

MALAWI / JUDGMENT

Kamanga v Farmers World Limited (Civil Cause 105 of 2018) [2022] MWHCCiv 61 (16 September 2022)

[2022] MWHCCiv 61

COURT

High Court of Malawi Civil Division

CASE / FILE NUMBER

Civil Cause 105 of 2018

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he LAND Pape es an CLA REED IN THE HIGH COURT OF MALAWI CIVIL DIVISION MZUZU DISTRICT REGISTRY CIVIL CAUSE NO. 105 OF 2018 BREAINGIS FA MA INGA osipeseseces ica wa sneceisenrrcracen gumeraibialiesicnctana arses mmcaran ana einlereattielatnnee aanncanel ote OTH ED CLAIMANT PA RMERS WORLD DUTY a decks. cenenmeisnnces tun Sic aiesiin nid aceon easier Wa eRURS aise DEFENDANT CORAM: Honourable Justice T. R. Ligowe S. Malora, Counsel for the Claimant C. Lupande, Counsel for the Defendant B. Manda, Official Interpreter R. Luhanga, Recording Officer and Court Reporter JUDGMENT Ligowe J, The Claim _ The Claimant in this case claims damages for false imprisonment, damages for malicious prosecution, damages for defamation and costs of the action from the Defendant. He was employed as a Branch Sales Manager for the Defendant at Mzuzu Branch. His statement of claim is that on 27" March 2017, the Defendant laid criminal charges against him based on some shortages that were discovered at the shop. The Defendant caused and instructed the police to arrest him despite there being clear evidence that he was not involved in any criminal activity. He explained that the shortage was a result of some credit sales in favour of one of the Managers of the Defendant, Dexter Mkandawire, duly authorized by management. But the Defendant's employees still called the police, laid charges against him and caused the police to arrest him. He therefore spent three days in custody in a room infested with lice and other bugs which feasted on his blood. The room also had little or no sanitation that he got severely sick. He further states that a criminal case was commenced against him, but was discharged on

25" April 2017 and the same operated as an acquittal with effect from 25" April 2018. The statement of claim also states matter pertaining to the manner the Defendant disciplined the claimant, which I think relate to his employment and not relevant to his claim in the present case. Further to this, the Claimant avers that the Defendant sponsored an advert on the Voice of Livingstonia Radio Station on or about 27" March 2017 that he had been suspended from work for stealing funds from the office. The advert injured his image before reasonable and right-thinking members of the society. Defence The Defendant's defence is that they merely made a complaint

to Mzuzu Police Station regarding the stock and cash shortage which the Claimant admitted to be responsible for. It was the discretion of the police to lay criminal charges against the Claimant and they did so. The Defendant further states that Dexter Mkandawire was not in the employ of the Defendant at the time the shortages arose, and in any event, the credit sale to him had not been approved by management. The Defendant also responds to the issues of employment raised in the statement of claim, but as already said, the same are not relevant to the case before this court. The defence with regard to the claim for defamation is that the advertisement was not commissioned by the Defendant. The radio station most probably aired it on its own initiative as a community radio based on the Claimant's admission of being responsible for the loss, that he had been suspended from work. The Defendant further contends that the advertisement was not defamatory as it informed listeners of the truth of what the Claimant admitted to doing. Counterclaim Besides defending the claims made by the Claimant the Defendant counterclaims that as manager of its Mzuzu | Shop, the Claimant was entrusted with various items of stock and the cash derived from the same to remit to the Defendant upon sale and receipt of the money. The Defendant caused to be carried out an audit at the shop from 25" to 27" March 2017, to determine whether the Claimant complied with all procedures put in place by the Defendant.

