



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 961 OF 1994



BETWEEN:

OLIVER KANYAMA PLAINTIFF

and

THE ATTORNEY GENERAL DEFENDANT

CORAM: E.B. TWEA
Msisha, Counsel for the Plaintiff
Defendant/Counsel absent

RULING

This action was brought by the plaintiff for false imprisonment and incidental damages to be aggravated. The defendant's filed a defence. The matter came up for directions. The defendant failed to file the affidavit of documents and the plaintiff applied for and got an unless order from the Court. The defendant did not comply and the plaintiff proceeded with assessment.

On the appointed day the defendants did not turn up and the plaintiff proceeded with the assessment.

The plaintiff told the court that he was on a plane to Harare when he was arrested in 1983. He was in custody from January 1983 to July 1984. He was never told why he was arrested, even at the date of his release.

It was his evidence that the cell he was put in was overcrowded. He was made to sleep next to the night

bucket which would fill up at night and overflow. The food was bad and toilets filthy. They were forced to walk on human excreta bare foot and as a result he developed a skin disease and has callus on his underfoot and suffers from sleeplessness. Court had occasion to view the callus.

It was further his evidence that initially his wife would come to visit him but later she never did because they told her that he was a rebel and that he would never come out. I hasten to say that this is hearsay and I will not refer to further evidence on this issue.

He told this Court that he run a produce business and an Arts and Signs concern. He would earn about K10,000 a month. Further he had curios, produce, motor vehicle and domestic furniture and appliances which all disappeared due to Police action. I wish to point out that all this was hearsay and opinion. If all these things disappeared through Police action, his wife and children or landlord are available and would have testified.

For the same reason, I am of the view that the plaintiff deliberately left matters to pure conjecture by Court as to loss of property business records and harrassment to his family. I refrain from putting any emphasis on these issues.

At the end of the day, I clearly have evidence of the plaintiff's detention and the effect of unhygenic surroundings. I have looked at the defendant's



defence. It is my view that it raises no issues than general traversity. I am inclined to believe that this is the best that the State had as a defence which in fact is no defence at all. Even the affidavit of documents does not disclose anything prior to the intended litigation.

I find that the plaintiff was in custody for 18 months and the State has no plausible reason for having put him in prison. He suffered hardship and contracted skin disease. I award the plaintiff K180,000 as damages for false imprisonment and costs for this action.

PRONOUNCED IN CHAMBERS this 28th day of May 1996, at Blantyre.



E. B. Twea
REGISTRAR

