

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1206 OF 1993**

BETWEEN:

R. B. MALINDA PLAINTIFF

and

MEDICAL AID SOCIETY OF MALAWI

and

THE ATTORNEY GENERAL DEFENDANT

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

RULING

The plaintiff herein was an employ of the Medical Aid Society of Malawi. He sued his employer for unlawful imprisonment.

It was his evidence that he was the General Manager from 1 September 1985 to 23 July 1989 when he was called to Police Fiscal Section at Kanabar House in Blantyre and put in custody. From Kanabar House he was taken to Blantyre Police Station cells then transferred after a day to Chichiri Prison.

While in Chichiri Prison he was put in several categories of holding cells. It was his experience that he slept without cover in congested cells. There were no sanitation facilities and poor ventilation in the cells.

The plaintiff told this court that he was then released on bail on 28 August 1989 after being charged with theft. The case was adjourned several times until it was withdrawn in October, 1991. He further told the court

that after his arrest he was served notice of dismissal by his employers.

This then was the evidence of the plaintiff. I bear in mind that the plaintiff claims damages for false imprisonment according to the amended statement of claim.

In his written submission the plaintiff cited the cases like Mkandawire vs. The Attorney General Civil Cause No. 1364 of 1993, Kalonga vs. The Attorney General Civil Cause No. 573 of 1995 and Nkhata and Others vs. The Attorney General Civil Cause No. 1459 of 1993 wherein the court granted K72,000, K12,000 and K60,000 for imprisonment for 60, 4 and 14 days respectively. The plaintiff herein was in custody for 36 days. Counsel submitted that the court should, in view of the devaluation consider granting damages at K180,000.

I have had time to reflect on these points. At the back of my mind I have to remember that such damages are at large and it is the discretion of the court to consider in quantum that would compensate the plaintiff.

I have taken into consideration that in the present case a charge was laid against the plaintiff, notwithstanding that it was not prosecuted to the end. I also bear in mind that the statement of claim is actually in the alternative as to who would be liable for the arrest and imprisonment of the plaintiff, both parties not having filed any defence this court is unable to determine the alternatives than to simply rely on the fact that there is a judgment. This, however, affects the courts ability to assess culpability of the parties involved. The plaintiff's own evidence did not dwell on this issue at all. Counsel simply relied on the fact that there is a judgment. I therefore grant the plaintiff damages in the sum of K75,000 taking into account the devaluation. I must mention that the plaintiff did not adduce any evidence which would entitle this court to award punitive or aggravated damages.

The defendants are condemned to pay costs.

PRONOUNCED IN CHAMBERS this 14th day of August, 1997, at Blantyre.



E.B. Twea
REGISTRAR