



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO. 353 OF 2007**

BETWEEN

ELTON BOTOMAN ..... PLAINTIFF

-AND-

XAI XAI ENTERPRISES ..... DEFENDANT

**CORAM : T.R. Ligowe : Assistant Registrar**  
Nyambo : Counsel for the Applicant  
Kaferanthu : Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

The plaintiff commenced this action by way of writ of summons claiming, in the main, damages for false imprisonment. His statement of claim avers that he was a Sales Manger for the defendant company at the material time. He had worked for the defendant for one year and four months when on 21<sup>st</sup> March 2006, he was arrested on allegations of theft of a cheque from Mr. Pex Master Ligoya, the Managing Director. That he was incarcerated at Lilongwe police Station for three days. He later appeared before court the Lilongwe magistrate's Court on 23<sup>rd</sup> march 2006 where he was charged with forgery, theft by servant and uttering false documents, to which he pleaded not guilty. He was released on bail on 18<sup>th</sup> March 2006. The matter had been set down for 30<sup>th</sup> May 2006,

28<sup>th</sup> June 2006 and 17<sup>th</sup> July 2006, but no witnesses turned up on all three occasions and so the Magistrate discharged the case on the last occasion. He maintains that he was innocent and points at the consistent reluctance of his accusers to show up at the Magistrate's Court as an indicator that they just framed up the charges against him. As a result he suffered loss and damage and therefore claimed damages for false imprisonment, damages for defamation, loss of salary and benefits from the time of his arrest up to the expiry of his contract of employment, severance pay and commutation of accumulated leave days.

Judgment was entered in default of the defendant's intention to defend for the defendant to pay the damages claimed. This is the assessment of the damages. The defendant did not attend on 2<sup>nd</sup> April 2008, the date appointed for the hearing of the assessment despite having been duly served with the requisite notice. No reason for the non attendance having been communicated, the court proceeded in their absence. Therefore, the plaintiff's evidence went unchallenged.

He told court that he is now a vendor dealing in stationery. His evidence confirmed the facts as stated in his statement of claim. He told the court that Mr. Ligoya had 2 leaves missing from his cheque book and he suspected the plaintiff of having stolen, forged and cashed K146 000 at National Bank of Malawi. One of the authorities at Police showed him a letter written by Mr. Ligoya authorizing them to arrest the plaintiff for being suspected of having stolen the cheques.

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. Further, any

pecuniary loss which is not too remote is recoverable, like loss of general business and employment. This is where the loss of salary and benefits from the time of his arrest up to the expiry of his contract of employment, the severance pay and the commutation of accumulated leave days would fall. However, no evidence has been given to prove that loss in this case. And so I can not award any damages for that.

I turn on to the 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. 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.”

I consider the imprisonment in this case short and I think K100 000 fairly compensates the plaintiff. So I award him that much plus costs of the action.

Made in chambers this 30<sup>th</sup> day of July 2008.

T. R. Ligowe  
ASSISTANT REGISTRAR