



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 182 OF 2015**

**BETWEEN  
SHEPHERD MUMBA  
AND**

**PLAINTIFF**

**THE DIRECTOR OF THE ANTI-CORRUPTION  
BUREAU**

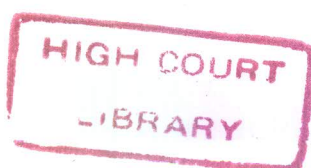
**DEFENDANT**

**Coram : MATAPA KACHECHE  
Masiku  
Bandawe**

**Assistant Registrar  
Counsel for the plaintiff  
Counsel for the defendants**

**ORDER ON ASSESSMENT OF DAMAGES**

1. The plaintiff is a lawyer by profession. He is a partner in Golden and Law, a legal practice. In addition he is a lecturer at the Malawi Polytechnic, a constituent college of the University of Malawi.
2. On 22<sup>nd</sup> October, 2011, at around 7:20 a.m. he was called by the defendant's officer to report at the defendant's office. He did so at around 7:30 the same morning. He was immediately put under arrest on the strength of a warrant of arrest dated 25<sup>th</sup> October, 2011. He was interviewed and a caution statement was recorded.
3. He was kept all day until 4:30 p.m. when he was taken to Blantyre Magistrate's Court where he was charged with the offences of theft and obtaining money by false pretences. He applied for bail and was released around 5 p.m., nine and half hours after the arrest.
4. On 24<sup>th</sup> and 25<sup>th</sup> November, 2011, the story of the plaintiff's arrest was published in the Nation Newspaper and the Daily Times respectively; both newspapers of wide circulation in Malawi. Both papers, quoting the defendant's Public Relations Officer, stated that the plaintiff was arrested on allegations of obtaining money by false pretences.
5. The plaintiff subsequently commenced judicial review proceedings against the defendant's decision to arrest and prosecute him. The High Court found that the defendant had acted *ultra vires* the law and quashed the decision. The criminal proceedings naturally died.



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6. According to the plaintiff all the actions taken in the criminal proceedings herein and the publication thereof led to his suffering. According to him the publication of the arrest and reasons thereof meant, to the whole world, that as a legal practitioner he is a criminal, thief, crook and conman. He also stated that his friends started saying that the source of his fortune was due to the fact that he was a thief. Some of his friends, classmates and relatives from across the country were calling him from across the country and beyond. One friend in particular, who is also his mentor, called him and warned him that he should be very careful lest he burn his hands.
7. Due to the defendant's conduct the plaintiff was greatly inconvenienced. His professional and business life came to a standstill, his family life affected and had to appear in Court to defend himself. His friends and professional colleagues enquired from him as to what had happened thereby taking up his time to explain to each of them the circumstances leading to his arrest and prosecution.
8. On 7<sup>th</sup> May, 2015 the plaintiff commenced action claiming compensation for false imprisonment, defamation and malicious prosecution. He also claimed costs of the action. Although the defendant initially defended the action, the parties subsequently entered a consent judgment finding liability on the part of the defendant. They agreed that as to the amount of damages the same ought to be assessed by the Registrar. This is therefore the assessment following that judgment.
9. The matter came on 12<sup>th</sup> January, 2016 for assessment. The defendant raised a preliminary issue concerning the appearance of Mr. Masiku without a notice of appointment of legal practitioner. However, Mr. Masiku explained that he was here not in his own right as representing the plaintiff but that he was merely holding the brief on behalf of Golden and Law. I thought the explanation was adequate and I directed that we must proceed with the assessment.
10. The plaintiff was the only witness. His evidence, as it stands, remains uncontroverted. In cross-examination the defendant took issue with lack of witnesses on the point that the plaintiff was asked by many people on the facts leading to his arrest. Although lack of an independent witness could have weakened the plaintiff's case on this specific point, there was no alternative suggested by the defendant, as a result the plaintiff's testimony stands.
11. I will start with the assessment of damages for false imprisonment. These are generally awarded where a person was, without lawful excuse, denied liberty to move wherever he wanted. Damages for false imprisonment are non-pecuniary in nature. They are primarily awarded for the injury to liberty, injury to feelings including loss of dignity, mental suffering and disgrace and humiliation (*Sulaimana and another v Attorney General* [2004] MLR 383); see also *Maonga and Others v Blantyre Print and Publishing Company* (1991) 14MLR 240 and *Mpinganjira v AG* [1996] MLR 12. As a result we do not need to extract each element of damages on this head. One global sum will suffice to cover all elements.
12. In arriving at a proper award the Court takes into consideration the need to reflect the society's disapproval of arbitrary arrests leading to the deprivation of an individual's liberty to move wherever he wants and engage in business or pleasurable activities.



