR 311).

CONCLUSION

The common law position stated above has completely changed in Malawi by the Employment Act 2002, giving more protection and terminal benefits to an employee than did the common law. However, that is not applicable in this case because the law was enacted later than the acts complained of. I would therefore order that firstly, the defendant pays the plaintiffs their salaries for the period from 27th June 1998 to 8th March 1999 i.e 9 months and not 11 months at the rate of K650.00 and K1,300.00 per month. The payment should be calculated up to 8th March 1999. Secondly, both plaintiffs should be paid one month's salary in lieu of notice. Thirdly, I refuse to award interest on the sums due and payable to the plaintiffs for their withheld salaries on the ground that although the plaintiffs were acquitted by the High Court for forgery, there is evidence in the court bundle which is incompatible with the total innocence of the plaintiffs. Awarding interest in such circumstances would lack equity and fairness. I decline to do so.

Lastly, the defendant is condemned to pay costs for these proceedings.

PRONOUNCED open court at the High Court, Blantyre on the 18th day of August 2004.

Chimasula Phiri
JUDGE