REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL DIVISION

JUDICIAL REVIEW CASE NUMBER 3 OF 2021

BETWEEN

(Before Hon. Justice Nriva)

THE STATE (On the application of JANET DAUDA,

SELLAH BVUMBWE, BERTHA CHITANI,

and JERMIA KAKUMBA----------CLAIMANTS

AND

OFFICER IN-CHARGE FOR NTCHEU POLICE ----------1st DEFENDANT

THE INSPECTOR GENERAL OF POLICE ----------2nd DEFENDANT

CORAM: His Honour. Elijah Blackboard Dazilikwiza Pachalo Daniels, AR.

Mr. L. Mickeus, of Counsel for the Claimants,

Mr. Matola, of Counsel for the Defendants,

Mr. Mathanda, Clerk/Official Interpreter,

JUDGMENT ON DAMAGES

1. It is not unusual for the agents of the sovereign to limit the liberty and dignity of men. It is a habit deplorable as it comes, but not alien to our context as a society to have illegal detention. Ideally, holding differently would be committing intellectual dishonesty and manifest pretence of the mind. As it were, whether unlawful restraint over the right to liberty is desirable or not is perhaps not an inquiry of this legal disposition. Needless to say, it is particularly concerning when the sovereign's agents limit the rights of men

through an illegality. Yes! The sovereign is at times allowed to limit the enjoyment of some rights which includes the right to liberty, but such a limitation must be reasonable, internationally recognised and one that is acceptable in a democratic society. In my view, that is basic constitutional knowledge. Be that as it holds, when men are restrained from their right to liberty without any reasonable cause, the law slumbers not, in that it becomes an aid that enables men to quantify their loss or injury on their personal liberty and dignity. Thus, by the judgment of the Court dated 22nd Day of September 2022, the Honourable Judge presiding over this case directed that the Registrar should proceed to do an assessment of damages for the unlawful deprivation of liberty that the claimants unreasonably suffered in the hands of the agents of the state, the defendants herein. In brief, the said damages are vicariously recoverable as against the defendants on the premise that their agents, falsely imprisoned the claimants at Ntcheu Police Station on 5th January, 2021 to 6th January, 2021 under the guise that the claimants did not comply with a High Court order which in part ordered the claimant to surrender the land whose boundary as argued by the claimants is the one that was in dispute. This matter had its legs into the Court through the wheels of judicial review.

I must mention that the issue of liability was resolved before the Honourable Judge. What I am called to duty upon, is to decide the appropriate quantum of damages. As it were, unlike the submissions of Counsel for the claimants, the order of the Honourable Judge is clear, I must assess damages for false imprisonment and nothing more because that is exactly the question that the judge addressed in his order. Generally, the issue before the honourable Judge was whether the claimants were entitled to damages for "*loss of rights*", that is the right to liberty and dignity bearing in mind that the process was birthed by way of judicial review proceedings. The question before the learned Judge was answered in the affirmative hence these proceedings.

2. As it were, Counsel for the claimants has submitted before me that in his view a total sum of K79,000,000.00 (Seventy-Nine Million Kwacha Only) is reasonable compensation as damages for false imprisonment, loss of business, loss of earnings and lastly the claimants are claiming damages being the expense they claim to have spent on their Counsel. Particularly, the claimants through Counsel have submitted that a sum of K60,000,000.00 (Sixty Million Kwacha Only) be awarded as damages for false imprisonment, a sum of K14,000,000.00 (Fourteen Million Kwacha Only) as damages for loss of business and loss of earnings and lastly, they submit that they spent K5,000,000.00 (Five Million Kwacha Only) being money paid to Counsel for his services. Respectfully, I do not think that such an award is reasonable and proportional as Counsel would want this Court to believe. Clearly, I shall pronounce myself as to why I harbour the view as expressed herewith. Suffice to say that, I decline the invitation of Counsel, inviting me to pronounce myself on heads of damages that only found their way through submissions and not from the pleadings. As I understand the law, Counsel must not claim any award on what he did not plead in the originating process. I thought that was a basic rule of thumb? Be that as it may, I had a close examination of the claimant's Form 86A and in particular paragraph 7 of the

reliefs that the claimants have sought through Counsel. For the avoidance of doubt, this is the exact relevant part of the paragraph:

