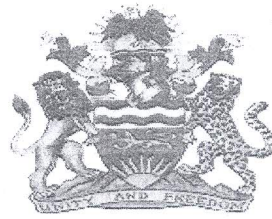


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REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 634 OF 2009

BETWEEN

FRED MANDA.....CLAIMANT

AND

THE ATTORNEY GENERAL.....DEFENDANT

Coram: WYSON CHAMDIMBA NKHATA (AR)

Mwabungulu- of Counsel for the plaintiff

Mlenga – of Counsel for the defendant

Chitsulo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

The claimant in this matter took out a writ of summons which was issued on 26th of March 2009 against the defendant claiming damages for false imprisonment, defamation and costs of this action. On the 16th of January 2019, a judgment in favour of the claimant was given by Honourable Justice Madise for damages for false imprisonment and defamation. This is the court's order on assessment of damages pursuant to the said judgment on liability. Essentially, the duty placed upon this court was to determine the reasonable quantum of damages that would adequately compensate the claimant for the losses and damages herein.

The matter came for hearing on the 7th of February 2019. The claimant was the sole witness for his case. He adopted his witness statement in which he averred that on or about the 22nd of October 2008 he was with his friends, George Mwase, John Chikokoto, and Jonathan Nachapala and were innocently chatting about Mlakho wa Alomwe function which was about to take place the following week and they were at Chibisa House in the city of Blantyre. A police Officer by the name of Malange came and accused the four of them of dealing in gemstones. The Police then arrested and handcuffed the four of them. They were paraded along Haile Selassie road in full view of a lot of people, friends and general public. They were taken to Blantyre Police Station where they were searched and then locked up, sitting on a dirty floor for over 50 minutes. They were falsely accused of illegal dealings in Gemstone but this was not true because the three of them Fred Manda, George Mwase and Jonathan Nanchapala had never dealt in Gemstones before. Their friend, John Chikokoto who had a valid licence showed them his licence and told the police that he was indeed dealing in Gemstones.

He further averred that as a result of the unlawful arrest, he endured humiliation in front of his family and friends who now perceive them as an untrustworthy person. He also endured dehumanising conditions in a police cell such as being exposed to mosquito bites being cramped in a dirty cell and inhumane sanitary conditions for more than 50 minutes. It is on this basis that he claims for false imprisonment and damages for defamation and costs of the action.

In cross-examination, he stated that he spent 50 minutes in Police Custody. He stated that he did not spend less than 30 minutes. He stated that there were four people arrested at Chibisa House as far as he can remember. He stated that he is not aware than about 40 people were arrested. He stated that it was around 12:30pm and was released at past 4. He stated that from 12:30pm to 4pm it is not 50 minutes. He stated that they walked a long a distance and were kept somewhere as they waited for the Police to arrange transport. He stated that they were released at 4pm. In re-examination, he stated that he spent 50 minutes at the Police Station and that they were arrested at 12:30pm and 50 minutes is time spent at the Police Station.

The court is moved to determine the reasonable quantum of damages that will adequately compensate the plaintiff. The measure of damages to be awarded was ably illustrated by Lord Blackburn in **Livingstone v Rawyards Coal Company (1880) 5 App 25** as follows:

‘That sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.’

General damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages on other hand, are such as the law will not infer from the nature of the course - (Refer to the case of **Stroms Brucks Aktie Bolag –v- Hutchinson (1905) A.C. 515**). In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer - (**McGregor on Damages p. 23 para. 1- 036**).

Special damages must be specifically pleaded and must also be strictly proved: Refer to the case of **Phiri v Daud [1992] 15 MLR 404**, **Mariwu v Sambani [1993] 16(2) MLR 586**, **Ngwira v The Attorney General**, civil cause no. 106 of 2005. Where documents filed by the plaintiff fail to meet this strict proof then special damages are not awarded: **Wood Industries Corporation Ltd v Malawi Railways Ltd [1991] 14 MLR 516**.

In the light of the case herein, on the plaintiff's claim for false imprisonment damages are awardable for, among others, loss of dignity, mental suffering, and discomfort suffered by a plaintiff. The period of incarceration is also a consideration under this head. See the case of **Matanda v Sales Limited 13 MLR 219**. The same sentiments were echoed in **Maonga and others v Blantyre Print and Publishing Co Ltd [1991] 14 MLR 240 (HC)**, it was held that in awarding damages for false imprisonment, courts consider the loss of liberty, mental suffering and humiliation caused by the false imprisonment.

In support of the assessment of these damages, the plaintiff filed skeletal arguments in which counsel for the plaintiff cited several comparable authorities for false imprisonment to assist the court in coming up with the appropriate quantum.

