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loss of eye
loss of earnings

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 1461 OF 1993

BETWEEN:

NCHACHI NGWIRA PLAINTIFF

AND

ATTORNEY GENERAL DEFENDANT

CORAM: D F Mwaungulu, Registrar
Kasambala, Counsel for the Plaintiff
Ndalama (Mrs), Interpreter

ORDER

This is an action by Mr Ngwira for damages for false imprisonment. The plaintiff was at the time of the imprisonment an accountant with Royal Oak Maintenance and Building Contractors. The defendant is the Attorney General, sued under the Civil Procedure (Suits by and against Government and Public Officers) Act.

This action was commenced by writ on the 27th of October, 1993. Judgment was obtained in default of notice of intention to defend on the 15th of December 1993. The judgment was interlocutory and damages had to be assessed. The assessment was set for the 10th of January, 1994. The defendant was served with the notice. He did not appear. I heard evidence from the plaintiff. I reserved ruling.

The plaintiff was arrested on 25th March, 1992. He was on a bus on his way home. It was the last bus for Machinjiri. The time was 7.00 O'clock in the evening. In the bus, he started talking about multiparty. Before the bus got to Machinjiri, a Mr Mwanyongo, working for Sanjika Palace, ordered the bus to go to Blantyre Police Station. The plaintiff was left there.

At the Police Station, he was manhandled. He was hit in the face and the eye. He was there for a couple of days without food, food brought by relations was denied him. He slept in very cruel circumstances. He had no blankets. The room was infested with biting insects. the prison was overcrowded. He was in prison up to 30th June, 1992.

While in prison, the plaintiff, who had no difficulties with his eyes, developed severe eye problems. He, as we saw, was attacked in the eye. In prison, murder suspects attacked his eyes. At the time of the assessment the eye was swollen. The condition deteriorated because initially he could not be allowed to go to the hospital. Eventually, he was. It was too late.

At Queen Elizabeth Central Hospital, doctors recommended that both eyes be removed. The plaintiff refused. He pleaded with the doctors to do whatever could be done to save his eyes. After a week, the doctors told him that one could be alright. He still refused to have the other one removed. He changed hospitals to Nkhoma Mission Hospital. He was told that they would still have to remove the eye. He refused. He came back to Queen Elizabeth Hospital. He now cannot see in one eye. He cannot read. He cannot walk up steps. He sees shades. There is a medical report from Nkhoma Synod confirming the medical condition of the eye.

The plaintiff, as we have seen, was an accountant at the time of the arrest. He was earning K800 per month. At the time he was arrested he had passed an interview to obtain a job that would have pushed his earnings to K1,500 a month. He used to do part time business in his profession.

The plaintiff should be awarded damages for false imprisonment, personal injuries occasioned by the false imprisonment and loss of employment opportunity. For false imprisonment, the plaintiff should be awarded damages for loss of liberty and injury to feelings. For loss of liberty, the award covers the deprivation of freedom and the time wasted in prison. For injury to feelings, the plaintiff is entitled to damages for the humiliation and wounding to his pride. Obviously regard must be had to the treatment received while the plaintiff was in prison. The plaintiff's imprisonment was long. I award the plaintiff the sum of K60,000 for false imprisonment.

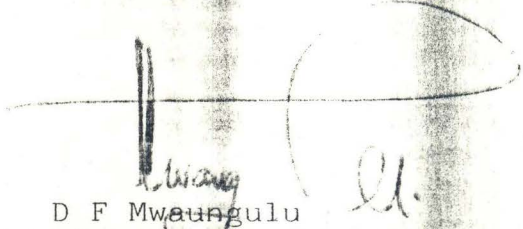
Apart from old rules of pleading, in an action for false imprisonment, the plaintiff could recover for any resultant injury. (Lowden vs. Goodrick (1791) Peake 64; and Pettit vs. Addington (1791) Peake 81). The damages are assessed in the same way as in personal injury claims. The plaintiff here went through considerable pain with the problems of the eye. He has suffered virtual loss of sight. He will not be able to see the things he used to enjoy. He will not be able to pursue the joys of his employment. He has lost sight completely in one eye. He has considerable difficulty in the other eye. I award the plaintiff K30,000 for pain and suffering and loss of amenities. For loss of earnings the plaintiff was earning K800 per month. He is aged 45 years. Of course I have to take into account that there was real prospect that he was going to increase his earnings. Mr Kasambala said since the plaintiff had 10 years before 55, when he would have ceased to earn the money, I should use the multiplier of 10. The matter is not approached in that way.

When awarding damages for loss of earning, courts aim at awarding such a sum that, in the time the plaintiff would have continued to work, gives the plaintiff an annuity which he has lost as a result of the injury. The multiplicand is the

plaintiff's actual earnings where, like here, they are clearly ascertainable. The award should take into account the fact that the money is paid before it is earned and would produce an income. The award should be such a sum which by reduction from capital and income gives the annuity lost. This means that the multiplier can never, in the normal circumstances, be the number of years lost. This would result in overcompensation. There is however a decision of this Court which goes counter to this. It is the decision of Sabadia vs. Dowsett Engineering Civil Cause Number 171 of 1982, unreported, which was followed recently in Kundwe vs. Stagecoach Malawi Limited, Civil Cause Number 907 of 1991, unreported. The decisions are not right as a matter of principle.

Damages for percuriary loss, such as loss of general business or employment, are not considered remote in a claim for false imprisonment. Childs vs. Lewis, (1924) 40 T. L. R. 870. The loss of earnings of K63,736 would be justified under this principle. In all I award the plaintiff K123,736.

Made in Chambers this 4th day of January, 1994 at Blantyre



D F Mwaungulu
REGISTRAR OF HIGH COURT OF MALAWI