All documents, stock and cash that were at the branch for a specified period, were physically checked by the auditors in the presence of the Claimant and his staff to determine such compliance. At the conclusion of the exercise, it was discovered that 351 bags of fertilizer and 25 bags of cement collectively worthy K6 718 600 were missing and the money had not been deposited in the shop's or Defendant's account by the Claimant. It was also discovered that various items of stock valued at K748 175 000 and cash amounting to K1 416 555 could not be accounted for by the Claimant. When asked, the Claimant admitted causing the loss dishonestly as he sold the fertilizer, the cement and the other items without remitting the funds to the Defendant and that he disbursed money to unauthorised persons. Particulars of the loss are outlined as follows:

Quantity	Weight	Item	Value (MK)
178	50 kg	bags NPK Fertilizer	3 738 000.00
33	25 kg	bags NPK Fertilizer	396 000.00
7	10 kg	bags NPK Fertilizer	33 000.00
56	5 kg	bags Urea Fertilizer	1 067 000.00
3	50 kg	bags Super D Fertilizer	83 400.00
18	50 kg	bags Comp. D Fertilizer	390 000.00
56	50 kg	bags Chitowe Fertilizer	\$52 500.00
25	50 kg	bags Akshar Cement	157 500.00
Various items of stock			748 175.00
Cash			1 416 555.00
Total Loss			8 883 330.00

6. The Defendant claims to have lost any profit it would have derived from the K8 883 330 by investing it in its business and therefore claims payment of the money, damages for loss of profits and costs of the action. Issues for trial 7. From the pleadings above, the issues for trial are: (a) Whether the Defendant is liable for false imprisonment; (b) Whether the Defendant is liable for malicious prosecution;

- (c) Whether the Defendant liable for defamation; (d) Whether the Claimant is liable for the loss of K8 883 330; and (e) Who pays costs for the action? Let us now look at the evidence and the law relating to these issues and determine them. The Evidence 8. The Claimant's evidence in support of his claim is that in 2013, the then Operations Manager for the Defendant, Dexter Mkandawire, used to come to Mzuzu Branch to get goods from the shop and issued cheques. He further stated that Dexter Mkandawire had authority to get cash and goods for sale and

issue cheques, under Article 15 of the Branch Managers Manual, which states on the relevant part that: - “Cash can only be collected by the authorized cash collector. Cash will only be collected by the following: i. L; Mark il. OIBM lil. Banked by Branch, where the Branch is authorized to do so. iv. An Area Manager with an authorized letter signed by Amin or Dexter or Joshi or Choka or DG or CG or SB. Currently only Mr. Mark Pinaar, is authorized. At times Area Managers will be authorised by a Director or one of the two Regional Managers Amini Edhi and Dexter Mkandawire co-signed by the chief cashier Mr. Chokalingam, to collect cash. They must however be in possession of a current letter of authority written on the same day. This letter is to remain in the branch as proof of authorization. When cash is collected it should be collected up until the last cash sale in the cash sale book. Cash must be counted in front of the Branch Manager or a representative authorized by him. Any missing cash over and above K20 000 shall be reported immediately to the nearest Police Station. Once cash is collected, all sales documents (i.e. cash sales, invoices) must indicate the next day’s date.” 9. The Claimant also stated that whenever a customer came to buy goods by cheque, he was supposed to inform the Regional Manager for authorization, and whenever Dexter Mkandawire

10. 11. LB. was getting cash and goods by way of cheques, he was informing the Regional Manager, who was authorizing. However, whenever he wanted to deposit the cheques, Dexter Mkandawire would stop him and say, he would advise when to deposit them. The Claimant exhibited two cheques, one for K200 000 dated 30th September 2013 and another for K350 000 which he had not deposited for that reason. The claimant further testified that he informed the Regional Manager about the situation in 2014, because it led to shortages of cash and goods for sale. The Regional Manager promised to look into it. The Claimant also said that he expressed his concern to Dexter Mkandawire himself and Dexter advised him to convert the value of the commodities into cash so that there were no cash deficits. The Claimant further testified that he reported the situation to Caroline Hollandor, the then Human Resources Manager (North) and Mr Tembo, Chief Internal Auditor. The Human Resources Manager assured him that she would report the matter to the Defendant’s Head Office and advised him to keep the cheques from Dexter Mkandawire safely for future reference. The Claimant continued to testify that the audit of September 2016 indeed discovered shortages, notably 200 bags of CAN fertilizer and he explained that the same had been taken by Dexter Mkandawire, who was asked and admitted to the same and later paid for them. However, unlike it had always been, the porters were barred from taking part and some young men were hired to assist in the exercise. He testified that Mr Masumba, the Human Resources Manager from Head Office asked him to show cash to the auditing team and he did, and also showed them cheques from Dexter Mkandawire which he put aside. Mr Masumba then ordered the Defendant’s Chief Security Officer to call the police. They came and restrained him from participating in the audit. He and the porters were ordered to sit in front of the shop and not move. Upon finding that some goods were missing, the Claimant testified that Johannes, the Defendant’s Financial Controller instructed the police to arrest him. He was taken to Mzuzu Police Station in a vehicle driven by the Chief Security Officer.

He was in custody for three days under inhumane and degrading conditions. He was kept in a room infested with lice and

13. 14, 15. 16. bugs and which had little or no sanitation and he got severely sick. The Defendant caused him to be prosecuted with malice at Mzuzu Magistrates' Court but he was discharged on 25" April 2017 under section 247 (1) of the Criminal Procedure and Evidence Code and the same operated as an acquittal on 25" April 2018. The Claimant also testified that the Defendant sponsored a defamatory radio advertisement on the Voice of Livingstonia Radio Station on or about 27" March 2017 that he had stolen funds. The advert portrayed him as a thief, untrustworthy and unreliable. After he was released on bail, some people expressed disappointment and frustration with him, especially Ackim Chiume who vowed not to transact with him again. He further testified that the advertisement was published to a large audience and it injured his image before reasonable and right-thinking members of the society. Mr Ackim Chiume also testified that he began farming in 2012 and had been buying fertilizer from Farmers World since. He knew the Claimant as coming from the same neighbourhood in Chiputula in the City of Mzuzu and also as an employee of Farmers World. He heard the announcement from the Voice of Livingstonia on or about 27" March 2017 to the effect that the Claimant had stolen K8.8 million from Farmers World. He asked Tina Kamanga, the Claimant's sister to inquire about the issue, and she confirmed about his arrest but not whether he had really stolen. Ackim Chiume testified that after he heard the announcement, he lost trust in the Claimant and after he was released, he told him about his disappointment. Ackim Chiume also testified that he in fact stopped buying fertilizer from Farmers World. When cross examined, the Claimant admitted that it was not Dexter Mkandawire's duty to collect cash from the branch but to authorise Area Managers by letter to collect the cash. He also admitted that he had not tendered any such letter of authorisation. He further admitted that he was in police custody at the time the radio announcement was made, he was just told about it and he did not provide the court with the actual content of the advert. Ackim Chiume was also cross examined and he admitted to have provided no content of the exact words of the radio advert.
17. In defence, Mr McBrown Nangwale, an Assistant Area Manager for the Defendant at the material time, testified that he was present when the Defendant conducted a forensic audit of the Mzuzu Shop from 25" to 27" March 2017. That the forensic audit was done because previous audits had revealed huge shortages at the shop. He further testified that the procedure for auditing is that all documents relating to the stock and cash at the branch are checked by the auditors in the presence of the staff at the branch. The said documents are then compared with the physical stock that is at the branch at that time. The variance in the figures will show the shortage or the overage of the stock. He testified that the other people present during the audit were the Claimant as Branch Manager, Beauty Gondwe, the Branch Clerk, Chikondi Chunga, the Internal Auditor, Kwame Kawaza, the Security Manager, Emmie Sohal, the Regional Operations Manager, Slim Mtegha, Isaac Katonga and James Nthenda, porters, and two police officers were called to witness the audit considering its delicate nature. Mr Nangwale testified further that the procedure that was used was that they began

with checking all the documents related to the stocks which included Goods Received Notes, Delivery Notes, Cash Sales and Bin Cards and the cash that was at the branch, and these were provided by the Claimant. Afterwards, they counted the stock physically. They dismantled all the stacks of products in the shop, including fertilizers and cement and started counting each product one by one, and this was with the help of the porters at the branch. When stock reconciliation was completed, a huge difference was found against the actual stock balance that was expected. This is as outlined in the particulars of loss in the Defendant's counterclaim above. Mr Nangwale testified that instead of depositing cash into the Defendant's account, the Claimant was depositing it into the personal account of Dexter Mkandawire, for the period between 2013 and 2015, who would in turn write a cheque to the Defendant, but that was against the procedure laid down by the Defendant. When the Claimant and the other staff at the branch were asked to explain, the Claimant admitted disbursing money belonging to the Defendant to Dexter Mkandawire and that he explained further that whenever there was a shortage in cash, he converted it into stock. Mr Nangwale testified also that, having discovered the malpractice and the loss, he asked the Security Manager, Mr Kawaza, to refer the matter to police so they could conduct their investigations on the matter and find out what happened to the missing stock and cash. Mr Kawaza was handed all documents relating to the matter including statements made by the Claimant, the Auditor, Chikondi Chunga and other staff at the shop

