Harry Chanamuna v Oilcom Malawi Limited

Judgment

Court:	High Court of Malawi
Registry:	Principal Registry
Bench:	The Honourable Justice J Kalaile SC JA
Cause Number:	Civil Cause No. 2001 of 1996
Date of Judgment:	June 17, 1998

Mr Harry Chanamuna, the plaintiff is claiming damages for wrongful termination of his employment and secondly damages for libel from his former employers, Oil Company of Malawi Ltd, hereinafter referred to as “Oilcom”.

It was the plaintiff’s evidence that he was employed by Oilcom as a Data Entry Clerk initially as a temporary employee from 3 June, 1994 up to 27 March, 1995 when his status was upgraded to that of a permanent employee. He was so employed up to 1996 when his services were terminated on some vague grounds. Oilcom informed him that he had failed to disclose the real reasons why his former employers, Cold Storage Company Ltd, had dismissed him. The plaintiff had worked for Cold Storage Company Ltd for ten years before he was dismissed by that company.

In March 1994, before his dismissal, auditors conducted an audit at Cold Storage Company Ltd. The auditors took away some books or records which were under the custody of the plaintiff. After the audit was conducted the plaintiff received a letter of dismissal from his employers on 5 April, 1994. The letter merely stated that the plaintiff failed to account for company money. The letter was tendered as exhibit P2. The relevant part of the letter states that:

"I wish to advise you of management decision that you be dismissed from company service with immediate effect for failing to account for company money."

The letter does not indicate the exact amount which the plaintiff failed to account for.

After his dismissal from Cold Storage Company Ltd, the plaintiff was employed by Oilcom. On 2 June, 1994 he was asked by Oilcom to complete an application for employed form. This is exhibit Dl. At page 3 of this form he answered the question: "Have you ever been dismissed or asked to resign from any organisation?" He replied that "I did not favour well with my employers for they wanted me to go for salesmanship not computer training."

Interestingly, document exhibit D2 gives some illuminating details. I reproduce it in full:

“Oil Company of Malawi (1978) Limited

PERSONNEL/CONFIDENTIAL

15th April, 1996

The Personnel Manager
Cold Storage Company Limited
P.O. Box 575
BLANTYRE

Yusuf
We have just received this report
For your information systems guy.
Please note the comments on
Honesty & remarks!
24/7

Dear Sir

MR H J CHANAMUNA

The above named has applied to this Company for employment as a DATA ENTRY CLERK and states having been in your services as a SALES SUPERVISOR from 1985 to 1994.

We shall be greatly obliged if you will confirm this and answer the questions below, concerning the applicant. A stamped addressed envelope is enclosed for your reply which will be treated in strict confidence.

Yours faithfully

for: OIL COMPANY OF MALAWI (1978) LIMITED

AT KONYANI (MS)

PERSONNEL AND TRAINING MANAGER

When did the applicant join your employment?	22/11/83
When did the applicant leave your employment?	31/3/94
Was the employment continuous?	YES
What was the applicant’s final salary	K540/M
Reason for leaving?	DISMISSED
Did the applicant give satisfaction in:	
(a) Conduct?	(a) YES
(b) Honesty?	(b) NO
(c) Work performance?	(c) AVERAGE
(d) Time Keeping?	(d) YES
(e) Soberness?	(e) YES
Was general health good?	YES

General Remarks:

HE MISAPPROPRIATED K6,129.48

SIGNATURE:_____ DATE: 23/7/96

DESIGNATION: PERSONNEL MANAGER

COLD STORAGE COMPANY LTD.
P.O. BOX 575, BLANTYRE
MALAWI

P&TM

Have discussed the issue with Ben and Luke. They agree that we terminate his services for not disclosing correct statement. I concur.

Please write a letter to the effect that his services will be terminated on 26/7/96.

Thanks

Yusuf
25/7”

This document is dated 23 July, 1996, by Cold Storage and was received by Oilcom on 24 July, 1996. However, the letter terminating the plaintiff's employment, that is exhibit D3, is dated 26 July, 1996 so that the plaintiff's employment was terminated two days after exhibit D2 was received by Oilcom. The timing of these events is crucial in view of some hearsay evidence which the plaintiff attempted to adduce. The hearsay evidence is that of LN Phiri who did not testify in Court. Other hearsay evidence which the plaintiff attempted to rely on is that of Mr Enea an employee of Oilcom, and Ms Konyani another employee of Oilcom. The plaintiff informed this Court that none of the employees of Oilcom were prepared to testify on his behalf for fear of losing their jobs. I ignored all of the hearsay evidence on the grounds that a witness can state facts which are known to him personally as distinct from facts which have been conveyed to him by others. No convincing reason was given why LN Phiri did not testify as he was not an employee of Oilcom.

