



IN THE HIGH COURT OF MALAWI

MZUZU REGISTRY

CIVIL DIVISION

CIVIL CASE NO. 103 OF 2013

BETWEEN:-

KELVINS M.K. BANDA..... CLAIMANT

-AND -

MALAWI REVENUE AUTHORITY.....DEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Mr. George Kadzipatike/ Mr. M. Munthali, of counsel for the Claimant

Defendant, absent and unrepresented

Miss Tionge Chiulika, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

The assessment hearing follows the order of the court made by the Registrar on the 13th of June, 2014 striking out the Defendant's defence and entering judgment in favour of the Claimant for the following;

- a. Damages for defamation.
- b. Exemplary damages for defamation.
- c. Special damages for defamation.
- d. Damages for his right to privacy
- e. Damages for false imprisonment.
- f. Costs of action.

Having heard the evidence on assessment, now the court returns to provide its findings regarding the quantum of damages. Before we do so, brief facts of the underlying matter suffice.

BRIEF FACTS

In the month of April, 2013 around 18.30 hours, the Defendant's employees/agents, identified as Phandiro and Chimzimu who were at the material time working under the orders of a Mr. Kunje went to his house without proper identifications and without proper search warrants and forced their way into his compound and promptly approached his 3rd born son, Brave who was playing outside his house.

That they started interrogating him on allegation that he had in his possession smuggled motor vehicles.

That upon hearing the noise that was emanating from outside his house, he went outside his house and he met Phandiro and Chimzimu who were accompanied by a number of police officers.

That without greeting him, as would have been expected from any normal human being, they started quizzing him on the whereabouts of the motor vehicles, which

according to them, he had allegedly smuggled and hid them somewhere within the compound.

That due to the pressure he was getting from Phandiro, Chimzimu and other police officers, he was compelled to go inside his house and brought out two Blue Books for two of his personal motor vehicles namely; Toyota Hilux Pick Up registration Number KU 228 and Toyota Carina Registration Number BK 3694.

That despite the fact that he had showed the Defendant's employees the two Blue Books, they did not believe him and they opted to embarrass him in front of his family and his house servant. Further to that, the Defendant's employees continued to embarrass him as they continued to force the Claimant to open his garage so that they could properly search for the smuggled motor vehicles, and upon conducting the search, the Defendant's employees discovered that the two motor vehicles were not actually smuggled as they had initially thought.

That without showing any signs of remorse, the Defendant's employees, hurriedly boarded their motor vehicle and hurriedly left the Claimant's compound.

That he was traumatized by this humiliating experience by the Defendant's employees and he failed to sleep that particular day and as a result of this, in the morning of the following day, he went to Mzimba Police Station where he met the Officer In-Charge and he logged a complaint against the unprofessional conduct of the police officers that visited his house along with the Defendant's employees. The Officer In-Charge stated that he was unaware of that operation and he denied having ever sent his officers to the Claimant's house, as such undertakings were a special preserve for the Defendant.

That, according to the Claimant, the Defendant's conduct had;

- i. Lowered his good reputation in the eyes of the reasonable and right thinking members of the society as he was now being perceived as a

thief and untrustworthy member of the society, and yet he was a disciplined and principled retired officer and a business man.

- ii. That the conduct by the Defendant's employees had breached his right to privacy
- iii. That from the day of the incident, he had not received any compensation or apology from the Defendant, and therefore was claiming damages.

ISSUE

The hearing was conducted to assess the amount of damages payable by the Defendants for defamation, exemplary damages for defamation, special damages for defamation, damages for false imprisonment, damages for breach of right to privacy, and costs of action.

DETERMINATION

DAMAGES FOR DEFAMATION

The word defamation contains two notions: slander and libel. Slander must in order to be actionable without special proof of special damage, impute among others a criminal offense punishable with at least imprisonment in the first instance. See **Chiwanda v Amoni and Others (Civil Cause No. 547 of 2006) (547 of 2006) [2007] MWHC 82 (14 July 2007)**. The present case is about slander as confirmed with Section 4 of the Witchcraft Act which criminalizes accusing someone of practicing witchcraft.

In **Mdumuka v Mphande 7.M.L.R 425** there was a proposition that a party cannot be deprived of the right to recover damages merely because the damages are difficult to assess or that such damages cannot be properly assessed.

When assessing damages under this head we consider the coverage of the publicity, the station in life of the Claimant and the effect on his daily life. See **Shepherd Mumbo v Director of the Anti-corruption Bureau Civ. Cause Number 182**. In the present case, the Claimant did not disclose the defamatory

words spoken or written by the Defendant. What is in the evidence is that the Defendant's employees only requested to see the motor vehicles. When they asked to see the papers, the Claimant went inside and brought out two Blue Books. It was after inspecting the Blue Books that the officers left after uttering the words, "it is not true that the motor vehicles were smuggled". Of course these words are said to have been uttered in the presence of the Claimant and his family members, and some of the officers that came to his house. Admittedly, there is defamation but the publication was never amplified or wide-spread.

Naturally, slander is less serious than libel, according to *Sheila Lozi vs Mille Jumbe*, Civil Case Number 1336 of 1998. When awarding damages to the Claimant, the level of the defamation shall be considered. Nevertheless, considering the case of **Sheila Lozi v Mille B Jumbe** (above) where it was established that the aim of damages is to vindicate the plaintiff's name and take into account distress, hurt and humiliation which the defamation has caused.

EXEMPLARY DAMAGES FOR DEFAMATION

The claimant also claims exemplary damages in the present case. Mwaungulu, Registrar by then, in **Matchipisa v Attorney General Civil Cause No. 52 of 1993** case quoting **Lord Devlin in Rookies v Bernard (1964) AC 1129** stated that aggravated damages endeavor to fully compensate the plaintiff for the damage he has suffered. Exemplary damages however are not necessarily a compensation to the plaintiff for the damage he has suffered they are more a punishment on the defendant for waywardness. Under this head too, the award is also guided by the level and manner of defamation.

DAMAGES FOR FALSE IMPRISONMENT/DAMAGES FOR BREACH OF RIGHT TO PRIVACY

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 health. **McGregor on Damages 16th Edition Para 1850-1851.**

In the present case the claimant is claiming false imprisonment. From the evidence at hand, the Claimant was falsely imprisoned for some minutes of the day by the Defendant's officers and police officers who visited his premises without a court order. During this period, the claimant did not experience any kind of physical injury. However, he suffered humiliation and loss of dignity. Considering the case of **Ngulube v Attorney General Civil Case No. 1509 of 1993** where it was stated that "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".

In the present case there is no specified period of time during which the Claimant was subjected to confinement. What is clear is that the whole scenario took place within a short time; it could be an hour or so. In the case of **Mbambo v Robrory, Civil Cause No. 296 of 2015** where similar circumstances occurred, a sum of **K1, 350, 000** was awarded.

On beach of the Claimant's right to privacy, damages are indeed synonymous. It is true that the people who visited the Claimant's residence were, obviously officers of the government but it does not mandate them to budge into people's homes at will. There is a laid down procedure for doing that assuming there is a

legitimate intention. In this case, none of the officers had an order of the court of law mandating them to visit and conduct a search at the Claimant's house.

COSTS OF ACTION

In the interest of good time management and fairness, I also had time to examine the court record and appreciate the level of effort put forth by counsel for the Claimant. This is, of course an old matter; a 2013 case, that ended with a summary judgment, and then this assessment of damages in 2021. 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 **MK2, 000,000.00** being full and final party and party costs.

CONCLUSION

Considering the law and the analysis above vis-à-vis the circumstances of this case and the Claimant, I make an award of MK6, 500,000.00 in damages. Plus, costs, the Defendant will pay **MK8, 500,000.00**. This whole sum is payable within 30 days from today.

Made in chambers this 9th day of October, 2021.


Brian Sambo
Assistant Registrar