

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 154 OF 1988

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HIGH COURT  
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BETWEEN:

BILLY JUMA.....PLAINTIFF

- and -

ATAFF GANI.....DEFENDANT

CORAM:

MKANDAWIRE, J.  
Mhone, of Counsel, for the Plaintiff  
Maulidi, of Counsel, for the Defendant  
Gausi (Mrs), Court Reporter  
Manondo (Mrs), Court Clerk

J U D G E M E N T

The plaintiff in this case is claiming damages for wrongful imprisonment. The defendant denies liability.

The plaintiff is an employee of Chancellor College, whilst the defendant is a businessman in the Municipality of Zomba. The facts of the case, which are not seriously in dispute, appear to be these. On 19th December 1987, which was a Sunday, the plaintiff was going to his place of work. On the way he met one Elton Chauluka. The latter was also going to Chancellor College to make a phone call so as to pass on a funeral message to some relatives. According to the evidence, the two had not known each other before. When they came to a certain residential area, they saw a white pick-up. The plaintiff's and Chauluka's story is that Chauluka did not run away when they saw the pick-up, but just walked ahead. The defendant's version is that Chauluka ran away. On this point, I prefer the defendant's story that Chauluka ran away. When Chauluka ran away, the defendant told the plaintiff that he, Chauluka, had stolen his main switch and that was why he was running away. The plaintiff was surprised to hear that, but it is not clear why the defendant had offered that explanation. The plaintiff then walked on and found Chauluka. On his part, the defendant went to his house and got his men with the express intention of arresting Chauluka for alleged theft of the main switch. Armed with his men, the defendant got on the pick-up and followed Chauluka who was with the plaintiff. He found them and then blocked their way. The defendant told Chauluka that he was taking him to the Police Station for the alleged theft of a main switch. Chauluka

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then pleaded that he should first be allowed to go and relay the funeral message at Chancellor College before being taken to the Police. The defendant went on to say that the plaintiff said Chauluka was going to ring from his office and if he ran away he, the plaintiff, would be responsible. The defendant then felt sympathetic and allowed Chauluka to go and phone. The plaintiff's version on the point is that Chauluka made the pleading on his own. He did not say Chauluka was going to ring from his office and he made no undertaking that he would ensure that Chauluka did not run away. On this point, I prefer the evidence of the plaintiff that he did not plead with the defendant to allow Chauluka to go and phone. Further, I find that he did not make any undertaking that Chauluka would not run away. Surely, if the arrangement was that Chauluka was going to phone from the plaintiff's office, then the two should have left together to go to the plaintiff's office to make the phone call. But it as it were, Chauluka left alone to go and phone, leaving the plaintiff behind.

They all jumped into the pick-up and went to Chancellor College. They parked next to Malawi Book Service shop. I think that what happened thereafter is important. According to the plaintiff, he disembarked and started to walk towards his office. The defendant and his men also disembarked and followed Chauluka to where he was going to make the phone call. But before he reached his office, the plaintiff was surprised that the defendant and his men grabbed him, lifted him and dumped him into the pick-up. He resisted, but he was overpowered. He was taken to Zomba Police Station. The defendant's explanation was that he was arresting him because his friend Chauluka had ran way. At the Police Station the defendant told the Police to keep the plaintiff in custody until Chauluka was arrested. The plaintiff went on to say that the defendant was ordering the Police as if that was his own office. The Police did not interrogate him, but just put him in custody. He was locked up at around 1.00 pm and released the following day at 9.30 am.

According to the defendant, this is what happened after parking at Malawi Book Service shop. As soon as the vehicle stopped, Chauluka jumped off. The plaintiff remained at the vehicle and the defendant asked him why his friend had jumped off. The defendant insisted that Chauluka was running away, but the plaintiff said he was only going to his (the plaintiff's) office to phone. Thereafter, the defendant, the plaintiff and the defendant's cook followed Chauluka, but then they saw him running away. At that point the plaintiff also started to run away, but the defendant instructed his men to get hold of him. The plaintiff resisted, but they grabbed him and put him in the vehicle and took him to Police. The defendant told the Police that he had arrested the plaintiff because he had allowed his friend to run away.

Having outlined the plaintiff's and the defendant's evidence up to the point of arrest, I think it would be proper if I deal with the evidence of the Police Officer, PW3, separately.

