



The Malawi Judiciary
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL DIVISION
CIVIL CAUSE NUMBER 875 OF 2017

Between:-

RAYMOND ALFRED.....1ST CLAIMANT
GREY BAULENI.....2ND CLAIMANT
SAMU DOTH.....3RD CLAIMANT

AND

ATTORNEY GENERAL (MALAWI POLICE SERVICE).....DEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Mr. E.D. Chibwana, of counsel for the Claimants

Defendant, absent and unrepresented

Mr. H.L. Matope, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

INTRODUCTION

The present assessment follows the judgment entered by the judge on the 9th of July, 2021 after striking out the defence under Order 13 r.6(1)(1) of the Courts (High Court) (Civil Procedure) Rules, 2017. The judgment was entered for damages for loss of personal liberty and mental feelings, damages for loss of reputation, humiliation and anguish, and damages for malicious prosecution. Costs were awarded to the Claimant.

BRIEF FACTS

The Claimants were arrested on 19th of June, 2016 on suspicion that they had intimidated a person living with albinism. They were, eventually placed in custody from 19th June, 2016 and granted bail on 23rd August, 2016. They were brought before a court of law for trial, and were consequently acquitted of the charge, and are now seeking damages for false imprisonment and malicious prosecution.

EVIDENCE DURING ASSESSMENT

The Claimants had the 1st Claimant, Mr. Lemon Alfred as their preferred witness. The 2nd and the 3rd Claimants unanimously adopted the witness statement by the 1st Claimant as a true account and reflection of what had transpired, and they requested the court to apply it as it determine their respective claims for damages.

The brief evidence is to the effect that the three Claimants were overheard chatting among themselves. The 2nd Claimant was praising the 3rd Claimant for his hard work in his grocery and farming business which had helped him to do well unlike those who were preoccupied selling body parts belonging to persons with albinism.

It said that, when Aubrey Harold Dzitsotso got the news from another person, as he was not present when they said those words, he reported the claimants to Bilira Police Unit. They were eventually arrested and incarcerated. They were in police custody from 19th June, 2016 to 23rd August, 2016. They spent 64 days in custody. They were taken to Lilongwe Magistrate Court for trial where the court of the Senior Resident Magistrate acquitted them. They said, because of the arrest, incarceration and trial for the charge the police did investigate before acting on the report, their right to personal liberty and reputation was infringed. They suffered humiliation, anguish, loss of liberty and reputation over and above injury to their mental feeling. They prayed for damages for loss of personal liberty and mental feeling, loss of reputation, humiliation and anguish, and malicious prosecution.

ISSUES

The issue at hand that needs to be resolved is the quantum for damages to be paid to the claimants for loss of personal liberty and mental feelings, damages for loss of reputation, humiliation and anguish, and damages for malicious prosecution.

DETERMINATION

DAMAGES FOR LOSS OF LIBERTY AND MENTAL ANGUISH, HUMILIATION AND LOSS OF REPUTATION

I have carefully considered the skeletal arguments submitted for this assessment. I want to thank Counsel Chibwana for the guidance given me on the law and the authorities cited in support of his submissions. Where appropriate, I will take into account these submissions in my order. I must also thank the witness for his testimony. I believe such testimony will assist me determine the appropriate level of damages to award in each instance.

Damages are the remedy for a victim of a wrong, and the wrongful party has to compensate the victim, in as far as money can, to be put back in the same position that the victim would have been if not for the wrong- **Elida Bello v. Prime Insurance Company Limited**, Civil Cause No177 of 2012 (unreported).

For purposes of good case management, I will deal with these two heads together.

When assessing damages for loss of reputation the court has to consider coverage of the publicity, the station in life of the Claimants and the effect on their daily life. See **Shepherd Mumbo v Director of the Anti-corruption Bureau**, Civil Cause Number 182.

In the present case, the Claimants have not explained or demonstrated to the court as to what extent was their respective reputation tarnished. Likewise, there is no sufficient evidence demonstrating the level of anguish and mental feelings, and humiliation. These have been left to the court to assume, and courts of law do not *Raymond Alfred and 2 others vs Attorney General (Malawi Police Service)*, Civ Cause No. 875 of 2017

have raw jurisdiction to do so. Unlike damages for malicious prosecution and loss of liberty, the above needed evidence if the court had to appreciate the level at which the Defendant had perpetrated them. In the absence of such a demonstration, what can be awarded on them are general nominal damages.

Considering the case of **Sheila Lozi v Mille B Jumbe**, Civil Cause No. 1336 of 1998 where it was established that the aim of damages is to vindicate the Claimant's name and take into account distress, hurt and humiliation which the Defendant's conduct has caused.

Damages for loss of liberty are usually linked to false imprisonment, and are generally awarded for the non-pecuniary loss of dignity. The principal heads of damage appear to be the injury to liberty i.e. the loss of time considered primarily from a non-pecuniary viewpoint and the injury to feelings i.e. the indignity, mental, suffering, disgrace and humiliation with any attendant loss of social status. In addition there may be recovery of any resultant physical injury or discomfort as where the imprisonment has a deleterious effect on the Claimant health. **McGregor on Damages 16th Edition Para 1850-1851.**

In the present case, the claimants were incarcerated for 64 days. Considering the case of **Ngulube v Attorney General**, Civil Case No. 1509 of 1993 where it was stated that in relation to time, I would say that longer incarceration in the absence of alternative circumstances should attract heavier award, shorter detention in the absence of aggravating circumstances should attract lighter awards. What should be avoided at all cost is to come with awards that reflect hourly, daily and monthly rates. Such an approach could result in absurdity with longer detention and shorter ones where there are assimilating or aggravating circumstances. This approach is to come up with different awards depending on whether the incarceration is brief or very long etc. and subjecting this to other circumstances.

In **Kamlepo Kalua vs Attorney General**, [2013], where the detention was for 3 months and 10 days and an award of MK6, 500,000.00 was made.

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In **Lightwell Mphulama vs Attorney General**, Civil Cause No. 1970 of 2008 (unrep), the detention was for 7 days and he was awarded MK700, 000.00.

In **Crispin Kaledzera, George Mwase and Sande Mkwamba vs. Attorney General**, Civil Cause Number 2578 of 2009. The detention was for 40 days and an award of MK300, 000.00 was made.

In the case of **Mbambo v Robrory, Civil Cause No. 296 of 2015** where similar circumstances occurred, a sum of **K1, 350, 000** was awarded.

Considering such a comparable award and taking into account that the value of Kwacha keep on changing, I award each of them **K500, 000.00** being damages for loss of reputation, humiliation, mental anguish, and **MK2,500,000.00** being damages for loss of liberty.

DAMAGES FOR MALICIOUS PROSECUTION

Turning to the Claim of damages for malicious prosecution, according to **Vovo Gomesi vs Attorney General**, Civil Cause No. 399 of 2013 it was stated that damages for malicious prosecution are awarded where a person is prosecuted without sufficient reasons. See also **Chamuka and another vs. Mpasu, United Democratic Front and Attorney General**, Civil Cause No. 662 of 1998.

In the instant case, the Claimants were prosecuted without any justifiable reason, and therefore maliciously prosecuted. They were charged with intimidation before the magistrate court yet the state did not have evidence in support of the charges. They were arrested and prosecuted before thorough investigation. They indeed deserve compensation.

In **Rabson Munthali and 11 others vs. Attorney General**, Civil Cause No. 121 of 2020, each of the Claimants was awarded MK2, 000,000.00 as damages for malicious prosecution.

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Taking all the circumstances of this case into account, the devaluation of the Malawi Kwacha and the comparable case law above, I award each of the three Claimants for **K2, 100,000.00** as damages for malicious prosecution.

CONCLUSION

To sum up, each of the three claimants are awarded as follows:

1. **MK500, 000.00** being damages for mental feelings, damages for loss of reputation, humiliation and anguish.
2. **MK2, 500, 000.00** being damages for loss of liberty.
3. **MK2,100,000.00** being damages for malicious prosecution

In total, the Defendants shall pay **MK 15,800,000.00**. This whole sum is payable within 30 days from today.

Costs are for the Claimants and shall be assessed separately if not agreed by the parties within 30 days.

Made in chambers today Monday the 4th of April, 2022.


Brian Sambo
Assistant Registrar