



IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NUMBER 1213 OF 2015

**BETWEEN:**

MATEYU JASON .....1<sup>ST</sup> CLAIMANT  
JACOB TEMBO.....2<sup>ND</sup> CLAIMANT  
KOZEKANI MALIKETI.....3<sup>RD</sup> CLAIMANT  
INNOCENT GOMANJIRA.....4<sup>TH</sup> CLAIMANT

**AND**

ROBERT JEKE.....1<sup>ST</sup> DEFENDANT  
ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT

<b>CORUM: R.M CHINANGWA</b>	<b>JUDGE</b>
Nyanda	Counsel for the Claimant
Chirwa	Counsel for the Defendant
Chitao	Court Clerk

**JUDGEMENT**

**Introduction**

1. The claimants seek damages for false imprisonment; malicious prosecution; and defamation. In addition, the claimants seek special damages and costs of the action.
2. The claims were opposed.
3. A total of 5 witnesses were called comprising of the claimants themselves and one defence witness. The claimants Counsel advised the court that the claimant's story was the same as such there was no need to hear each claimant individually. There being no objection from the defence, the court adopted the 1<sup>st</sup> claimants' story to represent that of all the claimants. The evidence was adduced through witness statements and the parties were orally cross-examined. Below is a summary of the evidence.

#### **Claimants Evidence**

4. The claimants story as recorded in the witness statement was short. The same is reproduced as follows: 'In or around November 2012, the 1<sup>st</sup> defendant reported to Dowa Police that I and other defendnats had uprooted sweet potatoes in his garden which is in the village of Mkanthama and also that we have cut down bananas in the village of Mndekwa. On or around the 4<sup>th</sup> November 2012, the police from Dowa Police Stations arrested me and the other claimants at our houses in Mkanthama Village on allegation of conduct likely to cause breach of peace. The arrest was under the information from the 1<sup>st</sup> defendant who reported to Police the unfounded allegation that we uprooted plants in order to grab the land at Mkanthama Village which is in dispute. The land in question is already under permanent order of injunction which restrained anyone from Mdekwa, Chaola and Kasache Villages from cultivating or trespassing or interfering with our peaceful enjoyment of the use of the land or interfering with the peaceful enjoyment of settlement of the people of Mkanthama village. On 7<sup>th</sup> November 2012, we were released on Court bail after being in custody for 3 days. We were wrongfully and without reasonable and probable cause arrested by Dowa Police for unfounded allegations that we were likely to cause breach of peace. We were jointly prosecuted before the First Grade Magistrate Court at Dowa on 1<sup>st</sup> February 2013 and for which offence the court acquitted us on the ground that the Police had failed to adduce proper evidence. As a result of my wrongful and false arrest, malicious prosecution and deprivation of my liberty without reasonable or probable cause I suffered loss and damage'.

#### **Defendants Evidence**

5. The defence evidence as given by Sub Inspector Innocent Gomanjira was equally brief. The same is reproduced as follows: 'I recall it was on or about 26<sup>th</sup> October 2012 when I received a complaint from Mr Robert Jeke (The 1<sup>st</sup> defendant) and others from Ndeka Village against the conduct of the claimants. The complainants accused the claimants that on this date at around 9pm stormed their village and began stoning their houses and damaging their crops (banana suckers) for no apparent reason. It was the complainant's story that since there was moon light during the night, they managed to identify the offenders to be the claimants. Subsequently, a case file was opened against the suspects and further investigations led to the arrest of the claimants. The claimants were all cautioned and formally charged for the offence of conduct likely to cause breach of peace and malicious damage to property. The claimants were thereafter taken before Dowa Magistrate Court to answer the above stated charges where after full trial the court found two of the suspects guilty as charged whilst the claimants were acquitted of the charges.

