



THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 1167 OF 2016
BETWEEN

Yona Kamtwera..... Plaintiff
Master Security Services..... Defendant

CORAM: *Madalitso khoswe Chimwaza, Assistant Registrar*
Kubwalo, Counsel for the plaintiff on a brief
Mpandaguta, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES (False Imprisonment)

Introduction:

This matter was set down for assessment of damages for false imprisonment following a default judgement which was entered on 15th February 2017.

The brief facts are that on 16th September 2014 around midnight, the plaintiff was lawfully travelling home at Mtandile, from his duty station Lingadzi Police in a hired taxi, where upon reaching Mtandile turn off, the vehicle he was travelling in was stopped by another vehicle.

He said the defendants Director Mr. Gangata disembarked from the other vehicle and ordered the police officers to arrest the plaintiff and the other people in the vehicle. He said he was taken to the defendants office at Area 3 where he stayed up 5am and he was accused of a robbery. He was later taken to Kanengo police where he was placed in a cell that was congested, stinking and very poorly ventilated, simply inhumane and in dignifying.

He said at 9AM the Officer In charge of Kanengo police at that time poured cold water on him and called him a disgrace to the Malawi police Service. Later in the day he was taken to his house for a search which yielded nothing. He spent another night at Kanengo police. He was later taken to Lilongwe Magistrate court where he was granted bail at around 16:00hours. On 29th September, 2015 he was acquitted. He tendered a certificate of his acquittal as exhibit EXP1. Therefore the applicant is claiming damages for false imprisonment for 40hours that he was incarcerated before his acquittal.

THE LAW ON ASSESSMENT OF DAMAGES

The cardinal principle in awarding damages is '*restitutio in integrum*' which means, in so far as money can do it, the law will endeavour to place the injured person in the same situation as he was before the injury was sustained – **Halsbury's Laws of England** 3rd Ed. Vol. II p.233 para 400.

This principle was further enunciated in *Livingstone v Raywards Coal Co* (1880) 5 App Cas 25 at 39, where Lord Blackburn said:

'...where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation.'

The High Court in *Ngosi t/a Mzumbamzumba Enterprises v H Amosi Transport Co Ltd* [1992] 15 MLR 370 (HC) set the basis for assessment of damages:

'Assessment of damages.....presupposes that damages have been proved. The only matter that remains is the amount or value of the damages.'

The rule is that prior to assessment, the injured party has provided proof of damage sustained – *Yanu-Yanu Co Ltd v Mbewe* (SCA) 11 MLR 405. Even in the face of difficulties in assessing damages, the Plaintiff is not disentitled to compensation – *Mkumuka v Mphande* (HC) 7 MLR 425.

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - *Stros Bucks Aktie Bolag v Hutchinson* (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – **McGregor on Damages** p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - *Govati v Manica Freight Services (Mal) Limited* [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – *Wood Industries Corporation Ltd v Malawi Railways Ltd* [1991] 14 MLR 516.

Although perfect compensation is impossible, what the plaintiff should get is fair and adequate compensation - *British Commission v Gourley* (1956) AC 185. Since it is difficult to assess damages involving non monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in *West v Shepherd* (1964) AC 326 at 346 where he states: '*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*'

The court bears in mind the sentiments laid out in *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported):

'At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into

account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.'

Damages for false Imprisonment

Generally false imprisonment is not a pecuniary loss but a loss of dignity and is left much to the Judge or jury's discretion. See **Mc Gregor on Damages** p. 1396.

Damages on a claim for false imprisonment are awarded to a Plaintiff for loss of dignity, mental suffering and discomfort among others, suffered by the Plaintiff. The court also considers the duration of the incarceration. These are some of the circumstances of the case that help the court to determine the quantum of damages – **Munthali v Attorney General** [1992] 16(2) MLR 646 and **Mausa and Mausua v The Attorney General and Inspector General of Police High Court**, Civil Cause Number 373 of 2003.

The court will also take into account the length of incarceration and conditions of incarceration. See **Gama vs Attorney General** Civil cause No. 2146 of 2007.

Damages may also be given for any injury to reputation as was stated by Lawrence L.J in **Walter vs. Alltools** (1944) 61 T.L.R Peake 87, that:

“A false imprisonment does not merely affect a man's liberty, it also affects his reputation” .

Counsel for the plaintiff has proposed a quantum of K4,000,000.00 for imprisonment for a period of 40hours. Counsel cited the case of **Because Chamveka vs Attorney General**, Civil Cause No. 120 of 2013, as comparable, in which case the plaintiff was awarded the sum of K800,000 for imprisonment which lasted 9hours and 25minutes.

Courts resorts to awarding conventional figures guided by awards made in similar cases and also taking into account the money value.

- In the case of **Isaac Mhango v Cross roads Hotel and The Attorney General (Malawi Police)**, High Court, Lilongwe Registry, Civil Cause Number 212 of 2014 where the Plaintiff was detained for 14days the court awarded MK3,000,000.00 as damages for false imprisonment in 2015.
- In the matter of **Medson Kanyoza and Nesta Ngwenya v ESCOM Limited**, High Court, Principal Registry, Civil Cause Number 541 of 2012, the Honourable Assistant Registrar awarded the 1st Plaintiff K100,000.00 and the 2nd Plaintiff K80,000.00 for false imprisonment for detention that lasted 33 hours and 25 hours respectively This award was made on 12th June 2015.
- **Jeminar Kayaza and two others vs Central African Produce Co.** Civil cause No. 4 of 2016 (Principal Registry) in which the Assistant Registrar, on 23rd february,2017 made an award of K800,000 each plaintiff for 3hours of first detention and 8days second detention.

It is now settled law that the length of detention (time) is not the only thing that the court considers when assessing damages in matters of false imprisonment. As cited above the court considers injury to liberty – loss of time considered from a non-pecuniary view point, injury to feelings – indignity, mental suffering, disgrace and humiliation.

The Plaintiff herein was detained for 40 hours. He was exposed to degrading and humiliating remarks that he was a disgrace to the police profession who instead of fighting crime he was branded as a criminal.

In terms of comparable period of detention the case of *Medson Kanyoza and Nesta Ngwenya vs ESCOM Ltd* reflects circumstances closest to the Plaintiffs herein. Taking into account the passage of time and the devaluation of the Kwacha, the case of *Because Chamveka vs Attorney General* reflects a better position though it is on a higher side as compared to the length of detention in the *Medson Kanyoza and Nesta Ngwenya vs ESCOM* and also the case of *Jeminar Kayaza and two others vs Central African Produce Co.*

In view of all the circumstances of the present case this court awards the Plaintiff K800,000.00 as damages for false imprisonment and costs of the action (to be taxed if not agreed).

Each party is at liberty to appeal.

Made in chambers this 12th day of September, 2017 at Lilongwe.



Madalitso K. Chimwaza

ASSISTANT REGISTRAR