

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO 3571 OF 2000**

BETWEEN:

D. MITENGO ..... PLAINTIFF

AND

ATTORNEY GENERAL ..... DEFENDANT

**CORAM: POTANI, REGISTRAR**  
Mzumara, Counsel for the Plaintiff

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**RULING**

On November 15, 2000, the plaintiff, Dickson Mitengo, commenced this action against the defendant, the Attorney General, claiming damages for false imprisonment and malicious prosecution and also withheld salary and costs of this action. Then on January 11, 2001, an interlocutory judgement in default of service of defence was entered. Subsequent to the default judgement, the plaintiff took out a notice of assessment of damages which was duly served on the defendant. However, the defendant chose not to attend the hearing of the evidence on the assessment.

It was the plaintiff's undisputed evidence that he was employed by the Plaintiff Vehicle Hiring Organisation (PVHO), owned by the government, as a Motor Vehicle Mechanic. On October 21, 1999, Policemen came to his place of work. They arrested him and took him to Blantyre Police Station and later to Chichiri Prison. He was informed that he had been arrested

because his employers had recovered motor vehicle parts from a watchman at his place of work. However, according to the plaintiff, he was at his house when the items were recovered from the watchman. After his arrest on October 21, the plaintiff was eventually released on bail on October 25 as per EXP1. It was his testimony that while in custody, he underwent untold hardship. He was being perpetually beaten by hardcore inmates and was being made to clean filthy toilets.

It was further the plaintiff's evidence that he was prosecuted on a charge of theft by Public Servant C/S 283(1) of the Penal Code. As it turned out, he was acquitted of the charge and he tendered a copy of the judgement as EXP2. Following the acquittal, the plaintiff's employers by letter tendered as EXP3 reinstated him to his work. The letter of reinstatement, however, stated that the salary withheld from the plaintiff during the pendency of his case would be forfeited. The plaintiff found it difficult to accept such a condition. He referred the matter to his legal practitioners. This did not go down well with his employers who in turn suspended him from work with effect September 5, 2000, as per EXP4.

Regarding his monthly salary, the plaintiff had it that he used to earn about K1,700.00 net pay. To that effect, he tendered EXP5, a payroll for the month of September 1999 which shows the sum of K1,737.94 as his net pay.

On the claim for damages for false imprisonment and malicious prosecution, damages are awarded for injury to liberty and feelings, that is, the indignity, mental suffering, disgrace and humiliation with the attendant loss of social status. See Mc Gregor on Damages 15<sup>th</sup> Edition Page 1026 paragraph 1619. Further damages are recoverable for any physical injury or illness in cases where the incarceration has occasioned a deleterious effect on the plaintiff's health and Lowden vs. Goodrick (1791) Peak 64 is a case in point. Also damages are recoverable for injury to reputation as Lawrence L J put it in Walter v. Alltools (1944) 61 TLR 39, 40 that:

***“false imprisonment does not merely affect a***



***man's liberty; it also affects his reputation".***

It would also appear that the period of the false imprisonment is also a relevant factor to be considered in arriving at the award of damages. The plaintiff in this case was imprisoned for 5 days. It was his evidence that he suffered during those 5 days as he was being beaten by inmates and was made to clean filthy toilets. In arriving at the award to be made, guidance has been sought from the case of **Kaisi v. Registered Trustees of Blantyre Adventist Hospital** Civil Cause Number 437 of 1994 (unreported) in which an award of K5,000.00 was made for imprisonment lasting 3 hours. It has to be borne in mind, though, that since that award was made, the value of our currency has suffered remarkable devaluation. I consider an award of K25,000.00 to be fair and adequate for the false imprisonment and K15,000.00 for malicious prosecution.

Regarding the claim for withheld salary, I hasten to say that upon his acquittal of the charge his employers made against him, the plaintiff was obviously entitled to payment of the salary that was withheld such that the defendant's action of forfeiting the withheld salary as a condition for his reinstatement can not stand. According to EXP5, the last pay the plaintiff got was K1,737.94. That was in September 1999. Since then, he has never been paid any salary. It is therefore ordered that the plaintiff be paid withheld salary from October 1999 to the date of reinstatement or lawful termination of his services at the rate of K1,737.94 per month.

Costs of this action are for the plaintiff.

Made in Chambers this day of September 25, 2001, at **BLANTYRE**.

  
H S B Potani  
**REGISTRAR**