

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3071 OF 2000

BETWEEN:

HASSAN KWISONGOLE.....1ST PLAINTIFF
REX MBEMBEZA.....2ND PLAINTIFF
GEORGE CHIPUTULA.....3RD PLAINTIFF

- and -

TOYOTA MALAWI LIMITEDDEFENDANT

CORAM: CHIMASULA PHIRI J.

Ching'ande of Counsel for the plaintiffs.
Makhambera of Counsel for the defendant
M. H. Fatch – Official Interpreter
Mrs V. Nkhoma – Recording Officer

JUDGMENT

Chimasula Phiri J.

The plaintiffs claim is for salaries from the date of alleged unlawful dismissal or termination of employment until lawful dismissal is done or termination or discharge from employment is properly done. The plaintiffs also claim costs.

PLEADINGS

By a Statement of Claim the plaintiffs pleaded as follows:-

1. The 1st, 2nd and 3rd plaintiffs are adult Malawi nationals and were at all material times respectively employed by the defendant as Service Advisor, Service Administration clerk and Mechanic.
2. The defendant is a company registered in the Republic of Malawi with limited liability and with its Head Office in the City of Blantyre in the Republic aforesaid.
3. The 1st plaintiff entered into the said contract of employment with the defendant on 1st March 1996, the 2nd plaintiff on 2nd March 1998 and the 3rd plaintiff on 1st August 1979 and by the time their employment was severed, they were on gross monthly salaries of K38,500.00, MK7,200.00 and MK9,200.00 respectively.
4. The said contracts of employment were governed by the defendant's Conditions of Service.
5. It was a term of the Conditions of Service of the said contract that when an employee is involved in serious misconduct he would be liable to summary dismissal by issuance of a Disciplinary Memorandum and an answer thereto by the employee followed by a disciplinary procedure are conditions precedent to summary dismissal or reason for any discharge.
6. On 21st July 2000 the defendant informed the plaintiffs that one Anna Mbvundula a Service Advisor had sent a note to Top Range Motors asking for a parcel which she later advised contained money which was a tip to her from the said Top Range Motors. The plaintiffs were further informed that the said Anna Mbvundula alleged that the plaintiffs also used to get tips from Top Range Motors.
7. On 24th July 2000 based on the said allegations from Anna Mbvundula the defendant terminated the plaintiffs' contract or employment or discharged the

plaintiffs therefrom on the alleged ground that they had been involved in corruption or bribery.

8. The plaintiffs plead that the said disciplinary memorandum was not issued to them as required by article 22.1 of the defendant's conditions of service.
9. The defendant so discharged the plaintiffs without proving the said allegations or giving the plaintiffs a chance to challenge the allegation made against them and they were paid one month's salary in lieu of notice and severance pay of two weeks pay for every completed year.
10. In the premises the plaintiffs plead that their discharge was uncontractual, unlawful and a nullity.
11. Without prejudice to the foregoing pleadings and in particular to the challenge of the validity of the discharge aforesaid, the plaintiffs plead that they did not involve themselves in corruption or bribery.

AND the plaintiffs therefore claim:

1. **The 1st Plaintiff**

- a. Salaries at MK38,500.00 gross per month for the period of wrongful termination, that is from 24th July 2000 until payment or proper and lawful discharge and payment.
- b. Interest on the aforesaid at a rate the court shall deem fit and just claimed under Section 11 of the Courts Act.

2. **The 2nd Plaintiff**

- a. Salaries at MK7,200.00 gross per month for the period of wrongful termination, that is from 24th July 2000 until payment or proper and lawful discharge and payment.
- b. Interest on the aforesaid at a rate the court shall deem fit and just claimed under Section 11 of the Courts Act.

3. **The 3rd Plaintiff**

- a. Salaries at MK9,200.00 gross per month for the period of wrongful termination, that is from 24th July 2000 until payment or proper and lawful discharge and payment.
- b. Interest on the aforesaid at a rate the court shall deem fit and just claimed under Section 11 of the Courts Act.

4. 15% of the sums payable in (1), (2) and (3) hereof collection levy.
5. Costs of this action.
6. Any other relief(s) the court may deem fit and just.

Dated the 25th day of September 2000.

The defendant in response to this Statement of Claim served a defence where it is pleaded as follows: -

1. Paragraphs 1, 2, 3, and 4 of the Statement of Claim is denied.

2. The defendant refers to paragraph 5 of the Statement of Claim and pleads that the defendant is not aware of the contents thereof.
3. The defendant refers to paragraph 6 of the Statement of Claim and admits the contents thereof.
4. Paragraph 7 of the Statement of Claim is admitted.
5. The defendant will at trial show that the plaintiffs were interviewed by the defendant each in turn during which interview the charge of corruption was levelled against each respective plaintiff individually.
6. The defendant states that instead of summarily dismissing the plaintiffs in view of their misconduct the defendant decided to terminate the respective employment contracts between the defendant and the respective plaintiffs by giving each of the respective plaintiffs notice of termination of employment.
7. The defendant repeats paragraph 6 hereof and will at trial show that the defendant acted within its rights at all material times.
8. The defendant refers to paragraph 8 of the Statement of Claim and pleads that in view of paragraph 6 hereof it was not necessary to issue the alleged or any disciplinary memorandum to the plaintiffs.
9. Paragraphs 9, 10 and 11 of the Statement of Claim are denied.
10. The alleged or any interest is not admitted.
11. The alleged or any collection levy is not admitted.

12. SAVE as hereinbefore expressly admitted the defendant denies each and every allegation of fact contained in the Statement of Claim as if the same were herein set out seriatim and specifically traversed.
13. **WHEREFORE** the defendant prays that the plaintiffs' claim be dismissed in its entirety with costs.

ISSUES

The main issues at this trial for determination are: -

- (i) Whether the plaintiffs' employment was wrongfully terminated.
- (ii) whether the plaintiffs are entitled to receive any salaries after 24th July 2000.
- (iii) Would interest be payable should the court find that the plaintiffs are entitled to their salaries after 24th July 2000.

THE EVIDENCE

Two witnesses testified for the plaintiff. Hassan Adam Kwisongole told the court that he now works for Mandala Motors as a Service Advisor, having joined on 2nd October, 2000. Prior to this he had worked for the defendant following offer of employment as Service Advisor in Blantyre with effect from 1st March 1996 –vide-**Exhibit P1**. His duties as Service Advisor included: -

- Receiving customer's vehicles.
- Following up process of repairing.
- Explaining costs of repairs to customers.

- Delivering vehicles to customers as well as handing over completed vehicles to customers.
- Partly assisting the Service Manager in controlling workshop staff.
- Preparing monthly budget for the workshop.

He was confirmed in his appointment in July 1996 and was sent to the Republic of South Africa for training in workshop management. On his return from the course he was promoted to the position of Senior Service Advisor and his salary hiked from K14,700.00 to K30,000.00 per month. His services were terminated by letter dated 24th July 2000 which reads as follows:-

24th July 2000

Mr H. Kwisongole
C/o Toyota Malawi Limited
P. O. Box 430,
BLANTYRE.

Dear Hassan,

TERMINATION OF SERVICES

Following the interview we had with you on Friday, 21st July 2000 on corruption we regret to advise that your services with the Company has been terminated with immediate effect.

You are being summarily dismissed according to our Terms and Conditions of Service on summary offences code S2 which states "Summary dismissal at the discretion of Management if corruption or bribery involving customers/staff".

You will receive terminal benefits as laid down by employment laws of Malawi less your indebtedness to the company and your pension refund in due course.

Yours sincerely,

J. J. Connel
MANAGING DIRECTOR

N. S. Ali
HUMAN RESOURCES MANAGER

He was paid net pay of K67,701.14 comprising pay in lieu of notice, accrued leave days and severance pay less income tax and loans.

He states that on July 21, 2000 he was summoned to the Training Centre of Toyota Malawi Limited by the Human Resources and Development Manager, **MR N. ALI**, Personnel Officer **NAFIS KHAN**, Service Manager, **CLIFFORD PHIRI**, **A. MBVUNDULA**, the 2nd and 3rd plaintiffs.

Mr Ali explained that Anna Mbvundula had written to Top Range Motors asking for a tip for whatever services she did and Mr Ali said it was a management issue.

Used parts are bought from Top Range Motors and Limbe Car Breakers. Quotations from these two places are directed to the Service Manager and there is a laid down procedure for payments.

The plaintiffs were not shown any document suggesting that they had called for a tip.

