

Let it be observed that although the issues have been set out seriatim it is not proposed that they be determined in the order they are appearing above.

JUDGMENT

Kapanda, J:

Introduction

The Plaintiff, Peter Iphani, is and was at all material times a craftsman. He was doing his business of a craftsman in Thyolo District near one of the Defendant's estates.

The Defendant is a limited liability company incorporated in the Republic of Malawi. It is, and was at all material times, the owner of an estate known as Chizunga Estate where it has a forest of Blue gum trees.

The Defendant's agents and/or servants arrested the Plaintiff on suspicion that the latter had stolen the Defendant's blue gum trees. The Plaintiff claims that his arrest was unlawful. Further, it is claimed by the Plaintiff that the said agents and/or servants of the Defendant took away the formers' various finished products, assorted personal items and utensils. Hence, the claim for damages for trespass to goods.

The complaint by the Plaintiff and the Defendant's response
The claimant's complaint

The details of the claim by the Plaintiff are in the statement of claim¹ dated 4th December 2001 and attached to the writ of Summons issued on 6th December 2001. For the purposes of this judgment, I do not wish to set out, within the text of this judgment, the full statement of claim. It will be enough if a sketch of what the Plaintiff is claiming is given.

¹ **"STATEMENT OF CLAIM**

1. The Plaintiff was at all material times a Craftsman engaged in the making of broomsticks and pick handles and was carrying out his business at Delule Village in Thyolo District.
2. The Defendant was at all material times a well-known and established company in the production of tea in Malawi.
3. The Plaintiff's products referred to in paragraph 1 herein were made from wood using various instruments including planes, chisels, axes, hammers and saws.
4. On or about the 5th of April 2001 the Plaintiff was apprehended by security guards from the Defendant's Chizunga Estate, on allegation that he had stolen 10 trees from the Defendant's forest.
5. The said guards being the servants and/or agents of the Defendant took the Plaintiff to Thunga Police from which he was subsequently moved to Bvumbwe Police Station and Chichiri Prison, thereby being incarcerated for a total of 7 days.
6. The Defendant preferred charges of theft against the Plaintiff. Contrary to Section 278 of the Penal Code (Cap 7:01) of the Laws of Malawi.
7. The Plaintiff was subsequently acquitted of the charges brought against him by the Defendant.
8. During the period that the Plaintiff was in custody, the Defendant's servants and/or agents proceeded to the place where the Plaintiff used to carry out his trade and took away his various finished products, assorted personal items and utensils.
9. Despite the Plaintiff's request for the return of the items aforesaid and despite an Order from the Midima Road First Grade Magistrate's Court, the Defendant has failed and/or neglected to return the said items to the Plaintiff.
10. By reason of the aforesaid, the Plaintiff has suffered loss and damages.

PARTICULARS

<u>ITEM</u>	<u>REPLACEMENT VALUE/SELLING COST</u>
3,680 Broomsticks at K15 each	K55,200.00
2,550 Pick handles at K35 each	K89,250.00
1 No. 4 Plane	K 595.00
1 No. 5 Plane	K 695.00
6 Chisels	K 870.00
2 Small Axes at K750 each	K 1,500.00
1 Extra Large Saw	K 3,200.00

The Plaintiff's contention is that he was wrongfully arrested by the Defendant's agents and/or servants. It is further alleged by the Plaintiff that he was unlawfully arrested on or about the 5th day of April 2001 and was put in detention, for a total period of seven(7) days. Moreover, it is the Plaintiff's averment that the Defendant had preferred charges of theft against him. The Plaintiff further states that he was subsequently acquitted of the charge made against him. Accordingly, the Plaintiff is claiming damages for false imprisonment.

Further, the Plaintiff contends that the defendant's agents and/or servants took away his various finished products, assorted personal items and utensils. The claimant moreover claims that he requested for the return of the items but the Defendant has failed and/or neglected to return the said items to him. Hence, he claims that the he suffered loss and damage as a result of the Defendant's failure to return the goods to him. The Plaintiff has given the particulars and the replacement value of the said goods. As a matter of fact, the values of the said goods has been put at MK158,900.00 and he claims this sum from the Plaintiff.

The statement of claim also indicates that the Plaintiff is claiming the sum of MK23,835.00 from the Defendant. The Plaintiff alleges that this represents Legal Practitioner's collection charges calculated at 15% of some liquidated claim. It would appear that the so called liquidated claim is the said replacement value of the goods that were allegedly taken away from him.

1 Medium Saw	K 2,950.00
1 Bow Saw	K 550.00
1 Sharpening Stone	K 95.00
2 Pots at K350 each	K 700.00
4 Plates at K50 each	K 200.00
1 Axe	K 350.00
1 20 litre Container	K 200.00
4 Cups	K 100.00
2 Spoons	K 50.00
Two 14 Pounds Hammers	K 995.00
One 4 Pound Hammer	K 650.00
One 50kg Bag of Flour	K 700.00
Dry fish for relish	K 50.00
Total	<u>K158,900.00</u>

And the Plaintiff claims:

- (1) K158,900.00 being the replacement value/selling cost of the items taken away by the Defendant.
- (2) K23,835.00 being Legal Practitioner's collection charges calculated at 15% of the liquidated claim.
- (3) Damages for false imprisonment to be assessed by the Court.
- (4) Costs.

Dated this 4th day of December 2001.

(signed)

Naphambo & Company

LEGAL PRACTITIONERS FOR THE PLAINTIFF"

Finally, the Plaintiff is claiming from the Defendant the costs of, and occasioned by, this action.

The Response by the Defendant

The Defendant, in the main, denies the whole of the plaintiff's claims. The full particulars of the Defendant's reply to the Plaintiff's claims are set out in the Amended Defence² which the Court accepted on 17th December 2003.

In essence, the Defendant denies that the arrest of the Plaintiff was wrongful. In this regard the Defendant further avers that its servants and/or agents reasonably suspected the Plaintiff of having committed an arrestable offence, namely, theft of its blue gum trees.

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"AMENDED DEFENCE"

1. The Defendant denies paragraphs 1 to 3 of the statement of claim.
2. The Defendant denies that the Plaintiff was apprehended by the Defendant's guards as alleged in paragraph 4 of the statement of claim or at all.
3. The Defendant denies that it preferred any or any charges against the Plaintiff as alleged in paragraph 6 of the statement of claim or at all.
4. Paragraph 7 to the statement of claim is denied.
5. The Defendant denies paragraphs 8 and 9 of the statement of claim.
6. The Defendant denies that the Plaintiff suffered loss alleged in paragraph 10 of the statement of claim or at all and puts the Plaintiff to strict proof thereof.
7.
 - 7.1 In the alternative the Defendant will contend that if they arrested the Plaintiff, which is denied, the said arrest was not wrongful as alleged in the statement of claim.
 - 7.2 At the date and about the time referred to in the statement of claim, an arrestable offence, namely, the theft of blue gum trees in the Defendant's tree plantation had been committed, and the Defendant by their servants or agents with reasonable cause suspected the Plaintiff of having committed the said offence.
8.
 - 8.1 In the further alternative the Defendant will contend that if the Plaintiff was wrongfully imprisoned by it which is denied, then the imprisonment could not have lasted for more than 48 hours since under the Constitution of the Republic of Malawi, the police were obliged to release the Plaintiff from remand within 48 hours after the alleged arrest.
 - 8.2 The continuation of the Plaintiff's incarceration for more than 48 hours was an act of the state to which the Defendant had no control.
9. Save as herein expressly admitted the Defendant denies each and every allegation of fact contained in the statement of claim as if the same were expressly set out and traversed seriatim.

Dated the 17th day of December 2003

(signed)

Further, the Defendant contends that if the Plaintiff was at all wrongfully imprisoned then they can only be liable for the alleged false imprisonment for a period of not more than 48 hours. It is the further contention of the Defendant that the imprisonment of the Defendant for more than 48 hours was an act of state for which the Defendant had no control. Indeed, the Defendant has alleged that since under the Constitution of the Republic of Malawi³ the police were obliged to release the Plaintiff from remand in custody within 48 hours after the alleged arrest then it can not be held liable for the incarceration of the Plaintiff for a period of more than 48 hours.

In short, the Defendant has joined issues with the Plaintiff on the claim by the latter. It accordingly became necessary for this Court to hear each parties' testimony on the facts in dispute in the action herein.

Evidence

As required by the rules of procedure⁴ the parties put in evidence their respective written witness statements and adopted them. The Plaintiff tendered two written witness statements. One statement was by the Plaintiff and the other was from a Mr Beni Kamoto.

On its part the Defendant offered two witness statements. There was one made by its Chief Security officer Mr Wellington Nyirenda. The other was tendered by Mr Lucius Paulo who was one of the guards at the material time the Plaintiff was arrested by the Defendant's agents and/or servants.

