

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 887 OF 1994

BETWEEN:

JOLEX BAULENI.....PLAINTIFF

-AND-

THE ATTORNEY GENERAL.....DEFENDANT

CORAM:

TWEA E B, REGISTRAR

Mazoe of counsel for the plaintiff

Defendant counsel absent

ORDER

This action was brought by the plaintiff for false imprisonment. The defendant although had shown intention to defend, did not file a defence at all. On 20th September the plaintiff obtained judgment in default of defence. On the same date the plaintiff filed a notice of assessment of damages returnable on 11th November, 1994.

On the appointed date both parties appeared. The plaintiff called one witness in his case.

It was the plaintiff evidence that he was dismissed from his job as storekeeper with District Relief Office at Phalombe on 23rd October, 1992. The following day at 12 midnight his former boss one Mr Chinkhunda brought police officers at his house and they arrested him. He was initially kept at Phalombe Police for 3 days before he was transferred to Mulanje Prison.

It was further his evidence that on 9th February, 1993 he appeared before court for plea on a charge of theft by servant. The case was in court until on 12th August, 1993 when he was acquitted. It was his contention that at all times he was remanded in custody not on bail.

This is the basis of the present claim. The issue of liability was already decided by the judgment entered on behalf of the plaintiff. What calls to be decided by this court is the quantum of damages that would compensate the plaintiff.

I must, on the outset, deal with the question of the period that the plaintiff was imprisoned. The plaintiff contends that

it was 10 months - or say 8 months and 12 days, i.e 24th October, 1992 to 12th August, 1993. The defence however contends that it can only be up to 10 February, 1993 where the plaintiff appeared in court and then remanded on bail, as is indicated by court record which the defendant asked the court to take judicial notice of. There was no counter argument on this point. It was the defendant submission that the chain of causation was broken by the remand by court.

I have considered both views and I am inclined to agree with the defendant. From the time accused appeared in court his remand on bail on custody is by sanction of the court. The plaintiff therefore cannot be heard to say this had no legal basis or backing. I thus find that the period in issue is from 24th October, 1992 to 10th February, 1993, about 3½ months.

The plaintiff in submission made reference to cases before this court in which this court made wards: CHARLES MKANDAWIRE VS AG CC 1364 of 1993, WINFRED MPHANDE VS AG CC 885 of 1993, JAMES MALIKETI VS AG CC 1455 of 1993. These cases are all illustrative, but I would caution myself from trying to make equations in the cases. One should at all times bear in mind the words of the learned Registrar, Mr Mwaungulu as he was then, in the case of DONALD NGULUBE vs THE AG CC 1564 of 1993, where in he said:-

"It is not advisable, in my opinion, to relate awards of false imprisonment in relation to time although time is one of the cardinal factors to be considered."

In this case, the view of the Registrar, which I support, was that such damages are at large and the judge has to take into account several variable factors than just the time involved.

In this case, I have looked at the circumstances, plaintiff was initially interdicted then dismissed and then arrested and charged but finally acquitted. This case bears no resemblance to the cases of WILFRED MPHANDE, JAMES MALIKETI and CHARLES MKANDAWIRE referred to above where the plaintiff were innocently arrested and never appeared in court. I would therefore refrain from drawing an equation between the said cases and the present one.

The only thing that would influence my finding in that the value for money has depreciated. In my view K30,00 would adequately compensate the plaintiff for the loss of liberty and all the anguish attendant to loss of freedom, and I so order.

The plaintiff is also awarded costs for this action.

Pronounced in chambers this 13th day of December, 1994 at
Blantyre.

A handwritten signature in black ink, appearing to be 'E. B. Twea', written over a horizontal line.

E. B. Twea
REGISTRAR OF THE HIGH COURT