



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE No.812 OF 2005

BETWEEN

HENRY KAPHANTENGO PLAINTIFF

-AND-

THE ATTORNEY GENERAL..... DEFENDANT

CORAM : T.R. Ligowe : Assistant Registrar

Mvalo : Counsel for the Plaintiff

Munyenembe : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff obtained a default judgment against the defendant for damages to be assessed. This is the assessment of the said damages.

His claim was that on or about 29th June 2001, at a bus stage near Labour Office in Lilongwe, he was arrested by a member of the Police service or an agent thereof on suspicion of being a robber on various occasions. He was released on 5th July 2001 because the Police had no offence to charge him with. While in custody he was tortured and severely assaulted by the Police all of which was unlawful and unconstitutional. As a result he suffered injuries to both eyes and the right hand. The hand was paralysed. He was in hospital for seven months and five days after being released from custody. He suffered

damage and therefore claimed damages for false imprisonment; Aggravated damages for assault and battery; Damages for physical harm and mental distress, pain and suffering which he continues to suffer up to the present day; Damages for loss of dignity, humiliation and anxiety; Damages for loss of earnings for a period of 18 years when he would retire. As it will be seen later in the judgment, the plaintiff only needed to claim damages for false imprisonment and the assault and battery.

On the day appointed for the hearing of the notice of the assessment of the damages, the defendant did not attend despite having been dully served with the notice. No reason for the non attendance having been communicated, the court heard the matter in the absence of the defendant.

One witness testified, the plaintiff himself. His evidence confirms the statement of claim. He was arrested at gun point and led to the Police station with hands risen up. When he denied being a thief he was beaten severely beaten and his eyes and right hand got injured. He exhibited documents from Lilongwe central Hospital indicating the diagnosis and prescription he was given, exhibits 1 to 4. He was driver and now he can drive no more. He has a reduced vision and his hand is so weak to hold a steering. And he can't drive with one hand, the left hand.

As earlier said, plaintiff has to be awarded damages for false imprisonment and damages for assault and battery. Firstly, 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 period of imprisonment is short and I award the plaintiff herein K70 000 damages for false imprisonment.

Secondly, awards of damages in assault and battery cases resulting in physical injury are arrived at on the same footing as in any other claim for personal injury. In addition the damages are also recoverable for injury to feelings, i.e. the dignity, mental suffering, disgrace and humiliation suffered by the plaintiff as a result of the assault and battery. See **McGregor on Damages** 15th Edition p.1024 para. 1615.

Damages for personal injuries may be for the plaintiff's pecuniary losses and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury. The non pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The rules of procedure require that past pecuniary losses, e.g. earnings already lost and expenses already incurred before the action must be pleaded as special damages. Future pecuniary losses and non-pecuniary losses are awarded as general damages.

The assessment of the damages is left to the court's discretion. The damages are awarded to compensate the plaintiff in so far as money can do it. See ***Benson Nakununkhe v. Paulo Chakhumbira and Attorney General*** Civil cause No. 357 of 1997 (Unreported). The extent of that compensation must be such that members of the society will be able to say that the victim has been well compensated. To do that it is desirable that as far as possible comparable injuries should be compensated by comparable awards. I found no case to compare with the present one, but it is my view that K300 000 sufficiently compensates the plaintiff for the assault and battery. He therefore is awarded a total of K370 000 in damages plus costs of the action.

Made in chambers thisday of March 2007.

T.R. Ligowe

ASSISTANT REGISTRAR