He stated that he was never issued with a **Disciplinary Memorandum** by his Departmental Manager or anyone and to which he would have been required under the terms to answer within 3 days of receipt before any disciplinary procedure or action could follow.

The witness produced a suppliers list for the defendant company to which Top Range Motors is an approved supplier.

In cross-examination he indicated that his salary at Mandala Limited is K22,000.00. He stated that during the discussions of 21st July 2000 he was not given any opportunity to state about the alleged corrupt practice of kickbacks. He indicated that even Anna Mbvundula who was the subject of discussion on 21st July 2000 did not make any allegations against the plaintiffs. In re-examination he emphasized that he never attended any meeting and was never served with any disciplinary memorandum as required by the conditions and terms of service.

The second witness was Rex Mbembeza who stated that currently he is employed by Agma Corporation as a company buyer and warehouse supervisor. He was employed by the defendant as a Service Administration Clerk by letter dated 3rd February 1998. He outlined his duties as follows:-

1. Opening of Job Cards in the computer when vehicles had been booked for service.
2. Costing of the Job Cards.
3. Responsible for creating or of orders called sub-let orders. These are orders made for supply of spare parts from outside suppliers.
4. Responsible for invoicing customers.
5. Responsible for bookings and appointments for vehicles for service.

He stated that when a vehicle came for service it was the duty of the Service Advisor (PW1) to receive the customer. Further, whenever spare parts were not available it was the Service Manager who was handling the matter. In such situations the Service Manager would go either to get quotations or call for quotations.

At the time of termination of his services on 24th July 2000, his salary was K7,200.00.

On July 21, 2000 he was called to the Training Room by Mr Ali at 4.00 p.m. In the Training Room Mr Ali said he had an interview with Miss Anna Mbvundula.

Mr Ali said that Mr Sattar complained to him that Miss Mbvundula was "persisting to him" for a tip for LPO's she had sent. And that she (Miss Mbvundula) had told Mr Ali that the 1st plaintiff, Mr Kwisongole and the 3rd plaintiff, Mr Chiputula(deceased) were also getting tips from top Range Motors.

Mr Ali never mentioned any occasion where the plaintiffs received or demanded tips from Top Range Motors.

He was being accused of knowing that his colleagues received tips from suppliers.

On Monday July 24, 2000 he received letter of termination of his services. (marked exhibit P10.)

He was never issued with a **Disciplinary Memorandum** as is required by the conditions of service.

He claims salaries at K7,200.00 up to the time court feels fit.

He wanted to pursue his career at Toyota Malawi Limited until such time he could retire.

In addition to the claims stipulated in the Statement of Claim, he also demanded an apology from the defendant and withdrawal of the allegations.

The 1st witness for the defendant was Nissar Ali, Training Manager at the defendant company. He has been working for the company since 1970. In 2000 he was handling the Human Resources Department. In July 2000 the 3rd plaintiff (now deceased) allegedly went to Mr Ali's office and gave him pieces of paper in relation to Miss Mbvundula. When Miss Mbvundula was called by Mr Ali and shown a piece of paper, she replied that she was not alone in the deal. She mentioned the plaintiffs as her accomplices. He said he called each one of them in turn for questioning. He said that after advising them that corruption and bribery is wrong, they apologised for what happened. Mr Ali said he reported the matter to management and in turn management dismissed the plaintiffs. He tendered in evidence the dismissal letters and admitted that he made reference to Code Offence S2 as reason for dismissal. This provides for dismissal at the discretion of management for corruption or bribery involving customers/staff.

In cross-examination he admitted that it was his duty to apply the terms and conditions of service and that these conditions applied to the plaintiffs' employment. He conceded that no disciplinary memoranda were issued to the plaintiffs and that the failure to do so was in breach of the conditions of service by the defendant in relation to the plaintiffs. Mr Ali said that Mr Hussein Jamadar was the department manager for the plaintiffs and he would have been the appropriate person to issue disciplinary memorandum. Mr Ali admitted that Mr Jamadar did not speak to the plaintiffs in relation to this issue. Mr Ali said he referred the matter to Mr Connell who was the Managing Director of the defendant on 21st July 2000 and that the plaintiffs were not present when he did so. Mr Ali said he did not recall the Managing Director calling for interviews of the plaintiffs before communicating the decision to dismiss them through the letters. The witness is not sure if the plaintiffs received their pension benefits. Mr Ali admitted that he never saw any other information in relation to corruption/bribery charges implicating the plaintiffs apart from the information from Miss Mbvundula that the plaintiffs also indulged in kickback practice on quotations for second hand spares. Until now the defendant still buys second hand parts from Top Range Motors. In re-examination the witness stressed that the plaintiffs and Anna Mbvundula admitted receiving kickbacks.

