IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 714 OF 1993

BETWEEN:

L W MASIKU.....PLAINTIFF

- and -

ADMARC.....1ST DEFENDANT

- and -

THE ATTORNEY GENERAL.....2ND DEFENDANT

CORAM: **VILLIERA, J.**
Mhango, for the Plaintiff
Harawa, for the 1st Defendant
Maluwa, for the 2nd Defendant
Kalimbuka Gama/Selemani, Court Clerks
Jere/Fukundo, Recorders

JUDGMENT

The plaintiff seeks a number of declaratory orders entitling him to various claims on the defendants. He prays for an order first, condemning the 2nd defendant for inducing a breach of contract between himself and the 1st defendant. Secondly, the plaintiff prays for an order for the payment of pension benefits by the 1st defendant and/or the 2nd defendant. Thirdly, the plaintiff prays for an order for the payment of a sum of K47,294.11 which he claims was paid to the 1st defendant under duress as money had and received for no consideration. Fourthly, for an order that the sum of K6,3388.19 being demanded by the 2nd defendant be waived and finally, the plaintiff claims exemplary and aggravated damages for false imprisonment.

The defendants for their part deny any wrong-doing. This is the essence of their defence, but they contend in the alternative that if the plaintiff has any claims against them, then the same are statute barred in terms of section 4 of the Limitation Act.

The plaintiff was employed by the 1st defendant in some undefined, but somewhat middle-rank capacity on the 1st September 1963 and was posted to their Regional Office in Lilongwe. There is no evidence as to what his main duties were, but it must be assumed that his career progressed satisfactorily, because in April 1971 he was appointed Executive Chairman of the 1st defendant. Again, nothing much is known about the plaintiff from the time he was elevated to the chairmanship up to the time he was detained in May 1977 on an allegation that he had misappropriated the 1st defendant's funds. He remained in custody, except for a brief period, when he was granted bail. In February 1978, he was convicted by the Regional Traditional Court at Soche of the offence of abuse of office and was sentenced to eighteen months imprisonment with hard labour. The plaintiff's sentence expired in April 1978. He had expected to be released from prison, but to his surprise and consternation, he was kept in custody, and apart from brief periods of apparent freedom, the plaintiff was kept in prison up to January 1991, when he was finally released. This is a brief account of the plaintiff's story. There is more to it and I shall examine in detail the various incidents when I come to deal with the specific claims.

Issue has been joined as to whether the plaintiff's claims are statute barred in terms of the Limitation Act. The plaintiff's claims are founded in both contract and tort and it is accepted by all parties that such claims cannot be brought after the expiry of six years from the time the actions arose. It is important, in my view, to dispose of this issue before considering the merits of the claims. It seems to me that any finding on the merits will be academic if in the end I hold that the claims or some of them are indeed statute barred.

The defendants, who have carefully analysed the various claims, contend that the causes of action in all of them arose more than six years ago and that in

terms of section 4 of the Limitation Act, these actions are statute barred. In his re-amended reply, the plaintiff contends, and I quote from paragraph 4 as follows:

> "4. In the alternative, the plaintiff further pleads that the right of action, if barred which is denied, was concealed by the frauds or threats of the second defendant acting for and on behalf of the first defendant and the plaintiff could not with reasonable diligence have discovered the said fraud or the true facts giving rise to his right of action herein until the 24th May 1993."

The plaintiff has given particulars of the alleged fraud or threats in the following terms:

> "On or about the 30th April 1979 and 31st July 1983 the Inspector General of Police represented that the plaintiff would be rearrested and kept in custody indefinitely, if he were to approach or make any demands on the first and second defendants; thereby induced the plaintiff to refrain from suing for his terminal benefits or for false imprisonment within the statutory period. At the time of the representations, the Inspector General well knew or ought to have known that the said statements were fraudulent and untrue or that the said representations had no basis in law."

In paragraphs 5 and 6 of the re-amended reply, the plaintiff pleads, and I quote:

> "5. In the further alternative the plaintiff avers that at the material time he was under undue influence.
>
> Particulars
>
> Living under circumstances where he could not access to independent advice and was under the mental weakness and or at the mercy of both defendants through unconscientious use of power.
>
> 6. In the premises by virtue of section 25 of the Limitation Act, the plaintiff's right to recover is not barred."

