

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1776 OF 1994



BETWEEN:

F.P.C. MWALE PLAINTIFF

and

MALAWI CONGRESS PARTY DEFENDANT

CORAM: W.W. QOTO, DEPUTY REGISTRAR
T. Chirwa, Counsel for the Plaintiff

RULING

QOTO, DEPUTY REGISTRAR - This is a notice of appointment for an order assessing damages following an interlocutory judgment the plaintiff obtained against the defendant on 15 December, 1994. It was adjudged that the defendant do pay the plaintiff damages to be assessed. That judgment was set aside by consent of the parties on 29 February, 1996 and the defendant was ordered to serve a defence within 7 days from that date. The defendant defaulted in this and on 5 August 1996, following that default, the judgment was restored and hence this notice of assessment of damages.

The plaintiff's claim against the defendant is for exemplary damages for false imprisonment and for loss of employment, rent and the sum of K61,710.00 which represents the value of his house and household properties allegedly confiscated by the defendant.

The plaintiff avers in the statement of claim that at the material time, he was a member of the Jehovah's witness sect. He was also owner of a house on plot number C/249 in Chilomoni Township in the City of Blantyre. The defendant was a ruling political party and in 1972, the defendants, through its agents and/or employees, evicted him from his

2/.....



house and confiscated it on the account of his membership with the said sect. He fled to Mozambique in fear for his life: At that time the defendant's agent or employee, one Rodrick Kamfutso he said instructed the plaintiff's employees to dismiss the plaintiff which his employer did. When he returned from Mozambique in 1975, the defendant caused the plaintiff to be arrested and to be detained. He was detained at Dzaleka Prison until 14 May 1977 when he was released.

The plaintiff further avers that in consequence of the defendant's action through its agents or employees he has suffered loss and damage. He accordingly claims a return of his house or payment of K50,000, its value, K11,710.00 being the value of confiscated goods, rent of K500 per month from 1972 until the date of judgment, damages for loss of employment and for false imprisonment.

Pausing here, the plaintiff's claims for value of his house, his goods and the rent are liquidated claims and as such they do not fall to be assessed. There being default by the defendant in serving a defence to the plaintiff should have entered a final judgment on them and not an interlocutory one. It is, of course, open to amend the judgment to make it both interlocutory in respect of his claims for false imprisonment and for loss of employment and final in respect of his claims for the value of the confiscated house and household properties and the rent. These can be specifically proved and since they have been specifically pleaded they do not fall to be assessed.

The plaintiff must amend his judgment accordingly.

With that I turn to the evidence.

The evidence on the record is that of the plaintiff only. I heard his evidence in the absence of the defendant who was nevertheless duly served with the notice of appointment to assess damages. Neither he nor his legal practitioner gave reason for failure to attend the hearing and as such there was no cause to adjourn the matter.

The plaintiff's evidence was that he is a businessman and an accountant. He was detained by the defendant in 1975 and he was put at Dzaleka Prison. Here the conditions were very bad. He was beaten up by prison

warders and he was kept in a small cell for one month without taking a bath. Food was given to him after fourteen days. He was released in 1975 and during the period of his detention, he was routinely beaten by the prison warders.

He again told the court that he was a member of a Jehovah's Witness Sect and as such he had refused to buy the defendant's membership card. This led to his detention.

He had a house on plot number C/249 in Chilomoni Township. It was near Chilomoni market and he had built it out of burnt bricks. He had documents of title to that plot which he had left behind after his arrest and his subsequent detention and which were destroyed by the defendant. His house was converted to its own use and benefit by the defendant.

He was in 1977 in the employ of Central Africa Transport Company and his salary was K200 per month.

The defendant caused breach of his contract of employment, again on account of his membership of the said sect.

I turn to damages for false imprisonment. The first point I have to make is that damages for this tort, indeed of any tort are or ought to be fixed at a sum which will compensate the plaintiff, so far as money can do it, for all the injury which he or she has suffered. As such the second point to be made is that general damages for false imprisonment are at large. The expression 'at large' is used to cover all cases where awards of damages may include elements for loss of reputation, injured feelings, bad or good conduct by either party or punishment, and where in consequence no precise limit can be set in extent. Lord Devlin in Rookes vs. Barnard (1964)A.C. 1129 at 1221 uses this term in this sense when he said the phrase means all cases where "the award is not limited to the pecuniary loss that can be specifically proved". That said, it is impossible to ascertain how the plaintiff's mind has been affected by the false imprisonment and it is impossible to equate the damage suffered to a sum of money. Actual compensation is impossible in the nature of things and, what a person gets is theoretical rather than actual compensation.

