



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL DIVISION

CIVIL CAUSE NO. 428 OF 2020

BETWEEN

JAMES CHIYEMBEKEZO.....CLAIMANT

AND

ATTORNEY GENERAL (MALAWI POLICE SERVICE).....DEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Mr. Namanja, of counsel for the Claimant

Defendant, absent and unrepresented

Mr. G. Kumwenda, Official Interpreter/ Law Clerk

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

On 18th November, 2021, the Claimant obtained a default judgment for the following;

- a. Damages for false imprisonment and
- b. Costs of this action.

On 19th August, 2021 I received evidence on assessment *ex-parte*. The Defendant was duly served with the notice of assessment of damages but did not attend the hearing, and did not give any excuse for not attending. I now return to give my order on assessment of damages, but before I do so, let me first give brief facts of this matter.

BRIEF FACTS

The Claimant was arrested by officers from Chigwirizano Police Unit, one of whom was Officer Namwali, on 3rd October, 2018 and was released on 8th October, 2018. He was arrested on allegation that he had stolen a plasma television set in Ntchentche Area, close to Chigwirizano Trading Centre. He was eventually released without being charged with any offence, and since then he was never taken to court despite being incarcerated for 6 days. He was placed on police bail but on 4th December, 2018 he was told to stop reporting for his bail.

EVIDENCE

The Claimant was the sole witness in his case. He adopted and tendered his witness statement. He told the court that he was arrested on allegations he did not know, and was incarcerated for 6 days. He said he was later placed on police bail which he was honouring until on the 4th of December, 2018 when the officers told him to stop reporting for his bail. He tendered a copy of his bail bond form along with his witness statement marked PEX 1.

ISSUE

The hearing was conducted in order to assess the quantum of damages payable by the Defendant to the Claimant for false imprisonment.

ANALYSIS AND DETERMINATION

I have gone through the evidence adduced by the Claimant, and also the skeleton arguments raised by counsel for the Claimant, Mr. Namanja. I wish to thank counsel for the good work. I had time to look at other comparable case law relevant to the present assessment, as well.

In a claim for damages, the victim is required to prove that he or she indeed incurred or suffered some damage and that the defendant was the cause of his damage out of their negligence. Once that has been done, the duty remains with the court to assess the extent to which the victim should be compensated. This follows the cardinal principle of **restitution in integrum** which simply means to be compensated as far as money can do; the law will try to place the injured person in the same condition he was before the accident had happened. See **Black's Law Dictionary 9th Edition p1428**.

Turning to the claim for damages for false imprisonment, not all days of incarceration were wrongful. False imprisonment began when the police failed to take the Claimant to a competent court of law to show cause why the claimant

should remain in their custody, and this was supposed to be done within 48 hours from the time he was arrested. See section 42(1) of the Malawi Constitution. Ordinarily, since the police is sanctioned by the law to conduct lawful arrests, out of the 6 days that the Claimant was placed under detention, 2 days are supposed to be subtracted for falling within the 48 hours. However, where the Defendant has completely failed to take the suspect to a competent court of law as indicated above, all days, including the ones falling within 48 hours should be considered for purposes of assessing damages for false imprisonment.

Damages for false imprisonment are generally awarded for the non-pecuniary loss of dignity. The principal heads of damage appear to be the injury to liberty i.e. the loss of time considered primarily from a non-pecuniary viewpoint and the injury to feelings i.e. the indignity, mental, suffering, disgrace and humiliation with any attendant loss of social status. In addition there may be recovery of any resultant physical injury or discomfort as where the imprisonment has a deleterious effect on the Claimant's health. **McGregor on Damages 16th Edition Para 1850-1851.**

It should also be known that when awarding damages for false imprisonment, the court also considers time spent in custody and aggravating circumstances. Considering the case of *Ngulube v Attorney General, Civil Case No. 1509 of 1993* where it was stated and I quote;

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

Counsel for the Claimant proposed MK10, 000,000.00 as sufficient damages for false imprisonment in the circumstances. He cited **Mwangwela vs Attorney General**, Civil Cause Number 699 of 2018 in which the court had awarded MK250, 000.00 for an imprisonment of 5 hours. He also cited **Chimwemwe Kalua vs Attorney General**, Civil Cause No. 490 of 2012 where the court made an award of MK2, 000,000.00 for an imprisonment of 7 hours. He, again cited the case of **Llewelyn Kalua vs The Attorney General**, Civil Cause Number 49

of 2017 where the court awarded MK3, 000,000.00 for an imprisonment of 5 days. I considered the cases, and discovered that the award also included other claims such as malicious prosecution, defamation among others. In the present case, the Claimant requests for damages for false imprisonment, only and the cases cited are not a complete match to the present circumstances. I can only consider them to some other extent.


Therefore, it is my considered view that the MK10, 000,000.00 being proposed by counsel for the Claimant would have been ideal if there were other aggravating factors. See *Martin Machipisa Munthali vs Attorney General, Civil Cause No. 52 of 1993*. There is no evidence in the present case that the Claimant was subjected to certain aggravating circumstances while under detention. All what happened was that he was incarcerated for 6 days without being taken to court or being charged with an offence, and was eventually given police bail which was unceremoniously terminated by the police on the 4th of December, 2018. There were no aggravating circumstances.

Considering the above, I award the Claimant the sum of **MK2, 000,000.00** being damages for false imprisonment.

Regarding costs of action, counsel for the Claimant proposed MK5, 000,000.00. I have considered the level of work done by counsel, time taken, the importance of the case among others, and I am of the view that the proposed amount is much on the higher side. What is just is **MK1, 500,000.00**.

In total, the Defendant shall pay **MK3, 500,000.00**. This whole amount is payable within 30 days from today.

Made in chambers today the 23rd of December, 2021.


Brian Sambo
Assistant Registrar.