

IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO 245 OF 1993

BETWEEN

E. M. CHADEWA ..... PLAINTIFF

- and -

THE ATTORNEY GENERAL ..... DEFENDANT

CORAM:           E.B. Twa, Registrar  
                  Kumange for the Plaintiff  
                  Chimasula for the Defendant

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ORDER

The plaintiff in this case brought an action for damages for false imprisonment, and loss of business profits as special damages at K10,200. The defendant did not file any defence. The plaintiff therefore obtained judgment on 11th October 1993 for K10,200 special damages and for damages to be assessed for the false imprisonment.

The facts which are not disputed are as follows. It was alleged by the plaintiff that he runs a fleet of mini buses and truck. On 31st January 1993 AFORD members: a political party, hired him to take their members to a party campaign meeting in Kasungu. It was his evidence that when they arrived in Kasungu, they were told that the meeting had been cancelled. They then drove back to Lilongwe, stopped at several points within the City so that AFORD party members could disembark.

It was his evidence that when he drove to Kawale he was stopped by two policemen: one of whom was armed with a gun and tear gas cannisters. The police told him not to take the main road, he was told to reverse his truck and take an alternative route to Kawale II. It was his evidence that the Police told him that there was an MCP meeting near the main road. MCP was a rival political party then. The plaintiff duly obliged then went to his home parked and relaxed with his family.

It was his evidence that later in the evening Police forced their way into his house. They assaulted him and arrested him. He was taken into custody at Kawale Police where he was further assaulted and then at Lilongwe Police where he was in custody for 3-4 days. He was denied food all this time. Finally he was taken to Maula Prison.

It was his evidence that at Maula Prison he was put together with hard core prisoners who would sodomise him at night. He told this court that two to three men would do that to him each night. Consequently he developed scratches in the anus and this has necessitated surgical attention. It was further his evidence that the food was bad and undercooked but he had no choice since he was refused the right to receive food from his family.

This in the essence was the evidence on false imprisonment. The other evidence was pertaining to medical treatment which was conceded was out of the pleadings.

The defence elected not to call any witnesses. In submission both parties cited several cases, but at the end of the day they agreed on one thing: that damages for false imprisonment are at large and discretionary.

There was argument about the court awarding exemplary damages in the course of the submission. The defendant was of the view that this should not be the case as the plaintiff did not specifically plead the exemplary damages. I would agree with the defendant. This is the position taken by courts as was decided by Mwaungulu, Registrar of High Court in Charles Mkandawire vs The Attorney General Civil Cause No. 1364 of 1993. Be this as it may, it was not disputed that the prison authority were aware that the plaintiff was being sexually assaulted in the cell.


Their response to his complaint was that that was prison life. It is also not disputed that he was discriminated on receipt of food stuff and visit by his family. Although damages are at large, I think I am entitled to take this into account as aggravating the injury done to the plaintiff by falsely imprisoning him. The plaintiff will live all his life with the trauma not only of the sodomy he suffered but also the injuries he sustained therefrom.



3.

I have taken into account the view espoused by the Registrar then in the cases of James Maliketi VS The Attorney General Civil Cause No. 1455 of 1993, on the award of damages, and in my view notwithstanding that the plaintiff was in custody for 17 days in the present circumstances, I think K35,000 would at least compensate him for the injury suffered. I thus award the plaintiff K35,000 damages for false imprisonment.

PRONOUNCED in Chambers on 9th day of August, 1994  
at Lilongwe.



E. B. Twea  
REGISTRAR