



THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY

Personal Injury Cause no. 831 of 2017

Between

AUSTIN J. OSMAN..... Claimant

and

ATTORNEY GENERAL (Malawi Police Service)..... Defendant

CORAM:	<i>Madalitso Khoswe Chimwaza,</i>	<i>Assistant Registrar</i>
	<i>I. Maluza</i>	<i>Counsel for the claimant</i>
	<i>C. Zude</i>	<i>Court Clerk</i>

ORDER ON ASSESSMENT OF DAMAGES FOR FALSE IMPRISONMENT

Brief Facts and Evidence:

1. The claimant was the only witness who adopted his witness statement where he stated that it was on or about the 27th May, 2017 when he was arrested by Lilongwe Police officers at area3 on allegations that he had a gun. He said at the time of arrest he was at his shop where he was doing his phone repairing business. He was searched but they did not find anything. They also went to his house to search but they did not find anything either. He was taken into police custody from 27th may, 2017 to 2nd June, 2022 (10days). During the 10days he was transferred to Lunzu Police unit for one day and later Chileka Police Unit for two days before being granted police bail. He was not charged with any offence.
2. The claimant is seeking damages for false imprisonment, general damages for malicious prosecution, damages for defamation, inhumane conditions and stress suffered in police custody, loss of business during and after incarceration, exemplary damages and costs of the action. Judgment was entered in default of defendants defence on 28th February, 2019.

- 3-. The claimant sent a demand letter and notice of intention to sue on 27th June 2017 which was not responded to. The defendants were not present during the hearing for assessment hence the evidence of the claimant went unchallenged.

Issue for Determination

How much should be paid as damages.

THE LAW ON ASSESSMENT OF DAMAGES

5. The cardinal principle in awarding damages is '*restitutio in integrum*' which means, in so far as money can do it, the law will endeavor to place the injured person in the same situation as he was before the injury was sustained – **Halsbury's Laws of England** 3rd Ed. Vol. II p.233 para 400.

6. This principle was further enunciated in ***Livingstone v Raywards Coal Co*** (1880) 5 App Cas 25 at 39, where Lord Blackburn said:

'...where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation.'

7. The High Court in ***Ngosi t/a Mzumbamzumba Enterprises v H Amosi Transport Co Ltd*** [1992] 15 MLR 370 (HC) set the basis for assessment of damages:

'Assessment of damages.....presupposes that damages have been proved. The only matter that remains is the amount or value of the damages.'

8. The rule is that prior to assessment, the injured party has provided proof of damage sustained – ***Yanu-Yanu Co Ltd v Mbewe*** (SCA) 11 MLR 405. Even in the face of difficulties in assessing damages, the Plaintiff is not disentitled to compensation – ***Mkumuka v Mphande*** (HC) 7 MLR 425.

9. The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - ***Stros Bucks Aktie Bolag v Hutchinson*** (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – **McGregor on Damages** p23 para 1-036.

Damages for false Imprisonment

10. Generally false imprisonment is not a pecuniary loss but a loss of dignity and is left much to the Judge or jury's discretion. See **Mc Gregor on Damages** p. 1396.

Damages on a claim for false imprisonment are awarded to a Plaintiff for loss of dignity, mental suffering and discomfort among others, suffered by the Plaintiff. The court also considers the duration of the incarceration. These are some of the circumstances of the case that help the court to determine the quantum of damages – Munthali v Attorney General [1992] 16(2) MLR 646 and Mause and Mause v The Attorney General and Inspector General of Police High Court, Civil Cause Number 373 of 2003.

11. The court will also take into account the length of incarceration and conditions of incarceration. See **Gama vs Attorney General** Civil cause No. 2146 of 2007. Damages may also be given for any injury to reputation as was stated by Lawrence L.J in **Walter vs. Alltools** (1944) 61 T.L.R Peake 87, that:

“A false imprisonment does not merely affect a man’s liberty, it also affects his reputation”.

Comparable case awards:

12. Courts resorts to awarding conventional figures guided by awards made in similar cases and also taking into account the money value.

