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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL DIVISION

CIVIL CAUSE NO. 634 OF 2009

BETWEEN

FRED MANDACLAIMANT

-AND-

THE ATTORNEY GENERAL.....DEFENDANT

CORAM: THE HON. MR. JUSTICE D. MADISE

Mr. Mwaungulu Counsel for the Claimant,

Defendant and Counsel absent

Mr. M. Mbekeani, Official Interpreter

Madise, J

JUDGEMENT

1.0 Introduction

- 1.1 The Plaintiff in this matter took out a writ of summons on 26th March, 2009 against the Attorney General seeking damages for false imprisonment and defamation. The Defendant denied the claim in their defence which was filed. The particulars of the Plaintiff's case have been articulated in the statement of case and the skeleton arguments that have been filed in aid of the summons. Similarly the Defendants denials are as outlined in the statement of defence and the arguments.
- 1.2 On the appointed day (1st November 2018) for the hearing of the case, the Defendant did not show up and no reasons were given for their non attendance. Since there was proof of service as acknowledged by Chisomo Maloto for the Attorney General, I allowed the Plaintiff to present his case.

2.0 The Facts

- 2.1 The Plaintiff stated that on 22nd October, 2008 at around 11:35 am at Chibisa House in the city of Blantyre he was arrested and handcuffed by a police officer named Malange from Blantyre Police Station on allegations that he was illegally dealing in gemstones. The Plaintiff was then paraded along the streets of Haile Sellassie Road in full view of the public. At Blantyre Police Station the Plaintiff was searched and locked up for 90 minutes.
- 2.2 The Plaintiff claims the arrest was unlawful and he endured humiliation in front of his family and friends as he was perceived to be an untrustworthy person. He now seeks damages for false imprisonment and defamation.
- 2.3 The story as narrated by the Plaintiff was confirmed by Letina Mitole who saw the Plaintiff being arrested, handcuffed and paraded along Haile Sellassie Road. There after the Plaintiff and others were put in a minibus by the police and taken away.

2.4 The Defendant was not present to pretend his defence. It was clear they were not interested in defending this matter. I now proceed to give my opinion on the matter on the merits.

3.0 The Issues

3.1 There are three main issues for consideration in this matter.

(a) Whether there was false imprisonment

(b) Whether there was defamation

(c) If yes whether damages are payable.

4.0 The Law

4.1 The burden and standard of proof in civil matters

The burden and standard of proof in civil matters is this. He/she who alleges must prove and the standard required by the civil law is on a balance/scales of probabilities. The principle is that he who invokes the aid of the law should be the first to prove his case as in the nature of things, a negative is more difficult to establish than an affirmative.

4.2 As Denning J, stated in Miller vs. Minister of Pensions [1947] 2 A II E.R. 372.

If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not

4.3 Similarly the degree of probabilities will depend upon the subject matter. When a civil court is deciding on a charge of fraud, it naturally follows that a higher degree of probability is required than when deciding an issue of negligence. However the standard does not reach as high as that required in a criminal court which is beyond a reasonable doubt.

4.4 The general principle is that the court must require a degree of probability which suits the occasion and is commensurate with the law and facts. Whichever story is more probable and the tribunal is convinced that this is it, must carry the day.

4.5 False Imprisonment

This tort is the deprivation of liberty or freedom of movement without lawful cause. There must be no justification whatsoever why the right to freedom of movement should be restrained. The question before me is whether the police can violate this right when they arrest on reasonable suspicion or probable cause. Obviously the answer is in the negative. False imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorized by law. See W.A. Mzungu vs. Blantyre Print and Publishing Co. Civil Cause No 1577 of 1995 (Unrepresented)

4.6 In Kadango vs. Stage Coach {2000-2001} MLR 182, Tembo J as he was then called

"The defendant will be liable for false imprisonment if they laid a charge against the plaintiff on which it became the duty of the police to arrest the plaintiff. They will not be liable if all they did was to give information to the police about the loss of money at their premises.

4.7 In James Saulosi and Goodwell paketj vs. Bata shoe company (Malawi) Limited. Unyolo J then

"The crucial issue in false imprisonment is to decide whether the defendant's servant merely stated the facts to the police or whether they made a charge against the plaintiff. It is accepted that conveying one's own suspicion to the police who on their own responsibility, take the plaintiff into custody, is not making a charge.

4.8 Defamation

A defendant is liable for defamation if he publishes to some person other than the plaintiff some false and defamatory story which injures the plaintiff's reputation. Three elements must be present for a defendant to be liable for defamation.

1. False story
2. Publication to third party
3. Injury to reputation.

4.9 Defamation is the intentional false communication published or publicly spoken that injures another's reputation or his good name. It holds a person to ridicule, scorn or contempt in a respectable and considerable part of the community. (Black Law Dictionary 6th Ed. 1990).

4.10 In Uren vs. John Fairfax & Sons Ltd [1967] 11 CLR 118, 150 Windeyer, J.

It seems to me that properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was publicly defamed. For this reason, compensation by damages operates in two ways: - as vindication of the plaintiff to the public and as a consolation to him for a wrong done. Compensation is therefore a solatium rather than a monetary recompense for harm measurable in money.

4.11 In simple terms the tort of defamation is the publication of a false statement which intends to lower a person in the eyes of right thinking members of

society. Such false publication must result in the public shunning or avoiding the person so defamed. The false statement must expose the person to hatred, ridicule and contempt. Once the statement is adjudged to be defamatory it is actionable per se.

5.0 The Finding

There is no dispute that the plaintiff and three others were arrested on 22nd October 2008 at Chibisa House in Blantyre on allegation that they were illegally dealing in gemstones. The Plaintiff was handcuffed and paraded along Haile Sellassie Road in full view of members of the general public.

- 5.1 At the Blantyre Police Station he was searched and locked up in a cell for 92 minutes but was later released. It is not known why the police did not prosecute the Plaintiff in a court of law in this matter if indeed he had committed an offence known to our law.
- 5.2 The law demands that there must be a probable or reasonable cause before an arrest can be made. The law cannot allow the Police to arrest citizens willy-nilly. The principle is that you do not arrest in order to investigate. The vice versa is actually true.
- 5.3 In the within matter I find no justification whatsoever as to why the Plaintiff was arrested, handcuffed and paraded along a public road as he was being taken to Blantyre Police Station where he was kept for 92 minutes. An arrest no matter for a short period of time still remains an arrest under the law and the question only becomes one of quantum of damages. I therefore find the Defendant liable in damages for false imprisonment.
- 5.4 I further find according to the evidence before me and the relevant law on the subject matters that the Defendant had committed a tort of defamation by parading the Plaintiff in handcuffs along Haile Sellassie Road in broad

day light without lawful cause. The Police violated the law and this adversely affected the Plaintiff's dignity and standing in society. His good name was tarnished in the eyes of his family, friends and society in general.

5.5 In these premises I find that the Plaintiff has made out a good case on a balance of probabilities and I rule in his favour on all heads as filed in the summons and the statement of case. I further award the Plaintiff the costs of this action. The Plaintiff must take out summons for assessment of damages for false imprisonment and defamation before the Registrar within 14 days.

I so order

Pronounced in open Court at Blantyre in the Republic on 16th January 2019.



Dingiswayo Madise

Judge