

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 424 OF 2006**

BETWEEN:

KINGFAT MANGANI.....PLAINTIFF

- and -

CALTEX OIL (MALAWI) LIMITED.....DEFENDANT

CORAM: CHIMASULA PHIRI J.

Nyirenda of M/S Wilson & Morgan for the plaintiff.

Chidothi of Sacrane, Gow & Co. for the defendant

Mr Thewethe – court official

Mrs L. Kasasi - typesetter

JUDGMENT

Chimasula Phiri J,

The plaintiff's claim is for damages for false imprisonment and defamation on aggravated footing. The defendant denies that the plaintiff is entitled to any damages whatsoever.

PLEADINGS

The plaintiff commenced this action by filing a Writ and Statement of Claim which reads as follows: -

1. The plaintiff was at all material times an employee of R. Gaffar Transport as a truck driver and transporting the defendant's fuel.
2. On or about October 17, 2005, the defendant unlawfully took the plaintiff from Blantyre and wrongfully directed and procured the police in Thyolo Police Station to arrest the plaintiff and take him into

custody on a charge, then made by the defendant, that the plaintiff had stolen fuel belonging to the defendant and sold it.

3. Acting upon the said direction, the police thereupon arrested the plaintiff and took him in custody at Thyolo Police Station whereat the plaintiff was detained for three days up to 19th October 2005 whereupon he was released on Police Bail.
4. Police investigations have since shown that the plaintiff did not do any wrong warranting arrest and incarceration.
5. In the premises the defendant caused the plaintiff to be wrongfully imprisoned and deprived of his liberty for a period of three days.
6. Further the defendant falsely and maliciously spoke and published of and concerning the plaintiff to the defendant's staff and the administration of R. Gaffar Transport and others whose names are at present unknown to the plaintiff, that the plaintiff had been found stealing fuel and was arrested.
7. In consequence of the said publication the plaintiff was greatly injured in his credit and reputation and in his said profession as a truck driver and has been brought into public scandal, ridicule and contempt.
8. Further the defendant acted as aforesaid out of spite and malice towards the plaintiff and thereby subjected the plaintiff to humiliation and disgrace.

The defendant served defence on the plaintiff which reads as follows:

1. The defendant makes no admission to the contents of paragraph 1 of the Statement of Claim and puts the plaintiff to strict proof thereof.
2. The defendant denies the contents of paragraph 2 of the Statement of Claim and contends they never directed or caused the Police to arrest the plaintiff or to take him into custody as alleged in paragraph 2 of the Statement of Claim and puts the plaintiff to strict proof thereof.
3. The defendant will at trial contend that the Police acted on their own responsibility upon conducting thorough investigations to arrest and not pursuant to any direction or action of the defendant.

4. The defendant will further contend that they merely conveyed their suspicion to the Police who upon thorough investigations decided to arrest the plaintiff.
5. The defendant repeats paragraph 2 hereof, denies the contents of paragraph 3 of the Statement of Claim, and puts the plaintiff to strict proof thereof.
6. The defendant does not make an admission to paragraph 5 of the Statement of Claim and puts the plaintiff to strict proof thereof.
7. WHEREFORE the contents of paragraph 5 of the Statement of Claim are denied.
8. The defendant denies speaking and/or publication of the words complained of in paragraph 6 of the Statement of Claim and puts the plaintiff to strict proof thereof.
9. WHEREFORE The defendant denies the contents of paragraph 7 and 8 of the Statement of Claim and that the plaintiff is therefore not entitled to damages whatsoever.

ISSUES FOR DETERMINATION

Basically, on the pleadings, the issues to be determined by this court are:-

- i. Whether or not the defendant is liable to the plaintiff for false imprisonment; and
- ii. Whether or not the defendant is liable to the plaintiff for defamation.

