

**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
 (CIVIL JURISDICTION)

**2022/HP/1954**



**BETWEEN:**

**AGNESS MANKUWE**  
**PARTNESS HICHIBANGU**  
**PRECIOUS AONGOLA**  
**MATRON MILIMO**  
**TAISA CHIVUBWE**  
**CIINDY SHATUMBU**  
**RACHEAL PHIRI**  
**CAROLINE HANJOBA**  
**BENNIPHATE MUTELO**  
**YVONNE MULEMELI**  
**JUDY TAKULI**

**1<sup>ST</sup> PLAINTIFF**  
**2<sup>ND</sup> PLAINTIFF**  
**3<sup>RD</sup> PLAINTIFF**  
**4<sup>TH</sup> PLAINTIFF**  
**5<sup>TH</sup> PLAINTIFF**  
**6<sup>TH</sup> PLAINTIFF**  
**7<sup>TH</sup> PLAINTIFF**  
**8<sup>TH</sup> PLAINTIFF**  
**9<sup>TH</sup> PLAINTIFF**  
**10<sup>TH</sup> PLAINTIFF**  
**11<sup>TH</sup> PLAINTIFF**

**AND**

**THE ATTORNEY GENERAL**

**DEFENDANT**

**BEFORE HON. JUSTICE E. P. MWIKISA**

**FOR THE PLAINTIFF: MRS L. NANKAMBA KALUBA WITH MS. R. TEMBO**  
**OF MESDAMES MUSHIP& ASSOCIATES**  
**FOR THE DEFENDANTS: NIL**

---

## **JUDGMENT**

---

### **Cases Referred To:**

- 1) *Masauso Zulu vs. Avondale Housing Projects* (1982) ZR 172

- 2) *Anderson Kambela Mazoka and Others vs. Levy Patrick Mwanawasa and Others* (2005) ZR 138
- 3) *Anti-Corruption vs. Charles Sambundu SCZ Appeal No. 054/2013*
- 4) *Joseph Mulenga and Another vs. The People* (2008) ZR1
- 5) *Attorney General vs. Kakoma* (1975) ZR 2012
- 6) *Khalid Mohammed vs. Attorney General* 1982 ZR 49
- 7) *Stapley vs. Annets and Another* [1969] 3 ALL E.R. 1541.
- 8) *Hicks vs. Faulkner* [1881] Q.B.D 167.
- 9) *Mbanga vs. Attorney General* (1979) Z.R. 234.
- 10) *Richman Chulu vs. Monarch (Z) Limited* (1981) ZR33
- 11) *Attorney General and Others vs. Phiri Appeal No. 161/2014(2017) ZMSC*
- 12) *Attorney General vs. Felix Chris Kaleya* (1982) ZR 1(SC)
- 13) *China Henan International Development Corporation Limited vs. Victor Chewa Appeal No. 55A/2011*

#### **Other Works Referred To;**

- 1) *Halsbury's laws of England vol. 97 5th Edition*
- 2) *Margaret Brazier, in Street on Torts, Ninth Edition, (London, Butterworths, 1993)*
- 3) *Clerk and Lindsell on Torts, Twentieth Edition, (Thomson Reuters (Legal) Limited, 2010)*
- 4) *Clerk and Lindsell on Torts 20th edition, Sweet and Maxwell 2010*
- 5) *McGregor on damages, 18th edition, Sweet and Maxwell*

### **1. Introduction and Background.**

1.1 The Plaintiffs herein commenced this action on 9<sup>th</sup> December 2022. On 10<sup>th</sup> January 2023, they filed a notice to enter judgment in default of appearance and defence against the Defendant of which the application was not granted on the basis that there were triable issues that could only be determined at trial.

1.2 There was a hearing on 9<sup>th</sup> March 2023, in which this Court advised the Plaintiffs to amend their Statement of Claim so as to give proper clarity on the dates pertaining to the occurrences of the events. The Plaintiffs were granted the application to amend the Originating process.

