



THE JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE REGISTRY
CIVIL DIVISION
CIVIL CAUSE NUMBER 309 OF 2021

BETWEEN

PATRICK SHAWA... ..CLAIMANT

AND

LOCAL GOVERNMENT SERVICE COMMISSION.....DEFENDANT

CORAM: Brian Sambo, Assistant Registrar

Mr. G. Taumbe, of counsel for the Claimant

Defendant, absent and unrepresented

Mr. Kumwenda, Law Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

The present assessment follows a default judgment obtained by the Claimant on 23rd of June, 2021 for the following;

- i. Damages for false imprisonment
- ii. Payment of withheld wages during the time the Claimant was under interdiction.
- iii. Interests
- iv. Costs of the action.

The Claimant had duly filed and served all attendant processes upon the Defendant as required under O. 5 r 7 of the Courts (High Court) (Civil Procedure) Rules, 2017 and there was proof of service to that effect. The Defendant never filed and served any response within the prescribed time limit, according to O. 12 r 6 of the Courts (High Court) (Civil Procedure) Rules, 2017.

BRIEF FACTS

The Claimant was employed by the Defendant as a security guard at their offices in Area 4 within the city of Lilongwe. There was a case of breaking at the Defendant's office where the Claimant was discharging his duties, and a number of the Defendant's office items were stolen. On a mere suspicious, the Defendant got the Claimant arrested on an allegation that he was the one who had stolen the items which included one desktop computer and TNM airtime vouchers. The Claimant was eventually arrested and kept in a police cell for a week and then transferred to Maula Prison where he was given bail after spending a month. The Claimant was prosecuted in a court of law the consequences of which were that he was acquitted of the charges and set free. Despite the clearance by the court of law, the Defendant went ahead to dismiss him from his employment, after interdicting him without pay for 9 months.

BRIEF EVIDENCE DURING ASSESSMENT HEARING

The Claimant was the sole witness in his case. His evidence is a complete replication of the facts given above suffice it to say that he went ahead, in the course of his testimony, to tender two pay slips indicating his monthly salary at the time of the interdiction while under the Defendant's employment.

ISSUE

The hearing was conducted to assess the quantum of damages payable by the Defendant for the tort of false imprisonment as well as the amount of withheld salaries covering the period of the interdiction over and above interest.

DETERMINATION

The tort of false imprisonment is punishable through payment of damages. According to Ligowe, AR, in **Chimveyi v Dembo**, Civil Cause No. 15 of 2008, 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 plaintiff's health. (See **McGregor on Damages** 16th Edition para. 1850-51)

Several factors will have to be considered in assessing damages for false imprisonment. The factors will, apart from the time spent under custody, include; the personal circumstances of the plaintiff (**Fernando Mateyu v. Atupele Haulage Ltd.** Civil Cause NO. 906 of 1993 (High Court, Principal Registry) (unreported), and the hardship suffered by the plaintiff while in custody. (**N.H.A. Thyangathyanga v. Attorney General.** [1995] 1 MLR 341). In **Donald Ngulube v. Attorney General** civil cause No 1569 of 1993 Mwaungulu Registrar as he then was 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.”

I am mindful that damages are awarded to compensate the Claimant in so far as money can do it. See **Benson Nakununkhe v. Paulo Chakhumbira and Attorney General** Civil cause No. 357 of 1997 (Unreported). The extent of that compensation must be such that members of the society will be able to say that the victim has been well compensated. To do that it is desirable that as far as possible comparable injuries should be compensated by comparable awards. See **Chimveyi v Dembo**, above.

Counsel for the Claimant made written and filed skeleton arguments in favour of the present assessment. After citing a number of cases, he proposed MK50, 000,000.00 as damages and MK480, 000.00 being the total amount of the withheld monthly salaries. I will see if I should agree with counsel.

Turning back to the claim of damages for false imprisonment, I wish to remind myself that, in awarding damages, the relevant approach is that of **Donald Ngulube v. Attorney General** (supra). The same approach was followed in **Gondwe v Attorney-General** [1996] MLR 117 (HC). Justice Nyirenda said at page 123,

“I quite agree time is an important consideration but it is by no means the sole consideration; not even an overriding consideration. A short sharp period of imprisonment characterized by brutal and dehumanizing reception might call for a stiffer award than a long period in prison where the prisoner’s needs and complaints are well attended to. The whole process of assessing damages where they are at large is essentially a matter of impression and not addition.”

I consider the 37 days that the Claimant was under detention in this case not a very long period and the evidence given does not disclose any aggravating circumstances with regard to his detention. The only aggravating factor attendant is that he eventually lost his job. However, I cannot attach his dismissal to the tort of false imprisonment as there is already a separate labour claim ancillary to the claim of damages for false imprisonment.

I had time to examine cases cited by counsel for the Claimant in support of the claim of damages for false imprisonment but, with due respect, all of them do not fall squarely with the circumstances of the present case. In those cases, the court had upgraded the awards because of the circumstances of the detentions concerned over and above time spent in imprisonment in each case. The 37 days spent in imprisonment by the Claimant in the instant case are, admittedly a considerable period of time but there is no evidence that such detention was made under appalling circumstances and that the Claimant was subjected to them. Considering this, I award him **K9, 000, 000.00**.

Coming to the claim of withheld salaries, the evidence is clear and not in dispute that the Claimant served interdiction for 9 months. The interdiction was without pay. After his acquittal from the charges of breaking and theft by the competent court of law, it was proper for the Defendant to reinstate the Claimant to his job but they did not let alone pay him his withheld salaries. After the clearance, he was well deserved of his money. The Claimant tendered pay slips, marked PEX

1 A and PEX 1B indicating his monthly salary at the time he was being interdicted by the Defendant. The pay slips showed MK52, 000.00 per month; that multiplied by 9 months, it gives **K468, 000.00** being the total amount of the withheld salaries. This is what the Defendant is called upon to pay under this head.

The Claimant further prayed for interest, and the only attendant interests are those permitted by section 65 of the Courts Act. Section 65 of the Courts Act; Cap 03:02 of the laws of Malawi, provides for interest on judgments. The said section states that;

Every judgment in civil proceedings shall carry interest at the rate of five per centum per annum or such other rate as may be prescribed.

In this case, I would allow interest on judgment only with respect to withheld salaries. It would be unfair to the Claimant for the Defendant to still pay him **MK468, 000.00** which was supposed to be paid in 2017/2018. In this case 10% of the withheld salaries total amount should be allowed. Simple arithmetic gives us **MK46, 800.00** being 10% of the total sum. This is what the Claimant shall receive in interest.

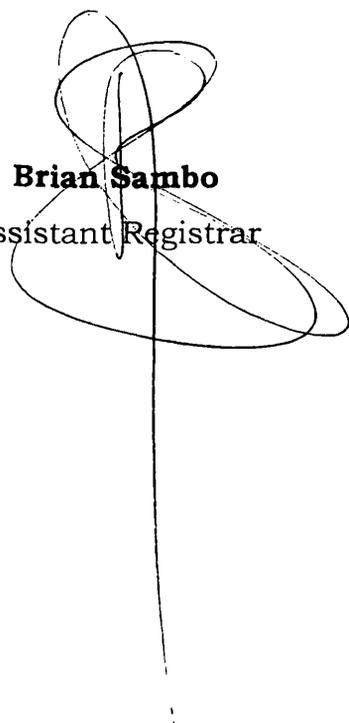
I also had time to examine the court record and appreciate the level of effort put forth by counsel for the Claimant. This is a new matter; a 2021 case, that ended with a judgment in default, and then this assessment of damages. The court record in my hands is sufficient for me to determine the level of party and party costs. I know there are other issues attracting costs on the part of counsel such as transport and other disbursements but the court record disposes. During this time of Covid-19 pandemic, it is also in the interest of courts of law to try as much as possible to minimize court meetings by disposing cases quickly. On this, I award the Claimant **MK1, 500,000.00** being full and final party and party costs.

In conclusion, the Claimant is awarded as follows;

1. **MK9,000,000.00** being damages for false imprisonment
2. **MK468,000.00** being total sum of withheld salaries
3. **MK46,800.00** being 10% interest on the withheld salaries and
4. **MK1, 200,000.00** being party and party costs.

In total the Defendant will pay **MK10, 714,800.00**. This whole sum is payable within 30 days from today.

Made in chambers this 23rd day of August, 2021.



Brian Sambo
Assistant Registrar