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**REPUBLIC OF MALAWI**  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**PERSONAL INJURY CAUSE NUMBER 268 OF 2019**

BETWEEN:

**STEVEN PATRICK MALISERO ----- CLAIMANT**

AND

**ELECTRICITY SUPPLY CORPORATION OF MALAWI-----DEFENDANT**

CORAM: **C.H. Msokera, Assistant Registrar**

Ndhlovu, of Counsel for the Claimant

Mattaka, of Counsel for the Defendant

Mathanda, Official Court Interpreter

**ASSESSMENT ORDER**

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1. The parties in this matter, through mediation, agreed that the defendant is liable to the claims of false imprisonment and defamation herein. Following the settlement on liability, my role is to assess the quantum of damages payable.
  2. In civil proceedings, of which this is one, the burden of proof (on a balance of probabilities) rests upon a party who asserts the affirmative of an issue – see *Isaac Chiwale (suing as administrator of the estate of Lazalo Chiwale) v Real Insurance Company Limited* [2012] MLR 195 (HC).
  3. Only one witness, the claimant himself, testified in these proceedings. The substance of his testimony is that he was taken to Blantyre Police Station by the defendant's agents who told police officers that he had committed the offence of forgery. He was put in a police cell on 30<sup>th</sup> January 2019 and was released in the afternoon hours of the following day. According

to him, the conditions in the cell were so deplorable in terms of sanitation. After some days, a police investigator, Mr Divala, informed him that the defendant would not bring evidence against him to substantiate their complaint. That marked the end of the criminal allegations against him.

4. The claimant argues that his arrest, detention and reporting for bail have portrayed him to the public as a criminal who had committed an offence. He laments that his credibility as a renowned electrical contractor has been negatively affected as he is viewed by people as a crook who cannot be trusted. It is his further testimony that he lost a potential contractual deal with Motal Engil because of the detention. It is my observation, however, that the claimant has not done enough to substantiate the loss of specific business with Motal Engil. He has neither tendered in court any documentation to that effect nor paraded his employee whom he alleges that he received a phone call from Motal Engil when he was in custody.
5. Nevertheless, it is the submission of the claimant that he should be awarded MK20 600 000.00 (MK10 600 000.00 for false imprisonment and MK10 100 000.00 for defamation). On the other hand, the defendant argues that a total compensation of MK1 000 000.00 (MK500 000.00 under each head) suffices. Their argument is that the claimant only stayed in custody for just a day and has failed to prove any potential contract with Mota Engil which was affected because of the arrest.
6. The acceptable approach in determining the quantum of damages under the head of false imprisonment was well put in the case of *Bulla v Agricultural Development and Marketing* [1993] 16 (1) MLR 30 as follows:

“In my view there is more support of the view point that damages to be awarded for false imprisonment should really be left to the Court to determine after taking into account all the circumstances of the case, including time. The problems that arise when time becomes the sole basis of the award is that such an approach is likely to ignore circumstances, both of aggravation and mitigation, which may attend a particular case.

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In certain cases, the circumstances of the arrest might be more pertinent to the quantum of damage than time, for obviously imprisonment in horrendous and horrible circumstances even for a short time may do more damage to the plaintiff than a protracted or elongated imprisonment in otherwise innocuous and harmless circumstances. This is understandable, because damages for false imprisonment are an award not only for loss of liberty, which in some way can be related to time, but also for loss of reputation and status which are not related to time. The approach, therefore, should be to leave it to the Court to decide the quantum in the circumstances of the case."

7. As for damages for the tort of defamation, the law is that the same must compensate the claimant for the damage to his reputation, vindicate his good name, and take into account the distress, hurt and humiliation which the defamation has caused - *Faiti and 9 others v Malawi Telecommunications Ltd* [2006] MLR 156.
8. I have looked at the submissions on case authorities either party has made as containing comparable awards to the case at hand. Unfortunately, Counsel has referred me to unreported decisions without attaching copies of such cases for my reference. As such, this court can hardly rely on such authorities.
9. However, I find it helpful to compare the present case with the following two previous awards made by this court. First is *Malunga v Attorney General* Civil Cause No. 85 of 2018<sup>1</sup>. In this case the claimant was a convict at Chichiri Prison after being convicted by the Blantyre Senior Resident Magistrate court of the offence of defilement. He lodged an appeal against his conviction and sentence before the High Court. Having heard the appeal, the court 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. The High Court failed to deliver the judgment for a period of 4 years. He sued the

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<sup>1</sup><https://malawilii.org/mw/judgment/high-court-general-division/2018/772> (accessed on 11th November 2020)

Attorney General for damages for violation of his rights under Section 42(2)(f)(vii) of the Constitution. In July 2018, this court awarded him MK5 000 000.00.

10. We should compare this with the award in *Kandoje and Another v China da Restaurant and Lodge* Civil Cause No. 29 of 2013<sup>2</sup>. The facts of this matter were that the claimants were employed by the defendant as an assistant supervisor and waiter. On 26<sup>th</sup> April, 2011 they were arrested and detained by the police on the instruction by the owners of the defendant that they had stolen a laptop that was missing from the lodge. They were detained for two days before being released on bail. Both claimants complained of having a tough time in detention. One told the court that he had been beaten by other inmates and the other informed the court that he spent a whole night in a standing position. In June 2018, this court awarded each of them damages to the tune of MK3 000 000.00 under the three heads of false imprisonment, malicious prosecution and defamation.


11. Coming back to the case at hand, having considered the foregoing, I am of the view that a total award of MK2 500 000.00 under the two heads of false imprisonment and defamation suffices.

**12. I proceed to award the claimant the aggregate sum of MK2 500 000.00 as damages under all heads.**

13. Further, the defendant will bear the costs of the proceedings herein.

14. I so order.

**Made** this 11<sup>th</sup> day of November 2020 at Blantyre.



C.H. Msokera

**Assistant Registrar**

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<sup>2</sup> <https://malawilii.org/mw/judgment/high-court-general-division/2018/76> (accessed on 11th November 2020).