1.3 The amended Statement of Claim was filed on 1<sup>st</sup> November 2023, the Plaintiffs were claiming for the following reliefs;

- a) **Compensation for false imprisonment and malicious prosecution in the sum of ZMW8,250,000.00;**
- b) **Compensation for loss of business, expected earnings and income in the sum of ZMW85,595.00;**
- c) **Compensation for legal fees in the sum of ZMW300,000.00;**
- d) **Damages for mental anguish, turmoil and distress suffered by the Plaintiffs as a result of the malicious prosecution in the sum of ZMW2,000,000.00;**
- e) **General damages for physical hurt occasioned by the Defendant's agents;**
- f) **Aggravated damages for torture and brutality committed by the Defendant's agents;**
- g) **Damages for defamation of character;**
- h) **An order for interest on the sums found due;**
- i) **An order for costs incidental to the proceedings;**
- j) **Any other relief that the Court deems fit.**

1.4 The Defendant has not contested the action.

## **2. The Plaintiff's Statement of Claim**

- 2.1 It was stated therein that the Plaintiffs herein, were members of the United Party for National Development (UPND). That on 15<sup>th</sup> December 2016, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Plaintiffs went to offer solidarity to the then opposition leader of the UPND party, President Hakainde Hichilema at the High Court during the Presidential Petition while the 7<sup>th</sup> Plaintiff was simply passing by the High Court. After hearing of the Petition, President Hakainde Hichilema went outside the Court to address his members. That the police pounced on the members and started spraying tear gas which resulted in the scampering of the members in different directions. That the police managed to apprehend the plaintiffs and put them in the land cruiser, after which they were arrested and charged with the offence of riotous behavior.
- 2.2 That the 1<sup>st</sup> Plaintiff was badly beaten by the police as they used short buttons, guns, and combat belts and was threatened with a knife. That the police also stripped off her dress, cut her waist beads, and tore her underwear.
- 2.3 It was further averred that they were taken to Kabwata Police Station where they were detained from the 15<sup>th</sup> December

2016, to the 18<sup>th</sup> December 2016, and were later taken to Lusaka Central Correction Facility where they spent a night in custody and were released the next day on the 20<sup>th</sup> December 2016.

2.4 That the Plaintiffs were prosecuted by undergoing a lengthy and undesirable trial under case No. 2SPA/174/2016, which resulted in them being acquitted on 12<sup>th</sup> September 2017.

2.5 That due to prolonged detention, the 3<sup>rd</sup> Plaintiff's health was badly affected, and this resulted in her contracting tuberculosis (TB).

2.6 Furthermore, the Plaintiffs averred that they were falsely imprisoned and maliciously prosecuted as the only offence they committed was being members of the UPND. That the arrest and investigations were effected brutally and horrifyingly. Thus, the Plaintiffs suffered aggravated assault and damages.

***Particulars of aggravated damages***

- 1) Infliction of severe and deliberate pain;**
- 2) Use of prohibited instruments of torture for the purpose of inflicting unbearable pain;**

- 3) **Psychological intimidation and infliction of torture by police officers against defenseless and non-violent suspects; and**
- 4) **Detention at Kabwata police station cell which was extremely filthy, cold, without water or toilet and hindering the Plaintiffs' relatives from bringing them warm clothes and blankets thereby inflicting excessive punishment on the Plaintiffs before they were proven guilty by any competent court of law.**

2.7 The Plaintiffs averred that the Defendant's investigations and prosecution lacked reasonable or probable cause as the allegations leveled against them were impracticable, baseless, malicious, and politically motivated.

***Particulars of false imprisonment and malicious prosecution***

- 1) **Arresting and detaining the Plaintiffs before investigations;**
- 2) **Arresting and detaining the Plaintiffs for no probable cause;**
- 3) **Failure to inform the Plaintiffs of the offence charged with at the time of arrest; and**
- 4) **Unreasonable delay to present the Plaintiffs before the Court.**

2.8 The Plaintiffs that despite the acquittal, the arrest and prosecution resulted in economic and massive losses in their business and extreme damages.

***Particulars of special damages***

- 1) Loss of business for the 1<sup>st</sup> Plaintiff for ZMW 5,143.00 per day in the fish business, multiplied by the 5 days spent in police custody, brings the total to ZMW 10,715.00;
- 2) Loss of business for the 2<sup>nd</sup> Plaintiff in the sum of ZMW150.00 per day in the clothes business multiplied by 5 days spent in police custody brings the total to ZMW 750.00;
- 3) Loss of business for the 3<sup>rd</sup> Plaintiff in the sum of ZMW3,500.00 per day in the saloon business multiplied by the 5 days spent in police custody brings the total to ZMW17,500.00;
- 4) Loss of business for the 4<sup>th</sup> Plaintiff in the sum of ZMW100.00 per day in the secondhand clothes business multiplied by the 5 days spent in the police custody brings the total to ZMW500.00;
- 5) Loss of business for the 5<sup>th</sup> Plaintiff in the sum of ZMW150.00 per day in the secondhand clothes business multiplied by the 5 days spent in the police custody, which brings the total to ZMW750.00;
- 6) Loss of salary earning for the 6<sup>th</sup> Plaintiff in the sum of ZMW2,500.00 per month as a fuel attendant at Mount Meru Filling Station where she worked in three locations along Kafue Road, Mungwi Road and Eastern Province multiplied by 12 months only, for more than 6 years spent unemployed due to the 5 days spent in police custody brings the total to ZMW30,000.00;
- 7) Loss of business for the 7<sup>th</sup> Plaintiff for the 250 chickens valued at ZMW90 each in the poultry farming business during the 5 days spent in police custody brings the total to ZMW22,500.00;
- 8) Loss of business for the 8<sup>th</sup> Plaintiff in the sum of ZMW143.00 per day in the second-hand clothes business multiplied by 5 days spent in police custody brings the total to ZMW715.00;
- 9) Loss of business for the 9<sup>th</sup> Plaintiff in the sum of ZMW333.00 in the market business of selling tomatoes, charcoal, vegetables, and fish multiplied by

the 5 days spent in custody brings the total to ZMW1,665.00;

- 10) Loss of business for the 10<sup>th</sup> Plaintiff in the sum of ZMW100.00 per day in the hairdressing business multiplied by 5 days spent in police custody brings the total to ZMW500.00; and
- 11) Legal fees expended on defence counsel for 98 days of imprisonment and malicious prosecution totaling ZMW300,000.00.

2.9 Furthermore, the Plaintiffs stated that premised on the arrest, detention, investigation, and prosecution, they suffered emotional distress, pain of body and mind, grave injuries to their reputation, inconveniences, and disturbance of the even tenor of their lives.

### ***Particulars***

- 1) The Plaintiffs' reputation has suffered great injury in that the public in general perceives them to be associated with lawlessness of the highest level in Zambia;
- 2) As a result of the broken reputation, the Plaintiffs have been deprived of an opportunity to earn a reasonable living; and
- 3) The Plaintiffs have suffered stress and hardships to rebuild their lives and to earn trust and confidence by the business community and general members of society.

## **3. The Defendants Defence**

**3.1** The Defendant did not contest this action

#### **4. Trial**

- 4.1 The matter came up on 11<sup>th</sup> March 2024. Counsel for the Plaintiff was in attendance. There was no attendance on the part of the Defendant.

#### **5. The Plaintiffs' Case**

- 5.1 The Plaintiffs called ten (10) witnesses to prove their case

***Testimony of Taisa Chivubwe a business woman, (PW1)***

- 5.2 Her evidence in chief as contained in her witness statement dated 16<sup>th</sup> February 2024, was admitted into evidence.

***Testimony of Racheal Phiri a business woman (PW2)***

- 5.3 Her evidence in chief as contained in her witness statement date 16<sup>th</sup> February 2024, was admitted into evidence.

***Testimony of Caroline Hanjoba a business lady (PW3)***

5.4 Her evidence in chief as contained in her witness statement dated 16<sup>th</sup> February 2024, was admitted into evidence.

***Testimony of Patness Hichibangu (PW4)***

5.5 Her evidence in chief as contained in her witness statement dated 16<sup>th</sup> February 2024, was admitted into evidence.