Detective Constable Ndingo, PW3, testified that he reported for duties at 7.30 am on 20th December 1987. He was taking over from a colleague and there was handover. Detective Constable Ndingo was taking over normal duties including records and persons in cell. Part of the hand-over exercise was a briefing on the arrest of the plaintiff. His colleague explained that the plaintiff was arrested because his friend had ran away and that he should remain in custody until that friend was apprehended. No doubt, this part of PW3's evidence was hearsay and I attach no weight to it. However, as a result of what his colleague had told him, PW3 checked in the records and found that no complaint had been filed against the plaintiff. All that was written in the register was that he was brought in by Gani, but no complaint. PW3 found this strange so he went and explained the matter to his boss, who ordered that the plaintiff be released immediately. So the plaintiff was released and that was about 9.30 am.

PW3 went on to say that after some months, the defendant approached and told him that the plaintiff had sued him for unlawful arrest. The defendant offered to pay K3,000.00 if PW3 assisted him in the matter. The witness's reply was that since there was no file and no complaint on the plaintiff, nothing could be done. Then the witness was posted away. PW3 concluded his evidence by saying that he was approached by the defendant, who wanted to have a chat with him before giving his evidence, but such meeting did not take place.

In cross-examination, the witness maintained that no formal complaint was made against the plaintiff. He said that although the plaintiff's name was in the register, there was no complaint and that the defendant had not made any statement. PW3 then invited both the defendant and Chauluka, but the defendant did not report at the Police Station. The defendant only made a complaint against Chauluka after the plaintiff had instituted these proceedings.

Mr Maulidi submitted that since Chauluka was a felon, and the plaintiff had facilitated the escape of a felon, the defendant was justified in arresting the plaintiff. According to Mr Maulidi, the plaintiff was guilty of the offence of being an accessory after the fact. It was also Mr Maulidi's submission that under section 33 of the Criminal Procedure and Evidence Code the defendant was entitled to arrest the plaintiff as he reasonably suspected that the plaintiff had committed a felony, to wit, accessory

after the fact of theft. The initial arrest having been justifiable, whatever happened at the Police Station was the responsibility of the Police.

On the other hand, Mr Mhone submitted that there were no reasonable grounds to suspect that the plaintiff had rendered assistance to Chauluka so as to make the arrest lawful under section 33 of the Criminal Procedure and Evidence Code. It was further submitted that as a matter of fact the plaintiff did not in any way facilitate the escape of Chauluka. The defendant saw Chauluka running away, but he made no attempt to pursue him. Instead, he arrested the plaintiff who was entirely innocent. It was submitted that it was the defendant who directed the Police to keep the plaintiff until Chauluka was found.

It is not in dispute that the defendant arrested the plaintiff. I find such arrest to have commenced at Chancellor College and not at the point where the plaintiff jumped into the pick-up, as there is evidence to show that he voluntarily went into the vehicle. The question is, was such arrest and subsequent detention at the Police Station lawful? Mr Maulidi sought to show that the defendant was justified in so arresting the plaintiff, because the latter had committed an arrestable offence, to wit, being an accessory to, the fact of theft. The defendant's case is that the plaintiff facilitated Chauluka's escape, in that when the defendant had found Chauluka and the plaintiff on the way and the defendant wanted to take Chauluka to Police, the plaintiff pleaded with the defendant that Chauluka be allowed to proceed to Chancellor College to relay a funeral message on the phone. It is said the plaintiff told the defendant that Chauluka would phone from his (the plaintiff's) office. I wish to observe that if what the defendant told the Court is true, that Chauluka was going to phone from the plaintiff's office, then one would have expected that when the vehicle reached Chancellor College Chauluka and the plaintiff would go together, especially that that was a Sunday when offices are normally locked. As it happened, they did not go together. What happened, and this is not in dispute, is that Chauluka went alone to make the phone call and the plaintiff remained behind. On the evidence before this Court, I find it as a fact that the plaintiff did not say that Chauluka would phone from his office. I also find that the plaintiff did not undertake to be responsible if Chauluka escaped. There was no need for the plaintiff to make such an undertaking, since Chauluka was already with the defendant. If the defendant wanted to ensure that Chauluka did not escape, he or one of his men would have accompanied him to the phone. Chauluka was left alone and now the defendant says the plaintiff assisted him. I find this to be ridiculous. When the defendant and his team saw Chauluka running away, they arrested the plaintiff instead of chasing Chauluka. One of the defendant's men,

Taubu, DW2, said that when Chauluka was running away, the plaintiff also started to run away and took off his shoes. I find this to be highly inconceivable. If it is true that the plaintiff was running away, where did he find the time to take off his shoes? I find that the plaintiff was not running away. He was only walking to his office when the defendant and his men grabbed him and threw him into the pick-up.