> *"...an order for damages for violation of the rights to personal liberty and dignity."*

Clearly, there is nothing in the originating process as regards the other heads that Counsel intends the Court to award damages on. I must decline that invitation. Hence, I will not make any order with respect to damages for loss of business, damages for legal fees supposedly paid to Counsel (I use the word advisedly considering that there is no material before me not even a receipt or a bill or indeed an invoice or perhaps a copy of a contract between the claimants and Counsel so as to dress their claim with some semblance of life). Perhaps, I will be clearer in the immediate next, but it remains what was said than it is what actually happened in the absence of any evidence to support the assertion. As it were, expressing this kind of reasoning Justice Madise (As he then was) had the following to say in the case of *Malawi Confederation of Chambers of Commerce and Industry-v- Rehema Mvula & 5 Others Civil Appeal No. 13 of 2014 (Unreported)*:

> *"The burden and the standard of proof in civil matters are set out at the beginning of the trial by the state of the pleadings remaining unchanged throughout the trial. He who alleges the existence of certain facts must be the first to prove his case a positive is easier to prove than a negative."*

Thus, the duty was upon the claimant to show the Court any reasonable expenses they spent and to what extent they spent. This was and is a question of fact, that those alleging bore the duty to sanctify the facts as alleged with evidence. Sadly, as will become apparent later in this order there is no evidence before me to warrant the claim on what is said to have been paid to Counsel. Moreover, and still on the earlier issue of pleadings, my understanding is that in an adversarial system like ours, Courts are enjoined to only determine matters properly brought before them. Similar averments were made by Tambala SC JA (As he was then) in the case of *Banja la Mtsogolo v Harriet Chiomba MSCA Civil Appeal No. 33 of 2008(Unreported)* were he held as follows:

> *"We are liable to believe that granting an effective remedy is to give a litigant a remedy which was not requested in their pleadings...for the court to change the pleadings and substitute them...would be tantamount to giving a person an orange when that person asked for a mango."*

Ironically, the claimants in the instant case are asking for more pumpkins dressed in a claim on loss of business, loss of earnings and loss of money supposedly paid to Counsel, when for all intents and purposes all they pleaded for were but a few mangoes, again clothed in loss of liberty and dignity. That I decline to give. Again, I must warn myself that in assessing damages in this case, my faculties should be confined to damages for false imprisonment and nothing more. Needless to say, I must be quick to mention that the

Supreme Court in the case of *Kankhwangwa and Others vs liquidator, Import and Export Malawi Ltd Civil Appeal No. 4 of 2003(Unreported)* seems to suggest that strict rules of pleadings do not apply to the Industrial Relations Court. Clearly, that case is distinguishable with the one now before me. In any case, the Supreme Court in the case of *Malawi Railways Limited v. P.T.K. Nyasulu MSCA Civil Appeal No. 13 of 1992 (Unreported)* held as follows:

> *"…Indeed, the court would be acting contrary to its own character and nature if it were to* ***pronounce any claim or defence not made by the parties****..."*
>
> *(Emphasis Added)*

More recently, Justice Kenyatta Nyirenda in a similar manner in the case of *Blaziyo Mukakama and 41 Others v Mota Engil & Roads Authority Civil Cause No. 268 of 2015 (Unreported)* held as follows:

> *"It is a well settled principle that the court can only determine matters as pleaded by the parties, not venturing into issues not raised by the parties in their pleadings."*

The learned Judge further made the point as follows:

> *"In so far as waiver or acquiesce* ***was not pleaded*** *by the Plaintiffs, the same* ***cannot be smuggled in through the backdoor, that is, submissions by Counsel*** *at the close of the case."*
>
> *(Emphasis Added)*

