



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL DIVISION
CIVIL CAUSE NO. 554 OF 2021**

BETWEEN

Beatrice Mateyo.....Claimant

-AND -

Attorney General (Malawi Police Service).....Defendant

CORAM:

Brian Sambo, Assistant Registrar

Mrs. H. Soko, of counsel for the Claimant

Mr. C. Kadutsa, of counsel for the Defendant

Mr. H.L. Matope, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

The present assessment follows a default judgment obtained by the Claimant on the 4th of October, 2021 for the following:

- i. Damages for false imprisonment.
- ii. Punitive damages.
- iii. Compensation for violation of constitutional right.

iv. Costs of action.

On 23rd May, 2022 I heard both parties on assessment of damages.

I now return to give my ruling on assessment of damages, but before I do so, a summary of the facts of the underlying matter may be important.

Brief Facts of the Matter

The facts of this matter are simple enough. The Claimant on 14th September, 2017 participated in a lawful solidarity march against Gender Based Violence. The march took place within the city of Lilongwe. In the course of the march, it pleased the Claimant to carry a placard that read, simply, "*Kubadwa ndi Nyini sichifukwa/sitchimo*" which in English Language means, "*Being born with a vagina should not be a problem/Being born with a vagina is not sin*". The march was overseen by the Malawi Police Service, and when the officers saw the placard, they found it offensive and went ahead to arrest the Claimant on the basis that she might have committed the offence of Insulting the modesty of women. The Claimant was taken to Lingadzi Police Station where she was cautioned and then released the same day. Now the Claimant prays for damages as outlined above.

Evidence on Assessment

The Claimant was the sole witness in her case. Having adopted her written Witness Statement, she sought a highlight to the effect that she participated in a solidarity march against Gender Based Violence on the 14th of September, 2017. She said the march involved different types of placards which were only handed over to her by organisers. On her part, she carried a placard that read, "*Kubadwa ndi nyini sitchimo*". On arrival at Lilongwe Civic Centre at about 11.00 AM she was approached by Superintendent Simeons Kamisa and informed that the police wanted to take pictures of the placard she was carrying and also to ask her some questions.

She said she was forced into the police motor vehicle and taken to Lingadzi Police Station where she was told that she had insulted all women, and

immediately her shoes and phone were taken away from her. She was then placed in a holding cell where she was detained for 5 hours.

She also told the court that the experience of being taken into a police vehicle was degrading, and caused psychological harm to her. She said, at the police she was verbally abused before being told the wrong she had committed, and that this experience, too caused her emotional and mental torture.

She said she was insulted by police officers that she was a stupid woman who was not reasoning well. She further told the court that the holding cell was in a poor hygiene and it caused unbearable discomfort as her shoes were taken away.

She went on to tell the court that, later around 4.30 PM, she was taken to the office of the Officer In-Charge where a statement was recorded from her. She was then given police bail, and it was at this point that she was able to see the offence charged of insulting the modesty of women.

She said the incident attracted unwarranted attention to her which also made her to receive insults and threats from unknown persons so much so that she had to spend more on her personal security.

She finally told the court that the arrest itself was baseless and the police did not take the matter to court despite being informed by the court to do the same within 14 days from the 16th of June, 2020.

During cross examination, she alluded to the fact that there was a contradiction between the Statement of Claim which had indicated 2 hours and her Witness Statement which indicated that the detention was for 5 hours. She said it was true that she was never taken to court for prosecution. She said that because of what the police did to her, her constitutional right to demonstrate and the right to be informed of the reasons for detention were violated.

In re-examination, the Claimant told the court that she was arrested at 11.30 AM and released on police bail at 4.30 PM. She said she was forced to get into the police vehicle, and her shoes and cell phone were taken away from her at

the police station. She said, while at the police station she was subjected to some verbal abuse by police officers, and was not informed the reason behind her detention. She further said the treatment by the police was degrading and traumatizing.

The defence also brought one witness, Superintended Simeons Kamisa (DW1). He adopted his Witness Statement as his evidence. Basically, his evidence was to the effect that he was the lead investigator of the Claimant's matter, and he was based at Lingadzi Police Station. He said the Claimant participated in a solidarity march against Gender Based Violence on the 14th of September, 2017. He said the march was under the supervision of the Malawi Police Service.

He told the court that the Claimant, during the march, carried an offensive placard in public, which read, "*Kubadwa ndi nyini sichifukwa*", and it was for that reason that she was taken to the police station for questioning as her placard was undermining the modesty of women.

He said the Claimant was told the reason for her detention, and then detained her, and that there was no use of handcuffs. That after being cautioned within the same hour, she was then released on police bail. He said it was not true that the Claimant was detained for 5 hours let alone that she was not informed of the reason behind her detention.

He said the prosecution did not take place because the Claimant had obtained an order of injunction against the police so that she was not prosecuted, and later on she instituted judicial review proceedings through Women Lawyers. He said this made it difficult for the police to prosecute her.

He further told the court that the Claimant was detained under normal conditions, and that it was not true that she was detained in a police cell. He said the truth was that she was detained in his office where she was cautioned and charged in the presence of Women Lawyers.

He also stated that it was not true that her constitutional rights were violated, as she was treated like any other female suspect. And that it was not true that she was insulted by his colleagues at the station.

He said the Claimant knew pretty well why she was detained. That her placard mentioned a woman's private part. That the language she was carrying on her placard was very vulgar to him and his fellow officers; offensive to the modesty of women. He said the language was not used in ordinary conversation but in swearing at each other.

During cross examination he told the court that he was among police officers who were deployed to oversee security issues during the march. He said the march started at Area 18 Roundabout, and several people; both men and women participated. That the demonstrators were marching towards Lilongwe Civic Centre Offices. He said the Claimant was arrested because of the offensive placard she carried during the march. He said the placard had a vulgar language which read, "*Kubandwa ndi nyini sichifukwa*". He denied that the Claimant was detained for 5 hours as he had recorded her statement and charged her within a space of an hour. He said it was not true that she was detained in a police cell as there was no cell for females at Lingadzi Police Station at that time. He said he was not present when she was being asked to take away her shoes. He said she was detained in his office, and his office was very clean at the time she was placed there. He added that he could not remember the exact time the Claimant was arrested, but all he knew was that the Claimant spent less than an hour at the Police Station.

Issues for Determination

There is basically only one issue for determination, and that is to assess the appropriate level of damages payable to the Claimant in the circumstances.

Analysis and Determination

It is normal for an injured party to claim damages in a court of law. I can only remind the parties that assessment of damages is left to the court's discretion. See *A.E. Kagwale v Attorney General*, Civil Cause No. 529 OF 2007. And 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 *A.E. Kagwale v Attorney General* (Above-cited).

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. (See *McGregor on Damages* 16th Edition para. 1850-51).

Damages for false imprisonment however need not be made exclusively on consideration of the time factor. See *Fernando Mateyu v. Atupele Haulage Ltd*, Civil Cause No. 906 of 1993 (unreported). 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."

So far, the facts remain that the Claimant was subjected to false imprisonment for an hour or so. The Claimant said she was detained for 5 hours – from 11.30 AM to 4.30 PM. On the other hand, the Defendant vehemently denied this fact; to have detained her for all that time but for less than an hour. DW1, Superintendent Simeons Kamisa, during cross

examination told the court that he recorded her statement at 4.00 PM and it was done within an hour. At the same time, he said he could not remember the exact time the Claimant was arrested from the march setting. If this is the case, the question would be, how did he know that the detention was for less than an hour? I know the evidence is on record to the effect that he was among police officers who oversaw the march, but the truth remains that for the court to believe his evidence that the detention was for less than an hour, he should have gone ahead to disclose the time the Claimant was taken from the demonstrations to the police station, and not just state the time she was released on police bail. The Claimant's evidence was complete as she had stated the time she was arrested and the time she got released on bail by the Defendant. The only problem is the contradiction, which she had alluded to during cross examination, that in her Statement of Claim she had indicated 2 hours while in her Witness Statement she said she was detained for 5 hours. I should, therefore, not entirely agree with her that she was detained for 5 hours; rather her detention was somewhere between 1 hour and 5 hours. It goes without saying that trial in the High Court of Malawi is determined by pleadings; in this case what was pleaded by the Claimant was 2 hours. I should therefore, conclude that her detention was for 2 hours.

It is also true that, in awarding damages to the claimant in this case, the approach in *Donald Ngulube v. Attorney General (supra)* could be the correct one. 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."

In the present case, I consider the detention for 2 hours not long, and the evidence given does not disclose aggravating circumstances. I know the Claimant alleged some aggravating factors such as being abused and insulted by police officers, unhygienic cell, confiscation of her cell phone and shoes but these have been explained away by the defence to the extent that the Claimant was detained in the office of Superintendent Simeons Kamisa as there was no cell for females at Lingadzi Police Station at that time. This being an office of a senior police officer, I have not believed that the Claimant was subjected to degrading treatment regarding the issue of accommodation. An office for such a senior officer cannot be as dirty as described by the Claimant.

Further, the Claimant herself did not particularise what insulting or abusive language was used by the said police officers or which police officers had done that. She ought to have expressly particularised that or bring independent or corroborative evidence for the court to believe that she was really abused and insulted. Otherwise, if it is true that she was insulted, she was free to lodge a complaint against the officers for having insulted and abused her.

Use of insulting language is a criminal offence, and criminal offences are not only reported to the police; they can also be reported to the magistrate if there was fear of conflict of interest on the part of the police. See Section 83(a) and (b) of the Criminal Procedure and Evidence Code.

To that end, it is my finding that the Claimant's detention was without aggravating factors. The court takes judicial notice that the practice of taking away shoes and phones from suspects before detention is lawful, normal, customary and acceptable, and this cannot, by itself, form the basis for claiming damages let alone considered as aggravating.

Accordingly, taking into account the circumstances of the case, and issues of devaluation of the Malawi Kwacha that has taken place in recent months, I award the Claimant **MK3, 500,000.00** as damages for false imprisonment.

Compensation for violation of constitutional right

The Claimant was indeed disturbed by being arrested and taken to the police station in the course of the lawful solidarity march. It was her constitutional

right to demonstrate; after all it was just a solidarity march against Gender-Based Violence in favour of women. It was a noble cause. The best way was for the police to leave the Claimant to conclude the march, and take her for questioning thereafter. Unless the police perceived real and imminent danger against her audience to the extent that if she was to be left on the scene, perhaps lives would have been lost or an irreparable, real and imminent danger was about to occur. I know, somehow this is ironic and utmost subjective bearing in mind that an offence was already suspected, and may be, leaving her moving around and displaying the so called offensive placard would not be a good idea. Whatever the case, she had the right to participate the solidarity march, and therefore entitled to compensation but at a reduced rate because of issues of mitigation of damages. It is true that those who did not carry abusive placards were not arrested by the police, and therefore, they were not disturbed let alone have their constitutional rights violated. Somehow, the Claimant contributed towards her own fate by carrying around the offensive placard. Moreover, the Claimant did not completely fail to participate in the solidarity march; she took part but she was arrested before the march was called off. The evidence before me shows that the march was going to end upon reaching the Lilongwe Civic Centre Offices, and at the time of her arrest, she had already arrived at the offices. Therefore, her constitutional right to participate in the solidarity march was not completely violated.

Considering these circumstances, I award her **MK1, 500,000.00** as compensation under this head.

Punitive Damages

The Claimant further prays for punitive damages. These damages are a bit tricky in that, they are out-rightly reduced in the event that the Claimant is found to have failed to act reasonably. It does not matter whether or not the defence did not raise it. See *Monahan v. Obici Med. Mgmt. Servs.*, 271 Va. 621, 628 S.E.2d 330 where the court said Defendant is not required to plead that observation if the evidence justifies such an instruction.

Under the mitigation of damages doctrine, a person who has suffered an injury or loss should take reasonable action, where possible, to avoid additional injury or loss. Intort mitigation of damages refers to conduct by the Claimant that, although not constituting a civil wrong itself, may reduce the Claimant's recovery. For example, if the victim of an assault used provocative words prior to the assault, the words may mitigate the Claimant's damages. Most jurisdictions limit mitigation of damages for provocative words to a possible reduction in Punitive Damages, as opposed to Compensatory Damages. See 2005 *Holley v. Pambianco*, 270 Va. 180, 613 S.E.2d 425.

In the present case, the placard carried by the Claimant was indeed not good at all. Her placard bore the words in Chichewa Language, "*Kubadwa ndi nyini sichifukwa/sichimo*" meaning "Being born with a vagina shouldn't be a problem" or "Being born with a vagina is not a sin". The Claimant carried this placard in public and in the presence of the police, and she did so in the course of a solidarity march against Gender Based Violence, and the march itself was staged in favour of women. If truth should be told, what she had carried was actually greater form of assault and violence against women; quite abusive, undermining and insulting to the modesty of women who happened to be the subject of the march. In essence, what she had carried was complete in the opposite of what she was trying to defend or intercede for. It was a plain contradiction.

The placard itself constituted two major forms of violence against women, children and girls; verbal abuse and psychological/emotional abuse. The former includes written texts and actual verbal abuse, and this is the use of negative comments that are unwelcome, embarrassing, offensive, threatening/or degrading to a woman. Examples of verbal abuse include name-calling, slut shaming, body shaming, labeling, false accusations, lying, insults, curses, among others. Whereas the latter refers to any act that provokes fear, diminishes the individual's self worth, dignity or self-esteem, inflicts psychological trauma on another person. See *Various Forms of Violence Against Women* by Mercy Makinde, <https://guardian.ng/guardian-woman/various-forms-of-violence-against-women/> accessed on 19th August,

2022. It is clear that the Claimant's placard was not short of those forms of violence.

Therefore, it does not matter whether or not the placard was prepared by someone and only handed over to the Claimant as she wanted the court to believe. The mere fact that she accepted to carry it, knowing very well it had carried violent messages against the people she participated to fight for, there is no justification for this court to award her punitive damages. My observation would have been different if what she was carrying was inoffensive. If anything, what can be awarded here are only nominal damages, and in this case **MK100, 000.00** is sufficient, in my view.

Conclusion

In summary, the Claimant is awarded as follows:

1. **MK3, 500,000.00** being damages for false imprisonment.
2. **MK1, 500,000.00** being damages for violation of constitutional right.
3. **MK100, 000.00** being nominal damages awarded under the head of punitive damages.

In total, the Defendant shall pay **MK5, 100,000.00**. This whole amount is payable within 30 days from today.

Costs are for the Claimant and shall be assessed separately if not agreed upon by the parties.

Made in chambers today, Friday the 19th of August, 2022.


Brian Samba
Assistant Registrar