



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO. 136 OF 2007**

BETWEEN

AUBREY NJIRAZAFA ..... 1<sup>ST</sup> PLAINTIFF

FRANCISCO KAMWANA ..... 2<sup>ND</sup> PLAINTIFF

-AND-

THE ATTORNEY GENERAL ..... DEFENDANT

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**CORAM : T.R. Ligowe : Assistant Registrar**

Kadzakumanja : Counsel for the Plaintiff

Liabunya : Counsel for the Defendant

**ORDER ON ASSESSMENT OF DAMAGES**

The plaintiffs were employees of Securicor Malawi Limited as security guards. On or about 5<sup>th</sup> December 2005, they were deployed to guard BP Oil Stores at Area 4 in Lilongwe when cartons of oil were stolen, but without the premises being broken into. The plaintiffs were arrested by the Police on 5<sup>th</sup> and 6<sup>th</sup> December 2005 respectively on allegations of the theft. They were temporarily released on bail on 9<sup>th</sup> and 12<sup>th</sup> December 2005 respectively. They were re-arrested on 17<sup>th</sup> and 11<sup>th</sup> January 2006 and released again on court bail on 16<sup>th</sup> February 2006 and 18<sup>th</sup> January 2006 respectively. Trial was before the

First Grade Magistrate sitting at Lilongwe for the offence of breaking into a building and committing a felony therein. They were both acquitted, the state having failed to establish a prima facie case against them. By reason of the foregoing the plaintiffs aver in their statement of claim that they suffered loss and damage, particularly that they were dismissed from employment. Therefore they claim damages for false imprisonment, loss of employment and costs of the action.

No defence having been served the plaintiffs entered a default judgment on 21<sup>st</sup> March 2007 for the defendant to pay the damages for false imprisonment, loss of employment and costs of the action.

This is the assessment of the damages.

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. Further any pecuniary loss which is not too remote is recoverable. The pecuniary losses fall into two categories, the one being any loss of general business or employment and the other the plaintiff's costs incurred in procuring his discharge from the imprisonment. All this has to be pleaded as special damages. (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 however 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.”

The first plaintiff's testimony was that he was first arrested on 5<sup>th</sup> December 2005 and released on 9<sup>th</sup> December 2005. He was rearrested on 17<sup>th</sup> January 2006 taken to court on 18<sup>th</sup> January 2006 and then granted bail by the court on 16<sup>th</sup> February 2006, after which he was acquitted on 1<sup>st</sup> June 2006. While in custody, he was sleeping on bare floor, the cell was congested and there were sanitation problems. He was taking meals once a day and he suffered a lot.

The second plaintiff testified that he was arrested on 6<sup>th</sup> December 2005 and detained at Lilongwe Police Station up to 12<sup>th</sup> December 2005. He was rearrested on 11<sup>th</sup> January 2006, taken to court on 18<sup>th</sup> January 2006 when he was granted bail and then acquitted on 31<sup>st</sup> May 2006. Just like the first

plaintiff, while in custody, he was sleeping on bare floor, the cell was congested and there were sanitation problems. He was taking meals once a day and he suffered a lot.

The plaintiffs asked to be re-instated to their jobs after being acquitted but their employer discharged them from employment. The first plaintiff told court that he was earning K5 858.92 and the second plaintiff K6 365.22 per month. They however did not show proof that they were earning that much.

The tort of false imprisonment is said to exist once the facts show an infliction of bodily restraint which is not authorized by law and without justification. (***Mphoka v. The Attorney General***, civil cause No. 258 of 1997(High Court) (Lilongwe Registry) (unreported). Section 42(2)(b) of the Constitution of the Republic of Malawi allows for 48 hours within which a person arrested for or accused of the alleged commission of an offence can be detained before being brought before a court of law, failing which he/she has to be released. Applying this to the facts, I find in the case of the first plaintiff that he was under false imprisonment two days. Between 18<sup>th</sup> January 2006 and 16<sup>th</sup> February 2006, he was properly remanded in custody by the court. As for the second plaintiff, he was under false imprisonment for four days the first time he was arrested and five days the second time he was arrested.

I consider the length of the plaintiffs' false imprisonment in this case short and bearing in mind other awards the court has ever made for similar circumstances, I am of the view that K150 000 would be fair compensation for each one of them. So I award K150 000 to each one of them plus costs of the action.

Made in chambers this 25<sup>th</sup> day of August 2008

T.R. Ligowe  
ASSISTANT REGISTRAR