



The Judiciary



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 69 OF 2013

BETWEEN

KWAME KANDOJE.....1st CLAIMANT

SHAIBU MAKAWA.....2ND CLAIMANT

AND

CHINA DA RESTAURANT AND LODGE.....DEFENDANT

CORAM: A.J. BANDA, ASSISTANT REGISTRAR

Mr. P. Mbale, of counsel, for the Claimant

For the Defendants, J. Masumbu, not present

Ms. M. Galafa, Clerk/ Official Interpreter

ASSESSMENT ORDER

Background

The Honourable Justice Michael Tembo, by an order of 29th November, 2016 held that judgment be entered for the claimants in their claims against the defendant claiming damages for; false imprisonment and malicious prosecution, defamation, special damages and costs of the action. The claimants obtained a date of appointment with the registrar for the assessment of damages on 17th May, 2018. Neither the defendant nor his legal practitioners turned up for the assessment hearing. The court proceeded to hear the claimants in the defendant's absence as there was proof of service of the notice.

Evidence

Mr. Kwame Kandoje and Shaibu Makawa told the court that they were employed by China da Restaurant and Lodge as an assistant supervisor and waiter. On 26th April, 2011 they were arrested and detained by the police on the instruction by the owners of the defendant, a lodge within Blantyre, that they had stolen a laptop that was missing from the lodge after the lodge had hosted a party that was held the previous night. They were detained for two days as they were released on 28th April, 2011 on police bail who told them to appear before the police every day thereafter. They said they were acquitted of the criminal charge by the court on 14th September, 2011.

Both claimants said they had a tough time in detention. Kwame Kandoje said that he was beaten by fellow inmates who made advances to him, without elaborating what the advances were about. He said the inmates had laid on him I the night. Mr. Shaibu Makawa said the inmates beat him up as he did not have money to make a contribution. He further said that he spent a whole night in a standing position.

Both claimants said that they were told that their employment contracts were terminated when they returned to the work after they were acquitted. They were told the Lodge could not have employees who were thieves. They said a case of unfair termination of work was laid before the Industrial Relations Court.

Analysis and Determination

Generally, the principle in law of torts is that a wrong must be remedied by an award of damages. The aim is to put the wronged party in the same position as the party was before the wrong was committed in so far as money can do it- **Hall v. Barclay [1937] AC 620 @ 623** per

Greener, L.J. False imprisonment is one of the nominal torts. As for calculation of damages for false imprisonment, Mc Gregor on Damages, 14th edition at paragraph 1357 states as follows:

"The details of how damages are worked out in false imprisonment are few; generally, it is not a pecuniary loss but a loss of dignity and is left much to the jury's or judge's discretion. The principle heads of damages would appear to be injury to liberty, that is the loss of time considered primarily from a non-pecuniary view point and injury to feelings, suffering, disgrace and humiliation, with any attendant loss of social status. This will be included in the general damages which are usually awarded in these cases: no breakdown appears in the cases supplied.

In addition, there may be recovery for any resultant physical injury, illness 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."

There are numerous cases in our jurisprudence that show that the quantum of damages in false imprisonment is left to the court's discretion taking into account all circumstances of the individual case. Factors in consideration are, but not limited to; time, that is the period under detention, conditions of the detention, loss of reputation and status. See for example the cases of *Bulla v. Agricultural Development and Marketing* [1993] 16 (1) MLR 30 @ 34 and 35; *Kamlepo Kalua v. The Attorney General* [2013] MLR @ 130 and 131.

In the case of *Arnold Kampeni and Five others v. Electricity Supply Commission of Malawi*, Civil Cause Number 255 of 1998 High Court, Principal Registry each of the 6 plaintiffs got K1,000,000.00 as compensation for false imprisonment. In that case the plaintiffs were detained for 5 days.

In the case of *Lightwell Mphulama v. Attorney General* Civil Cause 1970 of 2008 (Unreported), the plaintiff was detained for 7 days and he was awarded K700, 000.00 on 25th August 2011 for false imprisonment. The plaintiffs in the case of *Chrispin Kaledzera, George Mwase, Sande Mkwamba v. The Attorney General* High Court Principal Registry, Civil Cause Number 2578 of 2009 were detained for 40 days and the court awarded each of the plaintiffs K300, 000.00 on 24th May 2011 for false imprisonment.

In *Medson Kanyoza and Nesta Ngwenya v. ESCOM Limited*, being Civil Cause Number 541 of 2012, the plaintiffs were awarded K100, 000.00 and K80, 000.00 respectively for false imprisonment, their detention having lasted 33 hours and 25 hours respectively. The award was made on the 12th June 2015. In a more recent case of Civil Cause Number 4 of 2016, the plaintiffs were detained on the 11th June 2015 from 7pm to 10pm and released only to be detained again from the 12th of June to the 19th of June 2015. On claiming damages for false imprisonment, the plaintiffs were awarded K800, 000.00 on 23rd February 2017.

