

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1155 OF 1994

BETWEEN:

H.H. CHIKAONEKA t/a MADALITSO

CLOTHING FACTORY.....PLAINTIFF

-and-

INDEFUND LIMITED.....DEFENDANT

CORAM: Twea, J

Mpando, of Counsel, for the Plaintiff

Absent of Counsel, for the Defendant

Magwira (Miss), Recording Officer

RULING

The plaintiff filed an action by writ against the defendant on 9th May 1994 claiming for his return of eleven (11) sewing machines, that were seized and sold by the dependant, trespass and conversion of the said machines, and loss of use. The defendant filed a defence and a counter claim.

The matter proceeded under Order 14A, a summary, judgment was obtained for the seizure of the eleven (11) sewing machines and on the counter claim for two (2) sewing machines. The matter was then set down for assessment of damages.

The plaintiff who was trading as Madalitso clothing factory called the Accountant to give evidence on assessment of damages.

The facts of the matter are that the plaintiff who was trading as a cloth manufacturer obtained a loan from the defendant who are a financing institution. The loan agreement was duly executed. The loan was secured by a bill of sale on the plaintiff's sewing machines. The plaintiff defaulted payment of the loan and the defendant called up the whole amount due. There being further default the defendant realised the security by seizing eleven (11) sewing machines, which were in varying conditions, sold them. The matter having come before this court, the court found that the loan agreement was duly executed between the party and therefore binding. However, the court found that the bill of sale, not having been attested and registered was void, according to S.7 of the Bills of Sale Act. The seizure and sale therefore, was not legally valid and hence the judgment on this matter. There is no dispute on the facts.

The evidence of PW1 was that they did not have the original document on the purchase of the sewing machines that were seized, and that they had no records on the trend of business because their premises had suffered breakings and thefts. It was his evidence however, that they enjoyed good custom and had a turn over of K100,000 per month and a profit margin of K10,000 to K15,000 a month.

After the machines were seized, on 21st March, 1994 they went out of production until they borrowed three machines in July. From then on their production improved by and by. It was his evidence however, that they were unable to solicit big orders because they lacked capacity. Although PW1 said that after borrowing the three machines they were able to raise a profit of K2,000.00 a month, he did not give any figures as to how much they made as their productivity improved.

PW1 did not produce the value of the machines at the time they were bought or at the time they were seized. His evidence was that they were bought before he came into the employ. However, he tendered three quotations for machines of that kind. These quotations were PEX2, K12,500.00 per machine, brandy new, as at 2nd February, 1995, PEX3 K18,000.00 per machine brandy new, as at 13th August, 1997 and PEX4, K10,000.00 per machine used, as at 1st February, 1996. Be this as it may he concede that the dealers of the machines were Singer Limited, but that he did not get any quotation from them.

This there is the evidence on which I will assess the damages.

It must be mentioned that, PW1 was not cross-examined. When the case was adjourned for cross-examination, he fell ill and passed on upon agreement the parties proceeded to file their submissions.

I am inclined to consider the assessment of damages from the point of view of conversion, trespass and loss of use.

The tort of conversion consists of depriving another of his property without his authority. It is said to be-

“an act of wilful interference without lawful justification with any chattel in a manner inconsistent with the right of another whereby that other is deprived of the use and possession of it.”

In the present case the defendant came and removed the machines from the plaintiff premises and sold them off. They totally interfered with the right of the plaintiff and deprived him of his chattels. The tort of conversion comprises one single wrongful act and the cause of action accrues at the date of the conversion; See **Leasing and Finance Company of Malawi Limited vs Ephraim Mkanda Chiume** and Another Civil Cause No. 1379 of 1994 and also **General and Finance Facilities vs Cooks Cars** (Rainford) (1963) WLR 644 at 648. The measure of damages therefore will be the value of the machine at the date of the conversion.

There has been argument for the defendant that the value of the machines at time of conversion has not been established. This may be so, but it would not preclude this court from considering what would have been the reasonable value of each machine. According to the evidence PEX1, the machines were in working order but some did not have stands. Their ages were not determined. However PEX4, a quotation from a second hand dealer in similar machines, which was not disputed, indicated that the value of such machines would have been K10,000.00 each. I would therefore grant K110,000.00 damages for conversion. Be this as it may, I bear in mind that the defendant obtained a judgment on counter claim for two machines. The amount therefore will be reduced to K90,000.00.

The second head, is that of trespass. This is actionable per se, even where there was no injury to the property. I bear in mind however, that the defendant entered the plaintiff premises and removed the machines upon mistaken belief that they had legal recourse to the machines under the void bill of sale. This is a factor that is in favour of the defendant. I would therefore grant the plaintiff K5,000.00 damages for trespass.

Lastly, there was the claim for loss of use. The plaintiff claimed that they would make K10,000.00 - K15,000.00 profit a month before the machines were removed and then K2,000.00 a month after they borrowed three machines. There was evidence that the profit margin increased, although the enhanced figure was not disclosed. Those figures

were not supported by an evidence at all and it is my finding that there were not proved. I will thus treat this head as general damages.

I bear in mind that according to PW1's evidence business custom was variable, and the fact of the thefts that PW1 testified to disrupted the operations. In my view K40,000.00 would adequately compensate the plaintiff for the loss of use and I so order.

I therefore grant the plaintiff K135,000.00 damages in total with costs.

DATED in Chambers this 29 day of May 2001 at Blantyre.

E.B. Twea

JUDGE