

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3434 OF 2001**

BETWEEN:

J B MITEYANIPLAINTIFF

VERSUS

PRESS BAKERIES LIMITEDDEFENDANT

CORAM: M A TEMBO, ASSISTANT REGISTRAR

Ziyendam'manja, for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is an order on assessment of damages for false imprisonment.

This assessment was done pursuant to a default judgment entered herein in favour of the plaintiff dated 2rd January, 2002. Although duly served with a notice of hearing of the assessment the defendant absented itself and left the plaintiff's evidence uncontroverted.

The evidence of the plaintiff was that in 1998 he was the owner of four bakeries in Mangochi and that he was buying his bakery products from Press Bakeries limited in Limbe and Blantyre.

That in the course of transacting with the defendant he was surprised that on 5th March, 1998 he was visited by the Press bakeries' managers for Blantyre and Mangochi who were accompanied by police officers from Mangochi police and his own brother.

And further that the police informed the plaintiff that he was under arrest for the offence of theft by servant.

The plaintiff further stated that he tried to explain to the police that he was not an employee of the defendant. And that despite the plaintiff's explanation the police under the defendant's managers direction arrested the plaintiff.

The plaintiff stated that he was in custody for a period of eleven (11) days from 5 March 2001 to 16th March, 2001. And that there after he was remanded on bail until the criminal case against him was discharged by the court. The plaintiff tendered in court the letter from the Mangochi First Grade Magistrate Court in relation to the said discharge, which letter is marked as Exhibit P. 1.

The plaintiff testified that the arrest and incarceration herein has led to damage to his

reputation. He stated that the label attached to his personality is very shameful. The second witness for the plaintiff was his elder brother Danger Daimoni Mitiyani. His testimony basically confirmed his presence at the time of the arrest of the plaintiff and that the plaintiff was in custody for the period alleged herein.

It is a notorious fact that the law jealously guards against the infringement of an individual's personal liberty. And a person whose liberty has been infringed is entitled to damages. This same principle is embodied at common law in *C.F Kuchenmeister v Home Office* (1958) I QB 496 cited by counsel for the plaintiff in her written submissions.

Such damages are recoverable for injury to liberty and feelings and also the attendant loss of status. In arriving at the awards, factors such as the period of imprisonment, conditions of such imprisonment among others are relevant. The plaintiff herein was arrested and put in a cell for 11 days. He was remanded on bail and reported on bail at Mangochi for a period of 3frac12 years.

The injury to the plaintiff's feelings is enormous especially considering his business standing at the time of his arrest.

The plaintiff's counsel brought to the court's attention the awards made by the courts in various cases of false imprisonment. In *Nyirenda v Attorney General* Civil Cause No. 945 of 1997 (unreported) the plaintiff was incarcerated for 16 days and was awarded K80,000.00 as damages for false imprisonment; assaulted and battery. And in *Karonga v Ibrahim Morhammed* Civil Cause Number 2109 of 1997 (unreported) the plaintiff had been imprisoned for 3 days and was awarded K30,000.00 as damages for false imprisonment. The court also had the benefit of other awards made by the court for false imprisonment.

The court also appreciated that the Kwacha has depreciated since the awards alluded to above were made.

In the instant case, the court is of the view that for the suffering occasioned to the plaintiff's liberty and social status by, the 11 days false imprisonment an award of K100,000.00 is fair and adequate as damages.

The plaintiff is therefore awarded K100,000.00 as damages for false imprisonment. The plaintiff is also awarded costs of this action.

MADE in Chambers at Blantyre this 11th November, 2002.

M A Tembo

ASSISTANT REGISTRAR OF HIGH COURT AND SUPREME COURT OF APPEAL