Like I have enunciated in the recent above, I have gone through the witness statement which the witness adopted and the skeleton arguments attached thereof. I notice that at paragraphs 3.2.2.1 and 3.2.2.2 of the adopted skeleton arguments as read together with paragraphs 10 and 11 of the witness statement of Jeneti Dauda signed on 28th October, 2022, the claimants are claiming a sum of K14, 000,000.00 (Fourteen Million Kwacha Only) as damages for loss of business and loss of earnings. Worthy noting is the fact that the claimants seem to be confused, on paragraph 11 of the witness statement where they clearly state that a sum of K12, 000,000.00 (Twelve Million Kwacha Only) should be awarded to each claimant under these heads. On the contrary, paragraph 3.2.2.2 of the skeleton arguments, the claimants also clearly claim a sum of K4,000,000.00 (Four Million Kwacha Only) each as damages under these heads. Perhaps this was a slip of a finger. Whatever that was, but I decline to allow the claimants to use the backdoor in making their claims over these heads of damages. They did not plead them they have not cleaned their hands so as to attract the aid of this Court. Therefore, I decline to award any damages under these heads on the basis that the law on pleadings is clear, the court must determine issues based on pleadings unless otherwise in those exceptional cases. This is not one such, and Counsel must not suggest implicitly that it is, because it is not. Perhaps, I should also note

that I had a glance at the submissions made by Counsel for the defendants, I appreciate the guidance.

3. Nonetheless, if for some reason my reasonings on refusing to award on damages not pleaded by Counsel for the claimants are found wanting, but still the claims made by Counsel with respect to loss of business, loss of earnings and expenses incurred by the claimants on Counsel are without merit in that they are not supported by evidence. Ideally, I do not think that Order 12 Rule 19(1) of Courts (High Court) (Civil Procedure) Rules, 2017 must be taken lightly. Thus, the rules provide that assessment of damages proceedings must be conducted like a trial. As it were, what that means is that witnesses must and can be called to adduce evidence so the Assessor makes orders which are premised on facts and not what might have happened, but on what actually happened. Consequently, it is the duty of those that allege facts to prove the issues they allege. Discussing a similar point in the case of *Daniel Kulima v Hippo Chibvundi and Another Personal Injury Case No.418 of 2013 (Unreported)* the Court pronounced itself as follows:

> *"...it has always bothered the mind of this Court that many a time Counsel appears on a proceeding on assessment of damages as though they were appearing on a proceeding to answer again the question of liability. Clearly, there is a reason why under Order 12 Rule 19(1) Courts (High Court) (Civil Procedure) Rules 2017 (herein referred to as CPR 17) it is provided that an assessment of damages proceedings should be conducted just like a trial. Perhaps, I must echo this loudly that, to do a proper job at this level, Counsel has to bring before the Court evidence that shows the extent of the injuries sustained by his client, the degree of permanence and also showing the Court how the claimant is unable to do what ordinarily he could have been doing but for the accident and the injuries sustained. At this time, the question of whether there was an injury or not is not in issue."*

Coming to the instant case, I must mention that I have meticulously interrogated and engaged the witness statement heavily relied on by the claimants and I note that the last part of paragraph 5 reads as follows:

> *"...I must state that we used to make K500,000.00 monthly from selling farm produce and other commodities. This is not much, but it is enough to sustain our families."*

As it were, there is nothing before me indicating whether the K500,000.00 (Five Hundred Thousand Kwacha Only) supposedly earned in selling farm produce is constantly the amount made each month or indeed whether that amount as alleged is net income or indeed gross income or perhaps whether that amount is definitive or simply an approximation. The silence on such a quest for clarity is loud. Whether the silence is intended or is by way of omission remains unknown. In essence, that has been left to the speculation of the mind. But I must warn myself not to speculate. Nonetheless, the court will not go on a frolic of

its own to think on behalf of the claimants on what really did they mean. The duty to show this was on the claimant for they allege, it is incumbent upon them to shoulder the evidential burden. I must state that I do not mean the legal burden of proof, I mean the evidential burden. As I understand it, to discharge the legal burden of proof, one has to first discharge the evidential burden by adducing evidence that should move the Court on a balance of probabilities. Sadly, there is no evidence before me to show how and indeed whether this amount is what was indeed earned. There is nothing other than the words. No records no nothing. What is surprising is that the figure is not mentioned as an approximation. The figure is presented as a definitive amount. Perhaps, there is nothing that has moved me to even consider that as indeed something the court should focus on. With this again, I decline to sustain the argument that damages on loss of business and earnings are recoverable in the circumstances. There is nothing supported by evidence. Not one. I must add, if Counsel was able to show how the claimants' businesses were performing before the fact, and after the fact of the incarceration, perhaps I would have been persuaded. But this he did not do. Obviously, I remain dissuaded as it were.

