

IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY

CIVIL CAUSE NO. 97 OF 2000

BETWEEN:

DARIOUS CHAWINGA AND LUKE MULUNGU.....PLAINTIFF

AND

THE ATTORNEY GENERAL (RUMPHI POLICE).....DEFENDANT

CORAM: MRS I C KAMANGA, SENIOR DEPUTY REGISTRY.

Mwase, Counsel for Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This matter comes for assessment of damages following a default judgement that was entered in the plaintiffs favour on 2nd October 2000. The defendants were duly served with a notice of the hearing of the assessment. They however, never put up any appearance nor gave reasons for absence. The plaintiff's testimony is thereby uncontested.

One witness the first plaintiff testified. He told the court that in June 1999 he went to Rumphu Boma, at St Patricks Hospital to see his sister who was admitted at the hospital. After visiting his sister, he left the hospital at around 15:30 pm. He passed by Mwangonda Bottle store with a friend. As he was in the bottle store, he heard some gunshots. The plaintiff and some people in the bottle store went out to see what was happening. He saw policemen coming in their direction. As he was going back into the

bottle store, he realized that he had been shot in the leg. Then some policemen came into the bottle store and took him to the hospital where he was admitted for three and a half months. The plaintiff tendered a medical report which states that he had sustained “multiple gunshot wounds with open fracture of the right femur”. The medical report also indicates how the injuries were treated. The treatment reads as follows:”

- 1 Pin fractions
- 2 Wound dressing –removed remained bullets
- 3 Antibiotics”

Also the general observations, the doctor observed as follows: “Patient was in pain following gunshot fracture. The right femur has resulted to chronic osteomyelitis limping when walking; pus discharge from the wound.” The doctor further observed that the long term effects of the injuries is that he has developed chronic osteomyelitis (infection of the bone) and he now has an incapacity assessed at 50%. He now walks with a limp and cannot run.

The plaintiff complained that he was in plaster of paris and used crutches for a further five months after the discharge from hospital. He also said that the wound could not heal and he has spent a lot of money seeking medical assistance but he has been advised that it will take years before the wound can heal.

As noted, the plaintiff’s evidence is uncontested. It is unfortunate that the police service personnel, without justifiable cause, poured their bullets on innocent civilians at a public place. Such action on the part of the defendants cannot be condoned. I therefore award the plaintiff K450,000.00 (Four Hundred and Fifty thousand kwacha) the same being aggravated damages for the injuries sustained at the defendant’s instance. I also award the plaintiff costs for this action.

MADE IN CHAMBERS this 30th day of September, 2003.

Mrs I C Kamanga

REGISTRAR