



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
MZUZU REGISTRY  
CIVIL DIVISION  
CIVIL CAUSE NO. 05 OF 2018  
(BEFORE HONOURABLE JUSTICE LIGOWE)**

**BETWEEN**

**RUDOLF KACHAPILA.....1<sup>ST</sup> CLAIMANT**

**EMMANUEL MANDALA.....2<sup>ND</sup> CLAIMANT**

**CHILETISO SHAMUTI.....3<sup>RD</sup> CLAIMANT**

**NICHOLAS CHAZIKA.....4<sup>TH</sup> CLAIMANT**

**TAKONDWA KAUNDA.....5<sup>TH</sup> CLAIMANT**

**ALICE KAWANGA.....6<sup>TH</sup> CLAIMANT**

**TELEZA MKWINYAMBALE.....7<sup>TH</sup> CLAIMANT**

**ESPIN KONDOWE.....8<sup>TH</sup> CLAIMANT**

**HARRISON CHIRWA.....9<sup>TH</sup> CLAIMANT**

**LUCY CHIPHASO.....10<sup>TH</sup> CLAIMANT**

**GIFT CHUNGA.....11<sup>TH</sup> CLAIMANT**

**GEORGE SAKANDA.....12<sup>TH</sup> CLAIMANT**

**PETER SAMUEL .....13<sup>TH</sup> CLAIMANT**

**MWAYI YONASI.....14<sup>TH</sup> CLAIMANT**

**-AND-**

**GRACE CHIUMIA.....1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL (MINISTRY OF HOME AFFAIRS AND INTERNAL  
SECURITY).....2<sup>ND</sup> DEFENDANT**



**CORAM: Chiotcha P.D.: ASSISTANT REGISTRAR**

C. Mandala : Counsel for Claimants

Absent ; Counsel for the Respondent

T. Chiulika ; Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

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**1. BACKGROUND**

The claimants commenced this action on the 9<sup>th</sup> of January 2018 claiming damages for false imprisonment, damages for defamation, damages for assault, damages for inconvenience, damages for transport expenses and an order for costs of the action. The summons was issued by the court on the 10<sup>th</sup> of January 2018 and was served on the office of the Attorney General on the 12<sup>th</sup> of January 2018 through post and was also personally served on the 1<sup>st</sup> defendant. On the 2<sup>nd</sup> February 2018, the 2<sup>nd</sup> defendant filed its response and defense to the summons. However, as of 8<sup>th</sup> of February 2018, the 1<sup>st</sup> defendant did not express any intention to defend the matter nor did she respond to the court process. As a result, the court entered a default judgement against the 1<sup>st</sup> defendant on the 8<sup>th</sup> of February 2018.

Eventually, the matter was adjourned for assessment of damages as against the 1<sup>st</sup> defendant and for mediation as against the 2<sup>nd</sup> defendant. Mediation session was adjourned for 27<sup>th</sup> of April 2021. However, on this day, the 2<sup>nd</sup> defendant did not turn up for the said session though they were duly served. The judge held that it was not possible to proceed with mediation and the judge struck out the 2<sup>nd</sup> defendant's defence and entered a judgment against them as claimed by the claimant. The matter was accordingly adjourned to 20<sup>th</sup> of September 2021 for assessment of damages against both defendants. There is evidence on record that the 2<sup>nd</sup> defendant was duly served. There is no evidence that the 1<sup>st</sup> defendant was served with the said notice. It appears that since judgment on liability was entered against the 2<sup>nd</sup> defendant as the employer of the 1<sup>st</sup> defendant, the claimants are proceeding against the 2<sup>nd</sup> defendant who is vicariously liable for the misdeeds committed by the 1<sup>st</sup> defendant in the course of her employment.

**2. CLAIMANTS EVIDENCE**

The claimants were employees of National Registration Bureau based in different places here in Mzuzu. Somewhere in 2017, they decided to go to Mzuzu Shoprite



Mall for shopping. Whilst there, they saw the 1<sup>st</sup> defendant who at that time was a minister responsible for their office. They decided to meet her and greet her. To their surprise, the 1<sup>st</sup> defendant did not respond to their greeting. Instead, she rushed to police and came back with two police vehicles with police officers and ordered the police to arrest the claimants and take them away to police station. Under that direction, the police officers bundled the claimants into two police vehicles, took them to Mzuzu police station and locked them up in custody. They stayed there for 28 hours until they were released after being charged with the offence of unlawful assembly. However, from 2017 up to date, they have never been taken to any court of law to be charged or tried. They feel therefore that their arrest was without basis and malicious.