Mr Nangwale continued to say that at the time, they had not established whether the goods and the cash had been misappropriated by the Claimant. The following day they received a report from police that they suspected the Claimant was involved in criminal conduct and had opened a case of theft against him to which they would need the Defendant's staff to testify at the appropriate time. Since then, they never heard anything from the police, and only realized in 2018 when served with the summons for this case, that the Claimant was discharged. 18. Mr McBrown Nangwale concluded that it was the police after their own independent . investigations and exercise of their own discretion that they proceeded to arrest the Claimant on suspicion that he was involved in criminal misconduct. No officer of the Defendant acting on behalf of the Defendant instructed the police to arrest the Claimant. They simply relayed information of the missing items and cash that was unaccounted for at the Branch, to which the police on their own volition at the conclusion of their investigations commenced criminal proceeding against the Claimant. Mr McBrown Nangwale argued in the testimony that if the Defendant was behind the prosecution, they could have recommenced the criminal proceedings, either by pressuring the State to reopen the matter or even engage a private prosecutor. And, considering that the Claimant was the custodian of the stocks and cash at the Branch, as well as being responsible for the day-to-day operations of the said shop and that he failed to account and give a plausible explanation as to the missing stock and cash when asked to do so, it was reasonable for the Defendant to suspect the Claimant to have misappropriated the stock in the first place. Up to date, he has not made any good of the stocks or the cash that was found missing in his custody, and the shortage remains outstanding. 19. Mr Nangwale was cross examined whether the Defendant followed up with Dexter Mkandawire on the explanation given by the Claimant for the

loss. His response was that according to the policy of the company, it was the Claimant's responsibility to take care of the stocks and cash, so, he was responsible for the shortfalls. Asked whether he had proof for this, Mr Nangwale confirmed that the findings of the audit were the proof. 20. That marked the end of the evidence to which the law discussed below has to be applied.

False imprisonment 21. Let me mention that only Counsel for the Claimant filed written submissions for their position in the case. I agree with the submission regarding the definition of false imprisonment as stated in *Kanyemba v. Malawi Hotels Ltd.* [1991] 14 MLR 157 at 162 that: "False imprisonment consists of inflicting bodily restraint which is unauthorised and without lawful authority. In order to succeed, the plaintiff need not prove actual imprisonment in the sense of imprisonment in a gaol, for "imprisonment is no other thing but the restraint of a man's liberty, whether it be in the open field, or in the stocks in the cage in the streets as well as in the common goal." See *Meering v Grahame-White Aviation Co* (1919) 122 LT 44, CA. For an action to lie, the imprisonment must be by a defendant or by his orders. Where the defendant does no more than state the facts to the police officer, who, exercising his discretion, decides to make an arrest, there is no remedy by way of action for false imprisonment. Where there is reasonable and probable cause for suspicion that a felony has been committed a police officer can arrest a suspect: See *Walters v WIT Smith & Son Ltd* [1914] 1 KB 595. The burden of proving the existence of reasonable and probable cause is upon the defendant: *Hicks v Faulkner* (1881) 8 QBD 167 at 170." 22. False imprisonment stems from the fact that every person has the right to personal liberty. If a person has to be arrested it has to be on a warrant issued by a competent court. Otherwise without a warrant, section 28 of the Criminal Procedure and Evidence Code allows the Police to arrest any person whom they suspect on reasonable grounds of having committed or about to commit an arrestable offence. Section 33 of the Criminal Procedure and Evidence Code also allows private individuals to arrest without a warrant any person who is in the act of committing, an arrestable offence or for whom there are reasonable grounds for suspecting him to be committing an arrestable offence. Section 34 makes it imperative for any private person to make over to a police officer or take to the nearest police station any person arrested without a warrant without unnecessary delay. If there is no sufficient reason to believe that the arrested person has committed any offence, he has to be released immediately. Further to this, under section 42 (2) (b) of the Constitution, every person arrested for, or accused of, the alleged commission of an offence has the right 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, 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 such expiry, failing which he or she has to be released. 23. Following this, I fully agree with *Unyolo J* in *Chiumia v. Southern Bottlers Ltd.* [1991] 14 MLR 38 at 44 citing with approval the learned editors of *Clerk & Lindsell on Torts* (11ed), page 270, paragraph 420 that: "An unlawful arrest is a false imprisonment, and if the requirements of the law as to informing the arrested person of the grounds of his arrest or taking him before the approved authorities within a reasonable time are not complied with, an arrest which might otherwise have been justified will

be unlawful and ground an action in false imprisonment.” 24. Chatsika J also stated in *Tembo v. Industrial Development Group (1)* (1993) 16 (2) MLR 865 at 875 that: “It should be remembered that it is the duty of every citizen to give information of an alleged commission of a crime to the Police. If while acting on the information so given by a citizen, the Police mount investigations, and the investigations result in the arrest of a suspect, if the suspect is eventually found to be innocent, he cannot entertain an action in false imprisonment against the citizen who initially supplied the information to the Police. If on the other hand the citizen, instead of merely supplying information, makes a charge to the effect that the suspect has committed a crime, and on the strength of the charge, the Police arrests the suspect, the suspect would have a cause of action in false imprisonment against the citizen who made the charge if it is subsequently found that the suspect is innocent.” Malicious prosecution 25. It was held in *Lapukeni v. Commercial Bank of Malawi* [1996] MLR 139 that for malicious prosecution to avail a plaintiff of a remedy he must show: (a) that he was prosecuted by the defendant; (b) that the prosecution was determined in his favour; (c) that the prosecution was without reasonable probable cause; and 10

- (d) that the prosecution was malicious. The onus is on the plaintiff to prove every one of these essentials. If, therefore, the plaintiff's case fails to satisfy any one of these elements, it must fail. 26. As to the meaning of the requirement for the prosecution to be without reasonable cause, the court referred to *Phiri v Lujeri Tea Estate* (1981-1983) 10 ALR (Mal) 398, where Skinner CJ said: “In order for a plaintiff to succeed in an action for malicious prosecution he must establish, inter alia, that there was no reasonable or probable cause for the prosecution. Reasonable and probable cause means a genuine belief based on reasonable grounds that the proceedings are justified. As was said by Tindal CJ in *Broad v Ham* (1) 5 Bing NC 725 there must be a reasonable cause — such as would operate on the mind of a discreet man; there must be a probable cause — such as would operate on the mind of a reasonable man; at all events such as would operate on the mind of the party making the charge otherwise there is no probable cause for him.” 27. The Court also referred to Lord Atkin in the House of Lords in *Herniman v Smith* [1938] AC 305 at 316 where he approved the definition of reasonable and probable cause as: “an honest belief in the guilt of the accused based upon full conviction, founded upon reasonable grounds, of the existence of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.” Defamation 28. Defamation is a tort which protects reputation. A person who communicates to the mind of another, matter which is untrue and likely in the course of things substantially to disparage a third person is, on the face of it guilty of defamation. It is important that the Claimant should set out with reasonable certainty the alleged defamatory words and also allege that the imputation published is false. Although not necessary, he may also allege that it is malicious. The words are defamatory depending on what they would reasonably be understood to mean 11

29. 30. 31. in the light of the surrounding circumstances as known to the person to whom they are published. As a result, a defendant may be liable for words innocent on the face of them which are in fact defamatory of another person by reason of facts unknown to the author or publisher but known to the person to whom they are published. Application Let me now apply the law discussed above to the facts as I find them in the evidence. To begin with, it is not in dispute that the Claimant was arrested, spent time in police custody and that upon prosecution, he was discharged under section 147 (1) of the Criminal Procedure and Evidence Code on 25" April 2017 and as such, the discharge operated as an acquittal by 25" April 2018. The claim is that on 27" March 2017, the Defendant laid criminal charges against the Claimant based on some shortages that were discovered at the shop. The Defendant caused and instructed the police to arrest him despite there being clear evidence that he was not involved in any criminal activity. The defence is that Dexter Mkandawire was not in the employ of the Defendant at the time the shortages arose, and any credit sale to him had not been approved by management. The further defence is that the Defendant merely made a complaint to Mzuzu Police Station regarding the stock and cash shortage which the Claimant admitted to be responsible for. It was the discretion of the police to lay criminal charges against the Claimant and they did so. It is very important to appreciate that the whole matter arises from the Claimant depositing money for the Defendant into the personal account of Dexter Mkandawire for the period between 2013 and 2015. The audit undertaken from 25" to 27" March 2017 was not an ordinary stock taking but a forensic audit because previous audits had revealed huge shortages at the shop. It means that there was suspicion of fraud and the audit was done with the purpose of discovering if it had actually taken place, who was involved, how much money or stock was involved and possibly gather evidence that could be relevant in court. There seems to be no question that all the loss that was discovered was attributed to the Claimant depositing money into Dexter Mkandawire's personal account. That was not authorised at all. Article 15 of the Branch Managers' Manual referred to by the Claimant did 12

authorised at all. Article 15 of the Branch Managers' Manual referred to by the Claimant did not authorise Dexter Mkandawire to collect any cash, but that he would authorise Area Managers to collect cash from the Branches. The cash to be collected were sales, to deposit in the Defendant's Bank Account and not to exchange with personal cheques. Whatever happened between Dexter Mkandawire and the Claimant was therefore fraudulent. 32. The Claimant clearly explained his part. Mr Nangwale exhibited a report the Claimant made upon being asked to explain the loss. It states that: "On 27/03/17 we had auditing so it was found that there was shortage of cash K1 416 555 and stock K7 466 775, total K8 883 330. This happened because, from 2013, Mr Dexter Mkandawire (Operations and Marketing Manager) was collecting cash from my branch. So, he instructed me to convert cash shortage into stocks. So, we converted into NPK 50kg 265, Urea 50kg 198, CAN 50kg 265, D Compound 36 bags, Cement 50kg 203 bags and iron sheets 600 (assorted sheets and gauge). At first I informed our R/Manager (Mr Toshi) Admin/HR (Carolyn) and Area Managers (Mr Lungu, Mr Nyambo and Mr Munthali) At first he sent K1 500 000 we captured some bags of CAN, Urea and Iron sheets. After that he sent NPK stock 200 bags. Then

sent a cheque valued K1 101 600 which we balanced some cash and captured 30 bags of Urea. Lastly he sent cheque valued K2 641 000 which we captured 139 bags of CAN during annual stock taking. Since from that time he has not paid anything. Lastly sir, since from 2013 till now it has been a problem for me to balance my shop. I have been paying for some stocks to reduce the shortages.” (sic) 33. Nothing was said in the evidence for the Defendant to contravene the Claimant’s report or his evidence concerning his explanation for the loss. With this explanation, the Claimant could not have been reasonably suspected of being part of the fraud without Dexter Mkandawire saying anything implicating him, from. He therefore could not have been lawfully arrested in the circumstances. 13

34. It remains, whether he was arrested by the Defendant or by the Police on their own initiative. In *Chiumia v. Southern Bottlers Ltd.* [1991] 14 MLR 38, Unyolo J held that this is a factual matter. He said: “All the available evidence must be considered with religious care. The court should not only look at what the reporter said. As everyone knows, actions can speak louder than words. Consequently, the manner in which the reporter has acted is a factor which may be taken into account in determining whether such reporter merely gave information or whether he procured and/or directed the police to effect an arrest.” 35. This is demonstrated in *Chiumia v. Southern Boitlers Ltd.* (supra). The plaintiff was a stores clerk employed by the defendant at its head office in Blantyre, responsible for looking after spares parts and issuing them out upon requisition by appropriate departments. Upon a stock- take in June 1988, he was found with a shortage of K2 000. The team doing the exercise started all over again assisted by the company’s assistant accountant just to be sure they had not made a mistake, but again they came up with the same result. The plaintiff and his colleague were asked to explain how the shortfall came about but they failed. They were then told not to enter the stores again while the matter was being referred to management. The plaintiff and his colleague reported for duties on the next day, but just sat outside. An internal auditor was called to come and carry out a further check. The said auditor did this and he too came up with the same result. This was on 3 June 1988, a Friday. Then, on Monday, 6 June 1988 the plaintiff and his colleague reported for duties, but again they just sat outside as they had been banned from entering the stores. Later in the course of the day they were called and then taken to Ndirance Police Sub-station where the matter was reported and without much ado they were there locked up in a cell. They were charged with embezzlement, but were eventually acquitted. The plaintiff’s case regarding what happened at police was that the defendant’s personnel officer said that the plaintiff and his colleague were suspected to have stolen at the office and the police were required to help that the goods can be recovered. The police officer who handled the case gave evidence and agreed that the stores controller merely reported about the shortage found after the stock-take and went on to say that the decision to detain the plaintiff and the other stores clerk was his after interviewing the parties. On these facts, the court found no false imprisonment. 14