The plaintiff, therefore, contends that even if the causes of action were statute barred, he would nevertheless be in a position to prosecute his claims by virtue of the provisions of section 25 of the Limitation Act, in view of what the defendants or their agents did. The particulars of what the defendants did have been given. It is necessary now to find out what section 25 provides. The section is in Part III of the Act which deals with the extension of limitation periods in cases of disability, acknowledgement, part payment, fraud and mistake. The section specifically deals with fraud and mistake, and is in the following terms:

> "Where in the case of any action for which a period of limitation is prescribed by this Act, either -
>
> (a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agents; or
>
> (b) the right of action is concealed by the fraud of any such person as is mentioned in paragraph (a); or
>
> (c) the action is for relief from the consequences of mistake,
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake as the case may be or could with reasonable diligence have discovered it."

There is a proviso to the section which is not relevant for our purposes in this case. The section provides for the extension of the limitation period in cases of fraud or mistake. In one alternative, the plaintiff pleads that his right of action was concealed by fraud and threats and that he could not with reasonable diligence have discovered the fraud until sometime in May 1993. What was the concealed fraud? The plaintiff avers that the Inspector General of Police represented that he (the plaintiff) would be re-arrested and kept in custody indefinitely if he were to approach or make any demands on the defendants about his terminal benefits. It is further averred that the plaintiff, because of this fraud, refrained from suing within the

statutory period. The 1st defendant has taken issue with the plaintiff's plea and contends that there is no fraud on the face of the plaintiff's pleadings or in the evidence to satisfy section 25 of the Limitation Act. It is submitted that the word 'fraud' in section 25 of the Act is used not in any general sense of dishonesty, but meaning an intentional misrepresentation (or in some cases concealment) of fact made by one party with the intention of inducing another party to act on it to his detriment - **Stafford Winfield Cook and Partners Limited -s- Winfield (1980) 3 All ER**, at page 766. In the earlier case of **Petre -v- Petre (1851) 1 Drew**, at pages 397 and 398, **Kindersley, VC** said in relation to wrongful possession:

> "Firstly, what is concealed fraud? It does not mean the case of a party entering wrongfully into possession; it means a case of designed fraud by which a party knowing to whom the right belongs, conceals the circumstances giving the right, and by means of such concealment enables him to enter and hold."

In the instant case, the 1st defendant submits that even if the Inspector General made the representations attributed to him, there is no discernible fraud. The threat of re-arrest and indefinite detention cannot amount to fraud. The threat was real and probably worked to dissuade the plaintiff from suing in time, but it was not fraudulent. The plaintiff was aware of his rights all along and if he failed to sue, it cannot be because of any fraud, concealed or otherwise.

There is then the further alternative plea in the re-amended reply in which the plaintiff claims that at the material time he was under undue influence. He pleads that he was living under circumstances where he could not access to independent advice and was under the mental weakness and or at the mercy of both defendants through unconscientious use or abuse of power. The problem with this further alternative plea is that it cannot be fitted into section 25 of the Limitation Act from which the plaintiff claims his cause of action still subsisted. Undue influence is not recognised as one of the reasons for extending the period of limitation, either under section 25 or under the entire Part III of the Act. The plea of undue

influence sounds more of a disability than anything else. The plaintiff's claim is that he was so overwhelmed with threats that, having regard to the power of the defendants or their abuse of it, he could not contemplate enforcing his rights at law. That is not the same as not knowing his rights. The plaintiff was fully aware of his right to claim his pension benefits or to sue in connection with his other claims. He did not do so because he feared further unpleasant consequences. That is not covered by section 25 of the Limitation Act. Nor is it covered under the disability section of the Act, since the disability mentioned in section 31 refers to infants or those of unsound mind.

As I have stated earlier, the plaintiff was arrested in May 1977 on an allegation that he had misappropriated the 1st defendant's funds. He was acquitted of the offence of theft, but was convicted on another offence of abuse of office. The trial took place at the Regional Traditional Court at Soche where the plaintiff was not permitted legal representation. It is claimed that this was quite in order at the time, but the plaintiff was undoubtedly prejudiced and could not be said to have had a fair trial. As he did not have proper legal advice, his efforts at appealing against his conviction were frustrated. The plaintiff was at a disadvantage from the outset. He continued to be dogged by further disadvantages as I shall explain presently. The plaintiff's term of imprisonment expired in April 1978. He was not released as he had expected. No reason was given for his continued incarceration. He was released in April 1979, but was detained again at the end of November 1980 up to the 30th July 1983. Then finally, the plaintiff was detained from the 19th July 1986 up to the 11th January 1991. He had meanwhile developed a serious illness in prison and is now wholly incapacitated.

