



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 49 OF 2017

BETWEEN

LLEWELYN KALUA.....CLAIMANT

AND

ATTORNEY GENERAL.....DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA**

C. Kalua- of Counsel for the plaintiff

Mahonga- of Counsel for the defendant

Chitsulo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

The claimant in this matter took out a writ of summons which was issued on 6th of February 2018 against the defendant claiming damages for false imprisonment, malicious prosecution, defamation and costs of this action. The matter came for mediation on 28th of May 2018 before Honourable Justice N'riva. The defendants did not avail themselves for the same. The court made an order that the defence be struck out and judgment be entered in favour of the claimant and that the matter proceeds to assessment of damages. This is the court's order on assessment of damages pursuant to the said judgment on liability. The issue of the Defendant's liability having been so settled, 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 background of the matter is that the plaintiff a resident of Nkolokosa who was at the material time 70 years old was on or about the 10th of October 2013 arrested by the police at his house on allegations that he was involved in a robbery at Indebank in Blantyre on 27th of June 2013. He was kept in custody from the 10th of October to 14th of October 2013 when he was released by the Blantyre Magistrate's court. He was charged before the said court for conspiracy and robbery but was discharged for lack of evidence. The plaintiff believes the Police had no probable and reasonable cause for his arrest and prosecution. It is on this basis that he claims for false imprisonment, damages for defamation, malicious prosecution, and costs of the action.

The court is moved to determine the reasonable quantum of damages that will adequately compensate the plaintiff. The measure of damages to be awarded was ably illustrated by Lord Blackburn in **Livingstone v Rawyards Coal Company (1880) 5 App 25** as follows:

‘That 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 if he had not sustained the wrong for which he is now getting his compensation or reparation.’

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 other hand, are such as the law will not infer from the nature of the course - (Refer to the case of **Stroms Brucks Aktie Bolag –v- Hutchinson (1905) A.C. 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 p. 23 para. 1- 036**).

Special damages must be specifically pleaded and must also be strictly proved: Refer to the case of **Phiri v Daud [1992] 15 MLR 404, Mariwu v Sambani [1993] 16(2) MLR 586, Ngwira v The Attorney General**, civil cause no. 106 of 2005. 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**.

In the light of the case herein, on the plaintiff's claim for false imprisonment damages are awardable for, among others, loss of dignity, mental suffering, and discomfort suffered by a plaintiff. The period of

incarceration is also a consideration under this head. See the case of **Matanda v Sales Limited 13 MLR 219**. The same sentiments were echoed in **Maonga and others v Blantyre Print and Publishing Co Ltd [1991] 14 MLR 240 (HC)**, it was held that in awarding damages for false imprisonment, courts consider the loss of liberty, mental suffering and humiliation caused by the false imprisonment.

In support of the assessment of these damages, the plaintiff filed skeletal arguments in which counsel for the plaintiff cited several comparable authorities for false imprisonment to assist the court in coming up with the appropriate quantum. The first case was **Daniel Baleke Mwangwela vs Attorney General, 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. He also cited the case of **Chimwemwe Kalua v The Attorney General Civil Cause No. 490 of 2012** where the court awarded the claimant K2,000,000.00 as damages for false imprisonment of 7 hours. The award was made on the 14th of February 2013. Further to this, Counsel cited the case of **Martin Chimkaya v The Attorney General Civil Cause No. 67 of 2017** in which the court awarded the claimant K20,000,000.00 as damages for false imprisonment upon considering the circumstances of the case that the claimant was incarcerated for 47 days. The award was made on the 4th of June 2018.

Counsel for the plaintiff contends that the claimant in this case spent 5 days in incarceration making a total of atleast 120 hours. It is his opinion that although the period of incarceration is not the only consideration the court in **Daniel Mangwela** case adopted a formula of K50,000.00 per hour. He therefore prays for K15,500,000.00. Unfortunately, so to say, the other party did not make submissions under this head only.

All the same, this court has had regard to other several case authorities in which similar awards were made. I feel obliged to state that although the period of incarceration is a relevant factor to be taken into account in assessing damages for unlawful detention, the court cannot simply work out the damages on an hourly or daily basis borrowing figures from precedents. In my view the quantum in each case has to be assessed taking into account the entire circumstances that are peculiar to a particular case at hand. In the present case, this court takes note of the humiliation as lamented by the claimant in the way he was bungled into a police vehicle along his sons under instruction that they should not talk to each other. The claimant states that he was shocked at the whole ordeal. There is no doubt in my mind that the claimant suffered significant loss of dignity in the front of his family not to mention mental anguish. Taking into consideration that he also stayed 5 days in incarceration, I believe K3,000,000.00 would be adequate compensation under this head.

On damages for defamation, Counsel for the plaintiff cited the case of **Shepher Mumba v Attorney General** Civil Cause no. 190 of 2012 in which the plaintiff was awarded the sum of K3,500,000.00 for defamation. The award was made on 20 September 2012. Counsel for the plaintiff therefore prays for K25,000,000.00 for the manner the plaintiff was arrested and taking him to court for the abortive prosecution. He further cites **Martin Chimkaya v The Attorney General** (supra) in which the court awarded the claimant K5,000,000.00 as damages for defamation. The award was made on 4th June 2018.

It is contended that the claimant in this case had a photo taken while carrying a placard with his name and the words “arm robbery” and yet he had not committed the crime. As a committed Christian and a serving deacon at his church his reputation was tarnished. His brethren at his church have lost trust in him and the community where he lives at Nkolokosa call him a hypocrite. The entire period he was in detention and the abortive trial made people believe he is a thief, a robber, a fraudster and a crook. It is Counsel for the claimant’s submission that taking into account these factors K10,000,000.00 would be fair and reasonable compensation.

On the other side, however, Counsel for the defendants through his skeletal arguments is of the view that the claimant did not parade a witness to prove that he was indeed defamed. In support of this proposition, Counsel brought to the attention of the court the case of **Hayward v Hayward (1887) 34 Ch D 198** where it is stated that where a claimant fails to provide evidence in support of his claim for damages in a libel action, he would only recover a small award or nominal damages. In that case, a circular was distributed by the defendant at a trade fair, which cast the plaintiff and his business in a disparaging light. It was held that only a nominal award of damages should be made because the plaintiff had given no evidence of damage save that in his affidavit he had deposed that the publication of the circular was calculated to injure and had injured his business which has fallen off since the issue of it.

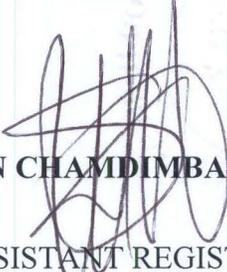
In the instant case, the claimant alleges “serious” injury to his character and but, save his viva voce evidence and his witness statement, has not provided any real evidence of this or any corroborative evidence to buttress his claim. He has not called any member of the family or church or community to bolster this claim. To my mind, his viva voce evidence and witness statement could be at best self-serving. Be that as it may, to my mind, this does not diminish the injury done to his feelings and its impact upon him. I note that in his witness statement, he gave evidence of his contract to be a sales agent for an Indian company called Springboard Enterprises Ltd and another called LESDEP that failed to materialize due the criminal proceedings. Whilst his evidence was not corroborated, I bore in mind that he clearly

feels that his reputation was attacked and that this reputation is important to him, sufficient as to cause him hurt feelings. Bearing in mind all the relevant factors of this case, including the extenuating circumstances of lack of corroboration, I conclude that an award of K5,000,000.00 would vindicate his hurt feelings and meet the justice of this case.

On malicious prosecution, Counsel referred the court to the case of **Shepher Mumba v Attorney General (supra)** and states that the plaintiff was awarded K6,500,000.00 for malicious prosecution. The award was made on the 20th of September 2012. The circumstances and the facts of the malicious prosecution in this case are very similar with those in Mumba case. He further cites **Martin Chimkaya v The Attorney General (supra)** in which the court awarded the claimant K5,000,000.00 as damages for malicious prosecution. It is Counsel's opinion that K9,000,000.00 would be reasonable compensation under this head. In my opinion, this is at a higher side, I make an award of K5,000,000.00.

In summary, therefore, the plaintiff is awarded the sum of **K3,000,000.00** as damages for false imprisonment, **K5,000,000.00** as damages for defamation and **K5,000,000.00** as damages for the malicious prosecution. In total the plaintiff is awarded the sum of **K13,000,000.00**. The plaintiff is further awarded the costs of this action to be taxed in the absence of an agreement.

MADE IN CHAMBERS THIS 13th DAY OF AUGUST 2018



WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR