



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 250 OF 2019

BETWEEN

RODNEY NASIYAYA CLAIMANT

-AND-

THE ATTORNEY GENERAL DEFENDANT

CORAM: HER HONOUR MRS E BODOLE, ASSISTANT REGISTRAR
 Kusiwa, of Counsel for the Claimant
 Chitsulo, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The Claimant brought proceedings against the Defendant for false imprisonment, defamation, and costs of the proceedings. This order on assessment of damages follows a default judgment on liability which was entered for the Claimant on 24th October, 2019.

The Evidence

The matter came for assessment of damages on 17th December, 2019 and the Claimant was the sole witness for his claim. The Defendant did not produce any witness.

The evidence before this Court is that on or about 10th April, 2018 the Claimant went to Mulanje DC lines to do some piece work. He was at that time working for Esperance Tea Estate as a general worker. On that day he was on off-duty hence the decision to look for piece work. While he was doing the piece work, two men and

a woman called Mrs. Meja came and found him there. They were not Police Officers. They accused him of stealing goods worthy over K1 million at Mrs. Meja's house and they forcefully took him to Mulanje Police Station for questioning.

At the Police station, the Police detained him for a period of two weeks before being released without being formally charged. Before being released, the Police Officers went to Esperance Estate to find out if he was an employee at the Estate and if he was off-duty and the same was found to be true. The Claimant was not brought before a Court of law within the prescribed time of the arrest and he was detained for a period which was unreasonably and unduly long. The conditions in the Police cell were horrible. The cells were small and overcrowded. He was sleeping on bare floor without blankets and he could not lie down. There was lack of privacy, poor ventilation and the diet was poor. This caused him serious discomfort.

The Claimant testified that his reputation has been tarnished as people regard him as a thief and a criminal.

General Law on Damages

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – *Elida Bello v Prime Insurance Co. Ltd* Civil Cause No. 177 of 2012 (unreported).

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded by awards made in decided cases of a broadly similar nature – *Wright v British Railway Board [1983] 2 AC 773*. The court, however, considers the time the awards were made and currency devaluation – *Kuntenga and Another v Attorney General* Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include false imprisonment and defamation. These are assessed by the court. Pecuniary loss must be pleaded and proved. In *Renzo Benetollo v Attorney General and National Insurance Co. Ltd* Civil Cause No. 279 of 1993 (HC) the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded.

False Imprisonment

Damages for false imprisonment are indeed mainly recoverable for loss of dignity. The factors taken into account do include injury to liberty; disgrace and humiliation and loss of social status. At the same time, courts do also consider the social status of the plaintiff and whatever hardship he may have suffered whilst in custody *Mnthala v Attorney General* Civil Cause No. 884 of 2005.

In addition, there may be recovery of any resultant physical injury or discomfort, as where the imprisonment has a deleterious effect on the plaintiff's health - *McGregor on Damages* 16th Edition para. 1850-51. Damages for false imprisonment need not be made exclusively on consideration of the time factor. In *Donald Ngulube v. Attorney General* Civil Cause No. 1569 of 1993 the court had this to say;

"In relation to time I would say that longer imprisonment, in the absence of alternative circumstances, should attract heavier awards, shorter imprisonment in the absence of aggravating circumstances should attract lighter awards. What should be avoided at all costs is to come up with awards that reflect hourly, daily and monthly rates. Such an approach could result in absurdity with longer imprisonments and shorter imprisonments where there are assimilating or aggravating circumstances. The approach is to come up with different awards depending on whether the imprisonment is brief, short or very long etc. and subjecting this to other circumstances."

Defamation

Imputations of a criminal offence are defamatory and as such actionable *per se*. In *Munthali v Mwakasungula* 14 MLR 298 p. 314 the court stated that

"Words which impute a criminal offence on the plaintiff are actionable without proof of special damages – see the case of Webb v Beavan (1893) 11 QBD 609. The words complained of are that the defendant stole the plaintiff's properties. Theft is not just a crime, but a serious one, to wit a felony, punishable with five years imprisonment. To call a person a thief is, therefore, a serious matter and the law presumes some damage must have occurred."

Damages for defamation are mainly awarded for injury to reputation and to feelings. There is no requirement for proof of special damages and the damages are said to be

at large. The amount of the assessment is peculiarly in the province of the Court. It was held in *Mkandawire v Mtonga and Another* Civil Cause No. 521 of 2005 that

“The damages cannot be measured by any standard known to the law; they must be determined by a consideration of all the circumstances of the case viewed in the light of the law applicable to then. (Jones v Hulton [1909] 2 K.B. 444, 483 (C.A.) per Frawell L.J.) In Justice Mwaungulu v Malawi News Civil Cause No. 518 of 1994 the court listed several factors that need to be considered. They include, (i) the context of the defamatory material, (ii) the nature and extent of the defamatory publication including the aspect of reproduction, (iii) the plaintiff’s standing, his reputation and status, (iv) nature of defamation, either libel or slander, (v) conduct of the defendants from the time of the publication and (vi) recklessness of publication.”

Analysis

The Claimant was kept in Police custody for about 14 days. The conditions in the Police cell were horrible. The cells were small and overcrowded. He slept on the bare floor without blankets and he could not lie down. There was lack of privacy, poor ventilation and the diet was poor. He had to go through all this suffering for 14 days. No wonder he said that this caused him serious discomfort. He lost his liberty and suffered disgrace and humiliation.

The fact that the Claimant was arrested for having stolen the property of Mrs. Meja shows that he lost his dignity. There was injury to his reputation or good name and feelings. By being arrested and detained, the defamatory words that the Claimant is a thief were published to the members of the public. No wonder he is being regarded as a thief and a criminal. His good reputation has been tarnished.

Award of Damages

In *John Msusa v Orascon Continental* Personal Injury Cause No. 879 of 2012 the Claimant was in custody for 5 days. He slept on the bare floor without a blanket. There were no washing facilities and he did not have a bath all the days he was kept at Blantyre Police station. He was doing his toilet in the presence of the other cell mates. Further the cell was over-crowded. This Court awarded the Claimant a sum of K4,000,000.00 as damages for false imprisonment on 27th July, 2017. In *Limbikani Kaseko Nyirenda v Attorney General* Civil Cause No. 354 of 2014 the

Claimant was incarcerated for 4 days at Blantyre Police Station without food as there was no-one to bring him food. He was not charged of any offence and when he was released, he was left destitute with no means of going back to Mangochi where he was taken from. The Court awarded him a sum of K4,000,000.00 as damages for false imprisonment and K2,000,000.00 as damages for defamation as there was a clear imputation that the Claimant was a thief. The award was made on 27th October, 2017.

In the present case, the Claimant was incarcerated for 14 days and was subjected to degrading treatment though not to the extent of that suffered by the Claimants in the above-cited cases. He has lost his good reputation. This Court, therefore awards him a sum of K6,500,000.00 as damages for false imprisonment and K2,500,000.00 as damages for defamation.

Conclusion

The claimant is awarded a total sum of K9,000,000.00 as damages. He is further awarded costs of proceedings to be taxed at a later date if not agreed by the parties. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Pronounced in Court this 4th day of March, 2020 at Blantyre.



EDNA BODOLE (MRS.)
ASSISTANT REGISTRAR