

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 484 OF 2003**

BETWEEN

CHARLES M. BANDA.....1ST PLAINTIFF

PIKITANI HAMITONI (deceased).....2ND PLAINTIFF

YONA R. CHIGONEKA.....3RD PLAINTIFF

-AND-

THE ATTORNEY GENERAL.....DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Mussa for the plaintiff

Defendants (absent)

Chulu Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff's claim is for damages for false imprisonment resulting from the unlawful detention of the plaintiffs, as well as costs for this action. This assessment of damages is in pursuance of the default judgment entered on the 10th of December, 2003. This assessment of damages was only be made in respect of the claims by the first and third plaintiffs, the second plaintiff having since passed away.

The brief facts of this case are that on or about the 22nd day of December 2001, the third plaintiff's house was burglarized. At that time the culprits managed to escape but all the same the third plaintiff went and reported the matter to police who begun conducting investigations. It was the third plaintiff's evidence that while the police

were making their investigations, he was also conducting his own enquiries and that it was through his enquiries that he got word through some people that they had seen one Joseph Chitekwere with the third plaintiff's stolen radio. Upon getting this information, the plaintiff went and reported the matter to police, who accompanied the plaintiff to where Joseph Chitekwere was residing. On this trip, the first and second plaintiffs, who were his colleagues and neighbours, also accompanied the third plaintiff. When they got to Chitekwere's house, the team, apparently questioned Chitekwere about the burglary, to which he allegedly admitted and was arrested.

After his arrest, it was stated in evidence that Chitekwere was severely beaten by a mob that had gathered to see what was happening, and he died in police custody from the injuries that he sustained. Following his death, the three plaintiffs were arrested on suspicion of murder and detained in custody for 83 days, before the Director of Public Prosecutions reviewed their file and found that they had nothing to do with the death and ordered their release. Indeed looking at the circumstances of the case, (as narrated by the two plaintiffs), there seems to have been no reasonable justification for arresting the plaintiffs, especially considering the assertion that the deceased was being assorted in the presence of the two police officers who had gone to arrest him. In fact I did wonder as to why, the two officers who had arrested Joseph Chitekwere were not involved in the murder investigation, since apparently, it was officers from the Central Region Police Headquarters, who went to arrest the plaintiffs. Indeed one would think that had the two officers been asked to explain what had happened, then the plaintiffs would not have been arrested. Indeed, it is my opinion, that looking at the circumstances of the case, that the asking of the two arresting officers as to what had happened, was the reasonable thing in an investigation into the death of Joseph Chitekwere. The fact that this was not done, thus lead me o conclude that the arrests were unjustified and that did amount to false imprisonment.

I should of course state that I do arrive at the conclusion that there was false imprisonment in this instance without having considered the Attorney General's side of the story. But then again they never defended the matter and never made an appearance at the assessment hearing, a thing that is now a norm on their part. Suffice to say that there have been instances where this court has dealt with

undefended cases against the Attorney General, and has proceeded to only award nominal damages, on the belief that the action would not have succeeded had it been defended. Examples of cases of this nature have been instances where the plaintiff was arrested on reasonable suspicion but was either discharged for want of prosecution or acquitted. In this instance however, it is my view that there was no reasonable suspicion, or at least there should not have been.

Having said this then, it is my view that the plaintiffs deserve to be awarded damages for false imprisonment. In this regard, I must first observe that damages for false imprisonment are indeed mainly recoverable for loss of dignity. The factors taken into account do include injury to liberty, disgrace and humiliation and loss of social status. At the same time, courts do also consider the social status of the plaintiff and whatever hardship he may have suffered whilst in custody. More importantly, the damages that are at the discretion of the court. In this instance, the plaintiffs were in custody for 83 days. Having looked at some of the decided cases, including wards that this court has made in the past for false imprisonment (like the case of ***M. Mnthala v The Attorney General*** Civil Cause Number 884 of 2005(unreported)). I do believe that an award of K1, 100, 000, for each plaintiff, will be adequate compensation. The plaintiffs are also awarded costs of the action.

Made in Chambers this.....day of.....2007

K.T. MANDA
SENIOR DEPUTY REGISTRAR