BURDEN AND STANDARD OF PROOF

Burden of Proof

The burden of proof rests upon the party (the plaintiff or the defendant), who substantially asserts the affirmative of the issue. It is fixed at the beginning of trial by the state of the pleadings, and it is settled as a question of law remaining unchanged throughout the trial exactly where the pleadings place it,

and never shifts in any circumstances whatever. See Joseph Constantine Steamship Line vs Imperial Smelting Corporation Limited [1942] A.C. 154,174.

Standard of Proof

The standard required in civil cases is generally expressed as proof on a balance of probabilities. "If the evidence is such that the tribunal can say: We think it more probable than not, the burden is discharged, but if the probabilities are equal it is not." Denning J in Miller vs Minister of Pensions [1947] ALL E.R. 372; 373, 374.

THE EVIDENCE

Both parties submitted witness statements as evidence in chief. The plaintiff who was first witness stated as follows after giving his particulars: -

I am a driver by profession and was working for Gaffar Transport as such at all times material to this case.

That Gaffar Transport was engaged by the defendant to ferry their fuel and distribute to various places within Malawi.

On or about October 17, 2005, in the morning at around 9 o'clock whilst I was at work at the defendant's premises at Makata Industrial site in Blantyre and while I was preparing to leave for Mwanza to deliver fuel, I was called by Mr Sokosa to leave everything I was doing and follow him.

I left everything as instructed and followed Mr Sokosa to his car. We got into his car and he drove off. I did not question him as to where we were going as he was my boss. Later when we had left Blantyre and heading towards Thyolo he only told me that we were going to Thyolo but did not say what we were going to do there. We were just two of us.

When we reached Thyolo Police Station, Mr Sokosa left me in the car and went into the police offices. He came out after some time together with a CID Officer, a Mr Fatchi. The three of us went to Kasembereka Tea Estate. When we reached Kasembereka Tea Estate, Mr Sokosa and the CID Officer went to the offices and later came out together with a certain man whose name I do not know but I later learnt that he is a security man at the Estate.

We went back to Thyolo Police Station. The CID Officer then started asking me some questions. The first question was whether or not I knew the gentleman they got from Kasembereka Tea Estate. I answered that I did not know him. Mr Sokosa then told the CID Officer that I was a thief and was found stealing fuel by the gentleman from Kasembereka Tea Estate and that the one who could explain better is the said gentleman from Kasembereka. Then the gentleman explained his side of the story.

Mr Sokosa left me at Thyolo Police Station and came back to Blantyre. He did not bid me farewell. He told the police to lock me up and I was locked up for three days upon which I was released on bail pending further investigations.

When I went back to work I was told not to report for duties and I stayed home for 3 weeks because CALTEX called Mr Khan of Gaffar Transport that I was not wanted and that they needed another driver and not me.

When I was called back to work I was posted to Lilongwe for dry cargo duties.

Police investigations have shown that I did not do any wrong warranting arrest and incarceration.

The arrest and accusations of theft leveled against me have caused great embarrassment, humiliation and suffering both in my personal and professional life.

The witness tendered a Police report from Thyolo Police Station which reads as follows:-

TO WHOM IT MAY CONCERN

This letter serves to certify and confirm that on 11/10/05, Mr Stanford Sokosa of Caltex Oil Malawi Limited reported a case against the tanker driver named Kingfat Mangani who works for R. Gaffar Transport after he

received an anonymous call stating that the suspect was illegally selling fuel whilst on transit.

According to the reporter, the suspect was on 29th September 2005 driving a tanker belonging to R. Gaffar Transport on his way to deliver fuel at the selling point and it is alleged that he was seen somewhere along Thyolo – Makwasa road illegally selling fuel from the tanker, a thing which prompted the unknown caller to make a call to the reporter expressing his suspicions over the driver's act.

Acting on the report, the suspect was arrested, interviewed and cautioned by the Police. Later he was released on bail. Police caused further enquiries into the allegation and found that the evidence that is surrounding the case is mere hearsay.

Hearsay evidence is not admissible in court of law as per Section 134 of the Criminal Procedure and Evidence Code. And basing on this fact, it will be very difficult to carry out prosecutions against the suspect.

In cross-examination the plaintiff stated that when he was taken to Thyolo Police Station he was asked what he knew about the theft of fuel and his answer was that he knew nothing. The Police asked the plaintiff if he knew the reason for his arrest. The answer again was in the negative. The plaintiff stated that there was a man from Kasembereka Tea Estate who allegedly stated that he saw the plaintiff selling fuel from the tanker in full view of some policemen.

The plaintiff stated that at some point Mr Sokosa and the Police Officer in Charge went out of the room. When the Officer in Charge came back, Mr Sokosa had left for Blantyre, leaving the plaintiff behind and was locked in police custody. He admitted that he did not hear Mr Sokosa give instructions to the Officer in Charge to lock up the plaintiff. He further admitted that he did not hear Mr Sokosa tell Mr Khan that the plaintiff was a thief.

The second witness for the plaintiff's case was Mr Chifundo Mbewe who adopted his witness statement as his evidence in chief. The statement reads as follows:

I am a yard attendant and was holding position at the defendant's premises at Makata Industrial site at all material times to this matter.

My duties included receiving fuel and also putting fuel in tankers at the defendant's premises at Makata for distribution to various destinations.

I was putting fuel in the tanker driven by the plaintiff on the morning of 17th October 2005 when I heard and saw Mr Sokosa calling the plaintiff to follow him. The following day I heard that the plaintiff is in the hands of the police because he was stealing fuel. Almost everybody at the office knew and heard about the news.

By this time I had worked with the plaintiff for quite a long time and had regarded him with a lot of respect as he could sometimes come back with a lot of fuel as "returns" to be returned to the company, a thing which most drivers could not do.

After I heard what had happened to the plaintiff I lost trust in him.

In cross-examination he stated that at the time of the incident he was working for Caltex and that the plaintiff was a driver while the witness was a loader of fuel. He confirmed that the plaintiff and himself were working for different companies. He stated that he had worked with the plaintiff for 6 months up to the material time. He explained that as a Yard Attendant, he was off-loading and dispatching fuel for drivers. Whenever a driver had taken fuel to some other destination and the fuel never got finished he was responsible for checking and reporting to the General Manager. Sometimes the witness was working in the warehouse. The witness admitted that he had no basis to compare the plaintiff with other drivers on the issue of fuel 'returns' as he was unable to mention the names of those other drivers. He told the court that it was Mr Mwambanaji who told the witness about the arrest of Mr Mangani.

The defendant called Mr Stanford Sokosa as its first witness. He adopted his witness statement as evidence in chief as follows:

1. *THAT I am Stanford Sokosa, a general merchandise businessman of c/o Post Office Box Number 404, Blantyre.*
2. *THAT I have been the defendant's Logistics Director until 31st December 2005.*
3. *THAT on 29th September 2005, I received an anonymous call from Thyolo informing me that the driver of our truck that was to deliver*

fuel at Kasembereka Trading Centre was seen selling fuel to someone in full view of Kasembereka Tea Estate Security Officer and four policemen.

4. *THAT I went to Kasembereka Tea Estate to check with the security officers and Atupele Kandoje, one of the security officers, confirmed the incident.*
5. *THAT I therefore reported the incident to Thyolo Police where I specifically asked the Police to help us investigate the matter.*
6. *THAT the officer on duty requested me to make available to the station, the driver for the vehicle, for questioning as they had transport problems.*
7. *THAT I obliged, by providing transport to a Mr Kingfat Mangani, the driver, who was in charge of the vehicle to Thyolo Police Station.*
8. *THAT upon arrival I was told to leave the driver, as the Police wanted to interrogate him further on the incident.*
9. *THAT subsequently I received a letter from Thyolo Police, dated 2nd November 2005 advising us that upon thorough investigations, the Police found no evidence to implicate Mr Mangani in the matter.*

He added that he reported the matter to Police because he could not believe it that fuel in a tanker could be taken out unmetered. He said he wanted the Police to assist the defendant on getting the truth. The witness stated that upon receipt of an order for fuel, the tanker is loaded with fuel using a meter. It is then sealed. Delivery is done through a meter which would detect any shortfall if it existed. The seals remain intact.

