



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NUMBER 813 OF 2015**

**BETWEEN:**

**ROLLINGS KAYANJANA.....1<sup>ST</sup> CLAIMANT**

**ENOCK MWALE.....2<sup>ND</sup> CLAIMANT**

**AND**

**CENTRAL REGION WATER BOARD.....DEFENDANT**

**CORUM: R.M CHINANGWA**

**JUDGE**

**Matumba**

**Counsel for the Claimant**

**Iphani**

**Counsel for the Defendant**

**Chitao**

**Counsel for the Respondent**

**JUDGEMENT**

**Introduction**

1. The claimant seeks the sum of Mk2,000,000.00 being loss of profits; damages for false imprisonment and malicious prosecution and costs of this action.
2. The claims were opposed and both parties paraded witnesses. Below is a summary of their evidence as gathered from their witness statements.

## The Evidence

3. The claimant state that they are commercial farmers based in Dedza. They stated that in 1999, they constructed a water canal from Dedza mountain to water their crop field. In the year 2011 the defendant blocked their water canal from the mountain on allegation that they had no license to use water from Dedza mountain. They then abandoned the canal and in the same year they constructed a water dam to water their crops. This dam was shared with the 2<sup>nd</sup> defendant who had a garden nearby. In the 2014, the defendant is said to have reported to Dedza Police Station that he was illegally using water from Dedza Mountain. On 26<sup>th</sup> September 2014, the defendant and police officers stormed the claimants' gardens on allegation that they were using water illegally. On 29<sup>th</sup> September 2014, they were taken to court where a case was opened against them. On 30<sup>th</sup> October 2014 the 2<sup>nd</sup> claimant was discharged having been found with no case to answer. The matter proceeded with the 1<sup>st</sup> claimant and he was acquitted on 14<sup>th</sup> April 2015. It is argued that the defendant caused the arrest, detention and prosecution of the claimants as the lower court found that the defendants reported the claimants to the police as the ones diverting water and they were imprisoned on the basis of the said report.
4. In defence the Mr Dickson Kadangwe, Zone Security Supervisor for Central Region Water Board, Dedza Zone stated that the defendant operates Dedza Secondary School scheme which gets its water from Dedza mountain. They use a canal to get water from the mountain to their water intake and thereafter to the treatment tank. He went on to narrate that, between the year 2012 and 2013 the defendant noticed that the water flow was getting low. They discovered that the cause in the change in the water flow was due to a diversion that had been constructed by the 1<sup>st</sup> claimant into a canal that he had constructed. When they approached the 1<sup>st</sup> claimant to request that he stops diverting the water, he initially began intimidating them. However, after discussions he agreed to close his canal so that the water flows back into the defendant's canal. About 24<sup>th</sup> September 2014, they noticed again that there was no water flowing to Dedza Secondary School scheme intake prompting staff members to report the matter to the zone office. It was discovered that the claimants had yet again diverted water from flowing into the defendnats canal to the clamants canal. The claimants had further constructed their own dam which they were using to irrigate their crops. It is argued that the claimants' actions made the defendnats water intake dry which

caused damage and resulted in no water distribution to their various customers Dedza Secondary School, Dedza Hospital, part of Airfield, Islamic Secondary School, Police Houses and parts of Dauya area. Efforts to reason with the claimants proved futile as they intimidated the defendants. Fearing for the safety of the defendants staff the matter was reported to the police. It is argued the police were brought into the matter to ensure safety as the defendants amicably tried to resolve the matter. The police carried out their own investigations, they went to the canal and saw that the water was indeed being diverted by the claimants. The police then made a decision to arrest the defendants and the defendants never instructed them to do so.

### **Issue for Determination**

5. This court has to determine the claimants were falsely imprisoned and maliciously prosecuted; are entitled to Mk2,000,000.00 being loss of profits; and costs of this action. These will be dealt with in turn.

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

6. On false imprisonment: In **Kazombo v Reserve Bank of Malawi** [2004] MLR 140 (HC) it was held that it is trite that if a claim for false imprisonment is to succeed, the defendant must be shown to have laid a charge against the plaintiff. That where it is not so clear that the defendant has laid a charge and basically directed the arrest courts have generally hesitated to find the defendant liable for false imprisonment. The question that arises is did the defendants lay a charge against the claimants? How was the claimants arrest occasioned? The claimants stated that, *'In the 2014, the defendant is said to have reported to Dedza Police Station that he was illegally using water from Dedza Mountain. On 26<sup>th</sup> September 2014, the defendant and police officers stormed the claimants' gardens on allegation that they were using water illegally'*. On the other hand, the defendants stated that *'Fearing for the safety of the defendants staff the matter was reported to the police. It is argued the police were brought into the matter to ensure safety as the defendants amicably tried to resolve the matter. The police carried out their own investigations, they went to the canal and saw that the water was indeed being diverted by the claimants. The police then made a decision to arrest the defendants and the defendants never instructed*

*them to do so*'. As it can be noted it is not very clear as to whether the defendnats laid a charge against the claimants to cause their arrest. During cross examination, the 1<sup>st</sup> claimant stated that 'when I was being arrested Kadabwe came with police, they took me to visit the canal and then I was arrested'. Again the 2<sup>nd</sup> claimant explained in cross examination the interaction he had with the police when he was visited by the police. He said, '*at the time of our arrest the police saw that the water was from a dam. They asked were the water came from...The police went to check if water was coming from the mountain and they found none. I was asked as to who constructed the dam. I said it was the 1<sup>st</sup> claimant but I was still arrested*'. This means the police did not directly act on the defendant's instruction if there was ever such an instruction. By the police going to view the canal and then asking the claimants questions shows there was an element of investigation on the part of the police. This means they acted on their investigation result as they arrested the claimants after viewing the canal and after questioning. The claimants have not proved the claim for false imprisonment on a balance of probabilities. The claim must fail.

7. On malicious prosecution: In the **Kazombo case** cited above the court held that for a claim of malicious prosecution to succeed the plaintiff must show that the defendant instigated the prosecution and that it did so with malice when such prosecution had no prospect of success. In this case, the 1<sup>st</sup> claimant did admit that he had constructed a canal and a dam. The 2<sup>nd</sup> claimant admitted that he was using a dam constructed by the 1<sup>st</sup> claimant. The claimants as found above were arrested on matters relating to canal and the dam. During cross examination the 1<sup>st</sup> claimants admitted that they had no license to construct a canal or dam. The 2<sup>nd</sup> claimant stated that he was only using the dam but did not construct it. It is this courts view that there was no malice in the prosecution much as the claimants were prosecuted. It is trite that tapping of water from natural sources is regulated by law. The claimants did not produce any license to show that they were allowed to tap water directly from natural sources. The police did view the canal and dam that was constructed by the 1<sup>st</sup> claimant and used by the claimants. In addition, it has not been contradicted that the actions of the claimants caused a water problem in the area. The prospect of success on the claimants' acts were high. Whatever went wrong in the charges brought against the claimants and the evidence that was presented before the lower court is beyond this court

to determine. The court finds that the claimants claim for damages for malicious prosecution has not been substantiated. The claim fails.

8. Loss of profits amounting to MK2,000,000. The claimants have stated that their encounter with the police and defendnats caused them to loose Mk2,000,000.00 in their farming business. It was not dispute that the claimants were farmers. However, as observed during cross examination the claimants did not bring evidence as to how they arrived at this amount. There was no clear explanation with records showing the financial statements of their accounts. This claim thus fails having not been substantiated.
9. Regarding cost of the action, it is trite that costs are in the discretion of the court. It is ordered that each party should bear its own costs.

#### **Finding**

10. The claimants' claims fail and are dismissed in their entirety.

**Pronounced this 22<sup>nd</sup> day of September 2021 at LILONGWE**



**R.M CHINANGWA**

**JUDGE**