



REPUBLIC OF MALAWI  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL DIVISION**  
**CIVIL CAUSE NO. 112 OF 2019**  
(Before Honourable Justice Mambulasa)

**BETWEEN:**

**LAWRENCE SIYANI..... CLAIMANT**

**-AND-**

**KALIBU PRIVATE SCHOOLS LIMITED..... DEFENDANT**

**CORAM: HON. JUSTICE MR. MANDALA D. MAMBULASA**

Mr. Frank Jones Gift Zambezi, Advocate for the Claimant

Mr. Joseph Kamkwasi, Advocate for the Defendant

Ms. Caroline Machado, Court Clerk/Official Interpreter

Mrs. Elizabeth Banda, Recording Officer/Court Reporter

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**JUDGMENT**

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## **MAMBULASA, J**

### **Introduction**

- [1] The claimant's claim against the defendant is for damages for malicious prosecution, false imprisonment, defamation, special damages amounting to the sum of MK164,000.00 being actual loss for disposing off his property to apply for court bail, exemplary damages and costs of the action.
- [2] The claimant was employed by the defendant as a security guard and was stationed at Kalibu Academy High School at Chileka in Blantyre.
- [3] The defendant is a private entity operating a primary and international high school campuses at Chileka in Blantyre.
- [4] On the night of 12<sup>th</sup> October, 2016 while in the course of his employment, the claimant was accused by the defendant's security manager that he switched off the electric fence and that he facilitated the theft of plasma television screen and decoder from the defendant's dining hall.
- [5] The claimant was subsequently arrested and detained by the Chileka Police Sub-Station from 13<sup>th</sup> to 18<sup>th</sup> October, 2016. He was remanded to Chichiri Prison for a further 7 days and was released on court bail on 28<sup>th</sup> October, 2016 by the Chisenjere Second Grade Magistrate Court.
- [6] On 20<sup>th</sup> February, 2017 after a full trial, he was acquitted by the said court in Criminal Case No. 284 of 2016.

[7] The defendant denies the claim stating that it merely reported the theft incident to the police and that the police through their own investigations arrested the claimant and another person who were security guards on duty on the night of the theft and prays to the Court that the action be dismissed with costs.

### **Issues for Determination**

[8] During the scheduling conference held on 29<sup>th</sup> May, 2025 the Court and the parties agreed that there were five issues falling for determination by the Court. These are:

8.1 Whether or not the claimant was maliciously prosecuted by the State at the instigation of the defendant?

8.2 Whether or not the claimant was falsely imprisoned and deprived of his liberty between 13<sup>th</sup> to 28<sup>th</sup> October, 2016 by the State at the instigation of the defendant?

8.3 Whether or not the claimant was defamed as a result of the arrest and prosecution by the State at the instigation of the defendant?

8.4 Whether or not the claimant is entitled to aggravated and exemplary damages for malicious prosecution, false imprisonment and defamation?

8.5 Which party is entitled to costs of the action?

## The Law

- [9] It is trite learning that in civil matters, it is the claimant who bears the burden of proof. In *Commercial Bank of Malawi –vs- Mhango*<sup>1</sup> the Supreme Court of Appeal observed as follows:

Ordinarily, the law is that the burden of proof lies on a party who substantially asserts the affirmative of the issue. The principle was stated in the case of *Robins v National Trust Co* [1927] AC 515 that the burden of proof in any particular case depends on the circumstances in which the claim arises. In general, the rule is *ei qui affirmat non qui negat incumbit probatio* which means the burden of proof lies on him who alleges, and not him who denies. Lord Megham, again, in *Constantine Line v Imperial Smelting Corporation* [1943] AC 154, at 174 stated that it is an ancient rule founded on considerations of good sense and should not be departed from without strong reasons. The judge said that the rule is adopted principally because it is but just that he who invokes the aid of the law should be the first to prove his case because in the nature of things, a negative is more difficult to establish than an affirmative. However, in a civil action the burden of proof may be varied by the agreement of the parties - see *Bond Air Services Ltd v Hill* [1955] 2 QB 417.

- [10] It is also commonplace that the standard of proof in civil matters is on a balance of probabilities. In *Miller –vs- Minister of Pensions*<sup>2</sup> Denning J said:

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<sup>1</sup> [2002-2003] MLR 43 (SCA).

<sup>2</sup> [1947] 2 All ER 372.

That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: “We think it more probable than not,” the burden is discharged but, if the probabilities are equal, it is not.

[11] Section 18 of the Constitution<sup>3</sup> protects the right to personal liberty of every person. It expressly provides as follows:

Every person has the right to personal liberty.

[12] Similarly, section 19 of the Constitution protects the right to human dignity and other personal freedoms. It states, *inter alia*:

(1) The dignity of all persons shall be inviolable.

(2) ...

(3) No person shall be subjected to torture of any kind or to cruel, inhumane or degrading treatment or punishment.

[13] In a proper case, human rights, freedoms and constitutional rights may be limited or restricted by the State. That is clear from section 44 of the Constitution. A police officer may only limit or restrict the enjoyment of the human and constitutional rights to liberty and dignity where sufficient grounds for such limitation or restriction exist.<sup>4</sup>

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<sup>3</sup> The Constitution of the Republic of Malawi.

<sup>4</sup> See for instance, section 34 of the Police Act, Cap. 13:01 of the Laws of Malawi.

[14] In *Kanyemba –vs- Malawi Hotels Ltd*<sup>5</sup> this Court explained what constitutes false imprisonment. It said thus:

False imprisonment consists of inflicting bodily restraint which is unauthorised and without lawful authority. In order to succeed, the plaintiff need not prove actual imprisonment in the sense of imprisonment in a gaol, for “imprisonment is no other thing but the restraint of a man’s liberty, whether it be in the open field, or in the stocks in the cage in the streets as well as in the common gaol.”

[15] In *Matanda –vs- Sales Services Ltd and others*<sup>6</sup> Unyolo J, as he then was, stated as follows:

The law is clear. As has been stated in numerous cases decided by this court, the crucial issue in cases of false imprisonment is to decide whether the defendant’s servants or agents merely stated facts to the police or whether they made a charge against the plaintiff. The test is this, if the defendant or his servants or agents made a charge on which it became the duty of the police to act then the defendant will be liable, but he will not be liable if he or his servants or agents merely gave information by merely conveying their suspicion and the police acted according to their own judgment.