In cross-examination, Mr Sokosa indicated that he reported the matter to the one who was second in command at the Police Station. He could not remember the name of the officer who requested Mr Sokosa to take the plaintiff to Thyolo Police Station. He indicated that no police witnesses would be called to give evidence in this matter, but that he would rely on the statement that was recorded from him at Thyolo Police Station and other witnesses. No such statement was tendered in evidence. He admitted that he was the one who took the plaintiff from Blantyre to Thyolo Police Station and reported to the police. He admitted that on his return to Blantyre, he was alone because the plaintiff had been left at Thyolo Police Station. The witness indicated that he had not brought his police statement

because he thought his lawyer would collect it. He denied making a charge against the plaintiff. In re-examination the witness said that it was the Police who asked him to leave the plaintiff behind with a view to carry out further investigations into the matter.

The second defendant's witness was Atupele Kandoje who adopted his witness statement as follows: -

5. *THAT while following the said person, we came across a stationary Caltex Tanker.*
6. *THAT beside the tanker were two men with 25 litres cans one full of petrol and a siphon.*
7. *THAT Sergeant Makidadi asked the two as to what they were up to.*
8. *THAT one of the persons, who I later learnt was the driver of the Caltex tanker by the name Kingfat Mangani responded that he merely wanted some money for fanta.*
9. *He later was apologetic to the sergeant and insisted on resolving the matter with the sergeant on spot.*
10. *THAT we stayed on site for almost 30 minutes with the Police Officer and myself insisting that Mr Mangani and friend be taken to the Station.*
11. *THAT later the two succumbed. They loaded the cans, siphons in tanker accompanied by Sergeant Makidadi and Phalira.*
12. *THAT the other three officers and the one who was suspected to have stolen our door boarded our car which was leading the way while the tanker trailed us.*
13. *THAT to our surprise when we reached Mbandaga Estate, the tanker could not be spotted. I ordered our driver to stop.*
14. *After 10 minutes the tanker reappeared, overtook us and parked in front.*
15. *THAT Sergeant Makidadi and Phalira disembarked from the tanker, the tanker drove off and the two sergeants boarded our vehicle.*

16. *I immediately quizzed the two sergeants as to what had happened and all they said was that they had asked the driver of the tanker and the buyer of petroleum to report to the Station at a later stage.*
17. *I reported the incident to the Group General Manager of Kasembereka Tea Estate.*
18. *In October 2005, I was taken to Thyolo Police Station where I gave a Statement as stated above.*

In cross-examination Mr Kandoje could not remember the date in October 2005 when he was taken to Thyolo Police Station to give his statement. He contradicted himself when he stated that he was taken to Thyolo Police Station by CID Officers and immediately said he found these CID Officers right there at the Police Station. He confessed that he could not differentiate between a police vehicle and a privately owned vehicle. When asked if he was telling the truth he appeared confused.

The last witness was George Kaipsa, who adopted his witness statement which reads as follows: -

2. *THAT I stay at Kasembereka Trading Centre in Thyolo.*
3. *THAT near my house is a maize mill. And on several occasions I have seen vehicles for World Food Programme and Caltex Tankers selling petroleum products to the owner of the maize mill.*
4. *THAT around September 2005 while I was at home, there was noise near my house. I went out only to see two policemen who took Jasiten Unyolo but he later came back.*
5. *THAT later in the same month two policemen came, called Jasiten Unyolo and after some minutes Jasiten removed cans and siphons from his house and hid them in the maize mill.*
6. *THAT 30 minutes later, Caltex vehicle came with policemen, searched Jasiten's house, took Jasiten and left.*
7. *THAT after two days Jasiten was released.*

There was no cross-examination and that marked the end of the evidence. Both counsel undertook to give supplementary written submissions for which I express my gratitude.

