

THE ATTORNEY-GENERAL (1982) Z.R. 75 (H.C.)

HIGH COURT
CHAILA,
4TH
(1980/HP/546)

AUGUST

J.
,1982

Flynote
Chiefs - Powers to preserve peace - Limits of.

Headnote

The plaintiff brought an action for damages for unlawful detention. He was arrested and handcuffed and then detained in a cell overnight at the palace of his local chief due to his conduct which was such as to alarm and disquiet the neighbourhood when he attempted to assault one of the neighbouring chiefs.

Held:

- (i) Section 11 of the Chief's Act, Cap. 479 allows a chief to quell any disorder or affray which may occur in his area by taking reasonable measures.
- (ii) The plaintiffs behaviour falls within s. 88 of the Penal Code which defines an affray.

Legislation

referred

to:

Chiefs Act, Cap. 479, s. 11.

Penal Code, Cap. 146, s. 88.

For the plaintiff: W. Muzyamba, Chigaga and Co.

For the defendant: M. Muyenga, State Advocate.

Judgment

CHAILA, J.:

This is an action against the Attorney-General in his capacity as a representative of the State. The plaintiff who is a peasant farmer in Chief Mwanza's area, Monze District, is claiming for damages for being unlawfully detained. The statement of claim provides that on 6th October, 1979, the defendant who was acting through its agents and/or servants arrested and handcuffed the plaintiff at Njola beerhall without any cause or lawful justification.

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The defendant has denied the liability and that the plaintiff has suffered any damage. The defence of the defendant is that the defendant while acting through its agents and/or servants did cause the plaintiff to be arrested at Njola beerhall and did cause him to be detained at the Chief's palace until the following morning; but the defendant has pleaded that the actions were justified and lawful. The defendant has further pleaded that the plaintiff's conduct was such as to alarm and disquiet the neighbourhood by threatening to assault Chief Ufwenuka.

The plaintiff gave evidence and called one witness. The defendant called a number of witnesses. The witnesses included the three chiefs in the area, i.e. Chief Mwanza, Chief Chona and Chief Ufwenuka.

[After stating the facts his lordship continued:]

Section 11 of the Chiefs Act, Cap. 479 reads:

"(1) Every Chief is hereby required to preserve the public peace in his area and to take reasonable measures to quell any riot, affray or similar disorder which may occur in that area."

The area where this incident took place was in Chief Mwanza's area and DW1 was a chief in that area. The chief and his kapasu told the court that a lot of fights in which the plaintiff was involved had been taking place at that place. The chief and his kapasu also confirmed that a night before the same man had beaten some people at that place. The chief was in company of two other chiefs; Chief Ufwenuka and Chief Chona. The plaintiff had already spoken bad words and insulted Chief Ufwenuka. The plaintiff had further threatened to go and beat up Chief Ufwenuka. The threats were issued to Chief Mwanza who was the host to the other two chiefs. The threats were being made at a beerhall. The law allows the chief to preserve peace in his area and take reasonable measures to quell any disorder or affray or similar disorder which may occur in his area. Section 88 of the Penal Code deals with affray and provides:

"Any person who takes part in a fight in a public place is guilty of affray."

There is evidence that the plaintiff had been fighting in that area. There is also evidence that in fact he fought a night previously at the same place. According to the provisions of s.11 of the Chiefs Act, even if Chief Ufwenuka were not threatened, Chief Mwanza would have been justified ordering the plaintiff to be arrested without a warrant for having been involved in a fight a night previously. Realising that similar disorder would occur the chief decided to take measures to stop it. He asked his kapasu to remove the plaintiff from the beerhall. Naturally the kapasu had to handcuff the man since the man was known to be of violent nature. In addition the man had been drinking from 1800 hours. According to the evidence of the chiefs the man was drunk. According to the established traditions the man was taken to the chief's palace. Taking people to his palace for

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advice would be one of the measures the chief would take under s. 11. The man was taken so that he could be sober and later be advised by the chief. I find therefore that the measures which the chief took in respect of the plaintiff were reasonable measures to stop the plaintiff from engaging in the fight or fights at the beerhall. I find therefore that the plaintiff has failed to prove the case against the State. The action is therefore dismissed with costs to the Attorney-General.

Action dismissed