I have seen the plaintiff and have heard his evidence. He is a very brave man. Also he is intelligent and articulate. I have the distinct impression that he is a man who was so overwhelmed by sheer pressure of the powers that were. The plaintiff informed the Court that as soon as he was released from prison, on the first occasion, he approached the 1st defendant for his pension benefits. This was after the then Inspector General of Police, the late Mr Kamwana,

had specifically warned him not to approach anyone in connection with his case. Apparently, the 1st defendant was not happy with the plaintiff's enquiries, and according to the plaintiff, this led to his detention for the second time in 1980. Some effort was made at disputing this evidence, but really there is no explanation as to why the plaintiff was detained for the second time. I have to accept the plaintiff's evidence on this point. The indication is that the 2nd defendant's agents, the police, were capable of detaining not only the plaintiff, but anyone on very trivial or no reason at all. This is not surprising, for it is a notorious fact that at that time the police were capable of wholesale detentions for very whimsical reasons. This is not all, for while the plaintiff was in detention on this second occasion, the 1st defendant extorted money from him, claiming that companies which he owned owed it. He was promised that if he paid the money, then he would be released. The plaintiff paid the money although, obviously, under duress and was promptly released from detention.

The plaintiff was then detained for the third time in 1986, and perhaps as an afterthought, a Detention Order was served on him. I shall have more to say about this later on in this judgment. It is clear, however, that these constant detentions completely overwhelmed the plaintiff. There is a very clear probability that he would have been detained if he had taken any action against either the 1st or 2nd defendant. The plaintiff who, in my view, was well aware of the need to sue the defendants, had to wait for a suitable moment. In the process, the time within which he should have taken action lapsed. This was not his fault at all and the defendants cannot now be heard to plead the Limitation Act. It would be wholly inequitable to allow them to take advantage of a situation of their own making. By constantly depriving the plaintiff of his liberty, the defendants effectively prevented him from conducting any normal business, including his right to sue. In the instant case, I hold that the plaintiff's right was held in abeyance and time did not start running against him until 1991, when he was finally released. Even then, I do not suppose the plaintiff would have sued if it was not for the results of the Referendum held in mid May 1993, when it became clear that the people of this

country had rejected the authority of the then Government. The plaintiff's action is, therefore, fully within time and these proceedings are properly before this Court.

The plaintiff's first claim relates to an amount of K47,294.22 which he and his family paid to the 1st defendant. The plaintiff submits that this sum was extorted from him under duress and was money had and received by the 1st defendant for no consideration and that accordingly this amount should be paid back with interest. A number of authorities have been cited by the plaintiff in support of his claim on this issue, but I do not believe that it is really necessary to refer to any authorities so far as this matter is concerned. The 1st defendant admits having received the money, but contends that it was an amount which was owed by the plaintiff and which he had properly paid back. The truth of the matter though is that the money was not owed by the plaintiff in his personal capacity. It was owed by companies which he owned. It is very unlikely that the plaintiff could have been called upon to pay on behalf of those companies if he had not been in prison. Advantage was taken of this fact to try and extort this amount from the plaintiff. He wrote and explained that he did not owe the money in his personal capacity and that his companies which were in receivership were the proper debtors. That is when undue pressure was brought to bear on him. He was told by agents of the 2nd defendant, no doubt in consultation with the 1st defendant, that he would not be released from prison if the amount was not paid. I am satisfied that this amount was not payable by the plaintiff in his personal capacity, because the 1st defendant in one of its letters admitted that the plaintiff owed it nothing. I am satisfied further that the money was paid by the plaintiff under duress. After all, the plaintiff was in prison and his family was struggling to survive. He only paid because he was promised early release from detention. Police monitored the payments and the plaintiff was released when final payment was made. I find accordingly that the money was paid under duress and it was money had and received by the 1st defendant without consideration. It must be paid back to the plaintiff with interest.

