

Akim Biliat vs Pallet Kings Personal Injury

Cause Number 933 of 2021

Judgment

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Personal Injury Cause Number 933 of 2021
Date of Judgment:	July 10, 2025
Bar:	For the Claimant: Mr Luciano Mickeas For the Defendant: Mr Charles Chayekha

The Claimant was employed by the Defendant as a security guard. In the night of 27th March 2021, he was seriously injured by a group of thieves. He was admitted for 20 days at Queen Elizabeth Central Hospital. He filed this suit claiming damages for pain and suffering, deformity, incapacitation and costs of this action. He alleged that the Defendant was negligent and he cited particulars thereof. The Defendant denies being negligent at all.

The Claimant adopted his witness statement and a medical report exhibited as AB. In cross examination, he stated that he had experience as a guard and he knew the inherent risks of such a job. He insisted that he was not given any tools by the Defendant and he was using his own stick. He stated that he did not see the thieves jumping off the fence but he was just ambushed. He agreed that even if he had a gun or a panga knife, he would not be able to use it in defence. He confirmed that the premises had adequate lighting. That the only dog that was available was not a trained security dog.

The Defendant called Mr Hastings Dzimbiri who was a supervisor to the Claimant. He confirmed that the Claimant was working alone on the fateful night. That he had personally trained the Claimant. He stated that the Claimant was offered some tools but preferred to use his own stick.

At the close of trial, the Court received submissions from Counsel 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 per *Miller v Minister of Pensions* [1947] All ER 372. 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 that 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.

In *Redson Khanyera v Eastern Produce Malawi Limited Personal Injury Cause 842 of 2014* (unreported) the High Court stated that:

"Where an employer has exercised all due care and yet a workman sustained the injury through the inherent risk of employment he cannot recover damages against the employer because an employer is not liable in the absence of negligence. The nature of the job of a security guard has an inherent risk in that one can be attacked even if one is well equipped or armed."

The Claimant agreed in cross-examination that he understood the inherent dangers of working as a guard. That even if he were equipped with a gun or a panga knife, he could not have used the same to defend himself, as he was taken by surprise. On similar facts, in *Chilakalaka v Makandi Tea & Coffee Estates Ltd Personal Injury Cause Number 657 of 2016*, N'riva J dismissed the claim.

Therefore, this Court considers that, on the available evidence, the Defendant cannot be held not to have provided a safe working environment. The Claimant

has failed to prove negligence on the part of the Defendant and so this claim is dismissed with costs.

Made in Open Court this 10th July, 2025.