In any case, during cross examination, the witness confirmed that they did not attach any documents to verify the allegation that they were making K500,000.00 (Five Hundred Thousand Kwacha Only) per month. Again, before me there is no material that suggests that the claimants suffered any business loss as a result of the arrests nor is there any material that shows the amounts that the claimants were earning per month.

4. Additionally, on paragraphs 8 and 9 of the witness statement, the claimants seem to also base their claim on defamation and the paragraphs are headed as, "defamation and shock, distress and mental anguish." Respectfully, these arguments are not sustainable. Defamation is a distinct tort which must be pleaded and proved if damages were to be awarded on injuring the character of any person. In fact, it is not surprising that in his skeleton arguments Counsel has only addressed the issue of false imprisonment and the other declined heads of damages. As it were, even if I was to conclude that Counsel did speak about defamation in his skeleton arguments, I would not have even considered that, because under Order 25 Rule 1 of Courts (High Court) (Civil Procedure) Rules, 2017 as read together with the Order of the Honourable Judge, the damages I must assess are those with respect to false imprisonment and nothing more. On this again the argument and its amplification are hereby denied.

   Perhaps just to mention that, Counsel for the defendant managed to cast doubt on the allegations of the claimants with regard to the manner in which the claimants were arrested. The witness testified that the other claimants were arrested in public but nowhere did she say that she was there when the others were arrested. Whatever she said about those that were arrested in her absence remains what she was told. It is not admissible for obvious reasons in law. It is guilty of being hearsay evidence. But again, her arrest was never in public; the witness told the court that she went to the Police Station on her own. She was not arrested in public she was only arrested at the Police Station. In fact, paragraph 4 of the

witness statement clearly shows that the claimants were both summoned to the Police Station where they were arrested. The idea that they were arrested in public has no aorta of truth. In fact, it contradicts a statement given under no stress whatsoever. It is more believable that paragraph 4 represents what happened. Counsel for the claimants had nothing in re-examination. The damage caused to his case remained as hereby exposed. Consequently, although the claimants would want this Court to believe that their arrest injured their reputation in the community, the same is not supported with the facts. This is not a case where the claimants were seen in the community walking with handcuffs in their hands. This however is not to downplay the case for the claimants. The point however is, the extent of the injuries caused is in my view not supported by the facts on the circumstances of their arrest neither is it supported by evidence.

Furthermore, and like the above, I have already declined to award on this head on the premise that the claimants did not plead reimbursement of K5,000,000.00 (Five Million Kwacha Only) as expenses incurred through paying Counsel by the claimants. These too I decline to award them now on the premise that there is no evidence before me to prove this expense as reasonably spent and recoverable as against the defendants. As it were, the witness told the court that they paid the lawyers, but considering the amount supposedly to have been paid, the witness should have provided the Court with some proof of payment. That did not happen. As it were, during cross examination it was also noted by Counsel Matola who managed to make the witness confirm that they did not attach any documentary evidence to support the assertion that they paid to their Counsel in the region of K5,000,000.00 (Five Million Kwacha Only). As it were, it is not unusual to expect a law firm to issue receipts when clients pay them. In fact, one would think that is mandatory. But that inquiry is neither here nor there. The point remains this claim is without merit. I decline to sustain it on two fronts, it was not specifically pleaded neither is the claim supported by evidence nor has it been proven because in essence it is being claimed as a special damage.

5. What then? In my view the claimants just like the honourable Judge directed are entitled to the reliefs sought. As I understand it, that is or should only be narrowed to those reliefs sought in the originating process by way of pleadings. In fact, Counsel for the claimant would agree with this reasoning because in his own submissions he submits for damages for denied right to liberty and right to dignity which is the essence of the false imprisonment tort.