The second defence witness was Peter Elias Makhuwa who works for the defendant as an electrician and has a driving licence. At times he is sent on errands using company vehicle. He stated that sometime in 2000 he was sent to get quotations from Autoquip. Before he set out on that trip he was given a letter by Anna Mbvundula to deliver to Mr Nazim of Top Range Motors. He delivered it.

It was his first time to be asked to deliver a letter to Top Range Motors. He stated that Anna Mbvundula was not operating from the workshop but at the Reception. She was working there with the 1st plaintiff.

The third witness for the defendant was Nazim Sattar Jussab who works as Sales Manager for Top Range Motors. He said that Top Range Motors is involved in selling second hand and new motor vehicle parts. He indicated that the company sells to the public at large and dealers such as Toyota Malawi Limited, Mandala Motors, Automotive Products Limited and others. He has worked for the company since 1985 and has dealt with Toyota Malawi for over 10 years. He said that in 2000 he received a note which said that he should sort out some LPO's he had received. The note was delivered by a driver from the defendant. He said he sent back the note to the Human Resources Manager of the defendant for him to deal with the matter. In cross-examination the witness said the note was understood by him as demand for commission. The witness could not explain in court what he had done with LPOs. He indicated that this was his first time to receive such a note. The marked the end of evidence in this matter.

ANALYSIS OF EVIDENCE AND THE LAW

According to section 57 of the employment Act 2000 a dismissal is unfair if:

- (a) there is no valid reason for the dismissal connected with the conduct or capacity of the employee,

- (b) if the employee has not been offered an opportunity to defend himself against the allegations made,

Further in section 61 the Employment Act states that in any claim or complaint arising out of the dismissal of an employee:

- (a) it shall be for the employer to provide the reason for the dismissal and
- (b) an employer shall be required to show that in all circumstances of the case he acted with justice and equity in dismissing the employee.

Under section 56, an employer is entitled to take disciplinary action against an employee when it is reasonable to do. In deciding the reasonableness of the action, regard will be had to the nature of the violation, the employee's duties, the penalty imposed, the procedure followed, the nature of the damage incurred, the previous conduct and circumstances of the employee.

All this is in line with the Constitutional provision on the right to fair labour practices in section 31.

VALIDITY OF THE REASON FOR DISMISSAL

The plaintiffs were dismissed for alleged corruption/bribery of customers/staff.

The Burden of Proof

The burden of proof rests upon the party (the plaintiff or the defendant) who substantially asserts the affirmative of the issue. It is fixed at the beginning of trial by the state of the pleadings, and it is settled as a question of law remaining unchanged throughout the trial exactly where the pleadings place it, and never shifts in any circumstances whatever. See Joseph Constantine Steamship Line vs Imperial Smelting Corporation Limited [1942] A.C. 154, 174.

In employment cases, the burden is on the employer to show that it was fair.

Standard of Proof

The standard of proof required in civil cases is generally expressed as proof on a balance of probabilities. *"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"*.

Denning J in Miller vs Minster of Pensions [1947] 1 ALL E.R 372; 373, 374.

The defendant did not call Anna Mbvundula who in the opinion of this court was pivotal to the defendant's allegations against the plaintiffs. Firstly, it was Anna Mbvundula who sent Makhuwa to Top Range Motors with a controversial note, which sparked the allegations of kick-backs. Secondly, Mr Ali stated that it was Anna Mbvundula who indicated that she was not alone in the shady deals but also the plaintiffs. Mukhuwa and Nazim Sattar did not testify on behalf of the defendant on any matters which they themselves handled or did on behalf of the plaintiffs. Can it therefore be said that the defendant discharged their burden of providing a valid reason for the plaintiffs' dismissal? My short answer is absolutely no. There was no valid reason for such action. It must be known that suspicion no matter how strong it may be, is not evidence. The evidence of Mr Ali is not strong enough to justify the dismissal. Even when Mr Ali states that the plaintiffs admitted wrongdoing and apologised, he did not give any reason why he did not ask the plaintiffs to write down their confessions and apology. Mr Ali's assertion that the plaintiffs confessed and apologised is not supported by any evidence and is mere wishful wild thinking.

