

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 1438/92

BETWEEN:

SAM F MAKANDANJI.....PLAINTIFF

-and-

A Z MURRY t/a ROAD AND FARM PREPARATIONDEFENDANT
COMPANY

CORAM: MWAUNGULU, REGISTRAR
Assani, Counsel for the Plaintiff
Jere, Interpreter

ORDER

The plaintiff in this action is a builder. The defendant employed him as a supervisor in October, 1990. The plaintiff took out this action for damage for false imprisonment. Judgment was obtained in default of notice of intention to defend on the 9th of February 1993. It was an interlocutory judgment. Damages were to be assessed. There was an appointment for this for 6th April, 1993. The case was not called for that day. On 8th June, 1993 the defendant put in an application to set aside judgment. The summons was set for the 20th of June of June 1993. The summons was not called on that day. On the 5th January, 1994 the plaintiff obtained an appointment for assessment of damages for 28th January, 1994. The defendant was served with the notice of appointment. On 28th of January, when I heard evidence, I ordered the defendant to pay K3,000.00 damages.

In the statement of claim, the prayer, the plaintiff is claiming damages on the "footing of aggravated damages". In Munthali v Attorney General, Civil Cause number 52 of 1993, I held that the phrase "aggravated damages" was wide enough to cover a claim for exemplary damages. Exemplary damages, in the High Court, however, must be specifically pleaded. Order 18, rule 8 provides:

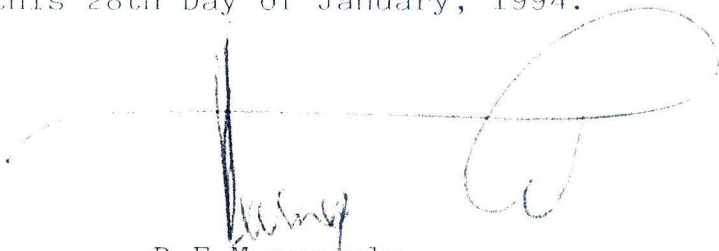
"A claim for exemplary damages or for provisional damages must be specifically pleaded together with the facts on which the party pleading relies".

The rule was introduced to counter the ruling of the Court of Appeal in Broome v Cassell & Co. Ltd., of (1971) 2 Q.B. 354. The Court of Appeal had overruled the decision of Lawton, J. in the High Court. Practically the rule requires two things of the plaintiff. First, in the body of the statement of claim, the plaintiff must plead exemplary damages specifically. He should not, as was done here, make a claim for exemplary damages in the general prayer. Secondly, after he has pleaded specifically, he has, in the body of pleadings, to provide facts on which he relies for the plea. In this case, although in the prayer the plaintiff asks for aggravated damages, he did not plead specifically. Moreover, he did not provide facts for the plea. Of course in paragraph 5 of the statement of claim there is reference to malice. This is an aspect of aggravation just as it is a factor when awarding exemplary damages. Since the plaintiff did not specifically plead exemplary damages, malice should be looked at as matter of aggravation.

The facts resulting in this action arose in this manner. On 21st May, 1991, while the plaintiff was at a building site, the defendant brought two policemen. He ordered them to arrest the plaintiff. The defendant complained that the plaintiff, his building supervisor, was stealing bags of cement. The plaintiff was in police custody at Makanjira and Mangochi police station for two days. The defendant was to call at the police station as soon as possible to finalise the matter. He did not. The police, therefore, released the defendant on bail. The matter was not prosecuted till this action.

I awarded K3,000.00 damages. Mr Assani cited awards of the the High Court and Supreme Court to help me decide in this matter. Damages for false imprisonment are at large: they are matters for a judge or jury on the facts and circumstances of a particular case. In English courts, because of difficulties of quantifying the matters that are compensated for in false imprisonment, loss of liberty and injury to feelings, and the number of ponderables, the awards have never been conventional as is the case in personal injury. In this case the imprisonment was not brief. A brief imprisonment would be several hours in a day. The imprisonment, however, was very short: two days. Taking into account the circumstances of the case, the humiliation of being taken for being a thief and being arrested in a broad day light in the presence of his juniors, the appropriate award is K3,000.00.

MADE in Chambers this 28th Day of January, 1994.


D F Mwaungulu
REGISTRAR OF THE HIGH COURT OF MALAWI