6. It is clear that the rationale on the law on damages is to bring the claimants to the position they would have been but for the injury. The idea of damages is not to enrich those that seek compensation. Certainly, that is not the rationale of awarding damages unless otherwise those that are termed exemplary damages. Thus, I will keep that in my mind as I proceed to make the order. Well understood is the fact that I do not sit here to reinvent the law on assessment of damages. Suffice to say that, there is no exact mathematics to measure compensation or damages as those sought in this case. Comparable cases are and

should inform the court as it were. Counsel for the claimants submits under paragraph 3.2.1.2 of his skeleton arguments in support of the assessment of damages the case of *Chimwemwe Kalua v Attorney General Civil Cause No. 490 of 2012(Unreported),* where Counsel argues that the claimant in that case stayed in custody for one day and was awarded K2,000,000.00 as damages for false imprisonment. The award is said to have been made on 21st February, 2014. I disagree with Counsel, the claimant in that case was detained for 7 hours not one day as indicated by counsel, and the factual basis are far from congruency.

It is from this that Counsel argues that a sum of K15,000,000 (Fifteen Million Kwacha Only) for each claimant is sufficient on the premise that, as he argues, there has been 8 years since this order was made. One wonders whether Counsel relied on this old case by design or not. Perhaps worth noting is the question that bothers my mind which is: why did Counsel cite a case decided 8 years ago, when in fact in 2017 Counsel himself was one of the lawyers who represented the claimants in the case of *Arnold Kampeni & 5 Others v Electricity Supply Corporation of Malawi Civil Case No. 255 of 1998(Unreported)* where Kanthambi AR (As she was then) ordered a sum of K1,000,000.00 (One Million Kwacha Only) to be paid to each claimant for false imprisonment. I wonder why Counsel had forgotten this rather nearer to recent order from the one he has relied on. Besides, even if I was to be persuaded by the 2014 case cited, in that case as wrongly submitted by Counsel, the claimant is alleged to have been detained for one day in paragraph 3 of his supporting arguments instead of 7 hours. Needless to say, the case has different factual basis. However, in this case, Counsel Matola was able to establish during cross examination that the claimants were only arrested at 2 pm or thereabouts on 5th January, 2021 and were released around 10 am on 6th January, 2021.

Certainly, Counsel should not suppose in his mind that this case should be treated the same with the case he cited because in the instant case, it cannot be argued that the claimants were detained falsely for one day. Besides, my understanding of the law is that the issue of time may not really be conclusive in terms of the gravity of the tort committed but perhaps how the tort was inflicted. In the instant case, the claimants were in fact not paraded in handcuffs around the community. No that is not what happened. In fact, cross examination reveals that they were summoned to police and they were in fact arrested at the police. If they were paraded in handcuffs walking around in the community perhaps, I would have been motivated otherwise. But that is not what happened. In enunciating a similar reasoning, the Court in the case of *Arnold Kampeni & 5 Others v Electricity Supply Corporation of Malawi (Supra)* had the following to say:

> *"...in common law countries, damages under this head are at large. Thus, time being one of the considerations cannot be a yardstick. The circumstances of the imprisonment might be so outrageous that high awards have to be made even though the period of incarceration is short."*
>
> *(Emphasis Added)*

Further, this Court interacted with the revered mind of Mwaungulu J (As he was then) who made a profound announcement about the law couched in the manner as follows:

> *"In my view there is more support of the view point that damages to be awarded for false imprisonment should really be left to the court to determine after taking into account all the circumstances of the case, including time. The problems that arise when time becomes the sole basis of the award is that such an approach is likely to ignore circumstances, both aggravation and mitigation, which may attend a particular case. In certain cases, circumstances of the arrest might be more pertinent to the quantum of damages than time, for obviously imprisonment in horrendous and horrible circumstances even for a short time may do more damage to the plaintiff than a protracted or elongated imprisonment in otherwise innocuous and harmless circumstances. This is understandable, because damages for false imprisonment are an award not only for loss of liberty, which in some way can be related to time, but also for loss of reputation and status which are not related to time. The approach therefore, should be to leave it to the court to decide the quantum in the circumstances of the case."*
>
> *(Emphasis Added)*

Need I say more on the wisdom enunciated by the eloquent Judge Rtd, other than saying not only do the court admire the force of this reasoning, but this court adopts the reasoning in its entirety and proceed to comment that, perhaps there is no better way of putting it other than how the reverend court did put it. The law is that clear. The discretion is that of mine. Perhaps to only say that that discretion must and should be informed by law. I shall endeavour to do exactly that as I herein proceed. Indeed, time may be a relevant consideration but it is not the only thing that should inform the mind of the court. At paragraph 6 of the witness statement for Janet Dauda, it is clear that the highlighting of the word one day is for the court to pay particular attention to the timing.

