



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE No.885 OF 2005

BETWEEN

HERO MWANDIRA PLAINTIFF

-AND-

THE ATTORNEY GENERAL..... DEFENDANT

CORAM : T.R. Ligowe : Assistant Registrar

Mapila : Counsel for the Plaintiff

Chiwala Chipeta : Counsel for the Defendant

Munyenjembe : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff in this case obtained a default judgment against the defendant for the defendant to pay him damages for false imprisonment, malicious prosecution and defamation plus costs of the action. This is the assessment of the damages.

Counsel for the defendant came so late just immediately after the plaintiff had testified, and then he asked for an adjournment because, Mr Liabunya, the lawyer seized of the matter at the Attorney General's Chambers was out of the country. The assessment was heard on 2nd May 2007 and he had left on 22nd April 2007 to come back in about three weeks. Counsel Chipeta had just known about the case a day before the

hearing and had not seen the case file at his office as he could not access Mr. Liabunya's office because he did not leave the keys.

In response to the prayer for adjournment counsel Mapila said that he would not object if the defendant meant to parade witnesses in seeking for the adjournment.

Having noted that there had been several adjournments of the matter before and that the defendant had done nothing to defend the claim I formed the view that the adjournment would just delay the matter and deny justice to the plaintiff. So I did not grant the adjournment but allowed hearing to proceed.

Mr. Hero Mwandira, the plaintiff had testified. He told court he lives at Area 25 and he has a grocery shop there. That one afternoon in 2003 a boy came to his shop claiming to be an assistant truck driver. The boy asked him if he would want sugar at K600 per bale. He agreed and in the night at around 9 pm the sugar and Kukoma cooking oil were brought. In the morning Mr. Mwandira went to report to Kanengo police station about what had happened. There he was told the things had been stolen from WFP warehouse at Kanengo. He agreed with the police that he would detain the truck driver the following day when he comes to collect his money. But the following morning he was called to the police station where he met two officers one from the Regional Police Headquarters and the other from Kanengo. They arrested him. The following morning he was transferred to Kawale and then to Lilongwe police station. He could not remember the actual date he was arrested but he remembers he was at Kanengo police station for one night and one night at Kawale police station. He was at Lilongwe police station from a Friday to Monday. On that Monday he was taken to court charged with breaking into the

warehouse and stealing therefrom. He was remanded at Maula prison for about 14 days. The police were not coming for trial and he was later acquitted. He further told court that he had bought tobacco for sale at Mdzaleka which he lost while in detention. And that he was a treasurer for AFORD but he was dismissed on the allegations of this case. But then these are issues to do with special damages which need to be specifically pleaded and which have not been so pleaded in this case. I will not consider them.

I have to assess the damages based on this evidence. I however find that it does not in any way support the claim for defamation and so I will not grant any award for defamation. I now remain with the damages for false imprisonment and malicious prosecution.

The tort of false imprisonment is said to exist once the facts show an infliction of bodily restraint which is not authorized by law and without justification. (*Mphoka v. The Attorney General*, civil cause No. 258 of 1997(High Court) (Lilongwe Registry) (unreported)). Section 42(2)(b) of the Constitution of the Republic of Malawi allows for 48 hours within which a person arrested for or accused of the alleged commission of an offence can be detained before being brought before a court of law, failing which he/she has to be released. It would appear in this case, the plaintiff was further detained for three days after 48 hours before being brought to court. And then the court remanded him at Maula prison. If anything therefore the defendant would be liable for false imprisonment for the said three days. I will assess the damages together with those for malicious prosecution for a reason that will be clear as I discuss damages for malicious prosecution.

An action for malicious prosecution is only maintainable on proof of certain types of damage. Lord Holt in **Saville v. Roberts** (1698) 1 Ld Raym 374; 5 Mod 394 held there are three sorts of damage any of which would be sufficient ground to support an action for malicious prosecution. He listed them as:

- (a) The damage to a man's fame, such as where the matter he is accused of is scandalous;
- (b) Where a man is put in danger to lose his life or limb or liberty; and
- (c) Damage to a man's property, as where he is forced to spend his money in necessary charges to acquit himself of the crime which he is accused.

Most criminal prosecutions are actionable as satisfying all the three conditions. The present case is one.

Mc Gregor on Damages, 15th Edition, paragraphs 1629 and 1630 state:

“The principal head of damages here is to the fair fame of the plaintiff, the injury to his reputation. In addition it would seem he would recover for the injury to his feelings i.e. for the indignity, humiliation and disgrace caused him by the fact of the charge being preferred against him. No breakdown however appears in the cases.

Holt's second head was the damage by being put in danger of losing one's life, limb or liberty. It therefore seems that the plaintiff can recover in respect of the risk of conviction. This is basically injury to feelings. If there has been arrest and imprisonment up to the hearing of the cause, damages in respect thereof should also be included, and will be the same as would be recoverable in an action for false imprisonment.”

Damages for false imprisonment are generally awarded for the impecuniary loss of dignity. The principal heads of damage appear to be the injury to liberty i.e. the loss of time considered primarily from a non

pecuniary viewpoint, and the injury to feelings i.e. the indignity, mental suffering, disgrace, and humiliation with any attendant loss of social status. In addition there may be recovery of any resultant physical injury or discomfort, as where the imprisonment has a deleterious effect on the plaintiff's health. (See **McGregor on Damages** 16th Edition para. 1850-51).

Damages for false imprisonment need not be made exclusively on consideration of the time factor. See **Fernando Mateyu v. Atupele Haulage Ltd** Civil Cause NO. 906 of 1993 (unreported). In **Donald Ngulube v. Attorney General** civil cause No 1569 of 1993 Mwaungulu Registrar as he then was had this to say;

“In relation to time I would say that longer imprisonment, in the absence of alternative circumstances, should attract heavier awards, shorter imprisonment in the absence of aggravating circumstances should attract lighter awards. What should be avoided at all costs is to come up with awards that reflect hourly, daily and monthly rates. Such an approach could result in absurdity with longer imprisonments and shorter imprisonments where there are assimilating or aggravating circumstances. The approach is to come up with different awards depending on whether the imprisonment is brief, short or very long etc and subjecting this to other circumstances.”

The plaintiff in this case was in custody for 19 days. I consider this a long period of imprisonment. In the circumstances I award the plaintiff K250 000 as damages for malicious prosecution and false imprisonment plus costs of the action.

Made in chambers this 10th day of July 2007.

T.R. Ligowe
ASSISTANT REGISTRAR