

5. *That on the 17th day of October 2018 I and the Claimant were arrested by the Malawi Defence Force in Namizimu Forest and handed over to the Malawi Police Service.*
6. *That I was charged with 2 counts namely illegal entering into a protected area contrary to section 32(1) as read with section 108 of the National Parks and Wildlife Act as well as extracting minerals in a forest reserve without a license, contrary to section 46(c) as read with 64(d) of Forest Act, 1997. A copy of the said charge sheet is hereto exhibited and marked as "BM 1."*
7. *That following the arrest I was held in prison for a period of 27 days following which I was granted bail on 13th November 2018.*
8. *That the arrests were effected on myself and the 2nd Claimant herein despite showing the Defendants all the requisite permits and documentation for our presence in the said area.*
9. *That following the arrests I was humiliated, assaulted, and harassed by the Malawi Defence Force who applied excessive force in their endeavor to subdue my innocent protest that I had all the necessary documents to be present in the said area.*
10. *That I was taken to Zomba prison by the Malawi police, the conditions at the said prison were inhumane, appalling, degrading, emotional and physically traumatizing.*
11. *That the said prison was overcrowded and I was forced to relieve myself in full view of other inmates which action brough a lot of psychological trauma and indignity. Further, sleep was a problem due to overcrowding hence I was forced to lay on one side for long periods of time as I could not turn and the same caused a lot of body pain.*
12. *That at trial I was found with no case to answer and acquitted having proved that I had all the requisite documents to carry out and be present at the said area at the material time. A copy of the ruling on the same is hereto exhibited and marked as "BM2".*
13. *That the actions of the defendants in arresting, charging, and imprisoning myself having shown them all the necessary permits for my presence at the said area are a blatant manifestation of gross negligence, abuse of power, and a breach of my constitutional rights.*
14. *That as a consequence of the defendant's acts, I have suffered loss and damage.*
15. *I therefore pray to this honorable court to grant general and exemplary damages for false imprisonment and costs of this action.*
16. *I make this statement knowing and believing its contents to be true and I acknowledge that if I make a false statement, I may commit perjury and be liable to substantial penalty.*

The 2nd Claimant's witness statement is set out herein.

1. *That the particulars appearing herein above are mine.*
2. *That I reside at area 25 in Lilongwe.*
3. *That matters stated herein are based on facts that are personally known to me and I believe the same to be true to the best of my knowledge and belief.*
4. *That at all material times I was an employee of Haman Limited and I was working as a public relations officer the company.*
5. *That on the 17th day of October 2018 I and the Claimant were arrested by the Malawi Defence Force in Namizimu Forest and handed over to the Malawi Police Service.*
6. *That I was charged with 2 counts namely illegal entering into a protected area contrary to section 32(1) as read with section 108 of the National Parks and Wildlife Act as well as extracting minerals in a forest reserve without a license, contrary to section 46(c) as read with 64(d) of Forest Act, 1997. A copy of the said charge sheet is hereto exhibited and marked as "AMS 1."*
7. *That following the arrest I was held in prison for a period of 27 days following which I was granted bail on 13th November 2018.*

8. *That the arrests were effected on myself and the 1st Claimant herein despite showing the Defendants all the requisite permits and documentation for our presence in the said area.*
9. *That following the arrests I was humiliated, assaulted, and harassed by the Malawi Defence Force who applied excessive force in their endeavor to subdue my innocent protest that I had all the necessary documents to be present in the said area.*
10. *That I was taken to Zomba prison by the Malawi police, the conditions at the said prison were inhumane, appalling, degrading, emotional and physically traumatizing.*
11. *That the said prison was overcrowded and I was forced to relieve myself in full view of other inmates which action brought a lot of psychological trauma and indignity. Further, sleep was a problem due to overcrowding hence I was forced to lay on one side for long periods of time as I could not turn and the same caused a lot of body pain.*
12. *That at trial I was found with no case to answer and acquitted having proved that I had all the requisite documents to carry out and be present at the said area at the material time. A copy of the ruling on the same is hereto exhibited and marked as "AMS2".*
13. *That the actions of the defendants in arresting, charging, and imprisoning myself having shown them all the necessary permits for my presence at the said area are a blatant manifestation of gross negligence, abuse of power, and a breach of my constitutional rights.*
14. *That as a consequence of the defendant's acts, I have suffered loss and damage.*
15. *I therefore pray to this honorable court to grant general and exemplary damages for false imprisonment and costs of this action.*
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SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions before the court. These submissions proposed the quantum of K20,000,000 for each Claimant as awards for false imprisonment, and K10,000,000.00 as exemplary damages. Counsel cited the following authorities as the basis:

