

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 1627 OF 2003**

BETWEEN:

ANDREW MWACHUNDA ..... PLAINTIFF

AND

THE ATTORNEY GENERAL ..... DEFENDANT

**CORAM: TEMBO, ASSISTANT REGISTRAR**

**Movette, Counsel for the Plaintiff**

**ORDER ON ASSESSMENT OF DAMAGES**

This is this court's order on assessment of damages for personal injuries done pursuant to a default judgment entered in favor of the plaintiff dated 11<sup>th</sup> August, 2003.

The notice of hearing was duly served on the defendant. The defendant did not appear at the hearing leaving the plaintiff's evidence totally uncontroverted.

The plaintiff herein had been shot by a member of the Malawi Police Service on 27<sup>th</sup> May, 2002. The gun shot entered the plaintiff's body in the back. As a result he sustained injury in the form of a gun shot wound as well as injury to his lungs that necessitated internal surgery. The plaintiff was admitted at Mzuzu Central Hospital for treatment. Although the plaintiff treated he still experiences neck pains. The plaintiff must have suffered a lot of pain from the gunshot wound as well as from the treatment thereof. No doubt herein the plaintiff is entitled to damages whose objective is to put him in a position he would have been had the tort herein not been committed. See **Namwiyo**

**v. Semu and Others** [1993] 16(1) MLR 369.

Such damages are conventional incapable of quantification in monetary terms with mathematical precision. As a result courts use decided cases of comparable nature as a guide in arriving at the appropriate awards. This court does not though lose sight of the fact that each particular case ought to be considered on its own merits. See **Chidule v. Medi** MSCA Civil Appeal Case No. 12 of 1993. The plaintiff herein claims damages for assault, pain and suffering and loss of amenities of life. This court notes that the measure of damages for assault occasioning bodily injury is done using the same principles governing the assessment of damages in personal injuries cases. See

This court has fully considered the plaintiff's submission in this assessment. This court though wishes to point out that the submission for an award of exemplary damages herein is not covered by the plaintiff's pleadings and so this court can not entertain the same. The plaintiff's submissions also indicate that he is unable to support a family of two wife's and 13 children. That is not in the plaintiff's evidence and this court shall disregard the same in arriving at the final award.

This court has considered the case cited by the plaintiff of **Kagona v Attorney General** Civil cause Number 918 of 1998 in which a plaintiff who had been shot in the chest area and who could not do heavy work was awarded K60,000.00 for pain and suffering and loss of amenities of life K20,000.00 for loss earning capacity. This court has also considered the other cases cited by the plaintiff's counsel and the fact of fluctuation in the value of the Kwacha since those awards were made.

This court in the circumstances awards the plaintiff the sum of K200,000.00 as damages for pain and suffering and a further sum of K50,000.00 for loss of amenities of life.

On the question of damages for loss of earning capacity this court notes the question indeed turns on the nature of injuries suffered by a plaintiff, his qualifications, professional or otherwise the labour market. And that the risk of being at a disadvantage of not getting a new job must be substantial to subject the plaintiff to it materializing before the end of his life. See **Tembo v. City of Blantyre and NICO** Civil cause No. 1325 of 1995. The plaintiff is a manual worker. Due to the weakening of his body manual work is not easily executed by him. He may therefore be said to have lost some capacity to earn a living through manual work. He has therefore lost earning capacity. This court awards the plaintiff a sum of K70,000.00 damages for loss of earning capacity.

Costs are for the plaintiff.

Made in Chambers at Blantyre this May, 2004.

**M A Tembo**

**ASSISTANT REGISTRAR**