



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 1163 OF 2000**

BETWEEN

WYSON H. KAPITO PLAINTIFF

-AND-

ATTORNEY GENERAL DEFENDANT

CORAM : T.R. Ligowe : Assistant Registrar

Okota Nyamulani : Counsel for the Applicant

Kaferaanthu : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

On 11th June 2001 the plaintiff entered a default judgment in his favour for the defendant to pay him damages for assault; damages for false imprisonment; damages for defamation of character; exemplary damages for the manner he was treated; and costs of the action. He made these claims following his arrest on or about 25th May 1999 by the Police. The plaintiff is the proprietor of Capital Technical Services in Lilongwe and he deals in repairs of computers, photocopiers and typewriters. While on his business trip in Salima, he was arrested by a Mr. Chaima an employee of the defendant and taken to Salima

Police Station. He was detained for five hours on allegations that he was a notorious car thief who had abandoned a car along Kamuzu Road which had allegedly been stolen from Lilongwe. He was assaulted in order for him to confess having stolen the car. As a result he suffered loss and damage.

The matter came before me for assessment of damages on 12th March 2008. The defendant did not attend despite having been duly served with the notice. No reason for the non attendance having been communicated the court proceeded in the absence of the defendant. The plaintiff's evidence therefore went unchallenged.

In his evidence the plaintiff told court that on 25th May 1999 he took a lift from Lilongwe where he lives going to Salima to collect a cheque for work he had done at Salima R.D.P. He was dropped at Kamuzu Road in Salima around 8.30 in the morning. There he found people surrounding a motor vehicle on the road side. He went to see, suspecting it was a road accident, only to be told that it a stolen vehicle dumped by thieves. He proceeded to Salima R.D.P. While at the Post Office with a Mr. Mbewe, an employee at Salima R.D.P., the one who had called him to collect the cheque, a police man in civilian came asking for the plaintiff's Identity Card. The Plaintiff did not have one and so he was taken to the Police Station. There the policeman slapped him and told him to put off his shoes and sit down. The police accused him of being the thief who had stolen the motor vehicle abandoned on the road. They did not believe him that he was a technician and had come to Salima to collect his payment at the R.D.P. They took him to the road top ask the guards who had seen the thieves at night if he was one of them. The guards refused him. They also took him to Mlambe Inn asking all the girls at the bar if he had slept with anyone of them in the night but they all refused. Afterwards he was released by Mr. Singano the Officer In Charge at Salima Police Station around 4.00 pm.

Both parties made submissions in writing on assessment of the damages herein. I take them into account and wish to state as follows.

Damages for false imprisonment are generally awarded for the impecuniary 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 plaintiff's health. (See **McGregor on Damages** 16th Edition para. 1850-51). The assessment of the damages is left to the court's discretion. The damages are awarded to compensate the plaintiff in so far as money can do it. See **Benson Nakununkhe v. Paulo Chakhumbira and Attorney General** Civil cause No. 357 of 1997 (Unreported). The extent of that compensation must be such that members of the society will be able to say that the victim has been well compensated. To do that it is desirable that as far as possible comparable injuries should be compensated by comparable awards. Damages for false imprisonment need not be made exclusively on consideration of the time factor. See **Fernando Mateyu v. Atupele Haulage Ltd** Civil Cause NO. 906 of 1993 (unreported). In **Donald Ngulube v. Attorney General** civil cause No 1569 of 1993 Mwaungulu Registrar as he then was had this to say;

“In relation to time I would say that longer imprisonment, in the absence of alternative circumstances, should attract heavier awards, shorter imprisonment in the absence of aggravating circumstances should attract lighter awards. What should be avoided at all costs is to come up with awards that reflect hourly, daily and monthly rates. Such an approach could result in absurdity with longer imprisonments and shorter imprisonments where there are assimilating or aggravating circumstances. The approach is to come up with different awards

depending on whether the imprisonment is brief, short or very long etc and subjecting this to other circumstances.”

I consider the imprisonment in this case brief. And considering the comparable cases cited in the submissions by both counsel for the plaintiff and the defendant, I think K50 000 fairly compensates the plaintiff for the damages suffered. So I award him that much plus costs of the action.

Made in chambers this 24th day of July 2008.

T.R. Ligowe
ASSISTANT REGISTRAR