PRINCIPLES OF NATURAL JUSTICE

(a) Opportunity to be heard

Apart from the reason for the dismissal, unfair dismissal is based on the manner in which the dismissal was handled. Termination of employment could be unfair and unlawful, if there was

compromise of principles of natural justice whether or not the contract refers to the principles. (*Grainger BS Nkwazi vs Commercial Bank of Malawi civil cause number 333 of 1999*).

In *Fair mount Investments Limited vs Secretary of State (1976) 2AER 865*, it was said that if a party is adversely affected by any evidence and is given the right to comment on that evidence, the principle of right to be heard is complied with.

When evidence is given as to why dismissal occurred it is clearly better if everyone is in general agreement, and this is better sorted out before dismissal. The employer before dismissal is supposed to make sure that all the evidence is available and clear. (*Employment Law, James Holland and Stuart Burnett, Blackstone Press, 2000*).

The principles of natural justice were properly incorporated in the defendants rules and regulations. They were actually therefore a term of the contract of employment between the plaintiff and the defendant. The defendant's rules clearly stated that every officer was entitled to a hearing which would involve informing the employee of the charge against him, making all reports available to the accused, hearing both sides and allowing cross examination. All this was not done in the case of the plaintiffs. They were never invited to any hearing nor were they given an opportunity to cross examine those who reported the allegations. The plaintiff's evidence on lack of hearing was not in any way contradicted by the defence.

Where facts of a case are in dispute, it is necessary to give an oral hearing to satisfy the rules of natural justice or the duty to act fairly. A fair hearing becomes the employer's justification for termination of employment where there is disagreement of facts. The duty to apply principles of natural justice does arise beyond the broader principle that where one is to affect another's rights adversely for a reason, the other reasonably expects to be satisfied of the reason. In the case

of Grainger BS Nkwazi vs Commercial Bank of Malawi civil cause number 333 of 1999, it was said that the principles of natural justice, apart from the constitution, to our justice system and where necessary, should receive deserved attention from courts.

In R vs Race relations Board, ex parte Selvarajan (1975) 1WLR, 1686, it was held that the race relations Board was acting fairly in considering written witness statements as opposed to allowing an oral hearing as the facts in the case were not in dispute. But that where the facts are in dispute, the requirements of natural justice seem to stipulate an oral hearing.

It is also a fundamental principle of natural justice that where the duty to act fairly demands an oral hearing, there is a right to cross examine witness. In R vs Board of visitors of Hull Prison, Ex parte St Germain (no2) (1979) 1 WLR 1401, it was held that where witnesses were giving hearsay evidence, fairness may dictate allowing the person affected the opportunity to cross examine witnesses. However, the plaintiff was denied even a disciplinary hearing contrary to the rules of natural justice.

In Mc William Lunguzi and another vs Attorney General MSCA civil application number 23 of 1994 (unreported), it was stated that section 43 of the constitution restates principles of natural justice that a man shall not be condemned unheard and that these principles of natural justice ensure that the decision making process is fair.

(b) Bias

It is also a general principle of law that a person who holds an inquiry must be seen to be impartial, that justice must not only be done but must be seen to be done, that if a reasonable observer with full knowledge of the facts would conclude that the hearing might not be impartial that is enough. Even if the

decision-maker has not been biased at all, a decision may still be quashed if they have any professional or personal interest in the issues, because justice must be seen to be done. In R vs Susses Justices, Expart McCarthy (1924)1KB256, a conviction for dangerous driving was quashed when it came to light that the justices clerk was a partner in the firm of solicitors acting for the plaintiff in related civil proceedings, even though it was shown that there was no actual bias.

In a case of Moyes vs Hylton Castle Working Mens Social Club and Institute (1986) IRLR 483, two witnesses to an alleged act of sexual harassment by a club steward towards a barmaid were members of the committee which dismissed the steward. It was held that it was a breach of natural justice for an apparently biased committee to hold the disciplinary matter.