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13. The very fact of incarceration entitles the plaintiff to a compensation. However, the Court will look at other factors such as the length of time and the conditions in which the plaintiff was incarcerated. Regard is had to awards given in previous cases but these are only used for guidance and not taken as binding precedents. Circumstances of each case defer from the others.
14. In this case the plaintiff suggested that we should follow *DB Mwangwela v AG Civil Cause number 699 of 2010 (unreported)*. In that case the plaintiff was incarcerated for five hours and the Court took K50, 000.00 per hour as a reasonable compensation to be awarded to the plaintiff.
15. While it might seem desirable to fix some rate in making these awards, in my view that would not be the correct approach. It would be tantamount to legislating awards but as we all know the duty to legislate is left in the hands of the Legislature and not the Judiciary. It is important to remember that precedent is the principle behind a decision, finding or ruling. Never must we interpret precedent as the actual decision. In the *Mwangwela* case we do not know why the Court found K50, 000.00 per hour as the proper rate.
16. I agree with Mwaungulu Registrar as he then was in *Donald Ngulube v. Attorney General* civil cause No 1569 of 1993 where he had this to say;

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*"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."*

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17. The plaintiff has cited several awards to guide this Court to come up with a fair award. I need not reproduce the awards herein. The plaintiff herein was detained at the defendant's offices, was never taken to a penitentiary or other form of cell; there is no suggestion that he was ill-treated or that he faced some degrading treatment. The greatest suffering coming as a result of the arrest was the detention itself leading to the inconvenience of making alternative arrangements to pick his children from school, failing to meet his clients and being prevented from doing his daily routines generally. In the circumstances I think K1, 500, 000.00 will suffice to compensate the plaintiff.
18. Next I will deal with damages for defamation. When assessing damages under this head we consider the coverage of the publicity, the station in life of the plaintiff and the effect on his daily life. In this case the publicity was very wide. The story was published in the newspapers with the widest circulation in this country. They also have online versions which certainly are read even beyond the borders. The plaintiff is a legal practitioner hence some of the readers, potentially, were his

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clients. His standing in society clearly diminished to an extent we may not be able to know. Certainly the plaintiff ought to be meaningfully compensated.

19. The plaintiff has suggested that we follow *Mkumba v AG Civil Cause No. 1091 of 2007*; *DB Mwangwela v AG*, and *Shepher Mumba v AG Civil Cause no 190 of 2012* as guiding cases to reach a fair award. The *Shepher Mumba case* has similar facts to the present one and the plaintiff is suggesting that we should take into consideration the devaluation of the kwacha.
20. Whereas I agree that the kwacha has devalued substantially since that award, I have not been presented with the circumstances that have led the plaintiff to bring the late for actions that took place in 2011, way before the actions that led to the litigation in the *Shepher Mumba Case* above. Be that as it may, I also consider that the allegations published in this case are much more serious consideration being had to the fact that the allegations had a bearing on the plaintiff's profession. I consider K4, 500, 000.00 to be adequate in the circumstances.
21. Finally I come to damages for malicious prosecution. These are closely related to the defamation damages already awarded above as the fact that a person is facing criminal prosecution has an effect of damaging a man's reputation or fame. Added to actual damage to the plaintiff's fame, a person facing prosecution, in my view, is not a free person. One wakes up every morning trying to figure out how he will acquit himself of criminal allegations, scandalous as they are. This has an effect on the plaintiff's psyche and feelings. Further, where he is on bail, the plaintiff faces some restrictions to his movements. These damages are also non-pecuniary in nature.
22. Again, the plaintiff has proposed that we use the *Shepher Mumba* case as a guiding precedent subject to the devaluation of the currency. For the reasons pointed out above I will also not strictly follow that case. In my view the proper award in these circumstances is K4, 000, 000.00.
23. The total award to the plaintiff therefore comes to K10, 000, 000.00.
24. I also award costs of the proceedings.

Delivered this 25<sup>th</sup> day of May 2016



CC Matapa Kacheche

**ASSISTANT REGISTRAR**