



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 174 OF 2019

BETWEEN

FADWICK PAHUWA.....CLAIMANT

AND

THE ATTORNEY GENERAL.....DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA**

Mr. Ndhlovu- of Counsel for the Claimant

Mr. Amos- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

INTRODUCTION

The Claimant commenced this action against the Defendant claiming damages for false imprisonment, damages for defamation, damages for malicious prosecution, damages for assault and battery and costs of this action. The Defendant filed and served their defence but the same was struck out and judgment entered in favour of the Claimant for all his claims herein on 21st May, 2020. The matter was referred to this court for assessment of damages which I must now consider. Before I proceed, I thought I should put it on the record that the defendants did not attend the assessment proceedings albeit having been served. There is on record a return of service to that effect. There was no excuse sent to the court for their failure to appear for the assessment proceedings. Such being the case, the court proceeded to hear the claimant in their absence.

The uncontroverted evidence came from the claimant through his witness statement which he adopted in court. He averred that he was at all material times employed as a Security Officer at ADMARC Limited in 2016 and during the course of his work, he was stationed at the ADMARC Chigumula market station as a guard in 2017. On or about 29 July 2017, his partner Mr. Alex Thom left a gun in the guard room. At around 1:00am, he was attacked by 5 thieves who were trying to steal the gun. One of the thieves successfully took the gun and ran away. He caught one of the thieves and started screaming for help. Immediately, one of the thieves came back and hacked his shoulder at which point he released the other thief and they ran away. Some neighbours came to his aid and noticed a police vehicle that was passing by. The vehicle was stopped and the incident was explained to the police who immediately accused him of selling the gun. He was taken into custody at Bvumbwe Police where he stayed until the 18th of August 2017.

On 6th August 2017, the police apprehended the 4 of the thieves attempting to use the same weapon in a robbery. The thieves identified Mr Nyalubwe as the individual who had directed them to steal the gun from ADMARC Limited. Mr Nyalubwe was also a guard at ADMARC Limited at the time. On 18th August 2017, he was released on bail the conditions of which required him to pay MK50,000.00, and that he was to report to Bvumbwe Police once a week, conditions which he duly complied.

On 4th September 2017, he was brought before the Magistrate's Court sitting at Midima where he was formally charged with the offence of theft by servant. The four thieves and Mr. Nyalubwe were also brought to court on the same day and were formally charged with the offences of theft and theft by servant respectively. The 4 thieves were convicted and sentenced to 15 years whereas Mr. Nyalubwe was convicted and sentenced to 22 years. The court found that there was no evidence that he was involved in the scheme and accordingly, he was acquitted by the Magistrate's Court.

He lamented that he had been kept in custody for a period of 21 days. His arrest and subsequent criminal prosecution put him to great shame. As a result, he has been ridiculed as people now look at him as a common criminal. It is on this basis that he now seeks compensation for the defamation of his character, unlawful imprisonment and malicious prosecution.

Such was the evidence on assessment of damages. I would like to thank Counsel representing the Claimant for the guidance as evidenced by the well-researched submissions filed in support of the assessment of damages herein in which several authorities have been cited. This court has given the submissions and the authorities counsel cited the most anxious consideration.

As aforementioned, this court has been moved to determine the reasonable quantum of damages that will adequately compensate the plaintiff. The measure of damages to be awarded was ably illustrated by Lord Blackburn in **Livingstone v Rawyards Coal Company (1880) 5 App 25** as that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation. Whatever the case may be, it ought to be borne in mind that it is not possible to quantify such damages with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board** [1983] 2 A.C. 773, and **Kalinda -vs- Attorney General** [1992] 15 M.L.R. 170 at p.172. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the claimant.