- **Vovo Gomesi vs Attorney General, civil cause No. 399 of 2013** where the plaintiff was detained for 40 days. Thereafter he was granted bail. The plaintiff was tried and acquitted. The plaintiff was awarded the sum of K6,000,000.00 for false imprisonment, malicious prosecution and mental anguish, trauma and all related feelings as well as assault and torture. The award was made on the 16th of July 2014.
- **Limbikani Kaseka v The Attorney General (Malawi Police Service) Civil Cause No. 354 of 2014** where the plaintiff was arrested at workplace in full view of his workmates and he was incarcerated for four days. The plaintiff was awarded the sum, of K4,000,000.00 on the head of false imprisonment only and the award made was made on the 27th of October 2017.

- **Bisalom Manjawira v Mota Compania Construction, SA Civil Cause No. 364 of 1995** in which the plaintiff was taken to the police station by the defendant without being told the reason for his arrest. The charge against the plaintiff was heard and dismissed. The plaintiff was falsely imprisoned for 113 days and was awarded the sum of K3,800,000.00 for false imprisonment and the award was made on the 11th of July 2014.
- **Hastings Chitsulo Gama v The Attorney General Civil cause No. 2146 of 2009** in which the plaintiff was in custody for 11 days. The plaintiff's arrest was published on media and his reputation got damaged. He lost his friendships that he had formed by virtue of his standing as intelligence Chief both in Malawi and abroad. He was awarded K2,000,000.00 damages for false imprisonment. The award was made on the 18th of January 2010.

Counsel for the claimant contends that the claimant in this case spent 50 minutes in incarceration. He submits that the claimant had to endure humiliation in front of friends and family who now perceive him as an untrustworthy person. I take note that there is a supplementary submission calling upon the court to take note that the claimant was arrested at 12:30pm and released at 4:00pm. He therefore prays that the court should consider making an award of K2,000,000.00 for the false imprisonment.

I must begin by saying, from the evidence on record, there was no justification for the arrest and detention of the claimant. That the claimant was detained for only 5 hours is no justification for violation of his right to freedom. This was in absence of any reasonable suspicion of committing a known crime or being about to commit a crime. The claimant narrated the discomfort he suffered while in police custody. I was perturbed at the casual way in which it appears the claimant and his friends were arrested. The habit of the police taking into custody citizens on flimsy grounds pending inquires is deplorable.

In this case, I daresay that the period within which the claimant was deprived of his liberty is relatively short. The cases cited herein range indicate time of being deprived of liberty from 4 days to 113 days with awards ranging from K2,000,000.00 to K6,000,000.00. The cases date back to 2010. The value of the Kwacha was stronger then than now. The periods of detention were also longer in those cases than the one of the claimant in the present case. There was also evidence of more serious assaults on the plaintiffs in some of those cases referred to, than the discomfort that the plaintiff underwent in the present case. Doing the best possible in the circumstances, the court awards K2,000,000.00 as damages for defamation to the claimant.

On damages for defamation, Counsel for the plaintiff is praying for an award of K2,000,000.00. He cited several the following authorities for the court to consider:

- **Justice Kapanda and Justice Chikopa v Malawi Broadcasting Corporation** Civil Cause no. 2837 of 2007 in which the plaintiffs were awarded the sum of K1,500,000.00 for general damages for defamation and the sum of K2,000,000.00 for exemplary damages for defamation newscasts and programmes aired.
- **Limbikani Kaseka v The Attorney General (Malawi Police Service) Civil Cause No. 354 of 2014** where the plaintiff was arrested at workplace in full view of his workmates and he was incarcerated for four days. The plaintiff was awarded the sum of K2,000,000.00 for defamation and the award made was made on the 27th of October 2017.
- **Hastings Chitsulo Gama v The Attorney General Civil cause No. 2146 of 2009** the court on the 18th of January 2010 awarded the plaintiff the sum of K1,000,000.00 for defamation.

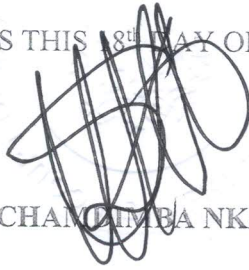
In the present case, the claimant states that he was arrested in full view of his family and friends, a thing which destroyed his reputation. He avers that he is now considered as an untrustworthy person. I find that quite lamentable. He definitely was humiliated. Honourable Justice Madise in his judgment on this matter he states:

The Police violated the law and this adversely affected the plaintiff's dignity and standing in the society. His good name was tarnished in the eyes of his family, friends and society in general.

Bearing in mind all the relevant factors of this case, including the extenuating circumstances of lack of corroboration, I conclude that an award of K2,000,000.00 would vindicate his hurt feelings and meet the justice of this case.

In summary, therefore, the claimant is awarded the sum of **K2,000,000.00** as damages for false imprisonment and **K2,000,000.00** as damages for defamation. In total the claimant is awarded the sum of **K4,000,000.00**. The claimant is further awarded the costs for the assessment proceedings to be taxed in the absence of an agreement.

MADE IN CHAMBERS THIS 18th DAY OF FEBRUARY 2019

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned over the name and title of the signatory.

WYSON CHAMUMBA NKHATA

ASSISTANT REGISTRAR