36. 37. It is also demonstrated in *Fida Faiti and 9 others v. Malawi Telecommunications Ltd.* [2006] MLR 156. The plaintiffs were working at Chileka installing underground cables for the defendant. PW 1 in the case testified that when the plaintiffs came back after lunch, he saw a certain person, who alleged that whilst the plaintiffs were away to lunch, he had seen some smoke in his garden. This person further stated that he had seen two persons in his garden setting fire to the cables. This man then reported the matter to Chileka Police who according to PW1 phoned the defendant's Chief Security Officer who procured Chileka Police using his motor vehicle and drove to where the plaintiffs were working and took the plaintiffs to Chileka Police station. It was the testimony of PW1 that as a matter of fact, the Chief Security Officer came all the way from Blantyre in his vehicle, passed by the plaintiffs on his way to Chileka Police, as the plaintiffs were just working beside the Blantyre—Chileka Road, and he took the Police in his vehicle and came back to where the plaintiffs were working. PW1 testified that they were all taken to Police, the Chief Security Officer led in his vehicle with the Police, and the plaintiffs followed in the company vehicle Nissan Diesel Lorry. When they reached the Police station, they found the owner of the garden who when asked failed to point at anybody amongst the plaintiffs as being the culprit. Hence all the plaintiffs were subsequently released at around 7 pm of the same day. However, to their utter surprise when the plaintiffs reported to work on the following day 25 August, 1999 they saw the Chief Security Officer who had again procured the Police from Chileka and ordered the plaintiffs to follow them to Chichiri Police, then they were taken to Chileka Police, and later came back to Blantyre Police where the plaintiffs were put into custody for the night and then on 26 August, 1999 they were all transferred to Chichiri prison where they remained incarcerated up to the 7 September, 1999. The court found the defendant liable for false imprisonment on these facts. In the present case, the Claimant's evidence on which he was not cross examined or directly controverted is that Johannes, the Defendant's Financial Controller instructed the police to arrest him and he was taken to Mzuzu Police Station in a vehicle driven by the Chief Security Officer. Mr Nangwale's testimony on the point does not give more detail than saying he asked the Security Manager, Mr Kawaza to refer the matter to police for further investigations. Given that the arrest followed a forensic audit conducted in view of shortages discovered previously, 15
38. 39. 40. 41, 42. and that the Defendant's auditing team came with police officers to witness the process considering its delicate nature, it is more probable than not that the arrest was indeed at the instance of the Defendant's Financial Controller. I am buttressed on this point by Mr Nangwale's insistence in cross examination that the audit was sufficient proof of the Claimant's involvement in the fraud even without cross checking with Dexter Mkandawire. The Defendant is therefore liable for the false imprisonment. As regards malicious prosecution, there could not have been reasonable probable cause to prosecute the Claimant in the face of the explanation he gave for the loss, relying on the findings of the audit alone, without anything from Dexter Mkandawire or anywhere else implicating the Claimant in the fraud. I also find the Claimant liable for malicious prosecution. With regard to defamation, there is no evidence of the defamatory words used in the radio

advertisement, nor was the radio advert exhibited, so the court cannot determine whether indeed the Defendant sponsored it and the words were defamatory. I find the Defendant not liable for defamation as a standalone claim. Otherwise, I am aware that the principal heads of damages for false imprisonment is the injury to liberty i.e., the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings i.e., the indignity, mental suffering, disgrace, and humiliation with any attendant loss of social status. With this, any element of defamation that came upon the Claimant as a result of his arrest by the Defendant will be addressed. Having failed to link the fraud with the Claimant, the Defendant's counterclaim fails. The action succeeds with costs on the claim for false imprisonment and malicious prosecution. Damages to be assessed by the Registrar. Pronounced in open court this 16th day of September 2022. 16

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