[16] In *Admarc –vs- Stambuli*<sup>7</sup> the Supreme Court of Appeal adopted the test in the following words:

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<sup>5</sup> [1991] 14 MLR 157 (HC) at 162.

<sup>6</sup> [1990] 13 MLR 219 (HC) at 229.

<sup>7</sup> SCA Civil Appeal No. 6 of 1984, cited in *Mvula –vs- Norse International Ltd* [1992] 15 MLR 331 (HC) at 337.

When the respondent was taken to police, he was locked up immediately. The police must have been satisfied with what the appellant's servant said to them. In other words, the appellants laid a charge against the respondent on which the police acted. Had the appellant gone to the police and stated that they suspected that an offence had been committed and requested the police to investigate, that would be laying an information because any arrest subsequently would have taken place on police discretion after examining the facts.

[17] The law on malicious prosecution is well settled. Malicious prosecution is a tort whereby one maliciously and without reasonable and probable cause initiates against another judicial proceedings which terminate in favour of that other and which result in damage to his reputation, person, freedom or property.<sup>8</sup>

[18] According to *Nguza –vs- Mzuzu City Council*<sup>9</sup> the tort of malicious prosecution has four essential elements that must be proved by the claimant. These are: (a) that the defendant prosecuted him; and (b) that the prosecution ended in his favour; and (c) that the prosecution lacked reasonable and probable cause; and (d) that the defendant acted maliciously.

[19] In *Mbewe –vs- Agricultural Development and Marketing Corporation*<sup>10</sup> the Court stated that the tort of malicious prosecution requires proof of absence of reasonable and probable cause and proof of malice in the commencement

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<sup>8</sup> *Street on Torts* 8<sup>th</sup> Edition (Butterworths) 1988, at 28.

<sup>9</sup> [1995] 1 MLR 161 (HC) at 164.

<sup>10</sup> [1993] 16 (2) MLR 594 (HC) at 602.

of prosecution. The requirement for malice may be satisfied by proof of improper motive or purpose.

[20] In *Manda –vs- Ethanol Company Ltd*<sup>11</sup> Mkandawire J opined that:

As for malice, the mere insistence on prosecution when there was no evidence is in itself evidence of bad motive.

[21] Next to be considered is the tort of defamation. As per the case of *Nyirenda –vs- AR Osman and Co.*<sup>12</sup> defamation is the publication of any statement which tends to lower a person in the estimation of right thinking members of society generally or which makes them shun or avoid him or to cut him off from society or to expose him to hatred, contempt or ridicule.

[22] In *Gatley On Libel and Slander*, (8<sup>th</sup> edition) at page 42, the learned authors put it this way:

Defamatory imputations are usually conveyed in words written or spoken. But there are many other activities and objects which may convey an imputation defamatory of some person, either of themselves or in their context.

[23] Later at page 85, the learned authors proceed to state as follows: -

Sometimes a mere act may convey a defamatory imputation, if it would be so understood by reason of conventional meaning or by reason of the inference to be

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<sup>11</sup> [1993] 16 (2) MLR 572 (HC) at 577.

<sup>12</sup> [1993] 16 (2) MLR 681 (HC).

drawn from it, whether by ordinary man, or by some person with special knowledge to whom it was published.

[24] In *Kingfat Mangani –vs- Caltex Oil Malawi Ltd*<sup>13</sup> the High Court followed *Vide Collins –vs- Jones*<sup>14</sup> where it was stated as follows:

The right of each man, during his lifetime, to the unimpaired possession of his reputation and good name is recognized by the law. Reputation depends on opinion, and opinion in the main depends on the communication of thought and information from one man to another. He, therefore, who directly communicates to the mind of another, matter untrue and likely in the natural course of things substantially to disparage the reputation of a third person is, on the face of it, guilty of a legal wrong, for which the remedy is an action of defamation.

[25] In *Mhango –vs- Raiply Malawi Ltd*<sup>15</sup> the Supreme Court of Appeal stated that defamation occurs when one by conduct or statement falsely portrays to others as to undermine the character or reputation of another.

[26] Exemplary damages were explained in the case of *Munthali –vs- Attorney General*.<sup>16</sup> Mwaungulu, Registrar then, quoted Lord Devlin in *Rookies –vs- Bernard*<sup>17</sup> where it was stated that aggravated damages endeavour to fully

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<sup>13</sup> Civil Cause No. 424 of 2006 (High Court of Malawi) (Principal Registry) (Unreported).

<sup>14</sup> (1995) 1 QB 564.

<sup>15</sup> [2016] MLR 179 (SCA).

<sup>16</sup> [1993] 16 (2) MLR 646 (HC). See also *Mwaungulu –vs- Malawi News and others* [1994] MLR 227.

<sup>17</sup> [1964] AC 1129.

compensate the plaintiff for the damage he has suffered. Exemplary damages however are not necessarily a compensation to the plaintiff for the damage he has suffered, they are more of a punishment on the defendant for waywardness.

[27] The law on special damages is also well settled. These must be specifically pleaded and strictly proved.<sup>18</sup>

[28] It is also trite law that where a witness who is available is not called, it may be presumed that his evidence would be contrary to the case of the party who fails to call him.

[29] In *Maonga and others –vs- Blantyre Print and Publishing Co Ltd*<sup>19</sup> the defendant failed to call the company secretary who wrote the letter of complaint to the police. It also failed to call the police officers who effected the plaintiff's arrest. All these witnesses were available.

[30] The court also quoted Banda J, as he then was, in the case of *Leyland Motors Corporation Malawi Ltd –vs- Mohamed*<sup>20</sup> as follows:

Failure to call a material witness to testify on a material point may damage the case of the party who failed to do so as that failure may be construed that the story is fictitious.

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<sup>18</sup> *Govati –vs- Manica Freight Services (Mal) Ltd* [1993] 16 (2) MLR 522-523 (HC).

<sup>19</sup> [1991] 14 MLR 240 (HC).

<sup>20</sup> Civil Cause No. 240 of 1983 (High Court of Malawi) (Principal Registry) (Unreported).

[31] The *dicta* in the *Maonga* and *Leyland* cases referred to above were quoted with approval by the Supreme Court of Appeal in *BP Malawi Ltd –vs- NBS Bank Limited*<sup>21</sup> as follows:

We think that the court was indeed entitled to attach significance to the absence of the company secretary, who was available to the appellant, to give evidence at the trial.