- ***Chimwemwe Kalua v Attorney General*** Civil Cause Number 490 of 2012 where the Claimant was awarded K2,000,000.00 for false imprisonment after spending 7 hours in police custody.
- ***Shepherd Mumba v Director of Anti-Corruption Bureau*** Civil Cause Number 182 of 2015 [2016] where the Claimant was awarded K1,500,000.00 after spending nine and a half hours in police custody. The award was made on 25th May 2016.
- ***Jacinta Bello v Attorney General*** Personal Injury Cause Number 232 of 2016 [2019] MWHC 114 where the Claimant was awarded K4,500,000.00 after spending 4 days in police custody. The award was made on 12th August 2019.
- ***John Msusa v Orascon Continental*** Civil Cause Number 879 of 2012 where the Claimant was awarded K4,000,000.00 after spending 5 days in a police cell.
- ***Leopas Matora & 3 others v ESCOM*** Civil Cause Number 228 of 2014 where the Claimant was awarded K6,000,000.00 for false imprisonment after spending 6 days in police custody.
- ***Oscar Banda v Attorney General*** Civil Cause Number 413 of 2016 where the Claimant was awarded K10,000,000.00 after spending 6 days in police custody.
- ***Martin Chimkaya v Attorney General*** Civil Cause Number 67 of 2017 where the Claimant was awarded K20,000,000.00 after spending 47 days in police custody.

ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant's pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.¹

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.² Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in *West v Shepherd*³ by stating: '*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*'

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*⁴, the Supreme Court states: "*It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.*"

In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,⁵ the Court states: "*Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.*"

In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: '*At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.*'

COMPENSATION

False Imprisonment

Damages on a claim for false imprisonment are awarded to a Claimant for loss of dignity, mental suffering and discomfort among others, suffered by the Plaintiff. The court also considers the duration of the

¹ See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

² *British Commission v Gourley* (1956) AC 185.

³ *West v Shepherd* (1964) AC 326 at 346.

⁴ [1996] MLR 486.

⁵ Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

incarceration – *Munthali v Attorney General* [1992] 16(2) MLR 646 and *Mausa and Mausua v The Attorney General and Inspector General of Police High Court*, Civil Cause Number 373 of 2003.

As cited above courts resort to awarding conventional figures guided by awards made in similar cases and considering the money value. It is now settled law that the length of detention (time) is not the only thing that the court considers when assessing damages in matters of false imprisonment. As cited above the court considers injury to liberty – loss of time considered from a non-pecuniary viewpoint, injury to feelings – indignity, mental suffering, disgrace, and humiliation.

The Claimants herein were detained for 27 days respectively. Counsel has cited awards ranging between K2,000,000.00 and K20,000,000.00 for between 7 hours and 47 days in police custody. The closest to the present case is the *Martin Chimkaya v Attorney General Case* (cited above) where the Claimant was awarded K20,000,000.00 for 47 days in police custody. This court thinks the award is excessive and had recourse to other awards such as the *Chrispin Kaledzera et al Attorney General Case* where the Claimants were awarded K300,000 for 40 days imprisonment. In *Sammy Bakali v Ishmael Bakali v Attorney General* Civil Cause Number 725 of 2019 where the Claimants were awarded K2,000,000.00 and K1,500,000.00 for spending 111 days and 75 days in police custody respectively.

Considering the awards cited above, **this court awards the Claimants K3,500,000.00 each as damages for false imprisonment.**

Exemplary and/or Punitive Damages

Exemplary damages often called punitive damages are awarded when the defendant's wilful acts were malicious, violent, oppressive, fraudulent, wanton or grossly reckless. The purpose of these damages is to punish the defendant for outrageous conduct and/or to reform or deter the defendant and others from engaging in conduct like that which formed the basis of the lawsuit.

Exemplary/Punitive damages ought to be specifically pleaded and proved - *Andrew Mwachunda v Attorney General* Civil Cause Number 1627 of 2003.

Counsel specifically pleaded, through his summons and statement of case that exemplary damages be awarded. The Default Judgment awards exemplary damages for false imprisonment. Counsel's arguments in support are reproduced below:

The Claimants had shown the defendant all the necessary documents permitting their presence in the said area, but the defendant took no regard of the same and went on to confiscate their documents and equipment, then they arrested and falsely imprisoned the Claimants under appalling conditions. It is clear that the defendant's actions were unreasonable, oppressive, arbitrary, and unconstitutional thereby entitling the claimants herein to exemplary damages

The defendants acted so irresponsibly and in outright contravention of a myriad of constitutional rights guaranteed to the claimants.

If it was not for the defendant's unprofessionalism the claimants would not have suffered in the manner that they did.

The passage reproduced above clearly sets out the extent of the Defendant's wanton unreasonableness. As per *Rookes v Barnard*, this court finds that the Police Officer's actions were '*oppressive, arbitrary and an*

unconstitutional action by a servant of the Government. ' Punitive damages are awarded for wilful acts by a defendant that are malicious, violent, oppressive...or grossly reckless. Based on this discussion, **the Claimants are hereby awarded K5,000,000.00 for exemplary damages.**

DISPOSAL

The Claimants are hereby awarded MK3,500,000.00 each for false imprisonment, and K5,000,000.00 as exemplary damages for false imprisonment.

Costs of the action will be taxed if not agreed. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 5th day of August 2021 at High Court, Civil Division, Lilongwe Registry.

A handwritten signature in blue ink, appearing to be 'M. Mandala', written in a cursive style.

CM Mandala

ASSISTANT REGISTRAR