

# Charles Nkhoma v Malawi Revenue Authority

## Civil Cause Number 114 of 2014

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<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice Allan Hans Muhome
<b>Cause Number:</b>	Civil Cause Number 114 of 2014
<b>Date of Judgment:</b>	March 20, 2025
<b>Bar:</b>	For the Claimant: Mr. Yasin Domasi For the Defendant: Mr. James Kambumwa

### Head Notes

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**Civil Procedure** - Evidence – Burden of proof – Claimant must prove their case on a balance of probabilities.

**Law Of Torts** - Malicious Prosecution – Essentials – Prosecution must be inspired by an improper motive not just wrongful.

**Law Of Torts** - False Imprisonment – Essentials – Claimants must demonstrate they were imprisoned at the defendant's instance and that it was unlawful.

**Law Of Torts** - Defamation – Essentials – Publication of a statement that lowers another person's esteem is defamatory.

**Law Of Torts** - Malicious Prosecution – Investigation – Failure to conduct a thorough investigation before reporting to police results in liability.

## Summary

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The Claimant sought damages in the High Court of Malawi against the Defendant for false imprisonment, malicious prosecution, and defamation. The Claimant, a former employee of the Defendant, alleged that the Defendant instigated his arrest and prosecution for the forgery of academic certificates without reasonable cause. The Defendant denied all claims, stating that the police acted on their own initiative. The Claimant was arrested, granted bail, and subsequently acquitted by the Magistrate's Court. Despite the acquittal, he was subjected to a disciplinary hearing and dismissed from his employment.

The Court considered two different CVs presented by the parties. The Court found the Claimant's CV to be more credible, noting several discrepancies in the Defendant's version, including differences in the surname on the alleged forged diploma, the Claimant's marital status, and his religious denomination. The Court concluded that the Defendant had failed to conduct a thorough investigation before involving the police. The Court observed that a malicious prosecution is not merely a wrongful prosecution but one inspired by an improper motive, and that the Defendant's failure to investigate made them liable for the consequences. Furthermore, the Court found that the Claimant's arrest and prosecution, which were published in a newspaper, lowered his esteem in the minds of right-thinking members of society, thereby constituting defamation.

The Court ruled in favour of the Claimant. The Defendant was found liable on all claims, including the costs of the action.

## Legislation Construed

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(None)

## Judgment

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1. The Claimant was employed by the Defendant as a Transport Officer. He alleges that the Defendant, without reasonable cause, instigated his arrest and prosecution on a charge of forgery of academic certificates. He claims damages for false imprisonment, defamation, malicious prosecution and costs of this action. The Defendant deny all the claims stating that the police acted on their own responsibility and initiative.

2. The Claimant testified that he was employed on temporary basis in March 2010 and confirmed in February 2012 per exhibits CN 1, CN 2 and CN 3. That when he applied for employment, he submitted two certificates, an MSCE certificate and a Diploma in Marketing exhibited as CN 5 and CN 6. He was surprised to be called by Mr Banda, the Director of Human Resources to his office whereupon two police officers arrested him on an allegation that he submitted a fake certificate to MRA, which he denied. He was granted bail and later on acquitted by the Magistrate's Court per exhibits CN 7 and CN 8. The allegations were published in the newspaper - exhibit CN 9. He was taken through a disciplinary hearing process despite the acquittal and dismissed from employment in January 2013.

3. Through his supplementary witness statement, the Claimant produced a curriculum vitae (CV), CNB 1, showing that he had an MSCE and Diploma in Marketing. That he

was married since 1995, with two children; that he was not single. He produced a marriage certificate and copies of National Identity Cards for his children as CNB 2 and CNB 3, respectively. His denomination was CCAP and not Assemblies of God per exhibit CNB 4.

4. In cross-examination, the witness insisted that his qualifications were an MSCE Certificate and a Diploma in marketing, as he has never studied with PAEC. He seemed to suggest that his statement that Mr Banda was advised by the police to drop the case was not correct. He confirmed that the newspaper did not belong to MRA but insisted that the news was communicated by MRA. He also maintained that MRA procured his arrest and his personal file records were doctored by MRA officials, for no apparent reason.

5. In re-examination, the witness stated that Mr Mwikho (Deceased), MRA's Human Capital Manager, communicated with PAEC and the newspaper about the alleged crime. That there was no evidence that the police conducted an independent investigation.

6. The Defendant called Ms Asante Mazulu, their Employee and Industrial Relations Manager. She adopted her witness statement together with exhibits MRA 1 (a letter of June 2012, requesting the Claimant to submit his academic qualifications), MRA 2 (a letter of July 2012 from the Defendant to PAEC requesting for the vetting of a Diploma in Accounting for the Claimant - in the name of Charles Mkhoma and not Charles Nkhoma), MRA 3 (a letter from PAEC advising that they had no records in relation to the Diploma and suggesting that there must have been a forgery), MRA 4 - 6 (letters

of suspension, invitation to a disciplinary hearing and appeal, respectively).

