



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE No.814 OF 2005**

BETWEEN

GIBSON SANGULUKANI BANDA ..... PLAINTIFF

-AND-

THE ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT

**CORAM : T.R. Ligowe : Assistant Registrar**

Kadzakumanja : Counsel for the Plaintiff

Chulu : Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

The plaintiff in this case obtained a default judgment against the defendant for the defendant to pay him damages for false imprisonment to be assessed, re-imbusement of expenses for criminal proceedings he was subjected to, and costs of the action. This is the assessment of the damages.

The plaintiff's claim was that on or about 10<sup>th</sup> February 1999 he was arrested by the Police, Lilongwe Police Station, on allegation of misappropriating public funds through pension warrants. He was in custody until 226<sup>th</sup> March 1999 when he was released on court bail. He was prosecuted on charges of fraudulent false accounting and theft by public servant, but was later discharged by the court, the state having

failed to adduce sufficient evidence. The detention was unlawful and he therefore claimed the aforesaid damages.

The defendant was duly served with a notice of appointment for the assessment of the damages but did not attend court. No reason for the non attendance having been communicated, the court proceeded in his absence.

In giving evidence the plaintiff adopted his witness statement. The statement confirms the facts as claimed in his statement of claim. He further states that he engaged Messrs Gonaulinji and Company to conduct his defence and he paid them K13 400. Exhibits C1, C2, C3, C4, C5, and C6 have been exhibited to prove that fact. He further states that the prison cell at Kachere was so congested. He was sleeping on the floor without beddings. He was bathing once in a while, and food was given once a day. I have to assess damages on this evidence.

Damages for false imprisonment are generally awarded for the impecuniary loss of dignity. The principal heads of damage appear to be the injury to liberty i.e. the loss of time considered primarily from a non pecuniary viewpoint, and the injury to feelings i.e. the indignity, mental suffering, disgrace, and humiliation with any attendant loss of social status. In addition there may be recovery of any resultant physical injury or discomfort, as where the imprisonment has a deleterious effect on the plaintiff's health. (See **McGregor on Damages** 16th Edition para. 1850-51). In addition to damages for false imprisonment, the plaintiff in this case also claims and apparently the default judgment has granted him, expenses for defending himself against the criminal proceedings. It can be observed from the discussion of the law above that damages for false imprisonment do not entail expenses for defending one self against

prosecution. That falls under damages for malicious prosecution. In that regard therefore I will not grant the plaintiff the K13 400 he purports to claim. I proceed with damages for false imprisonment.

Damages for false imprisonment need not be made exclusively on consideration of the time factor. See **Fernando Mateyu v. Atupele Haulage Ltd** Civil Cause NO. 906 of 1993 (unreported). In **Donald Ngulube v. Attorney General** civil cause No 1569 of 1993 Mwaungulu Registrar as he then was had this to say;

“In relation to time I would say that longer imprisonment, in the absence of alternative circumstances, should attract heavier awards, shorter imprisonment in the absence of aggravating circumstances should attract lighter awards. What should be avoided at all costs is to come up with awards that reflect hourly, daily and monthly rates. Such an approach could result in absurdity with longer imprisonments and shorter imprisonments where there are assimilating or aggravating circumstances. The approach is to come up with different awards depending on whether the imprisonment is brief, short or very long etc and subjecting this to other circumstances.”

In this case the plaintiff was in custody for 43 days. I consider this period long. In **Erustus Kachinga v. The Attorney General** Civil Cause 862 of 2005, the plaintiff had been detained for 42 days. I awarded him K300 000 for false imprisonment, last year in August. The circumstances are generally the same as in the present case. I award the plaintiff in this case K300 000 in damages plus costs of the action.

Made in chambers this .....day of February 2007.

T.R. Ligowe

**ASSISTANT REGISTRAR**