

IN THE HIGH COURT OF MALAWI PRINCIPAL REGISTRY CIVIL CAUSE

NUMBER 1677 OF 2009

BETWEEN

CHITUKUKO JOHN.....PLAINTIFF

- AND -

SAMMY TRANSPORT.....DEFENDANT

CORAM : THE HON. JUSTICE POTANI

Mr. Tandwe, Counsel for the Plaintiff
Ng'ambi, Court Clerk

RULING

This is an appeal from the decision of the Assistant Registrar handed down on May 26, 2010. Before the Assistant Registrar was an application by the plaintiff for the disposal of a case on a point of law and the application was made under order 14A of the Rules of the Supreme Court. The plaintiff sought the court's determination of three questions viz:

- (i) Whether in a contract to transport bales of tobacco it is the obligation of the transporter or the consignor of the bales to ensure that the goods are delivered safely or at all at the intended destination.***
- (ii) Whether where a transporter of goods in a contract to transport goods increases the charge of transporting the said goods because of any delay he can again claim any damages in respect of the same delays.***
- (Hi) Whether the defendant herein is therefore not liable to make good the damage and loss occasioned in respect of the damage to and loss of bales of tobacco.***

had clearly agreed in their written contract that the tobacco would be off loaded within 3 to 4 days upon which the defendant's trucks would be released.

On the unsuitability of Order 14A in the determination of the matter, the defendant submits that it is impermissible to proceed under Order 14A where the determination of the issue will involve ascertaining facts beyond those in the pleadings. It is appropriate to proceed under Order 14A only where there is an agreement on the facts.

The court in its determination of the matter notes that the facts of the matter are not in contention. The only point which begs the court's determination is whether on the undisputed facts the plaintiff is entitled to damages for the loss he suffered while his tobacco was under the bailment of the defendant and whether the defendant can claim damages for the delay in having the plaintiff's tobacco off loaded. In the court's considered view, these are questions which can easily be disposed of summarily on the undisputed facts.

The defendant having increased the cost of transportation of each bale from K700.00 to K1,150.00 in the wake of the delay only goes to show that the parties had varied their earlier agreement and the bailment period was extended beyond the 3 or 4 days earlier anticipated. That being the case, the defendant ought to be liable for the loss the plaintiff suffered while the tobacco was with the defendant even beyond the earlier anticipated 3 to 4 days. It would be quite absurd to allow the defendant to charge for the extended period and then say he was not under an obligation to ensure the safety of the tobacco.

The defendant having surcharged for the delay it would also be absurd to allow him to claim damages for the delay.

The court in the end would not fault the Assistant Registrar's ruling. The appeal is therefore dismissed with costs to the plaintiff.

Made in Chambers this day of March 22, 2011 at Blantyre.

JUDGE