

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 135 OF 2004**

BETWEEN

LEVI ZIBA.....PLAINTIFF

-AND-

FARMERS WORLD LIMITED.....DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Kita for the plaintiff

Defendants (absent)

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff's claim is for damages for false imprisonment, a refund of the sum of K17, 850 and costs of this action. This assessment of damages is in pursuance to the default judgment of 6th of May 2004.

The assessment was done on the 6th day of October 2005, but some how the file was removed from my office and was only brought to my attention today, on the 25th day of June 2007. This is by way of explanation as to what caused the delay in the delivery of this ruling. Considering that the sum of K17, 850 was a liquidated claim and was already covered in the default judgment, in this ruling I will only be addressing the false imprisonment claim

The simple facts of this case are that the plaintiff was once employed as a Branch Manager by the defendant company at their Mitundu office. On or about the 8th day of July a Securicor crew, contracted by the defendant company, went to

the Branch to collect cash accumulated from the sales of that week, which sales were apparently certified as correct by officials from the defendant's Head Office, on the 10th day of July 2007. However, on the 11th of July the plaintiff was called to the Head Office, where he was told by the Marketing Manager, a Mr. Jawed, that the cash that had been collected was short by K17 850. Following this, the plaintiff was taken to Kanengo police where he was detained for 5 days before being taken to Mitundu Police, where he was detained for one more day, after which the plaintiff's sister agreed with the defendant company to pay the shortage so that her brother should be out of trouble. Indeed, it would seem that it was after the money was paid that the plaintiff was released from custody.

After his release, the plaintiff was reportedly never taken before any court of law to be tried. Rather on or about the 21st day of July the plaintiff was approached by the defendant company if he could be a witness in a case in which the Securicor crew, that had collected the sales from his Branch, are being prosecuted for the theft of the money that the plaintiff was supposed to have stolen. It is not known at this point whether the case against the Securicor officers was concluded or it is still pending and neither was the court made privy to the outcome of the case. I would want to believe that this information should have been provided to the court considering the principle of reasonable suspicion, which applies in cases of false imprisonment. In other words, the law on false imprisonment is that where the party accused of false imprisonment is deemed to have acted out of reasonable suspicion, in that the offence for which the arrest was made was committed, and that there was an honest belief that the accused was guilty, their action cannot amount to false imprisonment. (See *Phiri v Lujeri Tea Estates limited* 10 MLR 398).

In this instance, this matter did not go to trial and hence the court did not have the opportunity to examine the full circumstances of the case for purposes of deciding whether the

defendant's had acted out of malice. Nevertheless, it is an undisputed fact that money was stolen from the Branch that the plaintiff was working at, at that time; it is the view of this court that the suspects would be either the plaintiff or the Securicor Officers who had collected the money. Between them, I am sure that the plaintiff had the duty to pack the money in the bags and to make sure that the same was intact when the Securicor Officers were sealing them. This fact alone, in my view would make the plaintiff the prime suspect in the mind of any reasonable thinking member of the society. Further, if the matter were to go before a court of law, it would have meant that the court would have had to decide (among other things) between the word of the Securicor Officers, who normally travel in a group against that of the plaintiff. Indeed, it is my view that in such a scenario, the odds would have been titled against the plaintiff. Having said all this and looking at the circumstances of this case, it is my view that the defendant did act in the honest belief that the plaintiff was guilty and hence the defendant could not be said to have falsely imprisoned the plaintiff. However, this matter never went to trial, instead the plaintiff did obtain a default judgment, which at this point of the case binds this court. Still, since it is the view of this court that had this matter gone for trial, the plaintiff's claim for false imprisonment would have failed, I am inclined to only award the plaintiff nominal damages of K10 000 and costs of the action.

Made in Chambers this.....day of.....2007.

K.T. MANDA
SENIOR DEPUTY REGISTRAR