THE LAW AND LEGAL ANALYSIS OF THE EVIDENCE

(i) False imprisonment

False imprisonment is complete deprivation of liberty for any time, however short, without lawful cause. It is the infliction of unauthorized bodily restraint without lawful justification. It is not a matter of bars and bolts but any form of unlawful restraint might turn out to be false imprisonment.

*“Imprisonment is no other thing but the restraint of a man’s liberty, whether it be in the open field or in the stocks or in the cage, in the streets or in a man’s house, as well as in the common goal; and in all places the party so restrained is said to be a prisoner as long as he hath not his liberty freely to go at all times to all places whither he will without fail or main prise otherwise. See – **Chiumia vs Southern Bottlers Ltd** – Civil Cause Number 797 of 1989 (unreported); **Namasasu vs Wood Industries Corporation Limited (WICO) and others** (1997) 1 MLR 162 at page 173; *Termes delaley* 1520, approved in **Bird vs Jones** (1845) 7 QB 742 and by Duke and Atkin LLJ in **Meering vs Grahame-White Aviation Co.** (1919) 122 LT 44; **Clerk and Lindsell on Torts** 17th Ed (1995) at page 592. and **Winfield and Jolowicz on Tort** 14th Edition (1994) at page 63.*

An action for false imprisonment is one of the forms of trespass to the person and any trespass to the person, however slight, gives a right of action to recover damages. Even when there has been no physical injury, substantial damages may be awarded for the injury to a man’s dignity or for discomfort or inconvenience - see Generally **Clerk and Lindsell on Torts** 14th Ed. Page 744; **Kuchnmeister vs Home Office** (1958) 1QB 496.

If a person orders a policeman to arrest another, it is an imprisonment by that person against the person arrested as well as by the policeman, and is ground for an action for false imprisonment against that person see – **Wheeler vs Whiting** (1840) 9 C & P262; **Walters vs WH Smith & Sons Ltd** (1914) 1 KB 595.

It is now trite law that where a person lays a charge to the police so as to make it a duty of the police to act, then the said person is liable for false imprisonment – see – **Matanda vs Sales Services Limited and others** (1990) 13 MLR 219; **Meja vs Cold Storage Company Limited** (1990) 13 MLR 234; **Mvula vs Norse International Limited** (1992) 15 MLR 331; **Chintendere vs Burroughs Limited** 1981–83) 10 MLR 215 and **ADMARC vs Stambuli** MSCA Civil Appeal Number 6 of 1984 (unreported).

In **Kanyemba vs Malawi Hotels Limited** 14 MLR 157, the court stated that restraint of liberty imputes “imprisonment” and that it does not need actual incarceration in a prison cell.

In the same case it was stated that for the offence to be proved the imprisonment must have been by the defendant or his orders. Thus procuring one’s servants to unlawfully arrest another will make the principal liable.

In **Lambert vs Great Eastern Railway Company** (1909) 2 KB 776, a railway constable made an arrest of a person on suspicion of an offence without reasonable grounds for so doing. An action for false imprisonment lay against the railway company.

In **Tembo vs Industrial Development Group (1)** (1993) Vol 16(2) MLR 865 at 875 (para d-e), Chatsika J, as he then was stated the position as follows:

“.....It should be noted that it is the duty of every citizen to give information of an alleged commission of a crime to the Police. If while acting on the information so given by a citizen, the Police mount investigations, and the investigations result in the arrest of a suspect, if the suspect is eventually found to be innocent, he cannot entertain an action in false imprisonment against the citizen who initially supplied the information to the Police. If, on the other hand the citizen, instead of merely supplying information makes a charge to the effect that the suspect has committed a crime, and on the strength of the charge, the Police arrests the suspect, the suspect would have a cause of action of false imprisonment against the citizen who made the charge if it is subsequently found that the suspect is innocent....”

In **Mtukumila vs Malawi Railways Ltd** [1997] 2 MLR 172, the court at pages 178 – 179 approved the following passage from **Hauya vs Cold Storage Company Limited Civil Cause No. 274 of 1987**.