As I have already said, there was no justification for the arrest. When the defendant saw the plaintiff and Chauluka walking together, he thought they were friends. But even if they were friends, would that, without more, be sufficient reason for arresting the plaintiff? Of course not. It appears to me that the defendant arrested the plaintiff as a "hostage" to secure the surrender of Chauluka. The evidence of Detective Constable Ndingo was that when he was taking over from his colleague, part of the hand-over briefing was that the plaintiff was arrested because his colleague had ran away and that he should be kept in custody until that colleague was arrested. Detective Constable Ndingo then checked in the records and found that no formal complaint had been filed against the plaintiff. He then reported to his boss, who ordered immediate release. The defendant had not made any statement at the Police and when Detective Constable Ndingo invited the defendant to the Police Station, he did not go. When the defendant realised that the matter was getting sour, he attempted to bribe the Police Officer. Mr Maulidi submitted that the evidence of Detective Constable Ndingo was hearsay and should be disregarded. I agree that certain aspects of his evidence was hearsay, but the hand-over briefing and his findings in the records cannot be hearsay. The hand-over briefing that the plaintiff be kept until Chauluka was arrested ties up with what the plaintiff told the Court, that the defendant directed the Police to lock him up as if the Police Station was his own office. I observed the defendant and I got the impression that he is capable of doing just that. I, therefore, find that the plaintiff was detained in custody on the directions of the defendant.

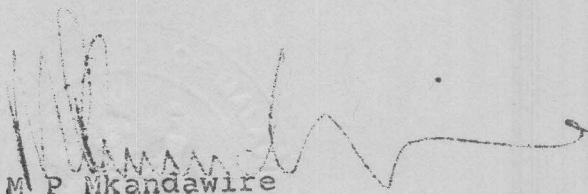
I now come to the question of damages. The plaintiff had been deprived of his liberty for 20 hours and 30 minutes. It has been said time and again that a person's liberty is a very precious thing and it should not be interfered with without any justification whatsoever. In the case of *Waters -v- W H Smith & Son Ltd (1914) 1 KB 595*, Sir Rufis Isaacs, CJ, observed as follows at page 602:

"Interference with the liberty of the subject, and especially interference by a private person has ever been most jealously guarded by the common law of the land."

In the case of Sindi -v- V D Ross & Co, Civil Cause No. 128 of 1982, the plaintiff was falsely imprisoned for 45 minutes and he was awarded K700.00. In Wasili -v- Clan Transport Ltd, Civil Cause No. 506 of 1981, the plaintiff was awarded K1,000.00 for a period of 3 hours. While in the case of Stambuli -v- ADMARC, Civil Cause No. 550 of 1991, an award of K4,000.0 was made for a period of 3 days. Perhaps I should also mention the case of S J Mwakalinga -v- Tratsel Supplies Ltd, Civil Cause No. 403 of 1984, in which the plaintiff was falsely imprisoned for 22 days and he was awarded K10,000.00. Indeed, there is no such thing as arithmetical progression in the award of damages. Each case must be considered on its own facts while decided cases can only be used as a guideline.

In the case before me the defendant's conduct was outrageous in the extreme. The defendant and his team went out on what I may call a man-hunt to arrest Chauluka. They found Chauluka all right and the defendant sympathised with him and allowed him to go and relay a funeral message on the phone. They saw Chauluka running away, but instead of chasing him they arrested the plaintiff. The defendant knew where Chauluka was staying and if he was a man who respected the law, all he would have done was to go and report to the Police. Instead, he took the plaintiff "hostage" simply because he was in the company of Chauluka. He then directed the Police to keep the plaintiff until Chauluka was arrested. This, in my view, was total and wanton disregard of human liberty and dignity. Then comes the mode of arrest. The defendant's men grabbed the plaintiff, carried and dumped him into the vehicle as if they were dealing with a bag of maize. Putting all these facts together, I think that this is a case in which aggravated damages are called for. The case of *Rookes -v- Bernard* (1964) AC 1129 considered at length the circumstances in which aggravated damages may be awarded. Put simply, aggravated damages may be imposed in a case where the conduct of the defendant aggravates the injury done to the plaintiff. I am satisfied that the manner in which the defendant committed the wrong was such as to injure the plaintiff's proper feelings of dignity and pride. Indeed, the plaintiff was subjected to mental injury, disgrace and gross humiliation. The manner of arrest, no doubt, aggravated the plaintiff's injury and suffering. In the circumstances, I think that K10,000.00 would be adequate compensation and I so order. The defendant is condemned in costs.

PRONOUNCED in open Court this 10th day of November 1992, at Blantyre.

  
M P Mkwandawire  
JUDGE