In the present case the traits of bias exist in Mr Ali's conduct. When he was informed about the allegations of kick-backs against the plaintiffs, according to the evidence, he did not even refer the matter to Mr Hussein Jamadar who was the immediate boss of the plaintiffs to issue a memorandum of disciplinary proceedings. I hold the view that the opinion of Mr Ali was coloured with bias that the plaintiffs were guilty of serious misconduct. Such bias offends the rules of natural justice. As already indicated earlier, this court takes the evidence of Mr Ali with a pinch of salt.

CONCLUSION

1. Whether the plaintiffs employment was wrongly terminated?

On the available evidence, the court has reached a decision that the plaintiffs employment was wrongfully terminated whether under the conditions and terms of service i.e. there is contractual breach by the defendant. Further, under the Employment Act 2000 the plaintiffs employment was wrongfully terminated because the defendant has been unable to provide justification for such act i.e. the defendant has failed to show that the dismissal was fair and in accordance with the Employment

Act. The Employment Act 2000 is a realisation of the constitutional right to fair and safe labour practices provided for in section 31 of the Constitution. I have no hesitation that the defendant breached both the constitutional and statutory right of the plaintiffs.

2. Whether the plaintiffs are entitled to receive salaries after 24th July 2000?

Remedies for unfair dismissal are provided for in section 63. To start with, the court can order that the plaintiffs be reinstated or re-engaged in work comparable to that on which they were engaged or make award of compensation. An award of compensation shall be such amount as the court considers just and equitable in the circumstances having regard to the loss sustained by the employee in consequence of the dismissal in so far as the loss is attributable to action taken by the employer and the extent, if any, to which the employee caused or contributed to the dismissal. The court is of the view that salary would be payable where the employee is reinstated or re-engaged so as not to create a break in income of the employee. In the present case re-instatement may not be the best option. The first and second plaintiffs are employed elsewhere, albeit, on low salary. The third plaintiff is dead. The best alternative is to award compensation. It was clearly the evidence of Kwisongole and Mbembeza that they intended to make their life-time career with the defendant up to retirement time. However, they have been forced to seek employment elsewhere. They have lost a handsome salary which they were getting at Toyota Malawi Limited. It may not be easy for the plaintiffs to get comparably better jobs because their images have been dented as corrupt persons. There has been no published apology by the defendant to clear the image of the plaintiffs. It may be that even for the future, prospective employers may not trust them yet the defendant did not prove any corruption in this court. I repeat that suspicion no matter how strong it may be, is not evidence. The plaintiffs were not treated fairly by the defendant. If this court had been asked to order punitive damages, I could have done so. It has been clearly stated in Japan International co-operation Agency (JICA) vs Verity P. Jere – civil appeal number 25 of 2002 (High Court_Lilongwe Registry – unreported) and Blantyre Sports Club vs Banda & Mkangala, civil appeal number 61 of 2003 – High Principal Registry –

unreported) that gone are days when employers would oppress employees by merely terminating their employment by notice or awarding salary payment in lieu of notice. That common law position has changed to afford fair and reasonable protection to the employee in the wake of harsh employers. The employment Act 2000 has provided for severance allowance in addition to other employment benefits. This court would therefore award K500,000.00 to the 1st plaintiff, K350,000.00 to the 2nd plaintiff and K300,000.00 to the 3rd plaintiff (deceased estate) as compensation for wrongful dismissal. I have taken into account several cases including *Fredrick Banda vs Dimon (Malawi) Limited* civil cause number 1394 of 1996 – High Court – Principal Registry – *unreported*) and *C. N. Chihana (Mrs) vs Council of the University of Malawi* – *miscellaneous civil application number 20 of 1992* – High Court of Malawi – Principal Registry. The awards I have made are just general award of damages and in no way exemplary or punitive. I would urge employers to be reasonable when taking steps to terminate employment contracts.

3. *Whether interest is payable?*

The issue of costs is discretionary and I feel that the awards granted to the plaintiffs sufficiently compensates them in monetary terms. I decline to award interest.

Costs too are in the discretion of the court and normally costs follow the event. The plaintiffs have succeeded and deserve to be awarded costs incidental to these proceedings. The defendant is condemned in costs.

PRONOUNCED in open court at Blantyre this 26th day of August, 2004.

Chimasula Phiri
JUDGE