

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1119 OF 2003

BETWEEN:

JAMES B. MASONGAPLAINTIFF

AND

SANI TYRES LIMITEDDEFENDANT

CORAM : TEMBO, ASSISTANT REGISTRAR
Mambulasa, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on the assessment of damages herein. The assessment was done pursuant to a default judgment entered in favour of the plaintiff on the plaintiff's claim for damages for detinue, conversion and loss of business herein.

The notice of hearing of the assessment was duly served on the defendant who never made any appearance at the hearing of the assessment. That means the plaintiff's evidence is uncontroverted.

On 1st April, 2003 the defendant's agents Mr Campbell and others went to a garage where the plaintiff's car was undergoing minor repairs and took the keys of the plaintiff's car. The defendants' agents claimed that the tyres fitted on the plaintiff's vehicle belonged to the defendant. The defendant's agents took the keys to the plaintiff's vehicle demanding that the plaintiff pay the price of the tyres. The defendant's agent Mr Campbell, kept the keys for the plaintiff's vehicle from that day the 1st April 2003 to

11th April, 2003 when he finally returned the keys to the plaintiff. The plaintiff did not have any duplicate keys and for the time when the keys were being kept by Mr Campbell the plaintiff could not use his vehicle.

Actually on 1st April, 2003 the plaintiff's vehicle had been hired by a Mr Tambala to ferry people to a funeral at a charge of K18,000.00 but that venture was frustrated by the defendant's agents wrongful possession of the keys to the plaintiff's vehicle. The plaintiff had to pay back the K18,000.00 to Mr Tambala. The plaintiff was using his vehicle for hiring business and used to make around K5,000.00 per day. He did not though inform this court how much of the K5,000.00 went into operating expenses.

It is clear to this court that the plaintiff clearly lost out the K18,000.00 that he had charged and had been actually paid to him but which he refunded Mr Tambala consequent upon the defendant's agents acts herein. The sum of K18,000.00 is therefore awarded to the plaintiff for the particular loss of business occasioned to him on 1st April, 2003. It is also clear that the defendant is liable in damages for detinue ie the unlawful detention of the keys herein from 3rd to 11th April, 2003 as claimed by the plaintiff.

That detention of the keys caused the plaintiff to fail to engage his vehicle in the hiring business for a period of 9 days. The measure of damages should therefore be the business inconvenience to the plaintiff. These damages ought only to be for detinue as there is no evidence of conversion but only detinue. These two torts nevertheless overlap.

The tort of trespass also overlaps with that of detinue as detinue necessarily involves trespass. This court will award damages for trespass but not on the aggravated scale as there is no evidence aggravating the trespass herein.

As already stated earlier on the most convenient measure of damages for detinue herein is the level of business inconvenience occasioned to the plaintiff by Campbell's detention of the key to the plaintiff's vehicle. That is represented by the loss of use of the vehicle by the plaintiff for the 9 days between 3rd and 11th April, 2003. This court is aware that the plaintiff was making about K5,000.00 per day from hiring out his vehicle. But no indication was made as to whether that was after deduction of operating expenses or not. This court also notes that the value of the kwacha has since fluctuated since the time of the wrong herein. Further, damages for loss of use are at large and depend on the particular circumstances of the case under consideration. See **Chinema v World Vision International** Civil cause Number 1097 of 1991.

In the present case this court is of the view that the appropriate award consideration of all the circumstance above ought to be K60,000.00 for detinue. The sum of K60,000.00 is

therefore awarded to the plaintiff as damages for detinue. As for the trespass the sum of K10,000.00 is awarded to the plaintiff.

Costs of this action are also awarded to the plaintiff who has wholly succeeded herein.

Made in Chambers at Blantyre thisday of April, 2004.

M. A. Tembo

ASSISTANT REGISTRAR OF HIGH COURT