“The crucial issue in false imprisonment is to decide whether the defendant’s servant merely stated the facts to the police or whether they made a charge against the plaintiff. It is accepted that conveying one’s suspicion to the police who, in their own responsibility, take the plaintiff into custody, is not making a charge. However, where the defendant acting through their agents or servants order the police to arrest the plaintiff, it is imprisonment by the defendant as well as the police and an action for trespass would lie against the defendant; but if the defendant merely stated the facts to the police who, in their own responsibility took the plaintiff into custody, this is not imprisonment or trespass by the defendant. The test is this: If the defendant’s servant made a charge on which it became the duty of the police to act then the defendant will be liable but they are not liable if they merely gave information and the police acted according to their own judgment”.

In the case of **Chintendere vs Borroughs Limited** 10 MLR 215, the plaintiff’s claim of false imprisonment failed because the defendant had neither given the police a direct order to arrest the plaintiff nor had they laid a criminal charge against him.

Both counsel in their written submissions made clear submissions on the law and referred the court to many case authorities. The major difference between the two of them is that counsel for the plaintiff insists that the defendant caused the arrest and detention of the plaintiff while counsel for the defendant insists that the defendant merely gave information to police and it was on their own initiative that the police arrested and detained the plaintiff.

Whether or not the defendant is liable for false imprisonment is therefore, a question to be determined on the facts of the particular case by examining in detail the circumstances which led to the plaintiff’s arrest.

In **Kaisi vs The Registered Trustees of Blantyre Adventist Hospital**, Civil Cause 439 of 1994, Tembo J as he then was, stated at page 6 that:

“...the determination whether a defendant made a charge or merely offered information to the police was a factual matter; that all the evidence had to be considered with religious care.

Thus the court should not only look at what the reporter said, but also the manner in which the reporter has acted as a factor to be taken into account in determining whether such a reporter merely gave information or whether he procured or directed the police to effect the arrest...”

It is, therefore, imperative that the court must consider the facts of this case carefully in order to make the right determination on the plaintiff's claim under his head.

In addition, in order to have a sustainable defence to the plaintiff's claim, the defendant must show that he had a reasonable and honest belief that the plaintiff had committed an offence.

Lord Campbell C J in **Broughton vs Jackson** (1852) 21 L. J. QB 265 at 267 stated that: -

“...the defendantmust show reasonable grounds of suspicion for the satisfaction of the court; it is not enough to state that he himself reasonably suspected. But he is not bound to set forth all the evidence; it is enough if he shows facts which would create a reasonable suspicion in the mind of a reasonable man...”

Looking at the evidence in this court, there is no doubt that the defendant says it received an anonymous call that someone was stealing fuel from the defendant's tanker. How anonymous was that call when subsequently Mr Sokosa was able to tell the court the source of that call? He made a follow up on the matter and subsequently took the plaintiff to Thyolo Police Station. He never had discussions about the issues raised by the anonymous caller with the plaintiff at the office to establish the position of the plaintiff. He just ordered the plaintiff to leave whatever he was doing and went with him to Thyolo Police Station. The plaintiff was left in the vehicle as the witness went to meet the policeman. Why did Mr Sokosa do that if his intention was merely to seek assistance of the police to investigate the matter? There is evidence that at some point Mr Sokosa and the policeman went out for a 5 minute discussion. If the plaintiff was the subject of their discussion, why did they not discuss the matter in the office and in the presence of the plaintiff? What information was Mr Sokosa passing on the policeman which Mr Sokosa did not want the

plaintiff to hear? Mr Sokosa said he could not even remember the name of the policeman who requested that the plaintiff be taken to Thyolo because the police did not have transport. All this was said to find an escape route from the fact that Mr Sokosa arrested the plaintiff and delivered him to Thyolo Police Station. Why did Mr Sokosa just leave the plaintiff at the Police Station without even explaining to him the circumstances? My view is that Mr Sokosa was satisfied and happy that he had arrested the plaintiff and delivered him to police.