Secondly, the plaintiff seeks a declaration that the 2nd defendant induced the breach of the plaintiff's service contract. A number of allegations have been made on this issue. It is pleaded, for example, that while the plaintiff was in detention sometime in October 1977, the 2nd defendant amended the law and retrospectively applied it so as to access the plaintiff to trial before the Traditional Court system, where he was denied the right to counsel. It is pleaded further, that in consequence the plaintiff was wrongly convicted of the offence of abuse of office for which he served a sentence. The truth of the matter is that the plaintiff was detained in May 1977. Since the introduction of the Regional Traditional Courts, the 2nd defendant periodically amended the jurisdiction of those Courts to try various offences. In October 1977, the jurisdiction of the Regional Traditional Courts was further amended to include the offence of abuse of office. It may be that this was done to access the plaintiff to the Traditional Court system, but it must be understood that the plaintiff was already facing the more serious charge of theft by public servant which was triable by those Courts at that time. It is probable that the law was amended to include the offence of abuse of office as a matter of convenience.

It is not correct to say that the plaintiff was wrongly convicted. It will be noted that the Court before which the plaintiff was tried was properly constituted. It would be wrong, in the absence of an appeal, to claim that the conviction was wrong. The police, as earlier stated, arrested the plaintiff on an allegation of fraud. He was convicted of an offence and was sentenced to eighteen months imprisonment. There was no appeal and it cannot be supposed that the plaintiff expected his job back at the expiry of his sentence. That would not have been normal in the circumstances, and although the 1st defendant did not dismiss him summarily as it was entitled to, that cannot be held against it. The plaintiff's contract of employment was discharged by virtue of his conviction. There could, therefore, be no inducement of breach of the plaintiff's contract by the 2nd defendant or anyone else.

At the time the plaintiff was being engaged in 1963, the 1st defendant had in operation a pension

scheme known as the Staff Provident Fund. This was a non-contributory scheme to which the 1st defendant paid 20% of each officer's annual salary. It applied only to senior staff. This scheme was abolished and replaced in 1970 by what was termed a far sounder Pension Scheme to which each officer was expected to contribute 5% of his annual salary. The 1st defendant was to pay 15% of each officer's salary. The total contribution was to be 20% of each officer's salary. Exhibit P2 gives details of what was to happen if an officer died or left before normal retirement age. This is what concerns us here, and paragraph 7 of Exh. P2 states, and I quote:

> "You will receive all your own contributions back or you may leave your contributions on the scheme and receive a pension based on your contributions when you reach age 60. If you are redundant or leave in ill health, you will receive at age 60 a pension based on the Board's own contributions if you leave your own contributions on the Scheme. If you leave of your own free will having completed less than ten years service with the Board, you will not receive the benefit of the Board's contributions. If you have completed more than 10 years service, you will also receive the benefit of the Board's contributions. The Pension will be calculated from the date of each officer's appointment to the Board's service."

The 1st defendant denied at first owing the plaintiff any pension benefits. In the course of the trial, however, an amount of K18,800.65, representing the plaintiff's Staff Provident Fund benefits, was paid to him. In addition, an amount of K2,853.63, representing the plaintiff's Pension benefits under the new scheme, was paid by Hogg Robinson, now Hogg Bain. The plaintiff did not receive this latter amount, as it was absorbed by tax liabilities. There does not appear to be any complaint about the Staff Provident Fund benefits. The 1st defendant, of course, denied owing this amount at first, but it is clear from the letter accompanying the cheque from the 1st defendant that its lawyers were not aware of these benefits. As soon as these benefits were brought to their attention, the amount was paid out to the plaintiff with appropriate

explanations. Let us, therefore, not make mountains out of these apparent molehills.

The benefits under the new Pension Scheme are another matter. It is not clear how the amount paid out was computed. It seems that the provisions of Exh. P2 were ignored because otherwise, the amount payable should have been greater than the odd K2,000.00 or so. The plaintiff was employed in September 1963 and his benefits, according to Exh. P2, were to be calculated from that date. When he ceased to be employed in May 1977, he had completed ten years service and was entitled, in addition to his own contributions, to those of his employer, the 1st defendant. Even assuming that 5% of the plaintiff's salary was deducted from 1970 towards his pension, can it be said in all seriousness that only a meagre K2,000.00 had accumulated by 1977? The plaintiff was appointed Chairman of the 1st defendant in 1971 and his salary in that position must have been good. Can it really be said that his pension contributions came only to some K2,000.00 odd or so? The Pension Scheme rules moreover provide that the pension should be calculated from the date of the officer's appointment to the service of the 1st defendant. How that was to be done is not clear, since the Pension Scheme only started in 1970. However, it is not for the Court to puzzle over those internal matters, suffice to say that the plaintiff's contributions should have been greater than was paid out to him. Even that did not include the 1st defendant's contributions. The plaintiff had served more than ten years and was entitled, in terms of the rules, to his employer's contributions. I find the manner in which the pension benefits were computed to be wholly unsatisfactory. The plaintiff's pension benefits from 1963 to May 1977 should be re-calculated. These will include his own contributions according to his salary progression over the years and the contributions made or deemed to have been made by the 1st defendant. The combined contributions will earn interest at the appropriate rates applicable during those years.

