



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 232 OF 2018

BETWEEN

JACINTA BELLO

PLAINTIFF

VERSUS

THE ATTORNEY GENERAL

DEFENDANT

CORAM : HIS HONOUR M. MAKHALIRA – ASSISTANT REGISTRAR
APPLICANT : REPRESENTED BY KUSIWA OF COUNSEL
RESPONDENT : ABSENT
COURT CLERK : MS. M. GALAFA

ORDER OF ASSESSMENT OF DAMAGES

By a default judgment entered by the Honourable Justice N'riva on the 25th of February, 2019, the court entered judgment in favour of the claimant for false imprisonment and ordered that the damages due be assessed by the Registrar.

The default judgment was entered after the Honourable Judge struck off the defendants' defence for failing to attend mediation hearing.

I then conducted the assessment hearing on the 20th of June, 2019. On the day of assessment hearing the respondent were not present despite Counsel for the Claimant informing the court that they were duly served with the notice for the assessment hearing. The court then proceeded with the hearing.

Only one witness gave evidence during the assessment hearing and it was the Claimant.

In her evidence, the Claimant told the Court that she comes from Kandoje Village, T/A Likoswe, Chiradzulu District.

She then tendered her witness statement which was then marked as EXPW1 as part of her evidence.

Counsel then adopted the skeleton arguments filed with the assessment bundle to form part of the evidence.

The Claimant is seeking damages for false imprisonment.

In her witness statement, the Claimant deponed that she joined a Village Bank that was being run at PIM in Chiradzulu District where she stays with her husband and that in October, 2017, she borrowed MK40,000.00 from the grouping which she was supposed to repay in two weeks. She said when the two weeks elapsed, she failed to repay the money due to financial problems and she communicated her problem to the grouping and asked for more time.

She went on to say that the grouping shares money after an agreed period and in this case the agreed date to share the money was the 12th of March, 2018.

She said on the 12th of March, 2018 she again asked for more time to be allowed to repay the money and promised her fellow group members that she had failed to pay the debt.

She said the police officer indeed arrested her and took her into Police custody at PIM Police Station where she was detained until 15th March, 2018 when she was released. For the 4 days she was incarcerated she was never brought before a Court of Law.

She went on to depone that the condition in the Police cell were horrible as the cell was small and overcrowded and that she spent the nights on bare floor.

She therefore claimed that she was wrongly imprisoned and deprived of her liberty for a period of 4 days.

Her prayed is for the court to award her damages for false imprisonment.

The issue before the Court at this stage is what quantum of damages should be awarded to the Claimant for the tort that she suffered.

It is trite that in that tort the general principle is that in awarding damages a Plaintiff is to be put in the same position as before to tort.

In the case of *George Kankhuni v Shire Buslines Limited*, Katsala, J stated as follows:

"The Law demands that the Plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as restitution in intergrum."

It is however not easy to quantify damages for losses that are not monetary in nature like the present case. Courts as such use comparable cases as a guide to the quantification of the applicable damages, without losing sight of particularities in the individual case that the court is dealing with. **See Chipeta' v Dwangwa Sugar Corporation Civil Cause No. 345 of 1998, High Court, Principal Registry (Unreported)**. The Court will also consider factors such as passage of time since a particular comparable award was made as well as currency fluctuations within the period between the case at hand and the comparable one. **See Hon Kennedy Kuntenga v Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry. (Unreported)**

It was stated in **Mikonbe v United Transport (Malawi) Ltd, [1992] 15 MLR** that damages in the tort of false imprisonment are awarded for loss of liberty, humiliation and mental suffering.

Mwaungulu, JA, then sitting as Registrar in the case **Mulenga v Mwale [1991] 14 MLR** quoting an earlier ruling he made stated that:

"the indignity, humiliation and stigmatization consequent upon imprisonment is what the Court endeavors to compensate. No monetary value can be raggged to these. Admittedly, the time spent under such restrains aggravates or mitigates the injury but it is not what is compensated and it cannot be the basis of the award although it is a relevant consideration."

terms as per Mbalame in Mwakalinga v Trastel Supplies Ltd, Civil Cause Number 403 of 1984 (Unreported). In common law countries, damages under this head are at large. Thus, time being, one of the considerations cannot be a yardstick. The circumstances of the imprisonment might be so outrageous that high awards have to be made even though the period of incarceration is short.

Coming to the present case, the evidence of the Claimant told the Court that on the 12th of March, 2018, her colleagues at the Village Bank grouping to which she was a member wrongfully directed and procured a Police Officer to arrest her on a charge made by the members, that she had failed to pay back a debt.

Acting upon that direction, the police officer arrested her and took her into custody of PIM Police Station where she was detained until the 15th of March, 2019, when she was released without being formally charged. She was indeed therefore incarcerated for 4 days.

She further indicated in her witness statement the conditions of the Police cell were horrible. The cell was small and overcrowded and that she spent the night on a bare floor.

I have taken note and considered the case law provided by the Counsel for the Claimant.


Counsel for example cited the case of Shepher Mumba v Attorney General, Civil Cause No. 190 of 2012 where an award of MK2,000,000.00 was made for false imprisonment. In that case the Plaintiff was arrested at 7:25 am on 29th March, 2012 and released on 30th March, 2012.

Counsel also cited the case of Cleopas Matora and 3 others v ESCOM, Civil Cause No. 228 of 2014. The Plaintiffs in this case was in carcerated for 6 days. The Court awarded each plaintiff MK6,000,000 as damages for false imprisonment. The award was made on 9th September, 2015.

Looking at the circumstances of the present case in which the applicant was detained in custody for what is clearly a civil matter and spent 4 days in custody and released without any charge and also the time the comparable awards cited were made, I award the Claimant the sum of M4,500,000.00 as damages for false imprisonment.

The Claimant is also awarded the Costs of the action. If the parties fail to agree on the amount of costs payable, the costs shall be assessed by the Registrar.

Made at High Court, Principal Registry, this 12th day of August, 2019, at Blantyre.



HIS HONOUR MANGAWA MAKHALIRA
ASSISTANT REGISTRAR