***Testimony of Benniphate Mutelo (PW5)***

5.6 Her evidence in chief as contained in her witness statement dated 16<sup>th</sup> February 2024, was admitted into evidence.

***Testimony of Matron Milimo (PW6)***

5.8 Her evidence in chief as contained in her witness statement dated 16<sup>th</sup> February 2024, was admitted into evidence.

***Testimony of Agness Mankuwe (PW7)***

5.9 Her evidence in chief as contained in her witness statement dated 16<sup>th</sup> February 2024, was admitted into evidence.

***Testimony of Yvonne Mulemeli (PW8)***

5.10 Her evidence in chief as contained in her witness statement dated 16<sup>th</sup> February 2024, was admitted into evidence.

***Testimony of Precious Aongola (PW9)***

5.11 Her evidence in chief, as contained in her witness statement dated 16<sup>th</sup> February 2024, was admitted into evidence.

**6. The Plaintiffs' Written Submission**

6.1 Counsel submitted that the Plaintiffs bear the burden of proving their claims on a balance of probabilities. The cases of **Masauso Zulu vs. Avondale Housing Projects<sup>1</sup>** and **Anderson Kambela Mazoka and Others vs. Levy Patrick Mwanawasa and Others<sup>2</sup>** were cited to the effect that he who alleges must prove and that "a plaintiff who has failed to prove his case cannot be

entitled to judgment, whatever may be said of the opponents case". Counsel argued that the Plaintiffs have discharged their burden as they have adduced evidence during trial to prove that they are entitled to the reliefs sought as outlined in their statement of claim.

6.2 Furthermore, counsel submitted that the plaintiffs have adduced documentary evidence to show that they were arrested, prosecuted and acquitted.

6.3 It was argued that the Defendant did not have reasonable and probable cause to arrest the plaintiffs as there was no evidence to warrant that action. Section 26 of the Criminal Procedure Code, Chapter 88, of the Laws of Zambia, was cited to reinforce the position that an arrest can only be effected if the police officer has reasonable and probable cause to do so. Counsel submitted that by ruling depicted on pages 7-21 of the plaintiff's supplementary bundle of documents, it shows that the police were aware of the fact that the plaintiffs were not the culprits, but the police still went ahead to effect arrest. The case of **Anti-Corruption Commission vs. Charles Sambundu SCZ Appeal No. 054/2013**<sup>3</sup> where the Supreme Court stated that:

***“Reasonable and probable cause for a prosecution has been said to be an honest belief in the guilty of the accused based upon a full conviction founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.....”***

6.4 Furthermore, it was submitted that the Defendant omitted to carry out investigations before deciding to arrest the plaintiffs, as investigations are the most important stages. To fortify this position, the case of **Joseph Mulenga and Another vs. The People (200\* ZR 1<sup>4</sup>** where it was held that:

***“Investigations are the most important stages in criminal offences and should be done thoroughly and cautiously as it is not the court’s duty to fill the gaps in the state’s case but it is for the state, to adduce all evidence to prove all material particulars of the offence charged beyond all reasonable doubt in a fair manner”.***

6.5 With regard to malicious prosecution, it was submitted that for malicious prosecution to succeed, the onus is placed on the plaintiffs to prove the five elements as outlined in the case of **Anti-Corruption Commission vs. Charles Sambundu<sup>3</sup>** Supra.

To buttress this arrangement, Counsel argued that as per ruling

on pages 7-21 of their bundle of documents, the Plaintiffs herein have satisfied all the five elements thus, they have proved malicious prosecution.