Let me now consider a small issue before moving on to consider the more important matter of the plaintiff's alleged false imprisonment. The issue concerns an amount of K6,338.19 which is being demanded

by the 2nd defendant and which the plaintiff says should be waived. The short history of the matter is this. While the plaintiff was in prison, he fell seriously ill and was rushed to the hospital. He was hospitalized for a period of twenty-one months. During this period, he stayed in a private paying ward at the Queen Elizabeth Central Hospital. The hospital authorities now demand that Mrs Masiku pay the outstanding account. This would ordinarily have been a straightforward matter. The majority of patients at that hospital stay in non-paying wards and treatment, accommodation and food is free. No one is forced to go into a paying ward, and those who do, need to fill special forms and pay a deposit. The plaintiff, however, claims that since he was in prison, it was the prison authorities who decided that he should be admitted in a private paying ward and that this was done for their convenience, as it would be easier to guard him. On the other hand, those of the prison personnel who gave evidence insist that all state prisoners, including detainees, are invariably taken to non-paying wards at the nearest civil hospitals. This procedure is provided for in prison regulations. In their experience, none of them had ever seen a prisoner in a private paying ward. My own view is that the hospital invoice should be settled by either the plaintiff, or Mrs Masiku to whom it is addressed. The fact that it was addressed to her is a clear indication that she sought the hospital services on behalf of her husband. I am satisfied, on a balance of the evidence, that the hospital bill is properly addressed and should be paid by the plaintiff.

The final issue for consideration in this matter is the claim for exemplary and aggravated damages for false imprisonment. It will be recalled that the plaintiff was arrested in early May 1977 on an allegation of misappropriation of the 1st defendant's funds. He was kept in custody up to September of that year. He was briefly released on bail but was, without any explanation at all, re-arrested in October 1977 and his trial started in the Traditional Court in November. On conviction for the offence of abuse of office, the plaintiff was sentenced to eighteen months imprisonment effective from the date that he was arrested. This resulted in the sentence expiring at the end of April 1978. The prison authorities in fact discharged the

plaintiff on the 1st May 1978, but he was not released from custody. By order of the police, acting on behalf of the 2nd defendant, the plaintiff was transferred to Mikuyu Prison, where he remained up to April 1979. The period between 2nd May 1977 and 1st May 1978 may be considered as the period when the plaintiff was in lawful custody. He had been convicted of an offence and the sentence was to run from the date of arrest. Even if the initial arrest was unlawful, and there is no evidence to that effect, the sentence imposed neutralized its effect. The same cannot be said of the period between 1st May 1978 and April 1979. There was no explanation for the plaintiff's continued detention nor was there any authority for it. The plaintiff was merely transferred to and kept at Mikuyu Prison. This is not surprising, because at that time the 2nd defendant and its agents, the police, were in the habit of arresting and detaining persons arbitrarily and without any explanation. As I have stated earlier in this judgment, this is a notorious fact. It is not surprising either that the plaintiff was treated badly while at Mikuyu Prison. The many cases that have come before this Court indicate that it was usual for the plaintiff and others to be in solitary confinement for days on end. In addition, the plaintiff was given food once a day and it consisted of undercooked beans and **mgaiwa**. There was no access to visitors or reading material. The plaintiff and others slept on bare floor and had only tattered blankets to cover themselves with. Toilet facilities were horrible, and in the case of the plaintiff, he had only a pail for all purposes. One can imagine the agony, embarrassment and humiliation which the plaintiff felt, especially since he had been, for a long time, a man of status in our society. When the plaintiff was released in April 1979, he did not experience the complete freedom that he had expected. He was taken before the then Inspector General of Police, the late Mr Kamwana, who warned him not to talk about his experiences in prison and not to approach the 1st defendant in connection with his employment. It was the plaintiff's evidence that he was not permitted to go away from Blantyre without police authority and that in fact he rarely ever left his house at Michiru, here in Blantyre. In addition, the police were constantly monitoring his movements and that for all practical purposes, the plaintiff was never a free man.

