

IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 395 OF 1994

BETWEEN:

N.H.A. THYANGATHYANGA.....PLAINTIFF  
-and-

THE ATTORNEY GENERAL .....DEFENDANT

CORAM: R.R. Mzikamanda, DEPUTY REGISTRAR  
Mr Msiska for the plaintiff

RULING

The matter came before this court for assessment of damages. The plaintiff is represented by Mr Msiska of Chizumila Msiska and Company and The Attorney General never appeared in this matter since it commenced.

On the date of assessment of damages the defendant failed to attend court and did not explain his absence notwithstanding that he was duly served with summons for assessment of damages. Also duly served on the defendant was a summons for amendment of writ and statement of claim.

Before he led evidence on the assessment, Mr Msiska applied to amend the writ and statement of claim in the manner duly served on the defendant. That application was not contested. I allowed the amendment because it was duly served on the defendant who never contested it.

The evidence of the plaintiff, the only witness in the matter is that in February, 1972 he was employed in the Civil Service. He first worked in the Judiciary for a period of three years. He then moved to the office of the Regional Engineer (Works) where he worked for four years before he went to the Post Office. He worked in the Post Office for five years and he was posted to Forestry where he worked for two years. All along he had been a Clerical Officer. He was promoted to the position of Senior Clerical Officer and was moved to the office of the Controller of Stores. He was a Senior Stores Clerk. He was then posted to the Department of Information where he worked for two and a half years before he was interdicted on an allegation that he had set the office on fire in an effort to conceal a theft he had committed in the office.

What happened was that during the night of 18th June, 1986 one of his assistants John Kambani negligently left an electric heater on in the stores ware house at the time he knocked off. The said electric heater caused a fire which burnt the office down, destroying stores in the process. When this was discovered in the morning, the police were informed. The police visited the office and took photographs. Then they arrested the plaintiff and a John Kambani. The two were locked up at the police station for four days without being recorded statements. While the plaintiff was severely beaten by the police at the time he was in custody, John Kambani was treated nicely because he was a husband to Miss Viola Mitole who was at the time a Member of Parliament. The plaintiff was beaten on each of the four days he was in police custody. Thereafter both of them were taken to Chichiri Prison where a week later John Kambani was released. The plaintiff was in Chichiri Prison for six months.

At Chichiri Prison the conditions were horrible. Showers were inadequate. Four hundred inmates would be crammed in a cell meant for up to one hundred in-mates. He was sleeping on the floor. The cells had toilet facilities inside. An inmate would be defecating while other inmates were eating meals which they had brought to the cell. He was let out of the cell together with other inmates for a short period. He would be cleaning the premises every day without using appropriate cleaning tools. Feases would land on his hands and face. Meals were not properly prepared because both nsima and porridge would have weevils. He had breakfast at 10.00 a.m and lunch at 2.00 p.m. In consequence of the poor prison conditions there were frequent deaths. Five people would die each night. Inmates would be subjected to harrassment by prison warders.

On 22nd December, 1987 he was taken to Blantyre Police Station where he was recorded a statement and was released on bail. He was charged with arson and theft. In 1990 he was discharged due to lack of evidence. In 1992 he was acquitted by the Chief Resident Magistrate, Blantyre, on no case to answer. He got his job back and he also got his salary arrears.

He said that the police went about telling people that he was thief and an arsonist. His character has suffered. He said that he had lost chance of promotion because those of his colleagues have risen to a P7 grade in the Civil Service and his juniors then are now his seniors. He claim damages for damage to his reputation and for his having lost promotion chances. His family has suffered owing to his interdiction.

Counsel for the plaintiff has cited before me a number of cases in which assessments for damages were made and awards of up K40,000 were made. In the case of Fordson Banda V Sobo Civil Cause No. 41 of 1987 Makuta CJ awarded K40,00 for false imprisonment lasting 40 days. In M.M Sindi v De Ross & Company Civ. Cause No. 128 of 1982 Unyolo J awarded K700 for false imprisonment lasting 30 minutes. In ADMARC v Stambuli Civ.



Cause No. 6 of 1984 the Malawi Supreme Court of Appeal awarded K4,000 for unlawful detention for three days while in Billy Juma v Attaf Civ. Cause No. 154 of 1988 Mkandawire J awarded K10,000. In H. Tembo v Industrial Dev Group Civ Cause No. 153 of 1993 an award of K25,00 was made for a false imprisonment for 4 days while in the case of Zilondetsa v Cold Storage 1994 case in unrep. Tembo J awarded K30,000 for false imprisonment for 21 days. These are the cases cited by Mr Msiska who rightly submitted that these cases are merely guidelines. He asked this court to award K300,00 for false imprisonment. He asks K100,000 for loss of advancement in the Civil Service. He asked for K1000 for defamation.

The evidence shows that the plaintiff was in prison for over six months. It is clear that the imprisonment was not justifiable because the fire was caused by the negligent act of another and that other had admitted this early in the police inquiries.

The conditions in prison were bad and the plaintiff was subjected to beating and teasing. I award K180,000 for false imprisonment.

The plaintiff has got three more years before he retires. He argues that his chances of advancement in the Civil Service have been lost. They certainly have been reduced and although he got his arrears he needs to be compensated for the reduction in his prospects for advancement. I award him K60,000.

The plaintiff says he had been defamed and that he claims for defamation. He says that policemen were going out to beer parties saying that he was an arsonist and thief. Surely he should have been able to find some of the persons to whom these defamatory remarks were published. The persons at the beer parties who heard the remarks could have assisted him in establishing this head. He mentioned of some Asians to whom the remarks were published. I think it would have been prudent to call at least one of the persons to whom the remarks were published. On the evidence on the record I find it difficult to give an award on this head. This head has not been proved. I make no award on it.

In all I award the plaintiff K240,000 and costs

MADE in Chambers on this 24th day of January, 1995.



R R Mzikamanda  
DEPUTY REGISTRAR