Bertha Saizi v Hallmark Creations Limited
Personal Injury Cause Number 137 of 2019

Judgment

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Personal Injury Cause Number 137 of 2019
Date of Judgment:	December 02, 2024
Bar:	Mr Hussein Edward, Counsel for the Claimant Mr Welkam Phiri, Counsel for the Defendant

The Claimant was employed by the Defendant as a cleaner in 2014 and later as a production assistant-embroidery in 2017. Due to her declining health, in 2018, she was moved from production department back to cleaning. She alleges that due to exposure to ink products she developed shortness of breath and other ailments including severe pneumonia, asthma, chronic cough as particularised in medical reports exhibited as BS 3, BS 4 and BS 5. The authors of these reports were not called to testify and so this Court received the same subject to the hearsay rule.

The Claimant further claimed that the Defendant was in breach of its statutory duty under the Occupational, Safety and Welfare Act, Cap. 55:07 of the Laws of Malawi. The alleged negligence was particularised, including exposing the Claimant to risk of damage and failing to provide a work place with adequate ventilation. The Defendant denies all the claims.

During trial, the Claimant adopted her witness statement adding that she was working in various departments including the screen printing section where she was exposed to ink products resulting in her illness. In cross-examination, she admitted that there was no ink involved in the embroidery department. However, in re-examination, she maintained that she was exposed to ink products when she was requested to assist in the screen printing department.

The Defendant called its Managing Director, Gift Gondwe, who testified that the Claimant was employed in the embroidery section which does not use ink products. That the room was well ventilated. There was no new evidence in cross-examination.

At close of trial, the Court received written submissions from Counsel for the Defendant only, for which the Court is grateful. The standard of proof in civil matters is on a balance of probabilities and the burden of proof lies on he who asserts the affirmative, in this case the Claimant: see Commercial Bank of Malawi v Mhango [2002-2003] MLR 43 (SCA).

Negligence has been defined as the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The Defendants might have been liable for negligence, if, unintentionally, they omitted to do hat which a reasonable person would have done, or did that which a person taking reasonable precautions would not have done: see Blyth v Birmingham Waterworks Company (1856) 11Ex Ch 781. The essential elements of actionable negligence are (a) a duty to take care owed to the Claimant by the Defendant, (b) a breach of that duty, and (c) damage suffered by the Claimant resulting from the breach of duty: see Kasawire v Ziligone and Another [1997] 2 MLR 139.

The Court has analysed the evidence before it and forms the opinion that the Claimant has failed to prove her case on a balance of probabilities. Courts have previously held that causation requires more than speculation; it must be supported by evidence demonstrating how the Defendant's actions or omissions led to the harm: see Lihoma v Anchor Industries Personal Injury Case Number 254 of 2014.

There is no direct evidence linking the Claimant's illness to the said ink products. She did not call any witness to back up her story that she was, sometimes, assigned to the screen printing section. All the evidence that this Court has is that she worked as a cleaner and in the embroidery section, where ink is not used. The allegation that she worked in the screen printing section has therefore not been made out, on the available evidence.

The Claimant’s claims are dismissed in their entirety, with costs.

Made in Open Court this 2nd day of December, 2024.