6.6 With regards to loss and damage, counsel argued that the Defendant disconnected the plaintiffs from their normal course of life and businesses due to the scandalous nature of the offences which injured and damaged their reputations. This was fortified by referencing the learned authors of **Halsbury's laws of England vol. 97 5<sup>th</sup> Edition at paragraph 733** on damages for malicious prosecution which provides as follows:

***“To support a claim for damages for malicious prosecution, one of three heads of damages must be shown. The damage may be: (1) damage to a man's fame, as where the matter of which he is accused is scandalous; or (2) damage done to the person, as where his life, limb or liberty is endangered; or (3) damage to his property as where he is put to the expense of acquitting himself of the crime with which he is charged. The claimant must show that any damage to fame suffered was a necessary and natural consequence of the charge itself as regards the second head of damage, that actual loss of liberty was suffered. Once one of these heads of damage is proved, damages are at large and may include compensation for loss of reputation and injured feelings.”***

6.7 Regarding exemplary damages for false imprisonment, counsel argued that the Defendant's not having reasonable and

probable cause to arrest amounted to false imprisonment. Thus, the Plaintiffs are entitled to exemplary damages. This submission was fortified by referencing the case of **Attorney General vs. Kakoma (1975) ZR 212<sup>5</sup>** held that:

***“False imprisonment consists in unlawfully and either intentionally or recklessly retraining another person’s freedom of movement from a particular place. The restraint must be total for a time, however short ....in an action for false imprisonment it is necessary for the plaintiff to prove nothing but the imprisonment itself.”***

6.8 I have considered all submissions regarding special damages and the claim for costs.

## **7. Consideration And Determination.**

7.1 I have reviewed the evidence and the oral and written submissions by the Plaintiffs. I am indebted to counsel for the arguments and well-researched submissions.

7.2 The Defendant did not counter the Plaintiffs’ case as no defence nor submissions were filed. That notwithstanding, the Plaintiffs bear the burden to prove their case on the balance of probabilities. As was restated by the Supreme Court in the case

of ***Khalid Mohamed v Attorney General (1982) ZR 49<sup>6</sup>***, where

the Supreme Court held that:

***“An unqualified proposition that a Plaintiff should succeed automatically whenever a defence has failed is unacceptable to me. A Plaintiff must prove his case and if he fails to do so the mere failure of the opponents defence does not entitle him to judgment”.***

7.3 **Margaret Brazier, in Street on Torts, Ninth Edition, (London, Butterworths, 1993) at page 476**, observes that the tort of malicious prosecution is not regarded with favor by the Courts because it runs counter to the policy of freedom to prosecute suspected criminals and to the interest in bringing litigation to a close. This judicial attitude is reflected in the development of the requirement that there must be an absence of reasonable and probable cause.

7.4 Four essential requirements need to be proved to sustain an action for malicious prosecution, and these are;

- a) **First, there must be prosecution by the defendant. Thus, the law must be set in motion against a plaintiff on a criminal charge.**
- b) **Second, the prosecution should end in favor of the plaintiff.**
- c) **Third, the prosecution should have been instituted without reasonable and probable cause.**

- d) **Fourth, the prosecution should have been instituted maliciously.**

The onus or burden of proving all these requirements is on the plaintiff. It is also instructive to note the observation of Lord Denning M R in **Stapley vs. Annets and Another**<sup>7</sup> at page 1543, that:

***“In an action for malicious prosecution, the burden is on the plaintiff to prove malice and absence of reasonable and probable cause. If the defendant denies it, it is not the practice to require the defendant to give particulars of his denial. It is only if he puts forward a positive allegation that he should be required to give particulars of it.”***

- 7.5 The learned authors of **Clerk and Lindsell on Torts, Twentieth Edition, (Thomson Reuters (Legal) Limited, 2010)** observe in paragraphs 16-30, on page 1083 as follows:

***“The question of reasonable and probable cause may create difficulties in the conduct of a trial, not so much from its own inherent difficulty as from the manner in which it presents itself. Since first it involves the proof of a negative, and secondly, in dealing with it, the judge has to take on himself a duty of an exceptional nature. The claimant has, in the first place, to give some evidence tending to establish an absence of reasonable and probable cause operating on the mind of the defendant. To do this, he must show the circumstances in which the prosecution was instituted. It is not enough to prove that the real facts established no criminal liability***

***against him unless it also appears that those facts were within the personal knowledge of the defendant.”***

7.6 The House of Lords in **Hicks vs. Faulkner**<sup>8</sup>, approved the definition of ***“reasonable and probable cause”*** by Hawkins, J. as follows:

