

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 220 OF 2002**

BETWEEN

LAMECK KUMWENDA.....PLAINTIFF

-AND-

ANTAFF GAFFAR.....DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Lungu for the plaintiff

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff's claim is for damages for assault and battery as well as costs for this action. This assessment of damages is in pursuance to the default judgment of 12th June 2002.

The hearing of the evidence on the assessment proceeded in the absence of the defendant, who despite having been served with the requisite notice, elected not to attend the hearing. Such being the case, the plaintiff's evidence was uncontested.

The plaintiff, at that material time, was a guard working for Man-O-Bec and was stationed at the Man-O-Bec flats which are opposite Lilongwe Hotel. It was the plaintiff's evidence that apart from himself there were also two other guards employed by Man-O-Bec as well as guards from the Securicor Company of Malawi. The plaintiff informed the court that in performing their guard duties, the guards had sections which they were manning, with the Man-O-Bec guards guarding one side of the flats and the Securicor guards guarding the other side.

On 16th September 1998, a Satellite receiver belonging to the defendant was apparently was stolen. This was at the time when the defendant was staying at the Man-O-Bec flats. From the plaintiff's evidence, the defendant's flat was at the side of the compound which was guarded by the Securicor guards. Despite this fact however, the plaintiff informed the court that all the guards including him were rounded up and told to get into the defendant's pickup. This was apparently so that they should be taken to Lilongwe Police for questioning. Before leaving for the police station, the plaintiff informed the court that the defendant got onto the back of the pickup and started assaulting them using a baton stick that he took from one of the Securicor guards. It is as result of this assault that the plaintiff claimed damages from the defendant for the injuries the former sustained.

According to the medical report, which was marked ExP2, the major injury that the plaintiff suffered was a fractured left Ulna Bone. However, in his testimony the plaintiff told the court that the defendant had hit him on the right knee, left foot, left hand (breaking it) and on the chin, which the plaintiff also claimed had been cracked. I do use the word claim for the latter injury because I was of the view that if the same had been sustained then the plaintiff would have required treatment for it. As it is no treatment was given to him for a cracked chin so perhaps it was only the skin on the chin that had been cut open. Suffice to say that the plaintiff was treated as an outpatient from 17th September 1998 to 1st February 1999 and the final observation on the medical report was that the plaintiff suffered 35% permanent incapacitation and that he is no longer fit for manual work. The report also indicated that the plaintiff would no longer be able to perform his duties as a guard. This however as it turns out is not true because the plaintiff did state that he is still working as a guard.

The law is well settled that on a claim for assault and battery resulting in physical injury, damages recoverable are arrived at like in any other case of personal injury. (see **McGregor on Damages** 15th Edition P.1025 paragraph 1615). In that

respect, damages are recoverable under the major aspects of pain and suffering, loss of amenities and loss of expectation of life. In addition damages are also recoverable for injury to feelings, that is, the disgrace, humiliation, indignity and mental suffering resulting from the assault and battery.

As earlier noted, in the instant case the major injury suffered by the plaintiff, according to the medical report was a broken left ulna bone. Indeed it would seem that it is from this injury that a conclusion was drawn that the plaintiff suffered incapacitation up to 35% and that he can no longer do any manual work. It is noted however that the plaintiff was treated as an outpatient and that the medical report does not state what other injuries the plaintiff had suffered. It is also further noted that the plaintiff is still able to perform his duties as a guard.

Having duly considered all the circumstances in this case and the fact that it is impossible to use money to restore the physical wholeness of a person who has suffered personal injury, I consider an award of K110 000 to be fair and just for pain and suffering and also the disgrace, humiliation and mental suffering resulting from the assault and battery. The plaintiff is also awarded costs of this action.

Made in Chambers this.....day of.....2004.

K.T. MANDA
SENIOR DEPUTY REGISTRAR