[32] Section 30 of the Courts Act<sup>22</sup> provides that costs are in the discretion of the High Court. It provides as follows:

Subject to this Act, the costs of, and incidental to, all proceedings in the High Court, including the administration of estates and trusts, shall be in the discretion of the High Court; and the discretion shall be exercised in accordance with the practice and procedure provided in the rules of procedure made by the Chief Justice under section 67 of this Act.

[33] Order 31, rule 3 (1) of the Courts (High Court) (Civil Procedure) Rules is couched in the following terms:

The Court has discretion as to-

- (a) whether costs are payable by one party to another;
- (b) the amount of these costs; and
- (c) when they are to be paid.

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<sup>21</sup> [2009] MLR 39 (SCA) at 46.

<sup>22</sup> Cap. 3:02 of the Laws of Malawi.

[34] When the Court decides to make an order about costs, then, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party. This is clear from Order 31, rule 3 (2) of the Courts (High Court) (Civil Procedure) Rules.

[35] There are exceptions to the general rule, where a successful party shall not always be entitled to have an order for costs against the unsuccessful party. For instance, where a successful party recovers no more than nominal damages, it may be ordered to pay the unsuccessful party's costs.<sup>23</sup> The successful party may also not be entitled to costs where the issue on which a party succeeded is raised for the first time by amendment at a very late stage.<sup>24</sup>

### **The Evidence**

[36] In his testimony, the claimant told the Court that his name was Lawrence Siyani and hails from Khwiya Village, Traditional Authority Masasa, in Ntcheu District. He said that he was employed by the defendant (Kalibu Private Schools Limited) as a security guard on 21<sup>st</sup> May, 2016.

[37] The claimant testified that he was assigned to work at Kalibu Academy High School section where his primary responsibility was to safeguard the company's property. His specific duties included monitoring the boys' hostels, overseeing the water pump area and protecting the teachers' residences.

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<sup>23</sup> *Texaco Ltd –vs- Arco Technology Inc* (1989) *The Times*, 13 October 1989.

<sup>24</sup> *Beoco Ltd –vs- Alfa Laval Co Ltd & Anor* [1995] QB 137.

- [38] On 11<sup>th</sup> October, 2016 he commenced his shift following the standard procedure. The handover was conducted by Mr. Salema, the deputy security manager. Together, they carried out an inspection of the key areas including the boys' hostels, the water pump and the teachers' houses.
- [39] He was on duty from 17:00 hours to 00:00 hours without any incidents. At approximately 00:00 hours, his colleague, Akimu Mtwiche who was assigned to guard the dining hall approached him to inquire about time. The claimant was not guarding that dining hall with Akimu Mtwiche.
- [40] On 12<sup>th</sup> October, 2016, at approximately 03:00 hours, his colleague, Akimu Mtwiche, returned to inform him that a plasma television and decoder were missing from the dining hall.
- [41] The claimant proceeded with the colleague to the dining hall and observed that a break-in had occurred. It appeared that the perpetrators had used a ladder to access and open a window of the dining hall. The window in question was located near the area of the wall where the plasma television was mounted.
- [42] The claimant and Akimu Mtwiche notified their colleagues who were assigned to guard the girls' hostels about the incident. Thereafter, they contacted Mr. Chisomo, the security manager, to report the incident.
- [43] Mr. Salema and Mr. Chisomo arrived at the scene and conducted their own inspection of the area. Later, they contacted police officers from Chileka Police Sub-Station and reported the incident.

- [44] The claimant stated that at approximately 06:00 hours, two police officers came to Kalibu Academy High School. The officers were Detective Kaliya and Detective Mailosi.
- [45] At that time, he was asked to hand over his duty station to Mr. Salema as his shift had come to an end. The claimant told the Court that they were instructed by Mr. Salema not to leave the school premises and wait for the police officers at the gate. Shortly afterwad, the claimant and his colleague, Akimu Mtwiche were transported to Chileka Police Sub-Station.
- [46] Upon arrival at the police sub-station, the claimant was not questioned regarding the theft. After a short while, he was instructed to return home. However, his colleague Akimu Mtwiche, was placed under arrest that same day after being interrogated by the police officers.
- [47] On 13<sup>th</sup> October, 2016, Mr. Chisomo informed the claimant that his presence was required at Chileka Police Sub-Station. Upon arrival, the detectives informed him that Mr. Salema had alleged that he had switched off the electric fence, which purportedly facilitated the theft on the previous night.
- [48] Subsequently, Mr. Salema and Mr. Chisomo arrived at the police station. In the presence of the claimant and the police officers, Mr. Salema stated that it was the claimant who had turned off the power switch to the electric fence, thereby facilitating the theft. Mr. Salema further identified him as one of the individuals responsible for stealing the plasma television and the decoder. Mr. Salema then instructed the police officers to immediately arrest the claimant.

- [49] The claimant said based on this allegation, the police arrested him and detained him in custody. He remained in detention from 13<sup>th</sup> to 18<sup>th</sup> October, 2016.
- [50] On 18<sup>th</sup> October, 2016 the claimant was brought before Chisenjere Second Grade Magistrate's Court where a two-week extension of his remand was requested for an alleged further investigation of his involvement in the theft of the said two items.
- [51] The claimant testified that he was sure that it was the defendant through its agents that wanted him to be detained further. He said the Chisenjere Second Grade Magistrate's Court denied the full extension and granted a remand extension of only 7 days.
- [52] He alleged that he was maliciously remanded at Chichiri Prison for an additional 7 days. He was subsequently released on court bail on 28<sup>th</sup> October, 2016 having been in police custody from 13<sup>th</sup> to 28<sup>th</sup> October, 2016 for a total of 16 days.
- [53] The trial continued until 20<sup>th</sup> February, 2017. The lower court found him with no case to answer and he was accordingly acquitted.
- [54] At all times, it was the defendant acting through its agents specifically, Mr. Salema, who insisted on proceeding with the trial, despite the clear absence of any evidence implicating him in the alleged theft. Furthermore, the defendant exercised undue influence over the investigative process by directing the police on how the trial should be conducted.

- [55] That the defendant acting through its agents instructed the police to take all possible measures to secure a conviction against the claimant regardless of the unavailability of evidence. This conduct demonstrates both a disregard for due process and a predetermined intent to implicate him without just cause.
- [56] The claimant testified that he verily believed that the defendant caused the police to arrest him, despite his clear innocence and lack of knowledge regarding the stolen plasma television and decoder. The defendant, through its representatives (Mr. Chisomo and Mr. Salema), instructed the police to arrest him without reasonable or probable cause or justification.
- [57] Before conducting any investigation or consulting him regarding the circumstances of the theft, the defendant instigated the police to arrest him. The defendant's accusations were based solely on speculation and circumstantial evidence without any supporting proof.
- [58] The claimant told the Court that he verily believed that if the defendant had conducted a thorough investigation, he was not going to be arrested or prosecuted in a court of law.
- [59] As a result of his incarceration, he suffered financial losses in his shoe-selling business. His wife was forced to sell the shoes at a significantly reduced price of K1,500 each, instead of the standard price of K5,000 in order to buy basic necessities at home such as food.
- [60] The claimant was also left with no choice but to sell his 20 bags of maize ordinarily valued at K200,000 for a drastically reduced total of K80,000, or

K4,000 per bag. In addition, he sold his radio valued at K14,000, for K5,000 to secure a sleeping place at Chichiri Prison from the “Nyapalas”. He was greatly traumatized.

[61] The claimant told the Court that he had never been formally dismissed from his employment; however, the last time he received payment was at the end of the month of October 2016. The company failed to support him during his trial and effectively constructively dismissed him by refusing to pay his salary during that period. In August 2017, the defendant paid him K112,000 without providing any explanation regarding the nature of that payment.

[62] Furthermore, the claimant testified that he has been unable to secure employment elsewhere because potential employers have labeled him a thief, a reputation that he believes was unjustly created and perpetuated by the actions of the defendant. He said this false stigma has severely damaged his professional prospects and livelihood.

[63] In addition, the individuals with whom he previously conducted business no longer trust him, as he is now perceived by the public as a thief. His friends and former colleagues have distanced themselves from him, treating him with suspicion and social exclusion due to the perception that he is a thief. This reputational damage is a direct consequence of his arrest, which was based on theft allegations initiated by the defendant that failed to be proved in court.

[64] The claimant told the Court that as head of the family who was publicly accused of theft, the reputational damage has extended beyond himself to the

entire family. Members of the community now view his family collectively as untrustworthy and associate them with criminal behaviour.

[65] It was his further testimony that the reputational damage to his family has significantly impaired their ability to engage with the community, as they are subjected to social exclusion and derogatory labels, including being referred to as ‘banja la kuba’ (the family of thieves). According to the claimant, such treatment constitutes a form of social stigma directly resulting from the defendant’s unfounded allegations.

[66] In cross examination, the claimant confirmed that he was claiming damages for false imprisonment, malicious prosecution, defamation, the sum of MK164,000.00 as special damages, exemplary damages and costs of the action.

[67] The claimant was unable to tell the Court who from the defendant published any defamatory words against him in the community where he lives.

[68] On special damages, the claimant told the Court that the money was not given to the defendant. It was used by the claimant’s wife.

[69] The claimant testified that the defendant did not tell the claimant’s wife to sell the shoes and maize at undervalued prices. The claimant confirmed that he had not brought any documentary evidence to support the claim for the sum of MK164,000.00.

- [70] Asked whether the claimant had ever suffered any theft, he told the Court that he did for three times even though he never reported the incidents to the police.
- [71] It was the claimant's position that it is normal for people to report to the police whenever they suffer theft.
- [72] The claimant told the Court that he was indeed employed as a security guard by the defendant.
- [73] When the theft occurred, it was Mr. Chisomo who reported the incident to the police through a telephone call.
- [74] At the time of reporting the incident, the claimant was in the guardroom at the gate. Asked to say the exact language that was used, he said that the academy had suffered a theft.
- [75] Mr. Chisomo did not mention any names of the people suspected to have committed the offence of theft to the police.
- [76] The claimant told the Court that they were four security guards that night that were on duty when the plasma television and decoder were stolen from the dining hall.
- [77] It was the claimant's testimony that the fence was indeed electrified and that it had not been switched off at any point during the night. However, the fence was broken into.

- [78] When the theft occurred, the claimant was at his designated station or area. The theft occurred at a different station, namely, the dining hall, which was being manned or guarded by Akimu Mtwiche.
- [79] The claimant told the Court that he remembered the detective who informed him that Mr. Salema had alleged that he switched off the electric fence. His name was Mr. Mailosi. However, the claimant stated that he would not be calling Mr. Mailosi as his witness.
- [80] It was the claimant's testimony that he was not present when Mr. Salema made the allegation that he had switched off the electric fence. The claimant does not know where Mr. Salema is currently based. Mr. Salema was the deputy security manager.
- [81] Asked how sure the claimant was that it was the defendant who wanted him to be in a two-week extension of his remand, he said it was because the defendant's agents had reported the incident to the police.
- [82] The claimant confirmed to the Court that the defendant did not prosecute him using private prosecutors. He was prosecuted by the State at the instigation of Mr. Salema.
- [83] Interrogated to explain how he knew that he was prosecuted at the instigation of the defendant's agent, Mr. Salema, he told the Court that his name was mentioned to the police by Mr. Salema.

- [84] It was Mr. Salema who told the police that the claimant had switched off the electric fence and that he should be locked up.
- [85] The claimant told the Court that investigations were carried out by the defendant.
- [86] It was the testimony of the claimant that he had not sued the defendant at the Industrial Relations Court for the employment/labour related aspects of his claim.
- [87] He was not aware that the Court could not assist him regarding the employment/labour related aspects of his claim.
- [88] Asked whether it was true that the claimant was unable to secure employment elsewhere because potential employers have labeled him a thief, he said it was.
- [89] The claimant confirmed to the Court that he was acquitted by the Chisenjere Second Grade Magistrate Court.
- [90] Interrogated why he was not showing the potential employers the judgment of the court that acquitted him, the claimant said that they look for a letter from the defendant, which he was never given. This testimony marked the end of cross examination.

- [91] In re-examination, the claimant explained to the Court that the shoes, radio and maize were sold at an undervalued price because he needed money to pay his lawyer who had applied for bail for him in court.
- [92] The sum of MK164,000.00 was actually paid to his lawyer.
- [93] The claimant explained that Mr. Chisomo was working for Kalibu Academy High School as a security manager. Similarly, Mr. Salema was working as deputy security manager.
- [94] The claimant told the Court that at Chileka Police Sub-station, he found Detective Mailosi who told him that Mr. Salema had alleged that he had switched off the electric fence. Further, Detective Mailosi told him to remove his belt and go into the police cell because the claimant's bosses had said so.
- [95] In his testimony, the claimant explained that his arrest had been caused by the defendant's agents who told the police that he had stolen a plasma television and a decoder.
- [96] The claimant testified that the defendant's agents did not carry out any investigation into the incident. They just reported the incident to the police.
- [97] The claimant told the Court that he has not been able to find any alternative employment because he is not trusted by potential employers. This is because of the actions of the defendant which resulted in his arrest and prosecution.

[98] The defendant called two witnesses in its defence.

[99] The first defence witness was Mr. Thomson David Mulingo. He told the Court that he was currently working as a boarding master for the defendant. He previously worked as a security manager and that he replaced the head of security immediately after the theft incident herein.

[100] He testified that he was reliably informed that on or about 11<sup>th</sup> October, 2016, two security guards, including the claimant were positioned at the boarding side of the defendant's premises close to the dining area.

[101] During the night, a theft occurred wherein a plasma screen and decoder were stolen from the dining hall which matter was then reported to the then head of security.

[102] The security manager proceeded to make a report to Chileka Police Sub-Station about the theft incident at the defendant's premises.

[103] Upon lodging the complaint at the police, the investigators using their skills and knowledge in solving crimes, proceeded to interrogate the claimant and another security guard who were on duty to determine what had happened on the night of the theft.

[104] According to the witness, after interrogating the two, they failed to provide convincing answers to the police officer and that is what consequently led to their arrest and prosecution. These sentiments were stated by the arresting officer who proceeded to prosecute them. A copy of the Judgment in

Criminal Case Number 284 of 2016 in the Chisenjere Second Grade Magistrate Court was exhibited and marked as, “TDM 1”.

[105] One of the two accused persons was found guilty and convicted by the said court while the other was acquitted.

[106] The defendant’s members of staff were called as witnesses and none of them hinted to the claimant or the other accused person as having stolen the items.

[107] In cross examination, the witness confirmed that he was a boarding master and that he was informed that on or about 11<sup>th</sup> October, 2016 two security guards including the claimant were positioned at the boarding side of the defendant’s premises close to the dining area.

[108] The witness further confirmed to the Court that his testimony was based on what he was told by someone else and therefore that the source of the information had not been disclosed.

[109] It was the testimony of the witness that he was not present when Mr. Chisomo was making a telephone call to the police to report the theft incident.

[110] The witness did not meet police officers who came to the school for investigation of the theft incident.

[111] Mr. Thomson David Mulingo was unable to tell the Court the identity of the security manager who allegedly made a report to the police.

[112] The witness was not present at the time the claimant and the other security guard were interrogated - whether at the defendant's premises or indeed at the police sub-station.

[113] He was not able to answer the question whether he could safely state that the police used their skills and knowledge in solving crimes when he was not present at the time the claimant and the other security guard were interrogated which led to their arrest and prosecution.

[114] Asked why the claimant was arrested by the police when none of the defendant's members of staff who were called as witnesses in the criminal case hinted to the claimant as having stolen the items, he told the Court that it was because the defendant reported the theft incident and the claimant was one of the security guards who were manning the area where the theft occurred.

[115] The witness told the Court that Mr. Salema was alive. He confirmed that Mr. Salema was one of the witnesses in the criminal case that was brought against the claimant in the lower court and that the claimant was acquitted by the court.

[116] Mr. Thomson David Mulingo conceded that the defendant did not convince himself that the claimant was indeed involved in the theft incident.

[117] In re-examination, the witness told the Court that the claimant was called to go to Chileka Police Sub-Station at the instance of the police themselves.

[118] He testified that he was a competent witness in this case because he came to his current position way back in the year 2018 and took over all the files concerning this case.

[119] He stated that the sources of his information were Mr. Salema and other officers whom he did not mention and the files at the office.

[120] The witness read a paragraph from the lower court's judgment which stated as follows: "He stated that he asked the first accused, on how come that the window was opened from inside, when the doors were closed; he stated that he was not given a convincing answer".

[121] Mr. Thomson David Mulingo testified that the security manager that he was referring to was Mr. Chisomo.

[122] The second defence witness was No. A9866, Detective Sub-Inspector Chris Kaliya, an attested member of the Malawi Police Service. He told the Court that he was currently based at Limbe Police Station.

[123] The witness testified that he recalls that he was the officer on duty on the day of the incident. He was a lead investigator and an arresting officer in the criminal case that was brought against Akimu Mtwiche and the claimant herein. He worked together with Detective Mailosi in the case.

[124] He told the Court that on 11<sup>th</sup> October, 2016, his office received a report from the security manager of the defendant that there had been a theft incident at the defendant's school premises.

[125] Mr. Chris Kaliya informed the Court that the security manager did not mention any names to the police of any suspects among the defendant's employees.

[126] Upon receiving that report, he visited the crime scene and carried out investigations using skills and knowledge in solving crimes and proceeded to interrogate the claimant and another security guard.

[127] After interrogating the two security guards, they were unable to provide convincing answers which consequently led to their arrest and prosecution.

[128] After trial was concluded at Chisenjere Second Grade Magistrate Court, one of the two security guards was convicted and the other was acquitted. He gave in evidence a copy of the Judgment in Criminal Case Number 284 of 2016 by the said court and it was marked as exhibit, "CK 1".

[129] In cross examination, Mr. Chris Kaliya told the Court that he had worked with the Malawi Police Service for 21 years. The training that he received in investigation was the basic police course as well as criminal investigation department training.

[130] Mr. Chris Kaliya testified that when he said they received a report of the theft incident from the defendant, he meant, Chileka Police Sub-Station and not him and Mr. Mailosi as persons or individuals.

[131] The witness did not directly receive the report of the theft incident as an individual. He confirmed to the Court that Chileka Police Sub-Station does

not have a dedicated telephone line for receiving reports or complaints from the public.

[132] In this case, the security manager went to Chileka Police Sub-Station to report the theft incident. The security manager, Mr. Salema, was accompanied by Mr. Charles Steven also known as Mr. Chisomo.

[133] The report was made on 11<sup>th</sup> October, 2016 between 08:00 and 08:30a.m. and the claimant did not accompany the two managers to the police.