In spite of this strict surveillance, or because of it, the plaintiff was arrested again at the end of November 1980. Mr Mwale, the police officer who arrested him, could not explain why he had been arrested. This time the plaintiff was taken to Zomba Central Prison. He was for a short time transferred to Maula Prison in Lilongwe, but was later taken to Mpyupyu Prison in Zomba. The treatment at this prison was no better than at Mikuyu where he had been detained on the first occasion. The plaintiff suffered constant bouts of malaria because of the numerous mosquitoes at this place. Also the plaintiff's diabetic condition and high blood pressure worsened, but at least he was able, occasionally, to see a doctor and to receive medical treatment. It is during this period that Exh. P8 was prepared. This is a medical report which confirms that the plaintiff is diabetic and that it was very important that he should be seen regularly for the adjustment of his treatment. The report further indicated that diabetes is a condition which, if not properly observed, can lead to very serious developments or complications. The plaintiff remained in detention up to the end of July 1983, when he was released. He was once again taken before Mr Kamwana and warned not to talk too much or to approach the 1st defendant. Although the plaintiff was out of detention, he was never free to do whatever he wanted. Police surveillance on him continued and he still had to seek police permission to go out of Blantyre. It was an intolerable situation.

The plaintiff enjoyed this apparent freedom up to sometime in May 1986. At about this time, the plaintiff telephoned the 1st defendant to enquire about his pension contributions. He says he did this because he had reached retirement age and wanted to know what had happened to his pension contributions. A month later, the plaintiff was summoned to Southern Region Police Headquarters and was informed by a Mr Mwalughali that he was to be detained for the third time. No reason was given, and the plaintiff assumes that the detention came about because he had made enquiries about his pension benefits. He is probably right, but at any rate, he was taken to Chichiri Prison where he was put in a tiny cell. The plaintiff had the usual tattered blanket or two, a pail at one corner and was left on his own for hours on end. He says the nights

were worse, but of more immediate concern was the worsening of his diabetic condition and high blood pressure. These conditions had been under control before, but now the plaintiff was denied access to medical treatment. In April 1988 and again in June and December of that year, the plaintiff petitioned the Inspector General of Police about his deteriorating health. Exhibits P18, P18A and P18B make very painful reading. It is clear that the plaintiff's condition was becoming increasingly desperate. Paralysis of the lower limbs had set in and the plaintiff had great difficulty in breathing. He could not sleep normally, but had to prop himself against a wall each night. He was gradually losing his sight. The Inspector General of Police and the prison authorities were all aware of the plaintiff's condition, but no one responded or came to his assistance. The plaintiff was largely ignored until he collapsed alone in his cell in June 1989. He was rushed to Queen Elizabeth Central Hospital where he was admitted and remained for twenty-one months. That is probably an indication of how seriously ill the plaintiff was, and this is confirmed by the medical report prepared by Dr C M Nyirenda, the Chief Consultant Physician who attended him during the period of admission. The medical report, Exh.P22, states, and I quote:

> "On admission Mr Masiku was found to be very acutely ill and in severe respiratory distress. Both his blood pressure and blood sugar levels were abnormally high. He was diagnosed to have severe congestive heart failure with acute pulmonary oedema and hyperglycaemic state with peripheral neuropathy and blurred vision. Both of these conditions were complications of uncontrolled blood pressure and blood sugar levels. He was in poor state of health because of lack of medical attention while he was an inmate at Chichiri Prison. Prior to his detention he was being clinically reviewed by the Medical Specialist in OPD1 at QECH and he used to be in a stable condition of health."

This is a long medical report couched in technical and scientific language, but all this was explained in detail during examination-in-chief and cross-examination of the witness. The main conclusion is

that the plaintiff's condition was caused by lack of medical attention. It is idle, therefore, for the 2nd defendant to argue as they have done that there is no nexus between the plaintiff's present loss of sight and detention. If the plaintiff had not been in custody or if he had been allowed medical treatment of his own choice while in custody, then his health would probably not have deteriorated as it has done. The 2nd defendant's callous treatment of the plaintiff is responsible for his present condition.

