



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 529 OF 2007**

BETWEEN

A.E. KAGWALE 1ST PLAINTIFF

-AND-

THE ATTORNEY GENERALDEFENDANT

CORAM: Ligowe : Assistant Registrar

Mvalo : Counsel for Plaintiff

Njirayafa: Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff commenced action against the defendant for damages for false imprisonment, humiliation and defamation and costs of the action. No notice of intention to defend having been given the plaintiff entered a judgment for the damages to be assessed. This is the assessment of the damages.

Hearing was done in the absence of the defendant as no State Advocate came to appear on the date appointed despite having been dully served with the notice. And no reason was communicated for the non attendance.

The facts as got from the plaintiff's testimony and statement of claim are that the plaintiff while in Lilongwe on an official visit from his place of work, where he was the Headmaster, Nachitheme Secondary School in Ntcheu, he got a call in the mid of the night from a woman, whom he did not ask for her name, one Mrs. Janet Mphatso that the school had been raided by robbers. He then in turn called Ntcheu Police Station so they could go there, but the police found nothing and they felt abused. The following morning the plaintiff got another call from his District Education Manager to report at Ncheu Police by 2 pm the same day. When he got there the District Education Manager, the Police Officer-In-Charge and officers were angry with him and accused him of having gotten drunk and cheated them about the robbers at the school. He tried to explain what had happened but to no avail and he was ordered to be locked in a cell. As he was getting off his belt, shoes and other belongings to get in the cell he was called back to the Officer-In-Charge's office only be told that the Police had found the woman who had called him in the night and she was Mrs Janet Mpatsa. He was released around 5 pm and told to come the next day in the afternoon. When he went back to his school, he found every body had already known he had been in police custody. The next day when he reported at the police together with the lady, he was surprised the lady was not treated the same way as he was the previous day, she was only cautioned never to report things before she is sure.

The plaintiff told court that he felt humiliated and embarrassed as at the material time he was a Headmaster at the Secondary school which is a senior position in Government as well as the National President of the Malawi Red Cross Society.

The assessment of damages is left to the court's discretion. And 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.

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 however 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.”

I consider the imprisonment in this case very brief and award the plaintiff K50 000 as damages. I also grant him costs for this action.

Made in Chambers this 9th day of January 2008.

T.R. Ligowe

ASSISTANT REGISTRAR