



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE No.221 OF 2006

BETWEEN

MABVUTO DELO BANDA PLAINTIFF

-AND-

THE ATTORNEY GENERAL DEFENDANT

CORAM : T.R. Ligowe : Assistant Registrar

Mapila : Counsel for the Plaintiff

Kalebe (Miss) : Counsel for the Defendant

Munyenjembe : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff got a judgment in default of defence against the defendant on 24th March 2006. This was on claims of false imprisonment and defamation. The plaintiff had been arrested on three occasions. On the first occasion he was arrested on allegations of robbery of a motor vehicle. The imprisonment was for a day, from 24th to 25th January 2002. The second occasion was from 1st March to 5th March 2002 on the same allegation of robbery. The third occasion was from 16th August to 13th December 2002 on allegations that he had beaten a person at a beer party in Mchesi who later died. As it turned out, he was not

involved in the robbery of the motor vehicle. And he was released from custody on the third occasion by the High Court, the State having failed to deal with him according to law within 21 days from 20th November 2002, the date the order was made.

I am mindful of the principle in ***Phiri v Lujeri Tea Estates*** 10 MLR 368 that for a plaintiff to succeed on a claim of false imprisonment he must show that his liberty was restrained without lawful justification, which was cited by counsel for the defendant. I am also mindful of section 42(2)(b) of the Constitution of the Republic of Malawi which allows for 48 hours within which a person arrested for or accused of the alleged commission of an offence can be detained before being brought before a court of law, failing which he/she has to be released. And considering that the courts have to avoid coming up with awards that reflect hourly, daily, and monthly rates in damages for false imprisonment but come up with different awards depending on whether the imprisonment was brief, short or very long and subjecting this to other circumstances (***Donald Ngulube v. Attorney General*** civil cause No 1569 of 1993), I think deducting the 48 hours does not really help anything as the imprisonment was in any case long; about four months.

On defamation counsel for the defence cited a succinct definition of defamation taken from ***Clerk and Lindsell on Torts***, 16th Edition, 1989 p21-22 as communication to the mind of another, matter untrue and likely in the natural course of things substantially to disparage the reputation of a third person. In so far as this definition goes, then the plaintiff proved no communication of any matter that was untrue and likely in the course of things to disparage his reputation. I would only award damages for the false imprisonment.

And the damages 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).

I award the plaintiff K600 000 plus costs of the action.

Made in chambers this 4th September 2008.

T.R. Ligowe
ASSISTANT REGISTRAR