

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2468 OF 2001

BETWEEN:

GOODSON MPATA PLAINTIFF

AND

THE ATTORNEY GENERAL DEFENDANT

CORAM: M A TEMBO, ASSISTANT REGISTRAR

Hara, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is an order on assessment of damages pursuant to a default judgment entered in favour of the plaintiff dated 3rd April, 2002.

The plaintiff's claim is for damages for assault and battery, false imprisonment, defamation, malicious prosecution and costs of this action. A notice of hearing of assessment of damages was taken out by the plaintiff and although it was served on the defendant, there was no appearance made from the defendant's Chambers. That left the plaintiff's testimony totally unchallenged. The plaintiff herein was driving at Kamba in the City of Blantyre on 14th July, 2002 at 9.00 pm when a police motor vehicle suddenly stopped in front of him blocking his way.

Immediately, Pambalipe, a Policeman came out of the Police vehicle. This Pambalipe had on previous occasions called the plaintiff to Soche Police Station to ask him about a certain cell-phone the plaintiff had purchased from a certain Mr Kamanga. And on one

such occasion Pambalipe had solicited K1,000.00 from the plaintiff to which the plaintiff had responded by offering K500.00 only which Pambalipe refused to accept. The plaintiff had reported that matter to the Anti-Corruption Bureau.

Pambalipe then came up for the plaintiff and pulled him out of his vehicle and hit him in the ribs and the plaintiff fell on the tarmac. The 4 other policemen who were in the police vehicle immediately alighted from their vehicle and descended on the plaintiff and all beat him. The policemen lifted up the plaintiff and pressed him hard against their vehicle. One of the policemen beat the plaintiff on the back using the butt of a gun he was carrying and caused him great pain.

The policemen then threw the plaintiff into the Land Rover where he crashed. And the policemen got into the vehicle and pressed the plaintiff against the vehicle all the way from Kamba to Soche Police Station. On arrival at Soche Police Station the Policemen took the plaintiff inside the station and led him along a narrow passage which had a burrier at the end. And there 3 officers who were on night duty began to beat the plaintiff. Thereafter the plaintiff was pushed into a cell filled with urine and he was given a bottle to use for passing water.

The plaintiff was in police custody until he was released on 16th July, 2000 at around 8.00 am. When the plaintiff was being arrested at Kamba Pambalipe shouted to his fellow Policemen that the plaintiff had stolen a cell phone. And the plaintiff was taken before Soche Magistrate Court on the charge of being suspected of having stolen goods. This charge was dropped by the Police prosecution upon an offer of no evidence resulting in the acquittal of the plaintiff in October, 2000.

The plaintiff herein is a businessman who had a pick up truck and 3 shops around Kudya, Chitawira and Chimwankhunda.

Clearly the plaintiff herein is entitled to damages for the assault and battery occasioned to him by the 5 policemen herein at Kamba and the 3 policemen at Soche Police Station.

The court has considered the cases cited by counsel for plaintiff on the quantum of damages on the plaintiff's claim for assault and battery.

In **Nakununkhe vs. Chakhumbira** Civil Cause Number 357 of 1997 an award of K10,000.00 as damages was made for assault and battery on 22nd October, 1997. And in **Nyirenda vs. Attorney General** Civil Cause Number 945 of 1997 in which a sum of K80,000.00 was awarded on 2nd June, 1998 as damages for assault and battery and false imprisonment.

The court also looked at the case of **Mhango vs. Attorney General** Civil cause Number 908 of 1998 where K30,000.00 was awarded as damages for assault and battery on 16th March, 1999. Of course it is appreciated by this court and the value of the Kwacha has depreciated since the awards cited above were made.

Upon a careful consideration of the above awards and all the circumstances obtaining in the instant case the court awards the plaintiff K80,000.00 as damages for assault and battery.

On the plaintiff's claim for false imprisonment damages are awardable for loss of dignity, mental suffering, discomfort among others suffered by a plaintiff. The period of incarceration is also a consideration under this head. See **Mc Gregor on Damages** 15th Edition at par. 1619. The court considered the cases cited by counsel for the plaintiff on the quantum of damages as well as other more recent cases decided by this court.

In **Nankhoma vs. Attorney General** Civil Cause Number 3623 of 2000 the plaintiff who had been falsely imprisoned for 2 days was awarded K30,000.00 as damages for false imprisonment.

Upon consideration of the awards referred to above and the particular circumstances in this case the court awards the plaintiff the sum of K40,000.00 as damages for false imprisonment.

The plaintiff claims damages for defamation as well. The court observes that the defamatory words herein were not extensively publicized and were only related to the 4 policemen who heard Pambalipe say that the plaintiff had stolen a cell-phone. And the court in the circumstances awards the plaintiff the sum of K10,000.00 as damages for defamation. This is so awarded upon considering the cases on awards made by this court in similar cases that were cited by counsel for the plaintiff and which this court does not wish to reproduce.

On the claim for damages for malicious prosecution it is clear that the police simply trumped up charges in a bid to vindicate Pambalipe's unprofessional behavior. In the light of the circumstances obtaining in the instant case and on considering the cases cited by counsel for the plaintiff on the quantum of damages under the head of malicious prosecution the court awards the plaintiff the sum of K30,000.00. This award is made in the light of a similar case of **Nankhoma vs. Attorney General** (cited above) in which an award of K25,000.00 was made on similar facts to the ones herein for malicious prosecution on 1st August, 2002.

Finally, the court awards costs of this action to the plaintiff.

Made in Chambers at Blantyre this 17th April, 2003.

M A Tembo

ASSISTANT REGISTRAR