

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2273 OF 2001

BETWEEN:

BLESSINGS J A MAKULUDZO.....PLAINTIFF

AND

THE ATTORNEY GENERALDEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Msisha S.C, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this courts' order on assessment of damages made pursuant to a default judgment in favour of the plaintiff for damages for assault and battery, false imprisonment and for mental stress and suffering and violation of constitutional rights. The judgment is dated 19th February, 2002.

The notice of hearing of this assessment was duly served on the defendant who did not turn up at the hearing. That left the plaintiff's testimony uncontroverted.

The plaintiff herein aged 28 years went to attend a rally addressed by the President of the Malawi Congress Party (MCP) at that Party's headquarters at Chichiri. That was on 17th August, 1999. The plaintiff had gone to the MCP headquarters with two friends. On arrival at the entrance to that headquarters around 12.00 noon, the plaintiff's way was blocked by police. Thereafter police officers grabbed the plaintiff's friend and started assaulting him. When the plaintiff tried to plead with the Senior Officer on the scene he

was himself assaulted by a police officer. The plaintiff was hit with a button stick on the area above his left eye where a scar is clearly visible now resulting from a cut to that area. The plaintiff optical nerves were also affected resulting in blurred vision in the left eye. The plaintiff was crying and bleeding to the extent that his shirt was soaked with his own blood. The police then grabbed the plaintiff and threw him into the vehicle so that they take him to their station.

But on seeing that the plaintiff was bleeding badly the police then decided to branch to Queens hospital where they dropped the plaintiff for treatment. The cut on the plaintiff's eye was stitched. The prognosis on the recovery of the plaintiff's eye is poor. The plaintiff had to start using spectacles since his left eye had been affected badly by the assault herein. The plaintiff spent K4,325.00 on the spectacles he is using now. At this point the court notes that the expenditure by the plaintiff on the spectacles is a special damage which ought to have been pleaded. As the same was not pleaded no award ought to be made in relation to the plaintiff's expenditure on the spectacles. But nevertheless it has clearly been proved in evidence that an expenditure on spectacles was done. Should the plaintiff be punished for counsel's over sight? The answer is no. K4,325.00 is awarded to the plaintiff.

This court is aware that on a claim for damages for assault and battery damages are awarded on using the same approach as in personal injuries actions especially where the assault involves injury to the plaintiff. The award is therefore a conventional one taking into account awards in cases of a broadly similar nature. See **Nankhoma v. Attorney General** Civil Cause Number 3623 of 2000, In the **Nankhoma Case** the plaintiff had been badly beaten by a group of people resulting in severe pain all over her body as well as wounds on her back, chest, legs and arms. She was awarded K55,000.00 as damages for assault and battery she had suffered.

This court has considered the fact that the plaintiff's injuries herein are not as severe as those suffered by the plaintiff in the above cited case. Nevertheless, the kwacha has depreciated in value since the award in the above case.

Upon considering these factors and the particular injuries suffered by the plaintiff as well as the assault and battery taken by the plaintiff herein this court awards the plaintiff K60,000.00 as damages for the assault and battery he suffered.

On the claim for damages for false imprisonment this court is aware that such damages are awarded for injury to liberty and feeling. That is the indignity, mental suffering, disgrace, and the accompanying loss of social status see **Mc Gregor on Damages** 15th Edition paragraph 1619 at page 1026. The period of imprisonment and the accompanying conditions all play a vital role in the determination of the award. The court notes that the plaintiff herein was bundled into a car accompanied by several

members of the Malawi Police Service. He must have really felt bad. The period of imprisonment though was relatively short as it involved travel time from Chichiri to Queens Hospital. This court has considered the awards made in similar case to this one.

In **Namasiya v S K Guard Servie's** Civil Cause Number 1831 of 2002 the plaintiff was awarded K50,000.00 as damages for imprisonment for 2 days in a solitary room.

Upon considering all the circumstances in the instant case this court awards the plaintiff K7,000.00 as damages for the false imprisonment herein which was unjustified and in violation of the plaintiff's constitutional rights to personal freedom.

Costs of this action are for the plaintiff.

Made in Chambers at Blantyre this 9th September, 2003

M A Tembo

ASSISTANT REGISTRAR