The above stated proposition is very well put by a distinguished English legal author as follows: *Cross on Evidence* (4ed). The author states at 401 that:

"According to the rule against hearsay as formulated in Chapter I, a statement other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact stated. This formulation conflates two common law rules, the rule that the previous statements of the witness who is testifying are inadmissible as evidence of the facts stated (sometimes spoken of as the 'rule against narrative' or the 'rule against self-corroboration'), and the rule that statements by persons other than the witness who is testifying are

inadmissible as evidence of the facts stated (the rule against hearsay in the strict sense).”

These are the reasons why I ignored the evidence of the witnesses, whose evidence was referred to by the plaintiff but who were not called to testify in Open Court. There are exceptions to the hearsay rule, but those exceptions do not apply to this case.

Oilcom called one witness just as the plaintiff was the sole witness for himself. Oilcom’s witness was Mr Ziyada. He was employed by Oilcom as the Personnel Officer since 1st April, 1989. It was his evidence that the plaintiff was employed by Oilcom subject to a satisfactory reference from the plaintiff’s previous employers. Oilcom referred to the Cold Storage Company Ltd on 15 April, 1996 and received a reply to its letter on 23 July, 1996. Oilcom’s letter and the reply are comprised in exhibit D2. As a result of exhibit D2, the plaintiff’s employment was terminated on 26 July, 1996 in a letter signed by Mr
Lambat. This is exhibit P1. It states:

“Oil Company of Malawi (1978) Limited

PRIVATE AND CONFIDENTIAL

26th July, 1996

Mr H J Chanamuna

OILCOM (1978) Limited

P.O. Box 469

BLANTYRE

Dear Mr Chanamuna

TERMINATION OF SERVICE

I regret to advise of Management's decision to terminate your services with effect 31st July, 1996, for falsifying information on your application for employment form.

Although your last working day is 31st July, 1996 you need not come to work next week.

According to the Conditions of Service, you will receive the following terminal benefits:-

July 1996 salary	–	Alreadypaid
Notice pay (1 month's salary)	–	K2, 060.00
Leave commuted (11 days)		893.98
Leave grant (1996)	–	831.00

Gross pay 3 784.98

Less: PAYE - K 552.57

Musco Loans - 1,500 (2,052.57)

Net payable K1 732.41

Details of your pension contributions will be communicated to you in due course and I attach relevant forms in this regard. Could you please accept the benefits detailed above by signing below and sending back to us a copy of the signed letter.

Yours sincerely

for: **OIL COMPANY OF MALAWI (1978) LIMITED**

Y M LAMBAT

CONTROLLER

Att'd.

I, ... accept the benefits detailed above as a full and final settlement of my terminal dues under the terms and conditions of my employment.

Signature: ..... Date: .....”

However, exhibit D2 states that the plaintiff's salary at Cold Storage Company Ltd at the time of his dismissal was K540 per month. The same exhibit D2 states under general remarks that the plaintiff misappropriated K6 129.48 and this was the reason for his dismissal. This should be contrasted with what is stated in exhibit D1 wherein the plaintiff stated that he did not favour well with his employers for they wanted the plaintiff to go for a salesmanship course and not computer training which the plaintiff preferred.

During cross-examination, the plaintiff produced a pay slip which showed that the plaintiff's salary was K604 per month. However, there is no evidence to demonstrate that this pay slip was indeed issued out by the Cold Storage Company Ltd.

It was Ziyada's evidence that the letter from Cold Storage Company Ltd showed that they responded on 23 July, 1996 and immediately after receipt of that letter by Oilcom, the plaintiff's services were terminated on 26 July, 1996. The witness further testified that Oilcom paid the plaintiff a month's salary in lieu of notice in accordance with the plaintiff's letter of appointment. He went on to state that the allegation that the plaintiff had misappropriated K6 129.48 was made by the Cold Storage Company Ltd and not Oilcom.

So far, I have dealt with the facts as presented by the plaintiff and the sole defence witness. In his written submission the plaintiff took the defendants to task on the right to be heard. It was his argument that Oilcom failed to comply with its conditions of service which provided for a "**Guide to Disciplinary and**

Grievances Procedures." The Guide does not, however, assist the plaintiff since it stipulates under section XI at 52, paragraph 4 that:

"**TERMINATION** The company may without necessarily assigning any reason, terminate the services of an employee by giving him appropriate notice or salary in lieu thereof as per section XII."

And Section XII paragraph 4 states that: "The notice requirement will be as laid out in one's letter of appointment." Clearly, Oilcom complied with this requirement by paying the plaintiff one month's salary in lieu of notice in compliance with the letter of appointment.

To be precise, Oilcom dismissed the plaintiff and refused to hear the plaintiff's side of the story upon receiving exhibit D2. The plaintiff cited the case of *McWilliam Lunguzi v Republic* Civil Cause Misc App No. 55 of 1994 (unreported). In particular, the plaintiff argued that Justice Mkandawire observed in that case that "Section 43 (of the Constitution) does nothing more than restate principles of natural justice that a man shall not be condemned unheard." However, Section 43 of the Constitution does not state anything close to what the plaintiff was trying to establish. Instead it provides that:

"Every person shall have the right to–

(a) lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and

(b) be furnished with reasons in writing for administrative action where his or her rights, freedoms, legitimate expectations or interests if those interests are known."

In my considered opinion, exhibit D2 as read with the letter of dismissal clearly satisfied the provisions of section 43 of the Constitution. The plaintiff also cited the case of *Zodetsa and others v Council of the University of Malawi* for the proposition that a man must be given adequate notice of the charges he is facing as well as an opportunity to contradict and challenge the case against him. In the *Zodetsa* case (supra), Mtegha J approved a dictum of Lord Denning which stated that:

"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him, and then he must be given a fair opportunity to correct or contradict them."

Counsel for the respondents neutralised the appellant's submission on this point by citing the case of R v East Berkshire Health Authority, Exparte Walsh [1984] 3 All ER at 429 where Sir George Donaldson MR stated that:

“The law regarding master and servant is in no doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with his servant at anytime and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the facts emerging at the trial prove breach of contract.”

The *Donaldson dictum* rather than the *Denning dictum* quoted by the plaintiff expresses the correct position regarding a master and servant situation. The respondents paid the plaintiff one month’s salary in lieu of notice upon receiving exhibit D2 from Cold Storage Company Ltd and in so doing were in no way in breach of their contractual obligations.

In the course of argument, the plaintiff also stated that by terminating his contract as they did by paying him one month’s notice pay, Oilcom deprived him of his pension rights. This argument cannot be sustained as there is clear authority to the contrary in the case of *McClelland v Northern Ireland General Health Service Board* [1957] 2 All ER 129. In the McClelland’s case, Lord Goddard states at 133 that:

“That an advertisement offers permanent employment does not, in my opinion, mean thereby that employment for life is offered. It is an offer, I think, of general

as distinct from merely temporary employment, that is that the person employed would be on the general staff with an expectation that apart from misconduct or inability to perform the duties of his office, the employment could continue for an indefinite period. But apart from a special condition, in my opinion, a general employment is always liable to be determined by reasonable notice. Nor do I think that, because a person is offered pensionable employment, the employer thereby necessarily engages to retain the employee in his services long enough to enable him earn a pension."

In my judgment, on the authority of the *East Berkshire* case and the *McClelland* case (*supra*), I hold that a case for wrongful termination of employment on the facts as presented by the plaintiff cannot stand. I dismiss the claim under this head. The next point which the plaintiff took up is the claim for libel in that the respondents' employee wrote a letter to Cold Storage Company Ltd on 15th April, 1996 as if the appellant had just been employed, yet the employee was fully aware that the appellant was already employed at that particular time. According to the plaintiff "that was an act of malice on its own."

Again, it is the opinion of the plaintiff that publication of the libel took place using the same reasoningas that which Tambala J, used in Liabunya v Lever Brothers Ltd, Tambala J, observed that "the evidenceshowed that there was communication of the contents of the dismissal letter to the secretary of the personnel manager during the time that it was typed." In the present case, communication took place when exhibit D1 (application for employment form) led to the letter of termination. It should be recalled that the libel is based on paragraph II (c) and (d) of the statement of claim which states that:

“(c) the allegation that the plaintiff misappropriated K6 129.48 is baseless and total fabrication; and
(d) that it is aimed at scandalising his name and defamation of his character.”

The evidence before the court shows that the figure of K6 129.48 was given to the respondents by the Cold Storage Company Ltd and the respondents did not publish it anywhere else. The fact is exhibit D2, the letter in which the figure K6 129.48 appears accompanied by the words “he misappropriated K6 129.48” only changed hands amongst bonafide employees of the defendants and was not proved to have been reproduced in writing anywhere else. Clearly, the appellant has misunderstood the proper legal principles on the point.

The correct position at law was perfectly presented by Denning LJ in the case of *Riddick v Thames Board Mils Ltd* [1977] 1 QB 881 where he stated that:

“. . . a master should not be liable for a confidential report made by one of his servants about another even though that servant was malicious in making it. Let the aggrieved servant bring his action against the malicious servant who reported on him. But do not let him bring it against the master who employs both of them and has done nothing wrong.”

In the case before me, none of the servants of the respondent wrote the document complained of. The claim on this head cannot succeed either. It is dismissed. The end result is that both claims by the plaintiff are dismissed with

costs to the defendants.