They told the court that because of the conduct of the 1<sup>st</sup> defendant they have suffered loss and damage. They have averred that they have suffered false imprisonment as they were in police custody on false accusations. They have deponed that they suffered defamation as the 1<sup>st</sup> defendant wrongly accused them of being irresponsible and persons who can wreak havoc and bring confusion at Shoprite Mall and as a result they no longer enjoy association and social interactions with friends as they are labelled confusionists and that their reputation has been damaged due to the accusations by the 1<sup>st</sup> defendant. They further averred that they suffered assault through being physically dragged into a police van by police officers. They further alleged that they suffered inconvenience as a result of the detention. They also deponed that they spent money and continue to spend money to honour police bail. And finally, they have stated that all this has brought misery, mental anguish and psychological torture on their lives.

Accordingly, they prayed for damages for false imprisonment, damages for defamation, damages for assault, damages for inconvenience, damages for transport expenses and an order for costs of the action.

The claimants have cited a number case authorities to justify the quantum of damages to be awarded to them. I will respond to them during my analysis of the law and the evidence. Suffice to say that the Claimants claim MK4, 000, 000.00 each for damages of false imprisonment, MK3 000 000.00 each for damages for defamation, MK500, 000 each for damages of assault, MK400, 000.00 each for damages of inconveniences, MK350, 000.00 each transport expenses and MK1, 500, 000.00 each for costs of the action. Therefore, the total sum which the Claimants claim is MK136, 500, 000.00.

### **3. ISSUES FOR DETERMINATION**



There is only one issue remaining to be adjudicated upon which is the quantum of damages to be awarded to the claimants on the heads of damages claimed

#### **4. APPLICABLE LAW.**

The general principle is that in awarding damages, a plaintiff is to be put in the same position as before the tort. Greener, W, put it this way in the case of **Hall v Barclay [1937] AC 620 at p. 623**:

**“...in my judgment, it is undoubted fact that there are two rules with which we begin in ascertaining how the damages should be ascertained. The first is this: A plaintiff who is suffering from a wrong committed by a defendant is entitled, so far as money can do it, to be put in the same position as if he has not suffered the wrong. This is what is referred to as restitutio in integrum...”**

This position was echoed in the Malawian case of **George Kankuni v Shire Buslines Limited** where Katsala, J stated that;

**“...The Law demands that the Plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as restitution in integrum...”**

It is however not easy to quantify damages for losses that are not monetary in nature like the present case. Therefore, courts use comparable cases as a guide to the quantification of the applicable damages, without losing sight of particularities in the individual case that the court is dealing with (See **Chipeta vs Dwangwa sugar Corporation Civil Cause NO. 345 of 1998 (Unreported)**). In **Munthali v Attorney General [1992] 16(2) MLR 646** and **Mausa and Mausua v The Attorney General and Inspector General of Police High Court, Civil Cause Number 373 of 2003** the courts resorted to awarding conventional figures guided by awards made in similar cases and considering the money value.

Further, the Court will also consider factors such as passage of time since a particular comparable award was made as well as currency fluctuations within the period between the case at hand and the comparable one (See **Hon Kennedy Kuntenga v Attorney General. Civil cause no. 2002 of 2002, High Court, Principal Registry (Unreported)**).

#### **5. DAMAGES ON FALSE IMPRISONMENT**



When it comes to false imprisonment, damages are awarded for loss of liberty, humiliation and mental suffering (see ***Mikombe and another v United Transport (Mal) Ltd 1992*** 15 MLR). This was succinctly put in the case of ***Mulenga v Mwale 91114 MLR*** when it was stated that;

**“...the indignity humiliation and stigmatization consequent upon imprisonment is what the Court endeavors to compensate. No monetary value can be ragged to these. Admittedly, the time spent under such restrains aggravates or mitigates the injury but it is not what is compensated and it cannot be the basis of the award although it is a relevant consideration...”**

In other words, the court should not only look at the period of incarceration without regard to the other factors of the case.

This was better explained in ***Mwakalinga v Tratsel Supplies Ltd Civil Cause Number 403 of 1984(Unreported)***. The court stated the following;

**“...In common law countries, damages under this head are at large. This time being one of the considerations cannot be a yardstick. The circumstances of the imprisonment might be so outrageous that high awards have to be made even through the period of incarceration is short...”**

In ***Jacinta Bello versus the Attorney General Civil Cause NO. 232 of 2018***, the court awarded MK4,500,000.00 as damages for false imprisonment to a claimant who spent 4 days in custody and released without any charge. The award was made on 12<sup>th</sup> August 2019. In ***Shepherd Mumba v Director of Anti-Corruption Bureau Civil Cause Number 182 of 2015 [2016]*** the Claimant was awarded MK1,500,000.00 after spending nine and a half hours in police custody. The award was made on 25<sup>th</sup> May 2016. In the case of ***Chimwemwe Kalua v Attorney General Civil Cause Number 490 of 2012*** the Claimant was awarded MK2,000,000.00 for false imprisonment after spending 7 hours in police custody. In the case of ***Llewelyn Kalua v Attorney General Civil Cause Number 49 of 2017*** the Claimant was awarded K3,000,000.00 after spending 5 days in a police cell.

