



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 85 OF 2018

**BETWEEN**

NICHOLUS TREVA MALUNGA.....CLAIMANT

**AND**

ATTORNEY GENERAL.....DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA**

Maele- of Counsel for the plaintiff

Chitsulo- Court Clerk and Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

This is the court's order on assessment of damages pursuant to a default judgment on liability entered in favour of the claimant on the 30<sup>th</sup> of April 2018 by Honourable Justice Kenyatta Nyirenda. The issue of the Defendant's liability having been settled already by the said judgment, the duty placed upon this court was to determine the reasonable quantum of damages that would adequately compensate the claimant for the losses and damages herein.

The claimant in this matter took out a writ of summons which was issued on 20<sup>th</sup> of March 2018 against the defendant claiming damages for violation of the right to a trial within a reasonable time under s.42(2)(f)(vii) of the Constitution respectively, violation to have recourse by way of appeal to a higher

court that a court of first instance under section 42(2)(f)(viii) of the Constitution of the Republic of Malawi and costs of the action.

The claimant averred that at all material times he was a convict at Chichiri Prison after being convicted by the Blantyre Senior Resident Magistrate court of the offence of defilement in Criminal case No.83 of 2010. He sued the defendant as the legal representative and legal advisor for the Malawi government. He lodged and appeal against his conviction and sentence at High Court Principal Registry in Criminal Case No. 34 of 2013. The matter was adjourned for judgment. Despite repeated reminders about the pending judgment, the judgment in the claimant's appeal never came out until the claimant completed his 11 year sentence on the 4<sup>th</sup> of November 2017. The High Court failed to deliver the judgment for a period of 4 years. Due to the foregoing, he suffered violation of his constitutional rights. It is against this background that the claimant claims compensation for violation of Constitutional rights and costs of this action.

In this case the plaintiff seeks a specific public law constitutional damages remedy, separate and distinct from any common law remedy that he may be entitled to. In essence the competency or otherwise of the relief sought by the plaintiff turns on a proper construction of Section 46(2)(a) of the Constitution provides that any person who claims that a right for freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to make an application to a competent court to enforce or protect such a freedom or right. Section 46(4) provides that a court referred under 46(2)(a) shall have the power to award compensation to any person whose rights or freedoms have been unlawfully denied or violated where it considers it appropriate in the circumstances of the particular case.

When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. In *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC) the court (per Ackermann J) stated as follows at p 826 para 69:

'... I have no doubt that this Court has a particular duty to ensure that, within the bounds of the Constitution, effective relief be granted for the infringement of any of the rights entrenched in it. In our context an appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the right entrenched in the Constitution cannot properly be upheld or enhanced.

Justice Dingake in ***Oatile v The Attorney-General* 2010 (1) BLR 404 (HC)** stated

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in

principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.

In this case, the claimant stayed in custody clinging to the hope that he was innocent and that he was going to be accorded his constitutional right and possibly be exonerated. This never came to pass albeit having moved the High Court to re-assess his conviction and or the sentence. Essentially, he may have been kept in prison with the attendant unpleasant conditions for a protracted period in circumstances where he could have gained his liberty even earlier.

I have taken into account the proposal by Counsel for the claimant that a global sum of K10,000,000.00 would be sufficient recompense. In my view, assuming the claimant had received his verdict four years ago and it was in his favour, it means the rest of the years he was in custody could be tantamount to wrongful imprisonment. In the case of **Daniel Baleke Mangwela v AG** Civil Cause No.699 of 2010, the plaintiff was awarded the sum of K250,000.00 as damages for false imprisonment after being imprisoned for 5 hours. If this case authority is anything to go by, I would say the sum of K5,000,000.00 would be reasonable compensation. I so order.

The plaintiff is further awarded costs of this action to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 23<sup>rd</sup> DAY OF JULY 2018



WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR