

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

CIVIL CAUSE NO. 264 OF 2004

BETWEEN

J. MOYO APPLICANT

AND

**RAPID DEVELOPMENT GUARD SERVICES RESPONDENT
CITY MOTORS LIMITED.**

CORAM : HON. JUSTICE MZIKAMANDA
: Mr. Malera, Counsel for the Applicant(s)
: Not present, Counsel for the Respondent(s)
: Mr.Gonaulinji, Court Interpreter

JUDGMENT

The plaintiff commenced an action by specially endorsed writ against Rapid Development Guard Services as first defendants and City Motors Limited as second defendants. The action was commenced on 15th April, 2004. Both defendants were duly served with the writ of summons. By Consent Order dated 27th July, 2004 the claim against the second defendant was discontinued. The first

defendant had filed a defense. The defense however never filed a court bundle and never turned up for the hearing of the matter despite due service.

I heard the case of the plaintiff. In his statement of claim the plaintiff stated that he was at all material times an employee of Lilongwe Water Board which provides water to residents in the City of Lilongwe. The first defendants were a security provider who at all material times were guarding the second defendant's premises. On or about the 1st of March, 2003 the plaintiff was sent to second defendant's premises to disconnect water for non-payment of bills. After the plaintiff had removed the water meter from the second defendant's premises, he left and went to a nearby Petroda Filling Station to reconnect water supply. As he returned the first defendant's servants or agents called him and told him that their boss wanted to see him. The said boss took the plaintiff to his office and accused him of stealing the water meter. The plaintiff was handcuffed and led to Lilongwe Police Station where the police advised the first defendant's servants or agents to release him because there was no case against him.

Despite the advice of the police to release the plaintiff, the first defendant's servants or agents proceeded with the plaintiff still in handcuffs to his place of work where it was confirmed that he was indeed an employee of Lilongwe Water Board and he was released. By reason of the matters stated, the plaintiff suffered severe shock and mental anguish and has suffered loss and damage. He prays for damages for false imprisonment and for costs of the action.

The defense statement on the file shows that the first defendant admits accusing the plaintiff of stealing the water meter at City Motors premises and that on reasonable grounds first defendant suspected the plaintiff of having stolen a water meter from City Motors premises. They deny to have handcuffed him. The state that on the day in question the plaintiff had indicated he was going to take meter reading but instead he removed a meter. They deny that the plaintiff spent 4 hours under their custody and denied to have subjected the plaintiff to humiliation and disgrace.

The plaintiff testified as his own witness adopting his statement in the court bundle. He stated that he is a meter attendant for Lilongwe Water Board. On 1st March, 2003 he was sent to disconnect water at City Motors Limited premises. He did disconnect the water. Then the guards told him that their boss was looking for him. The boss then accused him of stealing the water meter. He was handcuffed and taken to Lilongwe Police Station. The Police told the first defendants to release him but they did not. They took him to Lilongwe Water Board in handcuffs. They released him when Mr. Sibanda, the Debt Collector told them that he was an employee of Lilongwe Water Board and was on duty. He prays for damages for false imprisonment, humiliation and disgrace and costs. On the day in question he had his identity card and he told the defendants and the police about it and that he was on duty. He stated in court that he was detained for a long time in the cell of first defendants from morning to afternoon without being provided with food.

As earlier pointed out the evidence of the plaintiff went unchallenged. He gave it on oath. I find that the first defendants falsely imprisoned the plaintiff. The first defendant had no reasonable grounds to suspect that the plaintiff had stolen the meter when he told them he was employed by Lilongwe Water Board, was on duty and he showed them his identity card. Moreover they also saw him actually reconnect water at nearby Petroda Filling Station. I find that the first defendants were bent on humiliating and disgracing the plaintiff for his having performed his duty of disconnecting the water at City Motors.

This is a proper case to award exemplary damages against the first defendants for their overzealousness and for humiliating and disgracing the plaintiff with their having handcuffed him all the way to the Police Station and from there to Lilongwe Water Board. I award the Plaintiff a lump sum of K100,000.00 for the false imprisonment, humiliation and disgrace. The plaintiff also gets costs of this action.

PRONOUNCED in Open Court this 16th day of April, 2009 at Lilongwe.

R.R. Mzikamanda

J U D G E