Further, Mr Kandoje was happy to state that the plaintiff was stealing fuel from the defendant's tanker. This man came to police at the instance of the defendant and in his statement he said everything possible to show that the plaintiff was a thief who was allegedly seen stealing fuel from the defendant's tanker. The police investigations showed that this was mere suspicion based on hearsay sources. Suspicion, no matter how strong it may be, is not evidence. In my view, it is not necessary that the plaintiff should tell the court that he heard the defendant making a charge against the plaintiff and ordering the police to arrest him. The totality of the circumstances has to be considered. It must be realized that there can be subtle manner of procuring the police to arrest and detain one person at the instance of another person. Looking at the manner i.e. swift speed with which Mr Sokosa handled the matter, there can be no doubt in my mind that he did not have a reasonable and honest belief that the plaintiff had stolen fuel from the tanker. Mr Sokosa was baffled himself at how fuel could be stolen from the tanker unmetered and without breaking the seals on the tanker. This should have made Mr Sokosa act cautiously and reasonably but not emotionally as he did. Perhaps he had a grudge against the plaintiff.

In the instant case there is sufficient evidence to satisfy the court that the defendant through its servant and/or agent procured the police in Thyolo Police Station to arrest and detain the plaintiff on a trumped charge of theft and that the plaintiff was in police custody for three days.

(ii) Defamation

I now turn to the claim for defamation. Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person. In the case of **John Kiwa vs BAT (Malawi) Ltd**, Civil Cause Number 322 of 1987 (High Court – unreported) the former Chief Justice Makuta said:-

“In so far as defamation of character is concerned, it is clear that the allegation of theft was false and it must certainly have affected his reputation. Whereas libel is always actionable without proof or any special damage, slander must, in order to be actionable per se or without proof of special damage, impute a criminal offence punishable by imprisonment. The accusation of theft in the instant case is punishable by imprisonment”.

The right of each man, during his lifetime, to the unimpaired possession of his reputation and good name is recognized by the law. Reputation depends on opinion, and opinion in the main depends on the communication of thought and information from one man to another. He, therefore, who directly communicates to the mind of another, matter untrue and likely in the natural course of things substantially to disparage the reputation of a third person is, on the fact of it, guilty of a legal wrong, for which the remedy is an action of defamation. *Prima facie*, the publication of a defamatory matter is a cause of action. The one suing must in his pleading be able to set out with reasonable certainty the alleged defamatory words *vide – Collins vs Jones* (1955) 1 QB 564. He must also allege in his pleading that the imputation published is false and it is unusual though not necessary to allege that it is malicious. The motive is immaterial in determining liability. If the defence is justification i.e that the alleged defamatory statement is true, the person being sued must prove that matter true. The defence must prove the justification of the defamatory matter as alleged but need not prove the literal truth of every fact which he has stated. It is enough if he can prove the substantial truth of every material fact.

The claim for damages for defamation is contained in paragraphs 6 – 8 of the Statement of Claim. The evidence relied upon is that of Chifundo Mbewe. The evidence was clearly challenged by the defendant as hearsay and inadmissible. The court ruled in favour of the defendant. The plaintiff did not call any witness from R. Gaffar Transport to prove the claim. The plaintiff has failed to prove defamation.

DAMAGES

The plaintiff has succeeded on his claim for false imprisonment. However, in his pleading and submissions he merely prayed for damages on aggravated footing. There is no basis for such a prayer.

Further, the plaintiff indicates that he was in police custody for three days and was answering to bail terms for another 14 days. He argues that

his unlawful detention was for 17 days. He has not cited any legal authority for such computation. He has not even indicated the bail conditions. I find that his detention was for three days only.

He has said that on his release he was not immediately reinstated to his job and that later he was transferred to dry cargo business. He did not indicate if he suffered in his earnings.

Therefore, my award to the plaintiff is K95,000.00 for false imprisonment. The defendant is condemned in the costs of and incidental to these proceedings, to be taxed if not agreed.

PRONOUNCED in open court this 14th day of February 2008 in Blantyre.

Chimasula Phiri
JUDGE