Well, I have already concluded that in fact during cross examination the witness admitted that the claimants were arrested at around 2 pm on 5th January, 2021 and were released on 6th January at around 10 am. Certainly, the claimant must not confuse 20 hours of confinement to a day. Being detained for about a day and being detained for a day have 2 different meanings, the witness must mean what happened and not what suits a better case. There were 20 hours of confinement and not a day. No matter how that sounds, a day is respectfully not 4 hours less. This is a fact clearly known to be without dispute. My approach is that the claimants were incarcerated for about 20 hours and not a day as they want the court to be persuaded. I am not moved by the reasoning aforementioned.

As it were, aside from the fact that falsely imprisoning the claimants is detestable there is no material before me to demonstrate how the situation was so outrageous that a higher award would be warranted. There is no mention of how the claimants were treated and or whether they were physically harmed. But I saw in the witness statement about the

supposed status of the Police cell they were incarcerated in. All the Court wants is claims to be supported by concrete evidence if the court was to consider making an award in the neighbourhood as suggested by Counsel. That is indeed a question of facts and circumstances. The proven conditions of the place they were incarcerated would make the mind of the court to be moved to make an award not only affixed to time but the circumstances of the arrest.

Again, beyond mentioning the effect of the arrest and the connected business loss there is no material so moving that should warrant an award lamented by the claimants. As it were, the Court sitting as the Assessor could only be persuaded in that lane, if the claimants convinced this Court with evidence showing the state, they were business wise before the fact of the arrest and the state they are in after the arrest. Sadly, as would be seen later no such evidence was adduced. What then, do I diminish the case for the claimants? Certainly not. But this is a Court which operates on evidence not mere words which are subject to exaggeration. I do not say the claimants are exaggerating their ordeal. I should however be heard to mean that if I was to award them as they have prayed, perhaps the duty was upon them to show the Court the impact of the arrest made for the purposes of determining a proportional award of damages. In fact, what the agents of the defendants did is never condoned but the extent of outrageousness needed to be brought to the attention of the court by way of evidence. There is no such evidence before me. I am not convinced that this is the case that I should be here to order the defendant to pay in the neighbourhood of K60,000,000.00 (Sixty Million Kwacha Only) as prayed by Counsel. That submission is extremely not proportional and it would be unreasonable.

However, like in the case of *Arnold Kampeni & 5 Others v Electricity Supply Corporation of Malawi (Supra*) it is submitted by the claimants in this case that the cell they were put in was small, it had no lights no toilet infested with bed bugs and mosquitos and very smelly. It was by the grace of God who submitted the claimants in this case, that they managed to even survive the whole night in the cell herein considering that we struggled to live in the cell. Well, the conditions of the cell might indeed have been such but there was no evidence before me to base the conclusions on.

This was merely said. That our cell conditions are generally not in good shape is something I can take judicial notice on, but Counsel would have done better to demonstrate the veracity of their claims. But that a reasonable person would conclude that the person of the claimants suffered as a result of this is beyond question. But, like I presented before, on assessment of damages, the claimants must bring not just any evidence but evidence that shows the extent of the damage suffered, in fact that is a matter of duty by Counsel, so that the Assessor is properly guided, until then, this Court will continue expressing its views without fear of contradiction. Perhaps to be fair, the argument of cell conditions to be backed by evidence was also enunciated in the case of *Arnold Kampeni & 5 Others v Electricity Supply Corporation of Malawi (Supra).* However, I must say that I understand that evidence *viva voce* is evidence but I mean more weightier evidence would be required

if the Court was to agree with Counsel 's proposal. Counsel submits that K79,000,000.00 (Seventy-Nine Million Kwacha Only), K21,000,000.00 (Twenty-One Million Kwacha Only) shy of K100,000,000.00 (Hundred Million Kwacha Only) should be awarded by this Court. My view is that such an award must only be made where the facts backed by evidence permit. If not, the fate of Counsel 's submission suffers death on first interrogation by this Court. Like I said earlier, respectfully, I cannot agree with Counsel that the facts of this case would warrant any reasonable court properly applying its mind to the facts and the law make. Such an award would not be proportional.