False Imprisonment

To begin with, the claimant has been awarded damages for false imprisonment. Under this head, damages are awardable for, among others, loss of dignity, mental suffering, and discomfort suffered by a claimant. See the case of **Matanda v Sales Limited 13 MLR 219**. The same sentiments were echoed in **Maonga and others v Blantyre Print and Publishing Co Ltd [1991] 14 MLR 240 (HC)**, where it was held that in awarding damages for false imprisonment, courts consider the loss of liberty, mental suffering and humiliation caused by the false imprisonment.

In this case, Counsel for the claimant calls upon the court to consider that the claimant was incarcerated for 21 days at Bvumbwe Police. Counsel cites the case of **Daniel Baleke Mwangwela vs Attorney General, civil cause No 699 of 2010**, where the claimant was awarded the sum of K250,000.00 as damages for false imprisonment after being imprisoned for 5 hours. Counsel submits that after considering several cases on the awards of damages for false imprisonment, the court took K50,000.00 per hour as reasonable as reasonable compensation for false imprisonment and awarded the sum of K250,000.00. He further submits that in this case the claimant was imprisoned for 21 days which translates to 504 hours x K50,000.00 which comes to K25,200,000.00. He therefore prays that the court adopts the formula in the Mwangwela case and award the claimant the sum of K25,200,000.00.

Be that as it may, I do not agree with the proposal that damages for false imprisonment be assessed on an hourly basis. It is quite obvious that this would lead to absurdity in some cases. In **Donald Ngulube v. Attorney General Civil Cause No 15 69 of 1993 Mwaungulu (Registrar)** (as he then) had this to say:

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.

Essentially, in relation to time the court should consider that longer imprisonment, in the absence of alternative circumstances, should attract heavier awards and shorter imprisonment in the absence of aggravating circumstances should attract lighter awards. This must be done with due regard to comparable cases. Apart from the Mwangwela case (supra), I have considered the case of **Chimwemwe Kalua v The Attorney General Civil Cause No. 490 of 2012** where the court awarded the claimant K2,000,000.00 as damages for false imprisonment of 7 hours. The award was made on the 14th of February 2013. Further to this, I have considered the case of **Martin Chimkaya v The Attorney General Civil Cause No. 67 of 2017** in which the court awarded the claimant K20,000,000.00 as damages for false imprisonment upon considering the circumstances of the case that the claimant was incarcerated for 47 days. The award was made on the 4th of June 2018. In this case, the claimant was incarcerated for 21 days. In the light of the cited cases, I am of the view that K25,200,000.00 proposed for the claimant is on the higher side. The claimant is awarded **K12,000,000.00** as damages for false imprisonment.

Defamation

On damages for defamation, in arriving at the appropriate award, the aspects taken into account are mainly injury to reputation, injury to feelings, injury to health and pecuniary loss (**McGregor on Damages, 16th Edition page 1226 paragraphs 1893 to 1897**). Over and above that, the court takes into account the context of the defamatory material, the nature and extent of the publication of defamatory material, the standing of the plaintiff in the society and the conduct of the defendant since defamation. (see **Mwaungulu vs Malai News (1991)MLR 227**). In the case of **Mkandawire -vs- Mtonga and another** Civil Cause No. 521 of 2005 the court stated that damages for defamation (libel) are awarded for injury to reputation and feelings. In determining the award, courts look at several things including; the context of the defamatory material, the nature and extent of the defamatory publication including the aspect of reproduction, the plaintiff's standing, his reputation and status, nature of defamation either libel or slander, conduct of the defendants from the time of the publication, and recklessness of the publication.

