



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE No.1013 OF 2005

BETWEEN

DOUGLAS H. GELLA PLAINTIFF

-AND-

THE ATTORNEY GENERAL DEFENDANT

CORAM : T.R. Ligowe : Assistant Registrar

Kadzakumanja : Counsel for the Plaintiff

Munyenembe : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The defendant obtained a default judgment adjudging the defendant to pay him damages for false imprisonment and malicious prosecution to be assessed and costs of the action. This is the assessment of the damages.

In his statement of claim the plaintiff averred that on or about 24th October 1998, the defendant's agents and/or servants, police officers from Kanengo Police Station arrested him on allegations of armed robbery. He was in custody until 12th December 1999 when he was released on bail. He was prosecuted before the First Grade Magistrate sitting at Lilongwe and was acquitted, the state having failed to prove their case.

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

The plaintiff had filed a witness statement which he adopted in full on the date of hearing. In his statement he states that he was employed in the Police Service on 20th June 1994 and he retired on 28th February 2005. That on 24th October 1998 at about 20.00 hours, Police officers from Kanengo Police station came to his house at Area 30, Police Headquarters saying the Commissioner wants to see him. He went to the police station where he met the Officer In charge instead of the Commissioner who ordered him to be placed in a cell. He was in there for three days without being recorded a statement. There was an identification parade conducted but he was not identified by the complainants. Instead of releasing him the Police took him to the Chief Resident Magistrate's Court Lilongwe. He applied for bail but the state refused and he was placed at Maula Prison. He was prosecuted for the offence of armed robbery and on 12th December 1999 he was acquitted. He further states that he experienced a terrible life at Maula Prison. He was sleeping on bare floor without beddings. Meals were provided once a day. He felt sick but was not taken to hospital for treatment. He was interdicted without pay. His family was told to leave the institutional house at Area 30 but not take all their properties. Unfortunately the properties got stolen together with his academic and professional certificates. He exhibited a Police report certifying he had reported that his Junior Certificate 1993, Primary School Leaving Certificate 1991, Supersonic Radio One CD changer, Expand bag containing assorted clothes, and Phillips Television sets had been stolen and the police were still investigating the matter. He states that the value of the items stolen

is K250 000. He prays to be compensated for false imprisonment, malicious prosecution and costs of the action.

For reasons that will become clear later in the judgment, I will only concentrate on the issue of malicious prosecution.

An action for malicious prosecution is only maintainable on proof of certain types of damage. Lord Holt in **Saville v. Roberts** (1698) 1 Ld Raym 374; 5 Mod 394 held there are three sorts of damage any of which would be sufficient ground to support an action for malicious prosecution. He listed them as:

- (a) The damage to a man's fame, such as where the matter he is accused of is scandalous;
- (b) Where a man is put in danger to lose his life or limb or liberty; and
- (c) Damage to a man's property, as where he is forced to spend his money in necessary charges to acquit himself of the crime which he is accused.

Most Criminal prosecution is actionable as satisfying all the three conditions. The present case is one.

Mc Gregor on Damages, 15th Edition, paragraphs 1629 and 1630 state:

“The principal head of damages here is to the fair fame of the plaintiff, the injury to his reputation. In addition it would seem he would recover for the injury to his feelings i.e. for the indignity, humiliation and disgrace caused him by the fact of the charge being preferred against him. No breakdown however appears in the cases.

Holt's second head was the damage by being put in danger of losing one's life, limb or liberty. It therefore seems that the plaintiff can recover in respect of the risk of conviction. This is basically injury to feelings. If there has been arrest and imprisonment up to the hearing of the cause,

damages in respect thereof should also be included, and will be the same as would be recoverable in an action for false imprisonment.”

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).

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.”

The plaintiff in this case was in custody from 24th October 1998 to 12th December 1999. This is a long period of time. I award him K700 000 damages plus costs of the action.

Made in chambers thisday of March 2007.

T.R. Ligowe

ASSISTANT REGISTRAR