

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2442 OF 2003**

BETWEEN:

BROWN PINDANI PLAINTIFF

AND

GODFREY MDUMUKA1ST DEFENDANT

SHOPRITE TRADING LIMITED2ND DEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Mulemba, Counsel for the Plaintiff

ORDER ON ASSESSMENT DAMAGES

This is this court's order on the assessment of damages herein. The assessment was done pursuant to a default judgment entered in favour of the plaintiff for damages for pain and suffering, loss of amenities of life, false imprisonment and defamation. The plaintiff also got a default judgment for constitutional damages for the violation of his right to human dignity, special damages and costs of the instant action. The notice of hearing of the assessment of damages was duly served on the defendants who never appeared on the appointed date. That left the plaintiff's evidence totally unchallenged.

The plaintiff was working for the 2nd defendant as garbage selector on 20th May, 2003 when he was alleged to have stolen a can of fanta. The 1st defendant, then a branch Manager of the 2nd defendant made the allegation of theft of the can of fanta against the

plaintiff after finding an unopened can of fanta amongst the garbage that the plaintiff was about to sort out.

Upon making that allegation the 1st defendant grabbed the plaintiff by the arm and took him to the 2nd defendant shop's cold room. Once in the cold room the 1st defendant bound the plaintiff's hands at the back of the plaintiff and started beating him up with a security button stick so that the plaintiff admit the theft of the can of fanta. The 1st defendant beat up the plaintiff in the ankle and wrist joints for about an hour. After that the 1st defendant told the plaintiff to go to the till and pay for twice the value of the can of fanta. The plaintiff, who could barely walk as a result of the beating, was helped to the till where he paid twice the price of can of fanta at K71.98. And when the plaintiff was paying this sum the 1st defendant said to the till operator that the plaintiff was a thief and so had to pay twice the price of the can of fanta. The plaintiff went to Queens Central Hospital where he was examined and treated. As a result of the beating the plaintiff suffered swollen sprained ankle joints.

This court notes that in cases of assault occasioning bodily harm the measure of damages is the same as that in personal injuries for pain and suffering. See **Nankhoma v. Attorney General** Civil Cause Number 3623 of 2000. In assessing such damages the court has to necessarily consider the facts in each particular case and also seek guidance from awards made in decided cases of comparable nature.

The plaintiff herein was barbarically assaulted with a button stick on mere unproven allegations and when he was totally defenceless. The plaintiff was assaulted for a considerable time as well viz an hour. The plaintiff must have suffered lot of pain to the extent that his ankle joints were sprained and he could not walk from the 2nd defendant's shop to the bus stage. This court has also considered the case of **Nankhoma v. Attorney General** cited above to seek guidance on the appropriate level of damages for assault. In that case the plaintiff was beaten up by a group of people and suffered wounds on her back, chest, legs and arms. She was awarded K55,000.00 for the assault. This court notes that the injuries suffered in that case are far more serious than the ones suffered by the plaintiff herein. And further, that the kwacha has lost some value since that award was made.

In the circumstances of the present case this court awards the plaintiff the sum of K100,000.00 as damages for the assault.

On the plaintiff's claim for loss of amenities of life this court does not find any evidence suggesting that he lost enjoyment of any amenity of life. No award is therefore made under that head.

On the claim for damages for false imprisonment this court notes that the measure of damages depends on several factors, inter alia, the duration of imprisonment and conditions of imprisonment.

Such damages are recoverable for loss of dignity, humiliation and mental suffering occasioned by the incarceration. See **Mwandama v Malikebu** Civil Cause Number 751 of 1996. This court has had an opportunity to consider the level of awards in similar cases to the instant one like that of **Mwandama v. Malikebu** cited above in which the plaintiff, who had been incarcerated for 1½ hours in an open police station after being beaten, was awarded K7,000.00 as damages for false imprisonment in March, 2001. This court also notes the depreciation of the value of the Kwacha since that award that has been referred to for guidance only.

In the present case the plaintiff's hands were bound at his back and he was incarcerated in the 2nd defendant's cold room for about one hour. That must have been a very depressing experience for the plaintiff. He must have felt very humiliated. The cold in the cold room must have added a lot of suffering to the plaintiff on top of the binding of his arms.

In the circumstances of the instant case as alluded to above this court is of the view that an award of K70,000.00 for false imprisonment herein is fair and reasonable. The sum of K70,000.00 is therefore awarded to the plaintiff for false imprisonment. On the plaintiff's claim for damages for defamation this court notes that several factors are considered in arriving at appropriate awards. Such factors as: the context of the defamatory material; the nature and extent of the defamatory publication including the aspect of reproduction; the plaintiff's standing, his reputation, character and status; nature of defamation – libel or slander; conduct of defendant from time of publication and recklessness in publication. See **Justice Mwaungulu vs. Malawi News** Civil Cause Number 518 of 1994.

This court notes that the 1st defendant orally defamed the plaintiff. He slandered him. The extent of reproduction of the slander ought not to be extensive as far as the evidence is concerned. Although there is no evidence of charges being brought against the plaintiff the 1st defendant never showed any remorse for his defamatory words. The slander was also recklessly uttered.

In the circumstances this court is of the view that the sum of K30,000.00 is fair and reasonable as damages for the defamation herein. The same is awarded to the plaintiff as damages for defamation. The plaintiff's claim for K71.98 special damages herein also succeeds as the defendant's never proved that the plaintiff indeed stole the can of fanta as

alleged. And so K71.98 special damages is awarded to the plaintiff.

The court does not though recognize the head of damages termed “constitutional damages for the violation of the plaintiff’s right to human dignity”. This aspect of violation of the plaintiff’s constitutional right to human dignity has already been catered for in the awards under the heads of damages for assault, false imprisonment and defamation above. And so this court declines to award damages on the constitutional footing as claimed.

And finally, the costs of this action are awarded to the plaintiff who has wholly succeeded in his claim.

Made in Chambers at **BLANTYRE** thisApril, 2004.

M A Tembo

ASSISTANT REGISTRAR