[134] The witness testified that he then took a decision to visit the scene of the incident. When he arrived at the defendant's premises, he did not find the claimant. He only found Akimu Mtwiche.

[135] Mr. Chris Kaliya told the Court that he inquired why the claimant was not present. The explanation given by Mr. Chisomo was that the dining hall area was not his section.

[136] The witness testified that the claimant was later on invited to Chileka Police Sub-Station for interrogation after a day.

[137] As such, the claimant and Mr. Akimu Mtwiche were arrested on different dates. In the case of the claimant, during the interrogation, he exercised the right to remain silent.

[138] After full investigations, none of the two accused persons was found with the plasma television and the decoder.

[139] At the end of the trial, the claimant was finally acquitted by the lower court.

[140] The witness stated that the right to remain silent was a convincing answer because it is protected under the Constitution.

[141] Mr. Chris Kaliya was unable to say to the Court which part of the evidence or testimony that was given in court against the claimant was unconvincing.

[142] In re- examination, Mr. Chris Kaliya told the Court that he was the one who effected the arrest on the claimant. He could not remember whether indeed the claimant exercised the right to remain silent as it has been years since the case took place.

[143] Mr. Chris Kaliya could not produce the statements that were recorded from the claimant because they were given in evidence in the lower court. This marked the end of the defence case.

### **Analysis and Application of the Law to the Facts**

[144] The Court would like to sincerely thank advocates on both sides for their industry in conducting research in this matter and filing submissions and making available to the Court all authorities relied upon in their submissions.

[145] The first issue that the Court has to grapple with is whether the claimant was maliciously prosecuted by the State at the instigation of the defendant.

[146] As we have seen, the tort of malicious prosecution arises where a person, without reasonable and probable cause and acting with malice, initiates judicial proceedings against another which ultimately terminate in that person's favour and result in damage to his reputation, liberty, person or property.

[147] The claimant herein testified that he was assigned to work at Kalibu Academy High School. His duty was to safeguard the company's property. His section was boy's hostels, the water pump area and teachers' residences.<sup>25</sup>

[148] At the time that he was starting his shift on 11<sup>th</sup> October, 2016 an inspection of this section was carried out by both the claimant and the deputy security manager and everything was in order.<sup>26</sup> This was one of the standard procedures.

[149] The fact that the claimant was assigned to guard the boy's hostels, the water pump area and teachers' residence was also confirmed by the defendant's second witness, Mr. Chris Kaliya.

[150] Mr. Chris Kaliya testified that when he visited the scene of the crime, he did not find the claimant on the premises. The visit took place on the morning of 12<sup>th</sup> October, 2016. When he inquired why that was so, Mr. Charles Steven (also known as Mr. Chisomo) explained that he had allowed him to go home

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<sup>25</sup> See Paragraph 37 above.

<sup>26</sup> See Paragraph 38 above.

and rest as the theft incident did not take place in the section that the claimant was guarding.<sup>27</sup>

[151] It was the evidence of the claimant that the dining hall section where the theft of the plasma television and decoder took place was being guarded by Mr. Akimu Mtwiche.<sup>28</sup> That would also explain why the security manager did not allow Mr. Akimu Mtwiche to go home on the morning of 12<sup>th</sup> October, 2016.

[152] In view of the foregoing, the question is: why was the claimant arrested and prosecuted?

[153] The claimant testified that at Chileka Police Sub-Station, Mr. Salema alleged that it was him (the claimant) who had switched off the electric fence and thereby facilitated the theft. Mr. Salema further identified the claimant as one of the individuals who was responsible for stealing the plasma television and the decoder.<sup>29</sup>

[154] On the other hand, Mr. Chris Kaliya, the second witness for the defendant testified that the security manager did not mention any names of suspects from the defendant's employees.<sup>30</sup>

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<sup>27</sup> See Paragraph 135 above.

<sup>28</sup> See Paragraphs 39 and 78 above.

<sup>29</sup> See Paragraph 48 above.

<sup>30</sup> See Paragraph 125 above.

[155] The security manager, Mr. Salema, testified in the criminal case in the lower court. He is still alive. He was one of the persons who was involved in this case.<sup>31</sup> The Court wonders why the defendant did not see the need to call him as its witness in this case when he was clearly implicated by the claimant.

[156] For that failure to call Mr. Salema as one of the defendant's witnesses, the Court is more inclined to believe the version of the claimant that it was Mr. Salema who told the police that the claimant had switched off the electric fence and that he was responsible for stealing the plasma television and the decoder.

[157] There is another reason. Mr. Chris Kaliya testified that when the police received the report about the theft incident, he took a decision to visit the crime scene.

[158] When he arrived at the defendant's school premises, he told the Court during cross examination that he did not find the claimant. By that time, the claimant had been allowed to go home and rest by the security manager because it was not his section where the theft had occurred.<sup>32</sup>

[159] It was the testimony of the claimant that on the night on which the theft took place, there were four security guards on duty.<sup>33</sup> This begs the question:

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<sup>31</sup> See Paragraph 115 above.

<sup>32</sup> See Paragraphs 134 and 135 above.

<sup>33</sup> See Paragraph 76 above.

Why did Mr. Chris Kaliya only ask about the claimant and not the other two security guards who were manning the girls' hostels if no one had mentioned his name to the police?

[160] It will be recalled that on the morning of 12<sup>th</sup> October, 2016 the claimant was taken to the police along with Akimu Mtwiche. He was never interrogated by the police. He was allowed to go home and rest while Akimu Mtwiche was arrested and placed in custody.<sup>34</sup>

[161] The inescapable conclusion to be drawn from all this is that the police did not see the need to interrogate and arrest the claimant, let alone prosecute him. This is understandable because at the time that the theft took place, the claimant was at his station.

[162] It was Akimu Mtwiche who went to the claimant's station to tell him about the theft. At the police, the claimant gave no statement because he knew nothing about the theft incident and exercised his right to remain silent. The Court has no reason to disbelieve the claimant on this testimony.

[163] Mr. Chris Kaliya testified that after interrogating the two security guards, they were unable to provide convincing answers which consequently led to their arrest and prosecution.<sup>35</sup>

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<sup>34</sup> See Paragraph 46 above.

<sup>35</sup> See Paragraph 127 above.

[164] However, Mr. Chris Kaliya was unable to tell the Court during cross examination which part of the evidence or testimony levelled against the claimant in the criminal case was unconvincing according to him.<sup>36</sup>

[165] It will be recalled that the claimant was told by Mr. Chisomo that his presence was required again at the police. The question is: Why should it be Mr. Chisomo doing that when the claimant was at the police the previous day and was not interrogated and was told to go home and rest by the same police officers?

[166] The evidence in this Court does not show that anyone saw the claimant switch off the electric fence. Actually, the evidence shows that the theft took place while the electric fence was still electrified, notwithstanding that it was broken into. The claimant testified that during handovers, the switch was still on.<sup>37</sup>

[167] The testimony of Thomson David Mulingo was mostly based on hearsay evidence. The greater part of it is not competent and the Court cannot place any probative value on it.

[168] It is trite law that failure to call a material witness entitles the Court to assume that his testimony would have been adverse to the party that failed to call him. In the circumstances of this case, Mr. Salema should have been called as a witness for the defendant.

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<sup>36</sup> See Paragraph 141 above.

<sup>37</sup> See Paragraph 77 above.

[169] The totality of the evidence before the Court shows that the claimant was prosecuted by the police but at the instigation of the defendant. Mr. Salema did not only report the theft incident to the police. He laid a charge against the claimant that he had facilitated the theft by switching off the electric fence and that is why the police recalled him and arrested him.

[170] Yet, there was no proof that the claimant had switched off the electric fence. The stolen plasma television and decoder were not found with the claimant.<sup>38</sup> Worse still, the defendant did not carry out any internal investigations to satisfy itself that the claimant was involved in the theft.

[171] Nevertheless, the defendant persisted with prosecution of the claimant including its agents testifying in the criminal case against him when there was hardly any evidence linking him to the theft. There can be no further evidence of malice than this type of conduct on the part of the defendant.

[172] The prosecution of the claimant ended in his favour. The claimant was acquitted of the charge of theft by servant, an offence that is contrary to section 286 of the Penal Code as read with section 271 of the Penal Code.<sup>39</sup> Both defence witnesses were aware of this outcome.

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<sup>38</sup> See Paragraph 138 above.

<sup>39</sup> Cap. 7:01 of the Laws of Malawi.

[173] In view of all the foregoing, it is the firm view of this Court that the prosecution of the claimant lacked reasonable and probable cause. The first issue is therefore resolved in favour of the claimant.

[174] The second issue which the Court has to deal with is whether or not the claimant was falsely imprisoned and deprived of his liberty between 13<sup>th</sup> to 28<sup>th</sup> October, 2016 by the State at the instigation of the defendant?

[175] It is the position of the law that if a person by his actions and utterances led the police to detain and charge an otherwise innocent person to court, he is liable for false imprisonment and malicious prosecution.<sup>40</sup>

[176] Further, where a report is made falsely and maliciously against a person to the police, the victim is entitled to claim damages from the accuser and does not always need to join the police or the State to the action or proceeding.<sup>41</sup> He retains the right to pursue his or her claims against the accuser only, if he so elects as it happened in this case and numerous others including some cited herein.

[177] In view of all the reasons given in the resolution of the first issue, it is the Court's finding that the claimant was falsely imprisoned and deprived of his liberty between 13<sup>th</sup> to 28<sup>th</sup> October, 2016 by the State at the instigation of the defendant. This takes the Court to the third issue.

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<sup>40</sup> See *Mainstreet Bank (Nigeria) Plc –vs- Egwu* (2015) 15 NWLR Part 1482 page 336 at 350 Para E, Per Orji-Abadua, JCA.

<sup>41</sup> See for instance, *Okafor –vs- Abumufuani* (2016) 12 NWLR Part 1525 page 117 at 140 Para C-D, Per Sanusi JSC.

[178] The third issue that the Court has to grapple with is whether or not the claimant was defamed as a result of the arrest and prosecution by the State at the instigation of defendant?

[179] Defamation is not confined solely to the publication of words. It may also arise through acts or activities or conduct. These may convey defamatory imputations if they lead right thinking members of society to form a negative opinion about the subject. This position has been affirmed by no lesser a court than the Supreme Court of Appeal.<sup>42</sup>

[180] It is a well-established principle that arrest and detention especially where they lack lawful justification may give rise not only to claims for false imprisonment, malicious prosecution but also defamation. The authority for this proposition, among many others, is *Malimwe –vs- First Capital Bank Limited*.<sup>43</sup>

[181] It was the testimony of the claimant that he has been unable to secure employment elsewhere because potential employers have labeled him a thief, a reputation that has come about as a result of the actions of the defendant. He said this false stigma has severely damaged his professional prospects and livelihood.<sup>44</sup>

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<sup>42</sup> n15 above.

<sup>43</sup> Civil Cause No. 240 of 2019, (High Court of Malawi) (Zomba District Registry) (Unreported).

<sup>44</sup> See Paragraph 62 above.

[182] Similarly, individuals with whom he previously conducted business, no longer trust him, as he is now perceived by the public as a thief. His friends and former colleagues have distanced themselves from him, treating him with suspicion due to the perception that he is a thief. This reputational damage is a direct consequence of his arrest, which was based on theft allegations initiated by the defendant that failed to be proved in court.<sup>45</sup>

[183] In addition, the claimant told the Court that as the head of the family who was publicly accused of theft, the reputational damage has extended beyond himself to the entire family. Members of the community now view his family collectively as untrustworthy and associate them with criminal behaviour.<sup>46</sup>

[184] This has significantly impaired their ability to engage with the community, as they are subjected to social exclusion and derogatory labels, including being referred to as the family of thieves. Such treatment constitutes a form of social stigma directly resulting from the defendant's unfounded allegations.<sup>47</sup>

[185] During cross examination of the claimant by the defendant's Advocate Mr. Kamkwasi, the claimant was unable to tell the Court who from the defendant published any defamatory words against him.<sup>48</sup>

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<sup>45</sup> See Paragraph 63 above.

<sup>46</sup> See Paragraph 64 above.

<sup>47</sup> See Paragraph 65 above.

<sup>48</sup> See Paragraph 67 above.

[186] Even if one was to take the acts of arrest and prosecution in themselves as conveying defamatory imputation, the questions would still be: Was there evidence that the claimant had failed to secure employment elsewhere as a result of these acts?

[187] Was there evidence laid before the Court from any friends or colleagues of the claimant with whom he used to conduct business that they no longer trust him because of the arrest and prosecution?

[188] Was there evidence from any member of the claimant's family that as a family they are being viewed as untrustworthy and associated with criminal behaviour by their community?

[189] A reasonable employer, friend, colleague or member of the community informed about criminal cases would not just go by acts of arrest and prosecution of the claimant alone. They would have to go further and inquire about what the outcome of the prosecution was.

[190] At that point they would learn that the claimant was acquitted by the Chisenjere Second Grade Magistrate Court and that there is not only a judgment to that effect, but also a reference letter by the same court confirming the acquittal. Both of these, may be used to demonstrate the unimpaired possession of the claimant's reputation and good name.

[191] All in all, all the three questions above on this issue must be answered in the negative as there was no evidence laid before the Court to prove those

allegations. No witnesses were called by the claimant on all these allegations.

[192] The evidence of the claimant alone is insufficient to prove the tort of defamation, whether by words or acts or activities or conduct. The Court is not satisfied that this issue has been proved on a balance of probabilities. This aspect of the claim must therefore fail and it is dismissed.

[193] The fourth issue that the Court must address is whether or not the claimant is entitled to aggravated and exemplary damages for malicious prosecution, false imprisonment and defamation.

[194] The first point to note is that the claimant did not plead aggravated damages in his statement of case. He only pleaded exemplary damages. The claimant also confirmed this fact to the Court during cross examination.<sup>49</sup> Aggravated damages only came up in the claimant's skeleton arguments and submissions.

[195] That, cannot be allowed. It is trite that parties and the Court are bound by their statements of case and the issues joined therein. In that regard, the Court must always be on its guard so as not to deviate from the case made by each party in the statements of case, otherwise, it will unwittingly be making for parties, an entirely new case.

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<sup>49</sup> See Paragraph 66 above.

[196] Parties are not allowed to embark on a wild chase of issues, or of reliefs, which they either forgot or inadvertently omitted to raise in their statements of case without due amendment properly made.<sup>50</sup>

[197] Reverting to exemplary damages, courts award these only in rare and exceptional cases where the defendant's conduct is malicious, fraudulent, oppressive, or recklessly indifferent to the rights and freedoms of others.

[198] The second point to be made is that the Court is not satisfied that the facts of this case warrant the award of exemplary damages. The waywardness that occurred in this case is not the type that would make the Court award exemplary damages for at least two reasons.

[199] First, the defendant did not act spitefully towards the claimant through and through. There was an attempt on the part of Mr. Chisomo to get the claimant out of the criminal case. He did not mention any names of suspects to the police when reporting the theft incident. He allowed the claimant to go home and rest on 12<sup>th</sup> October, 2016 as he believed that the claimant had nothing to do with the commission of the offence that had occurred.

[200] It was clear to the Court that the two security managers for the defendant seemed to work at cross-purposes in the manner in which they handled the claimant's case. While Mr. Chisomo appeared to be convinced that the claimant was not in the wrong, Mr. Salema was not and had a totally different agenda. Mr. Salema who was the deputy security manager

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<sup>50</sup> *Commissioner General of the Malawi Revenue Authority –vs- Mtanga* [2019] 1 MLR 119 (SCA).

appeared to be overriding the position taken by his boss, the security manager.

[201] Second, while it is acknowledged that this Court has nothing to do with the employment or labour aspects of the claim, the evidence does show that for the less than one year that the claimant worked for the defendant, he was paid his terminal dues, notwithstanding that the payment was not accompanied by a clear breakdown.

[202] Finally, the claimant states that he claims special damages to the tune of MK164,00.00 being the actual loss for disposing off his property to apply for court bail. As we have seen, the law requires that special damages must be specifically pleaded and strictly proved.

[203] This sum was no doubt pleaded in the claimant's statement of case. However, it was not isolated as one of the issues to be dealt with by the parties and the Court during the scheduling conference.

[204] The Court felt duty bound to still deal with it. The claimant laid no evidence before the Court to strictly prove that it was actually spent by the claimant on his legal practitioner. As noted by Advocate Mr. Kamkwasi during cross examination of the claimant, he did not produce in evidence any document to support the claim.

[205] As my learned brother, Kenyatta Nyirenda J has observed before, the law is the law.<sup>51</sup> It must always be followed and upheld by the Court. The Court therefore dismisses this aspect of the claim as well.

[206] Costs are awarded in the discretion of the Court as is provided by law. The claimant has succeeded in two of his major aspects of the claim and has also failed on two other aspects. In view of this, the Court is of the considered view that each party should bear its own costs of this action. It is so ordered.

### **Finding and determination**

[207] In view of the foregoing, it is this Court's finding and determination that the claimant's arrest was indeed instigated by the defendant. It is also the Court's finding that the claimant was maliciously prosecuted by the State at the instigation of the defendant.

[208] The Court also finds and determines that the claimant was falsely imprisoned and deprived of his liberty from 13<sup>th</sup> to 28<sup>th</sup> October, 2016.

[209] The aspects of the claim for defamation, aggravated and exemplary damages for malicious prosecution, false imprisonment and defamation and special damages have failed. Each party shall bear its own costs.

[210] The claimant shall be compensated by the defendant for ordinary damages for malicious prosecution and false imprisonment only. The Registrar of the

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<sup>51</sup> See *The State (On application of Lin Xiaoxiao & 9 Others –vs- The Director General – Immigration and Citizenship Services & The Attorney General Judicial Review Cause No. 19 of 2020 (High Court of Malawi) (Lilongwe District Registry) (Unreported).*

Civil Division shall assess damages payable unless the parties shall earlier agree on the same.

[211] Any party dissatisfied with this judgment has a right to appeal to the Supreme Court of Appeal but after damages payable to the claimant have been assessed<sup>52</sup> or agreed by the parties, as the case may be.

[212] Made in open court this 15<sup>th</sup> day of May, 2026 at Blantyre, Malawi.



**M. D. MAMBULASA**  
**JUDGE**

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<sup>52</sup> See generally *Premiun Tama –vs- F. Mambala and others* Civil Appeal No. 72 of 2016 (Supreme Court of Appeal for Malawi) (Unreported), *JTI Leaf (Malawi) Limited -vs- Kad Kapachika*, MSCA Civil Appeal No. 52 of 2016 (Sitting at Lilongwe) (Unreported), *Toyota Malawi Limited -vs- Jacques Mariette*, MSCA Civil Appeal No. 62 of 2016 (Unreported).