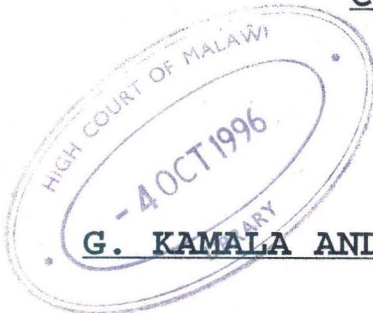


IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE 1448 OF 1994



BETWEEN

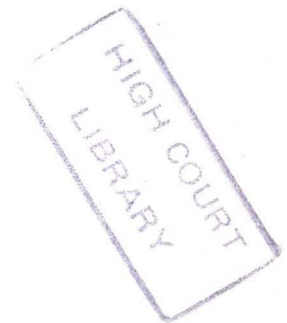
G. KAMALA AND 41 OTHERS..... PLAINTIFFS

AND

SABLE FARMING CO. LTD. RESPONDENT

CORAM: TAMBALA, J.

Mpando, Counsel for the Plaintiffs
Jusab, Counsel for the Respondent
Mrs. Katunga, Official Interpreter



RULING

The plaintiffs took out this Originating Summons seeking the court's interpretation of paragraph 3 of Wages (Hours of Work and Overtime) Order. The decision of the court in this application shall affect the rights of some 42 watchmen employed by the defendants and who are named as plaintiffs in this summons. I understand that the defendants employ more than 42 watchmen and all of them are interested in the outcome of this matter.

The Wages (Hours of Work and overtime) Order is made under the Regulation of Minimum Wages and Conditions of Employment Act Cap 55:01. The order as amended in 1990 limits the number of normal working hours for a watchman to 48 hours per week. Then it allows the watchman to work overtime, but such overtime shall not exceed 24 hours a week. He can work a maximum of 72 hours, 24 hours of which shall be regarded as overtime. Then the order states that the watchman shall, in addition to his basic pay, be remunerated at the rate of fifty per cent of his basic pay for any extra hours worked by him beyond forty-eight hours in any one week". It is this last part, which affects

payment for overtime, that has caused misunderstanding between the plaintiffs and defendants.

Counsel for the plaintiffs urged this court to regard basic pay as meaning basic pay for each day as against basic pay per hour, the position taken by the defendants. In the course of submissions it became quite clear to me as well as to counsel for the plaintiffs that the defendants interpretation is the correct one. The order is entitled "Hours of Work and Overtime". Paragraph 3 of the Order again talks about hours and not days. The payment for overtime is provided in paragraph 9(l) of the Order and it states that each hour of overtime shall be paid for the hourly rate plus one-half of such rate. What this means is that for every hour of overtime done, a watchman shall earn one and half times his basic pay per hour.

The conclusion reached by this court and which is now accepted by counsel for the plaintiffs is that the phrase "basic pay" in paragraph 3 of Wages (Hours of Work and Overtime) Order refers to basic pay per hour. Payment for overtime performed by a watchman is set at one and half times the payment per hour.

The plaintiffs sought interest at the normal bank rate on arrears of wages. On the authority of Tabord -v- David Whitehead and Sons Ltd, M.S.C.A. Civil Appeal No. 11 of 1988, payment of interest can be ordered only where the subject matter of the action is a debt. I cannot, therefore, make an order requiring the defendants to pay interest on arrears of wages found due and payable to the plaintiffs and their colleagues.

Let me say that upon a careful reading of paragraph 3 of the Order I find no inconsistency between what is contained in that paragraph and paragraph 9(1) of the same order. What is clearly wrong in paragraph 3 is the word "renumerated". It should be remunerated. The defendants' interpretation was correct. I dismiss the application. I however, exercise my discretion in ordering that each party shall bear his own costs.

MADE in Chambers this 11th day of September, 1996 at Blantyre.


D.G. TAMBALA
Judge