7. With this in mind, and having read the case of *Arnold Kampeni & 5 Others v Electricity Supply Corporation of Malawi (Supra*) where an order of damages in the region of K1,000,000.00 each was made in favour of the claimants. But unlike in the instant case, in the case herein cited, the claimants arrived at their work place in the morning, they were immediately apprehended by the Chief Security Officer and his guards and kept at the gate under the surveillance of the guards until the claimants were finally arrested. Again, in that case the claimants were not even allowed to move an inch, in fact they were guarded with guns brazing. As if not enough, the claimants in that case were taken to the police by the defendant's vehicle. The humiliation in that case is beyond words. I mean, the claimants were falsely confined for a period of 5 days unlike in this case. The award herein enunciated was made on 11th February, 2017. I must say that in the instant case, the witness statement for the claimants show that they were not in fact arrested in public, they were summoned to the police station where they were then confined cross-examination would also reveal that during the hearing of the assessment proceedings. This is crucial and peculiar to this case.

   Additionally, I had yet another encounter with the case of *James Chiyembekezo v Attorney General (Malawi Police Service) Civil Cause No. 428 of 2020 (Unreported)* where the claimant was arrested on allegations of theft of a plasma and was kept in custody for 6 days. As it were, he was never charged or taken to court although he was later released on bail by the police. In that case an award of K2,000,000.00 (Two Million Kwacha Only) was made on 23rd December, 2021. The damage and injury caused in that case is perhaps in my view more damaging as juxtaposed with the damage and the injury caused by an arrest for supposedly disobeying a court order. That is exactly what the claimants have narrated that their arrest was on the basis of an alleged contempt of court. Surely, my award must be less than that which was awarded in the case cited herein. I would be moved to award of K1,000,000.00 (One Million Kwacha Only) to each of the claimants, but I must consider the value of our medium of exchange.

8. Accordingly, I think it is reasonable to consider the loss of value in our medium of exchange. Accordingly, I order a sum of K1,500,000.00 (One Million Five Hundred Thousand Kwacha Only) as damages for false imprisonment for each claimant. It is the finding of this court that the claimants herein were falsely imprisoned for about 20 hours and yes, their right to liberty was infringed upon. It is beyond question that they suffered

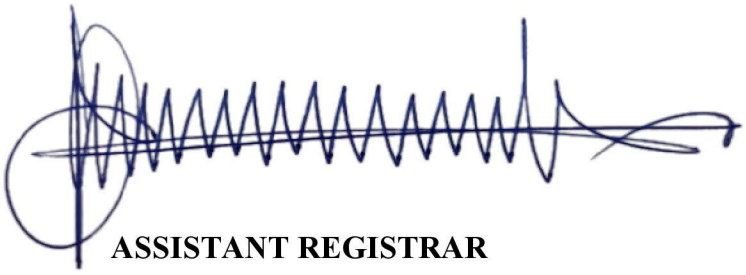
some mental injury as a result of this. I say that premised on what the reasonable man would conclude. An arrest would in the eyes of sober standing citizens of our society bring shock indeed. My worry however has been that at assessment level, the duty is incumbent upon the claimant to demonstrate how the arrest affected their day-to-day life. That has just been said without evidence to support it. If there was evidence to demonstrate the extent of the injuries suffered to their person, I would have said it and applied it. That, they have not shown. Thus, a total sum of K6,000,000.00 (Six Million Kwacha Only) in damages is hereby awarded to the claimants because indeed they suffered injury to their person but for the arrest.

9. For the purposes of the assessment proceedings, I proceed under Order 12 Rule 19(1) as read together with Order 31 Rule 3 of Courts (High Court) (Civil Procedure) Rules, 2017, I make an order of costs in favour of the claimants to be agreed by the parties. Should the parties fail to agree, the Court will do the assessment of costs. Particularly those reasonably incurred in the conduct of assessment of damages proceedings.

10. It is so ordered.

Any party aggrieved by this decision has the right to appeal within 30 days from the date of this order.

MADE in Chambers this 28th March,2023 at the High Court of Malawi, Principal Registry, Civil Division.



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