Chisanga & Tomoka
LEGAL PRACTITIONERS FOR THE DEFENDANT"

³ Section 42(2) of the Constitution.

⁴ Order 34/10 and 38/2A of the Rules of the Supreme Court 1995 ed. Pages 613-614 and 647-653 respectively.

All the witnesses availed themselves for cross examination. Indeed, they were also re-examined the party that called them. Further, both parties tendered some documents as part of their testimony. As matter of fact, the evidence that was offered by these parties was in a form of written witness statements, *viva voce* testimony and exhibits.

It is from the testimony of these witnesses that the facts of this case are to be discerned. Before I set out the said facts let me make an observation about the testimony that was adduced by the Plaintiff. It appeared to me that the witness statements of the Plaintiff's side were not read over to them before they either signed or thumbprinted them. Indeed, I was left with the impression that Counsel never involved the witnesses in the preparation of the witness statements. As I understand it, the proper procedure in the preparation of witness statements entails that Counsel should reduce in writing what a witness says. Whatever is obtained from a prospective witness is supposed to be read over to him/her. Thereafter, if the witness agrees with the contents of the statement he/she should sign for it. Further, the signing must be verified by a statement of truth stating that the maker of the statement believes the facts stated in the document are true to the best of his knowledge and belief. Moreover, if the witness statement is not so verified by a statement of truth the Court may direct that it shall not be admissible as evidence. It is also well to note that a legal practitioner, and the witness alike, have an obligation to take the greatest care to ensure that statements contain the truth⁵. As I said earlier, I doubt very much if what has just been described above was done.

Finally, it must be pointed out that I found Mr Kamoto to be so partisan in the way he testified before this Court. Actually, he showed that he was prepared to lie on behalf of the Plaintiff. As a matter of fact, the Court observed that his testimony was so coloured that he went all the way to offer evidence that contradicted the testimony of the Plaintiff in respect of the place where the tools of trade of the plaintiff were kept.

Facts

It is now necessary that I set out the facts that arose from the evidence of the witnesses. The Court shall, as far as practicable, set out the said facts that are relevant to the determination of the issues raised by the pleadings. As mentioned earlier, the facts of this matter are those that have been established from the accepted and relevant testimony of the four witnesses who testified before this Court.

The following are the summary of the pertinent facts in this matter:

The place of business of the Plaintiff

It is common fact that the Plaintiff is a craftsman. He is, and was at all material times, in the business of making pick handles and broom sticks. The raw materials used for the making of the said broom sticks and pick handles were trees. Further, it has been established that the Plaintiff's place of business was very close to the Defendant's forest.

⁵ *ZYX Music Gmb H vs King* [1997]3 All ER 129.

Theft of blue gum trees from the Defendant's estate

It is a fact that for sometime some unknown person(s) had been stealing the Defendant's trees from its estate. Then on 29th March 2001 the Defendant thought that it had found the persons who was stealing its trees. On this day they arrested the Plaintiff on suspicion that he was the one responsible for the theft of the said trees. As a matter of fact, the Plaintiff purported to put it before this Court that it was his friend who had been stealing the Defendant's blue gum trees. Not surprisingly, the Plaintiff conveniently could not remember the name of the said friend. Further, it is worth to note that the so called friend was using the said trees as raw material for the pick handles and broom sticks. These are blue gum trees from the Defendant's estate.

The arrest of the Plaintiff

I find it as a fact that on 29th March 2001 the Defendant's servants and/or agents arrested the Plaintiff. He had been arrested on suspicion that he had been cutting down the Defendant's blue gum trees. Incidentally, the plaintiff admitted that at the time of his arrest he had been making handles near the Defendant's blue gum forest. Further, the Plaintiff conceded that the said handles were from blue gum trees. Moreover, the Plaintiff did not deny the fact that at this time the Defendant's blue gum trees had just been cut down.

It is undisputed that the Plaintiff was later handed over to police. There is evidence to suggest that the Defendant's agents and/or servants told the police that the Plaintiff had been found cutting blue gum trees from the Defendant's estate. The Plaintiff was then kept in custody by the State for a period of at least six(6) days before being granted bail.

Further, it is common ground that the State charged the Plaintiff with the offence of the Defendant's trees. Moreover, it is a settled fact that the Plaintiff was acquitted of the charge preferred against him.

Alleged confiscation and/or trespass of the Plaintiff's goods

There is a dispute regarding what happened to the Plaintiff's goods that were alleged left at his place of business when he was arrested. However, it is a settled fact that the Plaintiff's said place of business was in a bush and an open place. Further, it is a fact the Plaintiff's said items were being kept at this place without being guarded by anyone. There is evidence to suggest that the said items were being hidden in the said bush where nobody, except the Plaintiff's witness, would have seen them.

The Plaintiff purported to establish that after his release from custody he went back to his place of work and found out that his various implements, assorted personal items, and unfinished products had been taken from his work place. He, however, admitted during cross examination that he never saw the said agents and/or servants of the Defendant taking his property. The Plaintiff informed this Court that it was Mr Kamoto who told him that the Defendant's agents and/or servants are the ones who took his items. However, the Plaintiff's witness told this Court that since it was dark and in the night he did not identify the people who allegedly took the Plaintiff's property. He further stated that he was not able to identify the tractor that was allegedly used to carry the items. This witness's testimony can be best described as hearsay evidence since he sought to tell this

Court that his children are the ones who told him that it was the Defendant's agents and/or servants who had come to take the Plaintiff's said property.

The Defendant asserts that it never took the Plaintiff's items. It was the evidence of the Defendant that at the time the Plaintiff was arrested he had nothing more than a small axe and a file. This Court has observed, and it is common ground, that the said file and small axe have since been returned to the Plaintiff.

The above are the relevant facts that emerged from the evidence on record. I will shortly turn to deal with the issues for determination in this matter⁶. As pointed out already, it is not my wish to determine the said issues seriatim. Suffice to put it here that at the end of this judgment all the pertinent questions raised by the pleadings will be dealt with.

Further, I wish to express my deepest appreciation of Counsel's careful and thoughtful written submissions. Any clarity in this judgment is essentially due to the said submissions. It will not, however, be possible to refer to each and every detail of their submissions. Actually, if I attempted to include all their arguments this judgment would be unnecessarily long. Accordingly, if it becomes necessary to do so, my reference to the arguments of Counsel will not be detailed. I will only give a sketch of the essence of the arguments. However, the parties are advised that all their points of view will be taken into account before arriving at a decision in this matter.

Without much ado, I now proceed to consider the pertinent issues for consideration in this action.

Consideration of the Issues

Was the Plaintiff unlawfully imprisoned?

As regards this question the Plaintiff asserts that the Defendant unlawfully imprisoned him. The Defendant has submitted in argument that it was legally entitled to arrest the Plaintiff since the Plaintiff was reasonably suspected to have been cutting down trees from its estate.

⁶ The said issues for consideration have been set out in the editorial note to this judgment.

It is trite law, which does not require an authority to be cited, that the tort of false imprisonment is established on proof of the fact of imprisonment and absence of lawful authority to justify that imprisonment. Further, the position at law is that once imprisonment is established the onus shifts to the Defendant to prove that it was reasonably justified⁷. Moreover, in the local case of **Victor Steward Mhango vs Attorney General**⁸ Mtambo, J., as he then was, said the following which is illuminating:

“The law on the subject is that an arrest, if made on reasonable suspicion, is lawful notwithstanding that the suspected offence was not in fact committed.”⁹

I have found as a fact that the Plaintiff had been arrested by the Defendant’s agents and/or servants. The Court must, however, make a determination on the issue whether the arrest was reasonably justifiable and therefore not unlawful.

⁷ *Sekasan vs Scebadica* [1968]EA 213

⁸ Civil Cause No. 199 of 1994 High Court [unreported]

⁹ *Ibid.*, p. 3

In my judgment the Defendant has established that it was justified in arresting the Plaintiff. It is well to note that the Defendant established that its trees were being stolen from its forest. The Defendant's servants and/or agents found the Plaintiff making handles from trees that appeared to be from its forests. Indeed, the Defendant demonstrated that on the material day its trees had just been stolen from its forest which was adjacent to the Plaintiff's place of business. The Defendant's servants and/or agents were justified in thinking that it must have been the Plaintiff who had cut down the trees. In terms of Section 33 as read with Section 34(1) and (2) of the Criminal Procedure and Evidence Code the Defendant was entitled to arrest the Plaintiff without a warrant and handing him over to the Police.¹⁰ Accordingly, the arrest of the Plaintiff can not in any way be described as unlawful or wrongful. Further, it is my understanding of the law that the fact that the Plaintiff was later acquitted does not mean that his initial arrest by the Defendant was unlawful.¹¹ It is so found as a fact that the Plaintiff's acquittal is of no legal consequence.

The above does not dispose of the allegation of false imprisonment. I must now consider the issue regarding the continued detention of the Plaintiff.

¹⁰ The texts of Section 33 and 34(1) and (2) of Criminal Procedure and Evidence Code read as follows:

Section 33(1) Any private person may arrest any person who in his view commits a cognizable offence, or whom he reasonably suspects of having committed a felony or who has been proclaimed as an offender under Section 106.

(2) Persons found committing an offence involving injury to property may be arrested without a warrant by the owner of the property or his servants or persons authorized by him.

Section 34 (1) Any private person arresting any other person without a warrant shall without unnecessary delay make (take) over the person so arrested to a Police officer or in the absence of a Police officer shall take such person to the nearest Police station.

(2) If there is reason to believe that such person comes under Section 28 a Police officer shall arrest him.

(3) If there is reason to believe that he had committed a non-cognizable offence, and he refuses on demand of a Police officer to give his name and residence, or gives a name or residence which such.....

¹¹ *Victor Steward Mhango vs The Attorney General supra.*

The continued detention of the Plaintiff

I wish to observe that the Police put the Plaintiff in custody after he was handed over to them. It was perfectly possible for the Police to refuse to re-arrest the Plaintiff if they thought there was no case against him.¹² Indeed, I doubt if the Defendant's agents and/or servants had control over what should happen to the Plaintiff upon being handed over to the Police. Consequently, the Defendant can not be held liable for the continued detention of the Plaintiff from the time it handed him over to the Police.¹³

Further, the position at law is that once a person has been arrested by the Police he has to be taken before a Court of law before the expiry of 48 hours from the time of such arrest.¹⁴ If they keep an arrested person for more than 48 hours that may constitute unlawful imprisonment.¹⁵ Who then is responsible for the continued detention of the Plaintiff for the said period of 7 days? It is the judgment of this Court that it is the State and not the Defendant. At law the Police should have kept the Plaintiff for a period of not more than 48 hours unless the Court authorized it. The Defendant can not be held liable for the acts of the State unless the Police were acting as the agents of the Defendant. This is not the case. Indeed, there is no evidence to suggest that the Defendant told the Police to keep the Plaintiff in custody. As a matter of fact the Defendant's agent, in so far as the evidence on record is concerned, told the Police that they had found the Plaintiff cutting trees belonging to the Defendant. The Police then decided to put the Plaintiff in custody.

Moreover, the acts of the Police in keeping the Plaintiff in custody for a period of more than 48 hours, and therefore unlawfully imprisoning him, can not be blamed on the Defendant. Actually, the view that I take is that the Defendant can not be held liable for any period of imprisonment after they handed the Plaintiff to the Police.¹⁶ Indeed, the Police were expected to bring the Plaintiff before a Court of Law within 48 hours of taking over the Plaintiff into custody. Thus, the period after the expiry of 48 hours is not to be attributed to the Plaintiff but the State. Unfortunately, the Plaintiff never took out any action against the State. This Court cannot, therefore, make any order against the state in respect of the Plaintiff's allegation of false imprisonment.

To sum up, the Plaintiff's claim for false imprisonment must fail.

¹² Section 34(2) of the Criminal Procedure and Evidence Code (Cap 8:01) of the Laws of Malawi.

¹³ *Patrick Maseko vs The Attorney General* C.C. No. 47 of 2001 High Court decision of 17th July 2002 unreported.

¹⁴ Section 42(2)(b) of the Republic of Malawi provides as follows:

Section 42(2) Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right -

(b) as soon as it is reasonably possible, but not later than 48 hours after the arrest, or if the period of 48 hours expires outside ordinary Court hours or on a day which is not a Court day, the first Court day after expiry, to be brought before an independent and impartial Court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be released;

¹⁵ *Patrick Maseko vs the Attorney General* supra.

¹⁶ *McDonald Mkukumira vs Malawi Railways Ltd* C.C. No. 895 of 1995 [High Court decision] [unreported].

