



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 431 OF 2016

BETWEEN:

OSCAR BANDACLAIMANT

AND

ATTORNEY GENERAL..... DEFENDANT

CORAM

Mrs T. Soko : Assistant Registrar

Mr Mumba : Counsel for the claimant

Ms. Munthali : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

This is an order on assessment of damages following a judgment by Justice N'riva dated 28th February 2018. The claimant was claiming damages for false imprisonment and malicious prosecution, damages for defamation and costs of the action. The Court dismissed the head of damages for defamation and the claimant succeeded in damages for false imprisonment and malicious prosecution.

The facts of the case derived from the statement of claim aver that on 9th November 2012, the claimant while in the course of his employment was arrested by the police on charge of theft. The charge concerned sums

of money which were stolen by robbers in broad daylight at the premises of the claimant's employers. Following the arrest the claimant was incarcerated at Kanengo police station from 9th November 2012 to 15th November 2012 when he was granted bail by the Mkukula Magistrate Court. The claimant attended Mkukula Magistrate Court for his trial until the 31st May 2013 when he was discharged by the Court as the state failed to parade witnesses.

EVIDENCE

In evidence, the claimant adopted his witness statement where he stated that where he stated that on 9th November 2018, he was arrested and detained at Kanengo police station on suspicion that he was involved in theft of money that took place at Afrispere Worldwide. The Claimant stated that he was locked up at Kanengno until 15th November 2012 when he was released on Court bail by the Mkukula Magistrate Court. The claimant stated that on 31st May 2013 he was discharged by Mkukula Magistrate Court because the prosecutors had failed on several occasions to parade any witnesses before the Court to prove their case.

SUBMISSIONS

In submissions, Counsel for the Claimant submitted that the Claimant should be compensated with K40, 000,000.00 for being incarcerated for 144 hours and K8, 000,000.00 for malicious prosecution. Counsel Cited a case of **Shepher Mumba vs The Attorney General Civil Cause No. 190 of 2012** where the claimant was awarded a sum of K2,000,000.00 for false imprisonment of 1 day which is 24 hours and K6, 500,000.00 for malicious prosecution. Counsel also cited a case of **Chimwemwe Kalua vs The Attorney General Civil Cause No. 490 of 2012** where the Court awarded a sum of K2, 000,000.00 on 14th February 2013 for false imprisonment of 7 hours. Counsel then stated that bearing in mind that in Kalua's case the Court awarded a sum of K2, 000,000.00 for 7 hours incarceration it follows that the award must be $K2, 000,000.00 \times 144 / 7 = 40,000,000.00$.

FALSE IMPRISONMENT

Damages for false imprisonment are non- pecuniary in nature. They are awarded where a person was without lawful excuse denied liberty to move whenever he wanted. They are primarily awarded for the injury to liberty, feeling including loss of dignity, mental suffering, disgrace and humiliation. Regard must be had to the conditions of the incarceration, length of time in incarceration. Even reasonability of the detention. Where detention is clearly arbitrary the compensation to be on the higher side as compared to a situation where the detention was based on some reasonable grounds. Although time is a factor in considering the quantum all

other factors need to be taken into account and it will not be proper to assign values to time spent in prison. See *Because Chikamveka vs Attorney General (Commissioner of Prisons) Civil Cause No. 120 of 2013*. In that case the claimant was awarded a sum of K800, 000.00 for spending 9 hours 25 minutes in custody. The award was made on 21st February 2014.

In *Vovo Gomesi vs Attorney General Civil Cause No. 399 of 2013* it was stated that damages for false imprisonment and malicious prosecution are awarded where a person was without lawful excuse, denied liability to move wherever he wanted. Where the unlawful arrest is by a private person, it is effective the time of arrest. The state is allowed to detain a person and take him before a competent Court within this period, on reasonable grounds otherwise any further detention becomes unlawful. Although the length of time the plaintiff has been in the detention is material, the Circumstances and general conditions of the detention also need to be considered. In this matter the plaintiff stayed for 38 days in detention and the Court awarded him a sum of K4, 000,000.00 in all heads of damages on 16th July 2014. You can also see *Patrick Chikuse and Zagwa Mashalubu vs The Attorney General* where the plaintiff was awarded a sum of K500, 000.00 for false imprisonment on 16th July 2014

DETERMINATION

In the present matter, I must state that it is clear from the authorities I have cited that the Court must not only consider the time factor but also other factors. In my mind in the case of Kalua the Court considered the factors in the case and in this matter I have to consider the factors at hand rather than just adopting the calculations submitted by Counsel for the claimant. The evidence is clear that the Claimant was detained from 9th November to 15th November 2015 which is a long period bearing in mind that the total hours he stayed in custody were 144. Besides, the claimant lost his dignity and was subjected to prison conditions that were not conducive. After considering the circumstances of this case the Court awards a sum of K10, 000,000.00 in all heads of damages.

Costs are for the claimant.

Pronounced in Chamber on 20th 21st June 2018


T. SOKO

ASSISTANT REGISTRAR