***“An honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.”***

7.7 The fourth requirement that needs to be proved to sustain an action for malicious prosecution is malice. In **Mbanga vs. Attorney General**<sup>9</sup> Muwo, J, observed at page 235 that;

***“Judicial attempts at defining the word malice have not been completely successful. He observed that consensus of opinion among judges has been that there must be some other motive on the part of the accuser than a desire to bring to justice the person whom he honestly believes to be guilty. Muwo, J, went on to observe at page 235 that the question of existence of malice is one of fact, and the burden of proving it is on the plaintiff. It has also long been the law that malice and lack of reasonable or probable cause must be separately proved. The absence of***

***reasonable and probable cause may, therefore be -evidence of malice."***

7.8 To sum up, malice means spite or ill will. It also more aptly means improper motive. The proper motive for any prosecution is, of course, to ensure and secure the ends of justice. If, therefore, the securing of the ends of justice in a prosecution was not the true and predominant motive, then malice is proved.

7.9 In applying the law above to the facts of this case. It is common ground that the plaintiffs were prosecuted by the defendant. The prosecution was terminated in favor of the plaintiffs. What is in dispute, however, is whether or not, first, the prosecution was instituted without reasonable and probable cause. And second, whether it was malicious. The plaintiff's major contention is that there was no reasonable and probable cause for them to be prosecuted on allegations of riotous behavior contrary to Sections 74(2) and 76 of the Penal Code, Chapter 87 of the laws of Zambia.

7.10 The question that remains to be answered is whether or not the proceedings were instituted maliciously. The Plaintiffs herein are of the view that the decision to arrest and prosecute was purely motivated on the part of the Defendant. I am of the considered view that the Plaintiffs have, however, not produced any evidence to substantiate these allegations.

7.11 The learned authors of **Clerk and Lindsell on Torts 20<sup>th</sup> edition, Sweet and Maxwell 2010 at page 1070** state that;

***“Evidence of malice of whatever degree cannot be invoked to disperse with or diminish the need to establish separately each of the first three elements of the tort.”***

7.12 In the present case, the Plaintiffs have successfully established three of the four essential elements required to prove malicious prosecution. However, upon careful consideration, I find that they have not demonstrated the fourth element—namely, that Defendant maliciously initiated proceedings against them. Consequently, the claim for damages for malicious prosecution cannot succeed.

7.13 Concerning false imprisonment, the case of **Richman Chulu vs. Monarch**<sup>10</sup> provides valuable guidance. The Court held that;

***“False imprisonment only arises where there is evidence that the arrest which led to the detention was unlawful, since there was no reasonable and probable cause.”***

7.14 In the case of **Attorney General and Others vs. Phiri**<sup>11</sup>, the

Court of Appeal held as follows;

***“False imprisonment consists in unlawfully and either intentionally or recklessly restraining another person’s freedom of movement from a particular place. The restraint must be total for a time, however short. There is no false imprisonment if a person’s arrest is justifiable or if there is reasonable and probable cause to restraint.”***

7.15 I have already determined that the Plaintiffs were prosecuted without reasonable and probable cause. It was the Defendant's responsibility to justify the plaintiff's imprisonment. The burden of proof temporarily shifted to the Defendant to provide justification, and based on the cited authorities, I find that the Defendant in this case failed to discharge that burden as they did not contest this action, even though the case of Khalid Mohammed states that the fact that the defendant's defence fails, does not mean that the plaintiff should automatically win their case.

7.16 In light of the authorities cited above, I conclude that the Plaintiffs have successfully established their claim of false imprisonment and are therefore entitled to damages.