Trespass to Goods

There is more argument of the law on the issue of trespass to goods than facts to support the case of conversion of goods. The evidence of the Plaintiff was that he did not see the Defendant's agents taking his goods. However, he sought to rely on the evidence of Mr Kamoto who testified on his behalf. Sadly, this Court has observed that the testimony of this witness is unreliable. In any event Mr Kamoto admitted that he was unable to identify the people who were allegedly taking the Plaintiff's goods. Indeed, he conceded that there was failure on his part to identify the so called tractor that was allegedly used to carry the said goods in issue. Moreover, it must be remembered that Mr Kamoto was not there when these intruders allegedly came to collect the goods in dispute. Actually, Mr Kamoto was told by his children in the evening that the Plaintiff's goods were allegedly being taken by some unknown people. The said children were not called to testify before this Court. There was no explanation given regarding why the children were not called to testify in this matter. The Court is of the view that the children of Mr Kamoto would have been well placed to tell this Court a true picture of the identity of the people who allegedly took the Plaintiff's goods. As I understand it, the children, must have seen these people when it was day light. Thus, more likely to have seen the identify of the alleged trespassers. Indeed, the children are material witnesses. The failure by the Plaintiff to call these material witnesses has weakened the Plaintiff's case. Actually, the failure to call the children has left this Court with the impression that if called they would not have confirmed the story of Mr Kamoto.¹⁷

Finally, it is observed that the said items were being left in an open space which could be accessed by anybody. The evidence adduced by the Plaintiff himself confirms this observation. Accordingly, one can not on a balance of probability conclude that it was the Defendant, and not some other person, who took the items. Indeed, the facts of this case suggest that the Plaintiff's goods were susceptible to being converted by any person who would access the Plaintiff's place of business.

In the premises, the claim for trespass to goods is not borne out by the evidence on record. Actually, I find that the only items that the Defendant's agents and/or servants took from the Plaintiff were the small axe and file. These two items have since been returned to the Plaintiff. The claim for trespass to goods I therefore dismissed.

The claim for Legal Practitioner's Collection Costs

The Plaintiff's statement of claim shows that he is claiming legal practitioner's collection costs in the sum of MK28,835.00 purportedly calculated at 15% of the replacement value of the goods allegedly taken by the Defendant. It is observed that this claim was not pursued during trial when the Plaintiff was offering evidence in support of his claims against the Defendant. Further, it is noted that Counsel for the Plaintiff did not address this Court on the issue of Legal Practitioner's Collection Costs. It was just as well that the Plaintiff appeared to have abandoned the claim for Legal Practitioner's Collection costs.

¹⁷ *Kamlangira vs Kamlangira* [1966-68] Vol. 4 ALR Mal. 301. See also *Mangila vs Rep* 8 MLR 182.

The above notwithstanding this Court will make its observation on the claim for legal practitioner's collection costs. For starters let me say that it was wrong for the Plaintiff to allege and/or think that the value of the said goods represented a liquidated claim¹⁸ and, therefore, suggest that legal practitioner's collection costs are payable. Actually, it matters not that the Plaintiff had indicated what he considered was the replacement value of the goods. Indeed, the fact that the Plaintiff had quantified the values of the items does not make his claim for trespass to goods a liquidated one.¹⁹ In point of fact, the statement of claim appears to show that the value of the goods were pleaded as special damages. Consequently, if one were to arrive at the amounts pleaded and award it to the Plaintiff it would require evidence being offered to substantiate the indicated values.²⁰ It, therefore, follows that the Plaintiff's claim for the sum of MK158,900.00 is not a liquidated one. As a matter of fact, the claim for replacement values/selling costs of the goods in dispute was an unliquidated demand albeit that the Plaintiff gave particular values/selling costs of the said items. The Plaintiff's claim in respect of trespass to goods was actually a claim in special damages which required to be proved specifically.

It accordingly follows that the claim for legal practitioner's collection costs was misplaced. As I understand it, such costs are payable where the claim is for a liquidate demand (a debt) and not otherwise. It follows, therefore, that the legal practitioner's costs claimed would not have been awarded even if the Plaintiff had succeeded in his claim for trespass to good.

Conclusion

The Plaintiff's claims are dismissed with costs.

Pronounced in open Court this 3rd day of February 2004 at the Principal Registry, Blantyre.



F.E. Kapanda
JUDGE

Civil Cause No. 3623 of 2001 – Peter Iphani vs Makandi Tea and Coffee Estate/Judgment

¹⁸ *T. Chilenje t/a Combidabo Pesqueiro De Matengula vs Attorney General C.C. No. 677 of 2001* [High Court decision of 28th February 2003] [unreported].

¹⁹ *Ibid.*,

²⁰ *Ibid.*,