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REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 634 OF 2009

BETWEEN

FRED MANDA.....CLAIMANT

AND

THE ATTORNEY GENERAL.....DEFENDANT

Coram: WYSON CHAMDIMBA NKHATA (AR)

Mwabungulu- of Counsel for the plaintiff

Mlenga – 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 26th of March 2009 against the defendant claiming damages for false imprisonment, defamation and costs of this action. On the 16th of January 2019, a judgment in favour of the claimant was given by Honourable Justice Madise for damages for false imprisonment and defamation. This is the court's order on assessment of damages pursuant to the said judgment on liability. Essentially, 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 matter came for hearing on the 7th of February 2019. The claimant was the sole witness for his case. He adopted his witness statement in which he averred that on or about the 22nd of October 2008 he was with his friends, George Mwase, John Chikokoto, and Jonathan Nachapala and were innocently chatting about Mlakho wa Alomwe function which was about to take place the following week and they were at Chibisa House in the city of Blantyre. A police Officer by the name of Malange came and accused the four of them of dealing in gemstones. The Police then arrested and handcuffed the four of them. They were paraded along Haile Selassie road in full view of a lot of people, friends and general public. They were taken to Blantyre Police Station where they were searched and then locked up, sitting on a dirty floor for over 50 minutes. They were falsely accused of illegal dealings in Gemstone but this was not true because the three of them Fred Manda, George Mwase and Jonathan Nanchapala had never dealt in Gemstones before. Their friend, John Chikokoto who had a valid licence showed them his licence and told the police that he was indeed dealing in Gemstones.

He further averred that as a result of the unlawful arrest, he endured humiliation in front of his family and friends who now perceive them as an untrustworthy person. He also endured dehumanising conditions in a police cell such as being exposed to mosquito bites being cramped in a dirty cell and inhumane sanitary conditions for more than 50 minutes. It is on this basis that he claims for false imprisonment and damages for defamation and costs of the action.

In cross-examination, he stated that he spent 50 minutes in Police Custody. He stated that he did not spend less than 30 minutes. He stated that there were four people arrested at Chibisa House as far as he can remember. He stated that he is not aware than about 40 people were arrested. He stated that it was around 12:30pm and was released at past 4. He stated that from 12:30pm to 4pm it is not 50 minutes. He stated that they walked a long a distance and were kept somewhere as they waited for the Police to arrange transport. He stated that they were released at 4pm. In re-examination, he stated that he spent 50 minutes at the Police Station and that they were arrested at 12:30pm and 50 minutes is time spent at the Police Station.

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.’