In the case at hand, the Claimant laments that his arrest and subsequent criminal prosecution put him to great shame and that as a result he has been ridiculed as people now look at him as a common criminal. Counsel invites the court to consider the case of **Mkumba V The Attorney General Civil Cause No 1091 of 2007**, in which the plaintiff was awarded MK300,000.00 for defamation. In that case, the plaintiff

was arrested by the police and the fact of the arrest and the moving about with the police amounted to defamation. Counsel further cites the case of **Mwangwela** (supra) wherein the plaintiff was awarded the sum of MK500,000.00 for defamation. Further to that, Counsel also cites the case of **Edwin Chitsulo Gama v The Attorney General** Civil Cause Number 26 of 2011, wherein the plaintiff was awarded the sum of MK250,000.00 for defamation. The award was made on 15th November, 2011. Counsel contends that the circumstances and the facts of the defamation in that case are very similar to the facts of the defamation in this case. He also points out that the value of the kwacha has gone down since that case was decided. It is his submission that damages in the region of K6,000,000.00 would be fair and reasonable compensation for the plaintiff under this head.

It is clear that the manner in which the claimant was arrested was defamatory in that he was portrayed as a criminal and this put him into shame and ridicule. I also bear in mind the violation of the claimant's right to an unimpaired possession of his reputation and good name. In view of the circumstances of this case and the case cited under this head, I award the claimant **K4,000,000.00** for defamation.

Malicious Prosecution

The claimant has also been awarded damages for malicious prosecution. In the case of **Bulla v Agricultural Development and Marketing Corporation** [1993] 16(1) MLR 30 (HC) the court cites with approval the assertion by the authors of MacGregor on Damages, in paragraph 1367, in which they state:

“The principal head of damage here is to the fair fame of the plaintiff, the injury to his reputation. In addition, it would seem he would recover from injury to feelings, that is, for indignity, humiliation and disgrace caused him by the fact of the charge being preferred against him.”

In arriving at an award under this head, Counsel calls upon the court to consider the **Bulla case** (cited above), in which the plaintiff was on 4th day of May, 1993 awarded MK2,000.00 for malicious prosecution. Counsel is of the view that the sum of K8,000,000.00 would be reasonable compensation under this head. Considering the award in the case cited above and the traumatic experience of having to undergo a criminal trial on unfounded allegations, I am of the view that the sum of **MK4,000,000.00** will be reasonable compensation under this head.

Assault and battery

Lastly, the claimant has been awarded damages for assault and battery. It is trite that damages arising from physical injury, are arrived at on the same footing as in any other claim for personal injury. see **Kachulu v Attorney General (Civil Cause 712 of 2005)**. In addition, the damages are also recoverable for injury to feelings, i.e. the dignity, mental suffering, disgrace and humiliation suffered by the plaintiff as a result of the assault and battery. See MacGregor on Damages 15th Edition p.1024 para. 1615.

Counsel calls upon the court to consider the case **Vovo Gomesi vs The Attorney General** Civil Cause Number 399 of 2013, in which the plaintiff was awarded the sum of K2,000,000.00 as damages for assault and battery. Counsel further submits that the award of MK2,000,000.00 in the **Gomesi case** was awarded on 16th July, 2014. Counsel contends that since 6 years have passed since then and the value of the kwacha is not the same as it was then, the sum of MK10,000,000.00 would be reasonable compensation under this head.

In my considered opinion, the sum total of evidence under this head was begging askance to say the least. The only part where the claimant talks of invasion to his physical integrity is where he alludes to being hacked. The degree of the injury is not put forward and there is no Medical Report to throw more light to the same. It has been mentioned above that damages in relation to physical injury, are arrived at on the same footing as in any other claim for personal injury. The claimant was duty bound to establish the injuries for the court to gauge the extent of pain and suffering endured with regard to comparable cases. I am inclined to make a nominal award of **K2,000,000.00** for assault and battery.

CONCLUSION

Having regard to all the circumstances of this case and particularly, the claimant is awarded as follows:

- False imprisonment K12,000,000.00
- Defamation K4,000,000.00
- Malicious prosecution K4,000,000.00
- Assault and battery K2,000,000.00

Accordingly, the claimant is awarded the total sum of **K20,000,000.00**. He is further awarded costs for the assessment proceedings to be taxed if not agreed by the parties.

MADE IN CHAMBERS THIS 31ST DAY OF JANUARY, 2022


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR