

IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 2044 OF 1994

BETWEEN :

D. NAMWELA (MALE) ..... PLAINTIFF  
AND  
ATTORNEY GENERAL ..... DEFENDANT

CORAM:

Qoto Deputy Registrar  
Katsala for the plaintiff  
Defendant absent



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ORDER

By a writ of summons and a statement of claim issued on 27th October, 1994, the plaintiff claimed a declaration that his continued interdiction was wrongful. He further claimed an order that he be reinstated and that his salary be paid to him and costs of the action. On 5th May, 1995, he obtained in default of defence in the following terms:-

1. That the defendants continued interdiction of is wrongful
2. That the defendant do reinstate the plaintiff in the Civil Service
3. That the defendant do pay the plaintiff his salary from July 1993 to such a date that the plaintiff will be reinstated into the Civil Service and interest thereon at the rate deemed to be fit by the court.
4. That the defendant do pay the costs of this action.

The matter comes before me in order to make an assessment of the plaintiff's salary from July, 1993. I must say at once that the wording of the sentence in paragraph 3 of the judgement is not a happy one. Damages for one cause of action must be recovered once and forever. They must therefore be awarded as a lump sum. Further damages must be assessed at the date of the trial. This is so because it prevents the court from speculating as to the financial position of the plaintiff in respect of the future. The court must make an assessment of damages in the light of facts known as at the date, Jobling v Associated Daines Ltd (1982) AC 794. In Wright v British Rly Board, Lord Diplock said it was the duty of judges to assess damages at the date of the trial. As such paragraph 3 of the judgement should have stated that the defendant do pay the plaintiff salary up to the date of the trial. I shall assess damages up to the date of the trial.

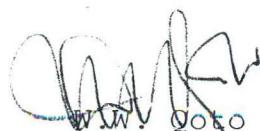
The hearing of assessment of damages proceeded in the absence of the defendant. He had been duly served with the notice of the hearing of the assessment but he did not appear at the hearing.

The plaintiff gave evidence which is uncontroverted. It was that he was in the employ of the Department of Landscape and was working at Sanjika Palace in the City of Blantyre. He used to work as a garden boy. He started work in 1990. In July 1993 he was accused of having bought a stolen mattress. He was taken to Magistrate court where he got acquitted after a trial. When he went back to his place of work, he was given a letter of interdiction.

His salary was K226.36 per month. He did not recieve any salary after his interdiction. Infact the letter of interdiction, exhibit P1, states that during the period of interdiction, he was not going to receive any salary or duty allowance.

From July 1993 to December 1993 at K226.36 per month comes to K1,358.15. From January to December 1994, at K226.36 per month it comes to K1,358.15. From January to December 1994, at K226.36 per month it comes to K2,716.32. From January 1995 to December 1996 at K226.36, it comes to K2,716.32. From January, 1996 to date of trial which is February 1996 at K226.36 per month it comes to K452.72. The total salary comes to K7,243.51. I award this sum of money to the plaintiff subject to the tax to which it is liable. I award the plaintiff costs of the action.

Made in Chambers this 13th March, 1996.



DEPUTY REGISTRAR