In the case of *Shepherd Mumba v. The Director of the Anti-Corruption Bureau*, Civil Cause Number 182 of 2015, High Court, Principal Registry (unreported, accessible on www.malawilii.org), the Assistant Registrar in an assessment order of 25th May, 2016 awarded a plaintiff who was detained for less than 12 hours and in much better conditions than this instant case, a sum of K1,500,000.00. I quote a part in the assessment order below:

The plaintiff herein was detained at the defendant's offices, was never taken to a penitentiary or other form of cell; there is no suggestion that he was ill-treated or that he faced some degrading treatment. The greatest suffering coming as a result of the arrest was the detention itself leading to the inconvenience of making alternative arrangements to pick his children from school, failing to meet his clients and being prevented from doing his daily routines generally. In the circumstances I think K 1, 500, 000.00 will suffice to compensate the plaintiff.

A person who is prosecuted where there are no sufficient reasons for the prosecution is held to be maliciously prosecuted. This is a wrong for which the person must be compensated. See *Chamuka and Another v. Mpasu, United Democratic Front and attorney General* Civil Cause No. 662 of 1998. Lord Holt in *Saville v. Roberts* (1698) 1 Ld Raym 374; 5 Mod 394 held that there are three sorts of damage any of which would be sufficient ground to support an action for malicious prosecution. He listed them as:

1. The damage to a man's fame, such as where the matter he is accused of is scandalous;
2. Where a man is put in danger to lose his life or limb or liberty; and
3. Damage to a man's property, as where he is forced to spend his money in necessary charges to acquit himself of the crime which he is accused.

Mc Gregor on Damages, 15th Edition, paragraphs 1629 and 1630 state:

The principal head of damages here is to the fair fame of the plaintiff, the injury to his reputation. In addition, it would seem he would recover for the injury to his feelings i.e. for the indignity, humiliation and disgrace caused him by the fact of the charge being preferred against him. No breakdown however appears in the cases.

Holt's second head was the damage by being put in danger of losing one's life, limb or liberty. It therefore seems that the plaintiff can recover in respect of the risk of

conviction. This is basically injury to feelings. If there has been arrest and imprisonment up to the hearing of the cause, damages in respect thereof should also be included, and will be the same as would be recoverable in an action for false imprisonment.

In the present case all three are satisfied, even though one would have been sufficient. The claimants had their names damaged as they were taken as thieves, they were in danger of breaking a limb from the conditions of their detention which included a beating, and indeed they lost liberty by the detention and the subsequent appearance to the police after they were given bail. The prosecution made them lose money to attend bail and trial and to pay for other incidentals.

In the case of *Douglas Gella v. Attorney General Civil Cause No. 1013 of 2005, High Court, Lilongwe Registry*, the court made an award of K700,000.00 as damages for false imprisonment and malicious damage in March, 2007.

The claimants also claimed damages for defamation. In the hearing of employees of the defendant, the owners of the defendant lodge turned the two claimants down when they presented themselves to work stating that they were thieves. In *Brown Pindani v. Godfrey Mdumuka and Shoprite Trading Limited Civil Cause no. 2442 of 2003*, a plaintiff who was orally defamed and accused of stealing a drink from the store of the defendant, and later forced to pay double the price for the drink was awarded K 30,000.00 as damages for defamation.

In the present matter I find **K3,000,000.00 (three million and five hundred thousand Kwacha)** to be adequate compensation for each of the claimants under the three heads of false imprisonment, malicious prosecution and defamation.

The two claimants further asked for indemnity of transport costs and legal and professional fees that the two incurred in the defence of their hearing. These are special damages. It is a requirement of law that special damages must be specifically proved in the assessment hearing. It is not necessarily by provision of receipts- see **Renzo Benetollo v. Attorney General and National Insurance Company Limited Civil Cause No. 279 of 1993, High Court Principal Registry (unreported)**, where the court held that where a party has not proved damages, reasonable compensation in the circumstances can be awarded. This should however, not water down the need for proof. In the instant matter, there was no proof of legal costs expenditure at

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K1, 056,000.00, nor K20,000 transport. I understand though that the two defendants were prosecuted and they incurred costs of that needless prosecution. I award them K300,000.00 each for the costs as nominal damages.

Conclusion

The claimants are awarded K3, 300,000.00 each as total damages for false imprisonment, malicious damage, defamation and legal, professional and transport costs of the needless prosecution. The two claimants are also granted costs of the assessment hearing, which if not agreeable, will be assessed by the registrar.

Made this 27th day of June, 2018.



Austin Jesse Banda
ASSISTANT REGISTRAR