The Claimant herein were arrested at Mzuzu Shoprite Mall in humiliating circumstances. The police were under orders from the 1<sup>st</sup> defendant. They were made to board a police vehicle and taken all the way to Mzuzu Police station. They were incarcerated for 28 hours during which time they were not allowed any communication with their relations. This happened without any



investigation. They were deprived of their liberty and imprisoned without any justification. They were exposed to deprivation of liberty, humiliation, injury to feeling, stigma, mental suffering and psychological torture.

Taking these circumstances into account and looking at the case law cited above, the court will award MK1 500 000.00 to each claimant on this head of damages.

## **6. DAMAGES ON DEFAMATION.**

In the case of **George Jivason Kadzipatike v Attorney General (Malawi Police Service) Civil Cause No. 87 of 2010 (HC) Mzuzu Registry** it was stated that in assessing damages for defamation the factors to consider include, but not limited to, the injury to the feelings, the anxiety and uncertainty undergone by the Claimant, the absence of apology, reaffirmation of the veracity of the matters complained of, as well as the Defendant's malice. These factors were extracted from the case of **Sam Mpasu v. Democrat Civil Cause No. 124 of 1995 (HC) (PR) (Unreported)**. In the case of **Anafi Chakuleji v. Attorney General (Malawi Police Service) (supra)** it was stated that damages for defamation are at large and they are compensation in nature. Their aim is to vindicate the Claimant's name. Such damages, in the opinion of the court, take into account the distress and humiliation suffered by the Claimant. In the case of **In the matter of Shepherd Mumba v Director of the Anti- Corruption Civil Cause Number 182 of 2015** the court stated that:

**When assessing damages under this heard we consider the coverage of the publicity, the station in life of the plaintiff and the effect on his daily life. Exemplary damages are awarded where the circumstances can be proved which would entitle the claimant to have an award of damages higher than what he would be awarded in an ordinary case. Exemplary damages are not necessarily a compensation to the Claimant for the damage he suffered; they are more punishment on the defendant for waywardness-see *Rookes v. Banard (1964) AC 1129*.**

In imputation of a criminal offence aggravates damages for defamation as stated in the case of **Munthali v Mwakasungulu (1991) 14 MLR 298**. In the Case of **Godfrey K. Nyirenda vs. the Attorney general (Malawi Police Service) Civil Cause Number 109 of 2016** the Claimant was awarded the sum of MK3, 000, 000.00 as damages for defamation. In the case of **Shepherd Mumba vs. Attorney General Civil Cause No. 190 of 2012** the plaintiff was awarded the sum of MK3, 500, 000.00 for defamation. Furthermore, in the case of **Martin**



**Chimkaya vs. the Attorney General Civil Cause No. 67 of 2017**, the court awarded the Claimant MK5, 000, 000.00 as damages for defamation.

Taking all these into account, the court will award MK1 500 000.00 to each claimant in damages for defamation.

#### **7. DAMAGES FOR ASSAULT AND INCONVENIENCE.**

In the case of **Charles Kanjoma v. the Attorney General supra**, the court awarded the sum of MK500, 000.00 for assault and battery on 19<sup>th</sup> October, 2012. In **Potex Kamenya Banda vs. Mr. Zhao, Civil Cause No. 939 of 2009**, the plaintiff who was merely a small-scale businessman was awarded MK150, 000.00 for inconvenience when he was detained for about 6 hours over and above damages for false imprisonment.

However, in this matter I have already taken into account, the issues of assault and inconvenience during assessment of damages for false imprisonment. I will therefore not award anything on these heads of damages as they have already been taken into account.

Just to add that the claimants have asked for MK350 000.00 each for the expenses they have incurred in travelling around to attend to police bail and other requirements. I think MK350 000.00 is on the higher side. I am of the view that MK100 000.00 to each claimant is reasonable. I therefore award MK100 000.00 for the said expenses.

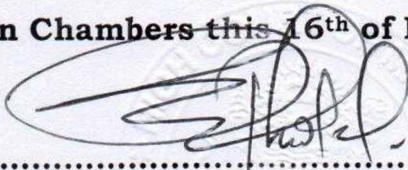
#### **8. DISPOSAL**

In total each of the claimant is awarded MK3 100 000.00 in damages on all heads claimed. There are 14 claimants, therefore the court has awarded a total of **MK43 400 000.00 (Forty-Two Million Malawi Kwacha)** to the claimants.

The claimants are also awarded costs for the hearing on assessment of damages to be agreed by the parties or to be assessed together with the costs of the whole action.

Any aggrieved party can appeal to the Malawi Supreme Court of Appeal.

**Pronounced in Chambers this 16<sup>th</sup> of November 2021**

  
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**P.D. CHIOTCHA**



**ASSISTANT REGISTRAR**