7.17 The Plaintiffs are also claiming general, exemplary, and aggravated damages as a consequence of the Defendant's actions. The case of **Attorney General vs. Felix Chris Kaleya**<sup>12</sup> held that;

***“In assessing damages for wrongful detention, the factors to be considered include duration, sanctity of personal liberty, presence or absence of the suffering of anxiety or indignity, manner and circumstances of detention and the reasonableness of the explanation for the detention.”***

7.18 Concerning false imprisonment, the learned authors of **McGregor on damages, 18<sup>th</sup> edition, Sweet and Maxwell** had this to say on damages at page 1571 paragraph 37-011;

***“The details of how damages are worked out in false imprisonment are few: generally, it is not a pecuniary loss but a loss of dignity and the like and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty, i.e., the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e., the indignity, mental suffering, disgrace, and humiliation, with any attendant loss of social status and injury to reputation. This will be included in the general damages which are usually awarded in these cases.”***

7.19 From the foregoing, the Plaintiffs herein are entitled to general damages, as it is evident that they endured a loss of liberty and time while in custody. Furthermore, I find that the nature of the charges brought against them caused indignity, mental distress, disgrace, and humiliation. This also led to a loss of social standing and potential harm to their reputation, particularly given their status within the community.

7.20 Concerning aggravated damages relating to false imprisonment, the learned authors of **McGregor on damages, 18<sup>th</sup> edition, Sweet and Maxwell** state at page 1571 paragraph 37-017;

**“The manner in which the false imprisonment is effected may lead to aggravation or mitigation of the damage and hence of the damages. The authorities illustrate in particular the general principle stated by Lawrence LJ in *Walter v Alltools* that;**

**“Any evidence which tends to aggravate or mitigate the damage to a man’s reputation which flows naturally from his imprisonment must be admissible up to the moment when damages are assessed. A false imprisonment does not merely affect a man’s liberty, it also affects his reputation. The damage continues until it is caused to cease by an avowal that the imprisonment was false.”**

**However, it is submitted that an unsuccessful plea by the defendant should not lead to an aggravation of the damages unless it is shown that the defendant made the charge mala fide. Otherwise, a bona fide dilemma, if he fails to plead the truth of the charge he risks losing the action against him,**

**while if he does plead the truth of the charge he risks an award of aggravated damages against him”**

7.21 The Plaintiffs at page 12 of their submissions contended that the Court should take into account the circumstances of the arrest, the detention, the affront to the Plaintiffs’ dignity and the damage that was caused to their reputation as the case was highly publicized on social media which enjoys wide audience across all the corners of Zambia and which damaging information is still being accessed by the public to the detriment of the Plaintiffs’ reputation.

7.22 I am of the considered view that the nature of the offence that the Plaintiffs were charged with caused damage to their reputation and to their dignity as well as humiliation, and for those reasons, the Plaintiffs’ claim for aggravated damages succeeds.

7.23 Concerning exemplary damages, the Supreme Court in the case of **China Henan International Development Corporation Limited vs. Victor Chew**<sup>13</sup> stated that;

**“We now come to exemplary damages. The learned author of McGregor on damages, 18<sup>th</sup> edition, Sweet and Maxwell, paragraph 11-011 stated that-**

**“.....It can confidently be said that today, exemplary awards are possible across the whole range of torts. Provided always that there is unacceptable behavior on the part of the defendant, behavior that displays features which merit punishment by way of malice, fraud, cruelty, insolence and the like, there is no tort where the writ of exemplary damages will not run.”**

7.24 From the foregoing, a review of the Statement of Claim reveals that the plaintiffs sought damages, outlining the specific categories of their claims. In my opinion, the circumstances of this case justify awarding damages that include an exemplary component, particularly in response to the police conduct that led to the plaintiffs' false imprisonment. The plaintiffs have demonstrated that they were unlawfully detained for approximately 3 days without valid reasons, inevitably suffering humiliation, harm to their reputation, and damage to their dignity due to their arrest and the charges brought against them.

## **8. Conclusion.**

**8.1** I hereby award the Plaintiffs general damages, which shall include an exemplary component to be considered in the final

assessment of damages for false imprisonment. Additionally, I grant aggravated damages, given that the nature of the charges brought against the Plaintiffs has likely diminished their dignity and reputation in society. Interest is also awarded on all amounts determined to be due.

8.2 Accordingly, I refer the matter to the Deputy Registrar for the assessment of damages. The Plaintiffs are further awarded costs, to be taxed in default of agreement.

Leave to appeal is granted.

Dated at Lusaka on.....11<sup>th</sup>.....day of.....March.....2025

  
.....  
**ELITA P. MWIKISA**  
**HIGH COURT JUDGE**