It has further been argued, on behalf of the 2nd defendant, that for purposes of calculating the period for which the 2nd defendant may be liable in false imprisonment, the periods during which the plaintiff was not in actual custody should be disregarded. Again, it has been argued that when the plaintiff was detained for the third time, a Detention Order, Exh. D23, was issued and that in terms of the Public Security Regulations in force at that time, the plaintiff's detention was lawful. The answer to the first part of the contention is that during the short periods that the plaintiff was not in custody, he could not really be said to have been free. During those periods the plaintiff's movements were closely monitored by the police. He was not allowed to communicate with the 1st defendant, his former employer, and most of all he was not allowed to leave the Blantyre area without permission from the police. That was no freedom at all and the law on that point is quite clear. A man must be free to go where he wants to without let or hindrance. The Detention Order issued to the plaintiff on 25th July 1986 must be considered in the light of the plaintiff's detention history. On two occasions, the man was detained without the benefit of a detention order. He had no idea why he was being kept in prison. When the plaintiff was detained for the third time, the 2nd defendant, as an afterthought, decided to issue a Detention Order. I say the issuance of that Detention Order was an afterthought, because really, it was not necessary. The plaintiff had suffered earlier detentions without any detention orders and he could have stayed in prison this third time without any. So far as the 2nd defendant was concerned, it was of no consequence whether there was a detention order or not. The plaintiff was liable to be detained at the whim of the 2nd defendant's agents, whether with or without a

detention order. The conclusion on this point accordingly, is that the plaintiff was falsely imprisoned for the entire period from 1st May 1978 to 11th January 1991. That is about twelve years.

For about twelve years, the plaintiff was wrongly imprisoned. I have detailed his experiences when he was in actual detention. Moreover, the 2nd defendant completely neglected his physical and mental health. The plaintiff was treated worse than any domestic animal that one can think of. Obviously, the plaintiff's experience at the hands of the 2nd defendant must have been, and was indeed, more painful to him than it probably would have been to any other ordinary citizen. After all, the plaintiff was a man of status in society. He was the Executive Chairman of a large and powerful statutory corporation. For a long time, he had been used to the comfortable life and to have things done to his order. It was no doubt most humiliating and embarrassing to be treated like a common criminal, which he was not. No one has justified even today why the plaintiff was constantly being detained. The detention order which purported to justify the plaintiff's incarceration talks about the need to preserve public order. It is not suggested that the plaintiff was organizing the overthrow of the then established Government. That would have been a most unlikely prospect, especially at that time. The plaintiff's 'offence', if that is the correct word, is that he talked too much when not in actual detention. He was a nuisance to the 2nd defendant and the Government, hence the irrational detentions and harassment.

The plaintiff is no doubt entitled to damages for his long and wholly unjustifiable detention. It must be said though that no amount of money will ever compensate him because, as the learned authors of **McGregor on Damages, 14th Edition**, state at paragraph 1537, and I quote:

> "The details of how damages are worked out in false imprisonment are few; generally it is not pecuniary loss but a loss of dignity and the like and is left to the jury's or the judge's discretion. The principal heads of damage would appear to be the injury and liability, i.e. the loss of time

considered primarily from the non-pecuniary view point and the injury to feelings, i.e. the indignity, mental suffering, distress and humiliation with any attendant loss of social status. This will be included in the general damages which are usually awarded in this case, no breakdowns appear in the cases."

In the instant case, the plaintiff is clearly entitled to exemplary damages for the reasons I have explained earlier in this judgment. For a period of almost twelve years, the plaintiff lost his freedom, his dignity and social status. In addition, his various ailments were aggravated by sheer negligence on the part of the 2nd defendant. He is now completely blind and will require the constant assistance of his family. The plaintiff's various businesses have collapsed and it is unlikely that he will now be in a position to revive them. The plaintiff should be compensated for his injury, but the award should also serve as a punishment and a deterrent to the 2nd defendant for having treated the plaintiff in such an inhuman manner.

I award the plaintiff a sum of two million kwacha. I also award the plaintiff the costs of these proceedings.

PRONOUNCED in open Court this 5th day of December 1995, at Blantyre.

J B Villiera
JUDGE