- o In the case of **Shephard Mumba vs Anti –Corruption Bureau**, Civil Cause No. 182 of 2015, the plaintiff was awarded the sum of K1,500,000 for imprisonment which lasted 9 hours in the judgment made in May 2016.
- o In **Maxwell Mhlambo vs Attorney General** Civil Cause No. 520 of 2008 the court awarded the plaintiff a sum of K400,000.00 for false imprisonment having been detained for 3 days. It was stated by the Registrar that each case has to be decided on its own facts.
- o In the case of **Rodney Nasiyaya vs AG, Personal injury case No. 250 of 2019**, the claimant whose liberty was restrained for 14 days in an overcrowded cell and was exposed to degrading treatment, he was awarded K6,500,000 for false imprisonment, Mk2,500,000 for defamation in a judgment dated 4th day of March 2020.

13. It is now settled law that the length of detention (time) is not the only thing that the court considers when assessing damages in matters of false imprisonment. As cited above the court considers injury to liberty – loss of time considered from a non-pecuniary view point, injury to feelings – indignity, mental suffering, disgrace and humiliation. The claimant herein was detained for 10 days. The Court is mindful that still each case has to be decided basing on its own facts. It is the considered view of the Court that a sum of **K6, 300,000** is reasonable award for false imprisonment, injury to feelings- indignity and inhumane treatment.

Malicious Prosecution:

14. On the claim for damages for malicious prosecution, the cardinal principle is that the plaintiff/claimant should demonstrate to the Court that the defendant without reasonable and probable cause, set the plaintiffs prosecution in motion while actuated by malice and that the said prosecution ended in the claimant's favour. See the cases of **Dr James John Chikago and another vs Director of ACB** civil cause No. 33 of 2015; **Kazombo vs Reserve bank of Malawi**, (2004) MLR 140 (HC) and **Mwafulirwa vs Southern Bottlers Limited** [1991] 14MLR 316. The three cases are raising four elements that have to be proven by the claimant to succeed on a claim for malicious prosecution namely: (i) that the claimant was prosecuted by the defendant (ii) that the prosecution was determined in the favour of the claimant; (iii) that the prosecution was without reasonable cause; (iv) and it was malicious. This is to show that not every acquittal amounts to malicious prosecution. The claimant should be able to demonstrate with evidence the four elements in order to succeed on a claim for malicious prosecution

15. In the present case it is not in dispute that the claimant was arrested but there is no evidence that he went through trial which turned out to be determined in his favour, or that the court found that he had no case to answer. The claimant has not demonstrated with evidence that there was any prosecution for any offence before any court that was done with malice or without reasonable cause. This Court therefore finds this head of claim not to have been proved and will not award damages for malicious prosecution.

Defamation

16. On this head of claim the claimant has not demonstrated how his reputation has been affected by the arrest and loss of business. The Court awards **K700,000.00** for defamation.

The Court will not award exemplary damages as there are no factors present in this case warranting punitive damages.

Loss of business during and after incarceration:

17. The claimant seeks to be paid damages for loss of business during the 10 days he was in custody and after release from custody. In his oral evidence he said he was making around K160,000 to K200,000.00 per month from the business of repairing cellphones. No evidence of records was produced to substantiate this claim. This Court is mindful that such claims ought to be supported by evidence of financial records if they are to succeed. In the absence of such evidence the Court uses its discretion to award a reasonable amount of loss. In the present case it has not been challenged that the claimant was arrested at his place of business at area 3. Therefore, the Court awards him K100,000 per day as loss of business for 10days he was in custody. The total award on this head is K1,000,000.00.

Costs of the action

18. The general principle is that costs are discretionary as per **Order 31 rule 3 (1) of the CPR** and also the case of **Hahn vs Spearhead Holdings Ltd and Others** [1990] 13 MLR 143 (HC). Costs normally follow the event, and this means a successful litigant will be entitled to costs of the action.

19. Looking at the history of the matter it was not complicated, the liability was settled through a default judgment as there was no defence filed and judgment was entered in favour of the claimant. There was an assessment bundle comprising of witness statement and skeleton arguments. This was not a complicated case to require a demonstration of skill and industry by Counsel, the Court awards **K1, 000.000.00** as party and party costs summarily on a standard basis as being reasonably incurred and proportionate to the amount of work done on the case pursuant to **Order 31 rule 4 and 5 (1) (a) (i) (ii) of the CPR.**

Summary of awards:

False imprisonment	K6,300,000.00
Loss of business	K1,000,000.00
Defamation	K700,000.00
Costs of the action	K1,000,000.00

Either party aggrieved by this ruling has the right to appeal.

Made this^{4th}..... day of ^{August}July, 2022 at Lilongwe High Court Registry.


Madalitso Khoswe Chimwaza
ASSISTANT REGISTRAR