In this case, there is a claim for exemplary damages. I am aware that

exemplary damages are awardable when the case falls within one of the three categories mentioned by Lord Devlin in Rookes vs. Bernard (1964)a All E.R. 367 at 410.

Looking at those categories I think the plaintiff's claim for exemplary damages is clearly sustainable in law. They can be awarded under any of the second category mentioned by Lord Devlin.

The first category where they are awardable to vindicate the strength of the law are where there is "oppressive, arbitrary or unconstitutional action by the servants of the government".

In this case the false imprisonment was by the defendant the Malawi Congress Party and not by the government or its servants. Infact the action here is against the defendant as an entity on its own. Looking at this category, Lord Devlin refused to extend it further. He said, "I should not extend this category - I say this with particular reference to the facts of this case - to oppressive corporations or individuals". Lord Devlin confined the award of exemplary damages under this category to the government on the premise that the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. He refused to extend it to private persons and corporations because that would be punishing them just because they are powerful. If they are guilty of using their power oppressively he said that is a case for aggravated but not exemplary damages.

According to Lord Devlin, the second category in which exemplary damages can be awarded is where the defendant's conduct "has been calculated by him to make a profit for himself which may well exceed compensation payable to the plaintiff". This applies more often in cases of libel where a person sells another man's reputation at a profit. Of course this category is not confined to moneymaking in the strict sense. It extends to cases in which the defendant is seeking to gain at the expense of the plaintiff some object which he could not obtain at all or not obtain except at a price greater than he wants to put down. In such a case exemplary damages are awarded to teach the wrongdoer that tort does not pay.

The two categories are according to Lord Devlin, established by the common law. To them is added the third category in which exemplary damages may be awarded and this is where the statute expressly authorises.

Of course when one looks at the first category, it should not be limited to servants of government in the strict sense but should be extended to cover all those who exercise governmental functions. Awards of exemplary damages under this category is vital to safeguarding the civil liberties of the people.

In my judgment exemplary damages can be awarded under the second category in this case. The defendant, by the action of its servants and or agents gained the plaintiff's plot on which there was a house valued of K50,000.00 and household belongings valued over K11,000.00. They could not have obtained these properties at all but for their action. Exemplary must be awarded in order to teach the defendant that tort does not pay.

I first of all turn to assess compensatory damages.

Compensatory damages for the tort of false imprisonment are awarded for injury to feelings with the attendant loss of social status. Of course, awards made in this court do not such a breakdown but there is no doubt that the courts do have these two heads of damage in mind when determining the appropriate amount of damages in each case.

Again damages may be awarded for any resultant physical injury, illness or discomfort in cases where the imprisonment has had a deleterious effect on the plaintiff's health. The manner in which the false imprisonment was effected may lead to aggravation or mitigation of the damage as well as of the damages.

An examination of awards of false imprisonment made in this court shows that the duration of the false imprisonment is a crucial factor in fixing the quantum of damages. But it is not the only factor. Damages in each case are fixed at a sum which is appropriate on the facts and circumstances obtaining in it. Of course the basic guide is that such

damages must be fair and adequate compensation for the damage suffered.

Turning to the present case, the plaintiff was falsely imprisoned from 1975 and he was released in 1977 - a period of about two years. The conditions under which he was detained were very bad. Food was denied him for two weeks since the date of his arrival at Dzaleka Prison. He was kept in a small cell for a month without a bath and during the period he was there, he was routinely beaten by the prison officers. In my view, these facts aggravated the damage he suffered as a result of false imprisonment.

I think K400,000.00 is fair and adequate compensation and I award it to him.

I further award him K50,000.00 exemplary damages. In total I award the plaintiff K450,000.00 with costs.

His claim for damages for loss of employment is untenable in law and it is dismissed. There is no such a tort.

MADE IN CHAMBERS this 8th day of May, 1997, at Blantyre.



W.W. Qoto

DEPUTY REGISTRAR