

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 370 OF 2006**

BETWEEN

McFAISON CHIWANDA.....PLAINTIFF

-AND-

THE ATTORNEY GENERAL.....DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Kumange, J, (Rtd) for the plaintiff

Defendants (absent)

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff's claim is for damages for false imprisonment and malicious prosecution, the claim for defamation having been withdrawn at the hearing of the assessment. The plaintiff also claims costs for this action. This assessment of damages is in pursuance to the default judgment of 21st of April 2006.

The brief facts of this case are that the plaintiff being an executive member of the TEBA Workers Association was arrested by the police on suspicion of obtaining money by false pretences. The arrest was made on the 2nd of July 2005 by a Mr. Zinyongo, a CID officer stationed at Lunzu Police Station. The matter not having gone for trial, and the assessment of damages not having been contested, it was not made apparent as to what led Mr. Zinyongo to believe that the plaintiff had committed the aforesaid offence. Indeed there was no indication to the effect that a complaint had been made to the police against the plaintiff to justify the arrest and subsequent charge. Indeed for all intents and purposes, this seems to be a case where the arrest was made without the officer conducting any kind of investigation, as was demonstrated by the fact that the accused was later acquitted by the court under Section 249 of the Criminal Procedure and Evidence Code, on account that the state could not offer any evidence against him. Indeed according to the testimony of Mr. Chiwawula (PW2 during the assessment hearing), as members of the TEBA association, they were the ones who would have been in a position to make the complaint against the plaintiff that he was obtaining money by false pretences from them, but that none of the members made such a complaint. Indeed then there is a clear suggestion that there was false imprisonment of the plaintiff as there was no apparent justification or reasonable suspicion or cause

warranting his arrest. There being no doubt that the plaintiff's liberty had been taken away when he was placed in custody for six days.

Turning to the claim for malicious prosecution, it is the view of this court that for the plaintiff to succeed on such a claim, he or she must prove each of the four elements: (1) that the original case was terminated in favor of the plaintiff, (2) that the defendant played an active role in the original case, (3) that the defendant did not have probable cause or reasonable grounds to support the original case, and (4) that the defendant initiated or continued the initial case with an improper purpose. Looking at the facts in the present instance, it is my view that, while there could be suggestions of the existence of the first three elements, it can not be states as a matter of fact that the plaintiff's arrest and subsequent charging and prosecution, were done with an improper purpose in mind. Of course at this stage of the case, these are but moot questions for this court considering that there is a judgment on this claim in favour of the plaintiff, albeit not on the merits. Indeed at this point all is required of this court is to assess damages for false imprisonment and malicious prosecution, which I now proceed to do.

Firstly, damages for false imprisonment are indeed mainly recoverable for loss of dignity, with the principle heads of damages being injury to liberty, injury to feelings and any attendant loss of social status. Courts do also take into account whatever hardship the plaintiff may have suffered whilst in custody. More importantly, the damages that are awarded are at the discretion of the court.

In this instance the plaintiff was in custody for 6 days due to what seems to be an overzealous and careless act of a police officer. This is in the sense that he apparently made this arrest without conducting any investigations whatsoever, but more importantly without any complaint being lodged with the police. Further, at the time of the arrest, the plaintiff does not seem to have been committing an obvious crime, as he was attending a meeting, which had been sanctioned by among by the police. Thus for all intents and purposes, the plaintiff's arrest was not justified. I thus award the plaintiff the sum of K200 000 as damages for false imprisonment.

In terms of damages for malicious prosecution, it is observed that the same are not different from the damages awarded for false imprisonment, with the only difference being that a claim for malicious prosecution, would entitle the plaintiff to claim, among others, the costs of defending himself in the criminal proceedings.¹ In the present proceedings it was the plaintiff's evidence that he has so far spent about K9 500, both in these proceedings and in defending himself against the criminal charges. However, he did not provide the courts

¹ This is per McGregor, H, (1997) *McGregor on Damages*, Sixteenth Edition, Sweet & Maxwell, pp1207

with any evidence to justify these claims and as such for all intents and purposes, such expenses were not proved before this court. The court will thus only award the plaintiff nominal damages of K1000 for the expenses incurred by the plaintiff in defending himself against the criminal charges. The costs for prosecuting this claim are excluded because they form part of the award for the costs in this matter.

Thus the plaintiff having already been compensated for his loss of dignity, the total award that is made to the plaintiff in this case is for the sum of K201 000 and costs of this action.

Made in Chambers this.....day of.....2008

K.T. MANDA
SENIOR DEPUTY REGISTRAR