7. The forged Diploma was also exhibited through a supplementary witness statement. Through the same, the witness produced a CV showing that the Claimant had an MSCE and a PAEC Diploma. That he was single and that his denomination was Assemblies of God, among others. This was in sharp contrast to the Claimant's CV.

8. In cross-examination, she confirmed that she joined MRA in 2012 and was not involved in the recruitment of the Claimant. She explained the process of recruitment and confirmed that MRA reported the Claimant to police following the discovery of the fake qualifications. She did not know if the police had conducted their own investigation.

9. In re-examination she stated that vetting of academic qualifications may be done before or after recruitment, depending on situations. She explained that MRA had good reason to report the matter to police.

10. At close of trial, the Court received written submissions from Counsel, for which the Court is grateful. The standard of proof in civil matters is on a balance of probabilities and the burden of proof lies on he who asserts the affirmative, in this case the Claimant: see *Commercial Bank of Malawi v Mhango* [2002-2003] MLR 43 (SCA).

11. This Court agrees with submissions made by Counsel that on the issue of false imprisonment, the main question is whether the Defendant merely laid the facts on which it became the duty of the police to arrest the Claimant or that the Defendant laid charges against the Claimant on which the police acted: see *Manda v Ethanol Company Ltd* [1993] 16(2) MLR 572 and *Mbewe v Admarc* [1993] 16(2) 594. According to *Kenneth Ndovie & 2 Others v Airtel Malawi Ltd*, Civil Cause Number 696 of 2013, in false imprisonment claims, 'a Court must look at the evidence before it with religious care. The Court must look at the Defendant's conduct in the whole process.'

12. Thus, Makuta J. (as he then was), in *Kanyemba v Malawi Hotels Ltd* [1991] 14 MLR 1, highlighted the fact that to succeed in a claim for false imprisonment, a claimant has to show three elements, namely: that (a) he was imprisoned; (b) at the instance of the defendant and (c) the imprisonment was unlawful. In the present matter, the fact that the Claimant was arrested for 3 days is not disputed. What is disputed is whether the arrest was at the insistence of the Defendant and whether indeed there was a probable cause for suspicion that an offence had been committed by the Claimant.

13. The Court has received in evidence two different CVs and between the two, one must be given a benefit of doubt. Before that is done, this Court must be clear that it does not subscribe to the Claimant's contention that MRA officials would be in the practice of doctoring academic qualifications.

14. Nonetheless, looking at the two CVs, the Court is inclined to conclude that the CV submitted by the Claimant is more credible than the one adduced by the Defendant. The reasons are that the Claimant has proved, on a balance of probabilities, that his

CV had an MSCE Certificate and a Diploma in Marketing (and not PAEC). In addition, the forged PAEC Diploma has the surname Mkhoma whereas the Claimant's surname is Nkhoma. The Claimant was married since 1995, with two children and that he was not single per MRA CV. That his denomination was CCAP and not Assemblies of God per MRA CV.

15. The Court, therefore, observes that had MRA made thorough investigations before inviting the police, they could have carefully considered the discrepancies cited above. Neither does the Court have evidence of an independent investigation from the police other than a subsequent acquittal from a competent Court (much as the standard of proof is different).

16. The law is to the effect that 'malicious prosecution does not mean the intentional and wrongful prosecution of an innocent man; it means that prosecution inspired by an improper motive...A prosecution so inspired may be actionable even though there was an honest belief in the guilt of the accused:' see Salmond and Heuston on the Law of Torts, Twentieth Edition p. 21. Thus, on the facts of this case, MRA had a prima facie case against the Claimant, however, as elucidated in the previous paragraph, they failed to do a thorough investigation and they must suffer the consequences of such inaction.

17. Chatsika J (as he then was) in the case of Nyirenda v AR Osman & Company 16(2) MLR 681, defined defamation as publication of a statement by a person about another which may tend to lower that other person's esteem in the minds of right-thinking members of society. The claim for defamation in this matter arises from the Claimant's

arrest, which fact is undeniable. Having found that the Claimant was falsely imprisoned and maliciously prosecuted, the same lowers him in the estimation of others. The allegations were published in the newspaper and the Defendant cannot in this regard plead non publication: see Cecilia Kumphukwe and Others v Attorney General Civil Cause Number 210 of 2018. This Court, therefore, finds that the Claimant was defamed by the Defendant's action.

18. In conclusion, therefore, the Defendant is liable on all claims including costs of this action. Damages shall be assessed by the Registrar, if not agreed by the parties within 14 days.

Made in Open Court this 20th day of March 2025.