#### **Issues for Determination**

6. This court has to determine whether the claimants the claimants are entitled to the reliefs sought.

#### **Analysis of Law and Evidence**

7. The issues that have been raised will be addressed in turn. To begin with false imprisonment, in **Hauya v Cold Storage Co Ltd** [1994] MLR 92 (SCA) it was held that where '...there is no evidence that the defendant laid a charge against the plaintiff, and the police carry out their own investigations and decide to arrest the plaintiff, the defendant is not liable for false imprisonment'. In this case a report was made by the 1<sup>st</sup> defendant of theft to the police. The police state they recorded a statement from the complainant, the 1<sup>st</sup> defendant. In the 1<sup>st</sup> defendnats statement recorded by the police, it states that 'the following were people whom were seen leading the group one Mateyu Sosten, Matson Chikoti Chikwaya, Jacob Tembo, Enock Kapinda Malata, James Lupiya and Marko Marko Nyarazi. Then the police say they carried out their investigations. The evidence shows the 1<sup>st</sup> defendant laid a complaint and the police acted on it as the complaint was recorded on 5th November 2012 and the claimants state they were arrested around 4<sup>th</sup> November 2012. Under section 15 (3) of the Police Act the police are allowed to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground

exists. In this case the 1<sup>st</sup> defendant informed the police that the complainants whom he had seen had damaged his crops. This court finds that there was sufficient ground to apprehend the claimants. Now under the Constitution the police have 48 hours within which they can detain an arrested person where there is reasonable suspicion that an offence has been committed. After 48 hours if the arrested person is not brought before a court of law, then the arrest or imprisonment becomes unlawful. Now if the complaint before the police was made on 5<sup>th</sup> November, and the claimants were released on 7<sup>th</sup> November then the police were within the 48-hour rule. Their arrest was based on reasonable suspicion of an offence. A reading of the complaint made before the police shows that there was reasonable suspicion to arrest the complainants who had allegedly damaged crops and were allegedly seen by the complainants. The claimants have not shown that they had spent more than 48 hours imprisoned and they have not shown that there was no reasonable suspicion. In **Iphani v Makandi Tea and Coffee Estate** [2004] MLR 91 (HC) it was held that the tort of false imprisonment is established on proof of the fact of imprisonment and absence of lawful authority to justify that imprisonment. An acquittal does not mean that the imprisonment was false. The claim for false imprisonment fails.

8. Regarding malicious prosecution it was held in **Mbewe v Agricultural Development and Marketing Corporation** [1993] 16(2) MLR 594 (HC) that malicious prosecution requires proof of absence of reasonable and probable cause and proof of malice in commencing proceedings. A plaintiff may prove malice by showing improper motive or purpose. In this case the backbone of the story is that crops were uprooted; there was alleged disturbance on the defendants' fields and the claimants were allegedly seen and confronted the complainants about the matter. The claimants were seen by the 1<sup>st</sup> defendants and they reported the matter to the police. This is gathered from the lower court record and the complaints lodged at the police. This court finds that there was no malice in the prosecution. There was probable cause to prosecute the claimants. In any criminal case two things ought to be proved whether the offence was committed and whether the alleged suspects committed the offence. There was no dispute about the offence having been committed but the question was who committed the offence. The complainants as witnesses in the lower court gave strong leads as to the involvement of the claimants. That had to be

tested and proved in court as can be gathered from the lower court record and complaint lodged before the police. The prosecution was thus not malicious. The claim fails.

9. Regarding defamation it was held in **Kwalira v Ganiza** [1993] 16(1) MLR 236 (HC) that the exact words constituting defamation must be pleaded and the evidence must support exact words pleaded. In this case the exact defamatory words have not been pleaded and proved. This court finds that the claim has not been substantiated and thus fails.
10. Regarding special damages it was held in **Masiye v Chibuku Products Ltd and another** [1997] 1 MLR 465 that it is trite that special damages must not only be expressly pleaded but must also be strictly proved. In this case the claimants have pleaded special damages but Chibouk not proved the special damages they are seeking. The claim fails having not been substantiated.
11. Regarding costs of the action, it is trite that costs are awarded at the discretion of the court. Having heard both sides this court is of the view that if the claimants had considered their evidence, they shouldn't have dragged the defendnats to court.

**Finding**

12. The claimants' claims fail in their entirety.

**Pronounced this 6<sup>th</sup> day of October 2021 at LILONGWE**



**R.M CHINANGWA**

**JUDGE**