



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI ZOMBA DISTRICT REGISTRY

CIVIL CAUSE NUMBER 104 of 2014

BETWEEN

LAMSON BILIWITAPLAINTIFF

AND

PATEL MAHOMMED t/a NINKAWA TRANSPORT.....DEFENDANT

Coram: H/H Jean Rosemary Kayira Assistant Registrar

Counsel Msuku of Counsel for the Plaintiff

Defence Counsel Absent

Mr. Tepeka Court Clerk and Official Interpreter

ORDER OF ASSESSMENT

INTRODUCTION

This matter resumed on 24th November, 2015 for hearing on assessment of damages following a consent judgment where the Defendant was held liable on 20th October, 2015. This matter commenced on 27th March, 2014 through a specially endorsed writ of summons which was duly issued by the Court. In a statement of claim, the Plaintiff states that at the material time he was employed by the Defendant as a guard. On or about the 29th January, 2012 whilst on duty, the Plaintiff was severely bitten by dogs brought onto the premises by the Defendants and that the biting of the Plaintiff was as a result of the Defendant's negligence.

The Plaintiff therefore claims damages for deep cuts in the face, deep cuts on both legs, deep cuts on both arms and cuts all over the body. He claims damages for pain and suffering, loss of amenities of life, disfigurement and costs of action. In his evidence, the Plaintiff tendered the witness statement which was marked **EXP 1**. In his witness statement, the Plaintiff states that he sustained deep cuts on the upper side of his right eye, deep cuts on both legs, deep cuts on the buttocks, cuts on both hands and all over his body having been bitten by the Defendant's dogs. On examination at Mtengo Umodzi he was found with severe extenine dog bite wounds and had blood all over his body. He had deep cut wound which was dressed with salvon and bandaged. He was also given Diclofenac and referred to Queen Elizabeth Central Hospital for possible TTV, ARV and proper management.

At Queen Elizabeth Central Hospital they found that he had sustained multiple cuts and laceration, deep wound on the right leg, multiple cuts on both legs, arms and on the face. Some of the wounds were actively bleeding. The wounds were cleaned, dressed and sutured. He was then referred to Ndirande Health Centre where he received treatment for 2 months-**LB4**. It is his evidence that as a result of the injury he suffered serious permanent scars all over his body. Occasionally he feels a lot of pain on the right eye due to the injuries and he has to keep this eye closed which is a big inconvenience. Having closed his case, the matter therefore resumes for ruling on assessment of damages.

REASONED ANALYSIS OF THE COURT

In this matter, I am duty bound to determine a reasonable, fair and justifiable quantum for the Plaintiff accordingly. In determining the compensation, it is very clear that no precise formula is used because the pain one can endure in a given circumstance depends on several factors. It is therefore prudent to consider the nature of injuries as well as the extent to which they have affected the lifestyle of the Plaintiff. Under pain and suffering it is proper to observe that the pain refers to that agony endured during and after the accident. This point was well articulated by the Supreme Court of Appeal in the case of *City of Blantyre v Sagawa*¹ as it distinguished the three heads of damages as follows:

"...pain is used to suggest physical experience of pain caused by and consequent upon the injury while suffering relates to the mental elements of anxiety, fear, embarrassment and the like. On the

¹[1993] 16 (1) MLR 67

other hand, loss of amenities of life embraces all that which reduces the Plaintiff's enjoyment of life, his deprivation of amenity whether he is aware of it or not."

In assessing damages the Courts are striving to bring the injured person to a position where reasonably he or she would have been had it not been for the injury. I therefore take recognition of the sentiments by late Justice Chimasula Phiri in *Zaina Chipala v. Dwangwa Sugar Corporation*.² The esteemed Judge stated that it is important to bear in mind that damages in personal injuries cases cannot give a perfect compensation in money terms. This is so because physical and bodily injury, pain and suffering and loss of amenities cannot be calculated in terms of money. This Court agrees with such sentiments. Since compensation for an injury is not a simple arithmetic, this Court will consider the conventional awards in relation to the injuries in the present matter.

PAIN AND SUFFERING

In determining the appropriate and reasonable compensation, the nature of injuries suffered by the Plaintiff is very essential and crucial. This Court acknowledges that the Medical Report issued in relation to the injuries relating to the Plaintiff have been illuminating. The Medical Report states that the Plaintiff had severe extensive dog bites and blood all over the body. Immediately after the incident he was taken to Mtengo Umodzi Hospital where they referred him to Queen Elizabeth Central Hospital. After treatment he was referred to his nearest health centre which is Ndirande Health Centre. All these hospitals he had to endure the pain and agony of the wounds being dressed, cleaned and sutured. It is loudly clear from the Medical documents that the injuries were severe.

In order to maintain the similar trend in compensation awards, Courts consider other similar cases. This was stated in *Mphatso Phoka versus Attorney General*³ as follows;

"...the fundamental principle of law of damages in whatever area they are awarded is that the damages to be recovered must be in money terms, be no more and no less than the Plaintiff actual loss."

²Civil Case Number 435 of 1998

³ Personal Injury cause no. 17 of 2013

I have considered awards made in other cases for guidance whilst being mindful that each case must be decided on its own facts. . In *Mazale vs Livason and another*⁴ the Plaintiff sustained a fracture on the tibia and rupture of the spleen. He was awarded K3, 500, 000 on 17th July 2012 being damages for pain and suffering and loss of amenities. Further, in *Wilson Kamwendo vs Reunion Insurance Company Limited*⁵, the Plaintiff was awarded K4, 800, 000 for pain, suffering and loss of amenities. This Plaintiff had sustained a fracture of the right femur, right knee, soft tissue injuries and chest pains. A further reference is made to *Leonard Kulomba and Prime Insurance Company Limited*⁶ where the Plaintiff had deep cuts on the wrist joint, dislocation of the right wrist and general body pains. He was awarded K2, 500, 000 for pain, suffering and loss of amenities of life on 14th August 2014. In *Lovemore Mathemba vs Prime Insurance Co. Ltd.*⁷ Plaintiff was awarded K3, 500,000.00 for loss of amenities and pain and suffering. I therefore award the Plaintiff **K3, 500,000.00** for pain and suffering.

LOSS OF AMENITIES OF LIFE

Under this head, the Court endeavors to compensate the victim whose lifestyle and abilities have been limited due to the injuries resultant from another's tort. In the present case, the Plaintiff cannot walk properly due to the incident and also when there is so much light he needs to close his eye to prevent the pain due to the cut close to the eye. This are what the plaintiff has to go through day in, day out. In *Tionge Zuze vs Hilda Chingwalu*⁸ the Plaintiff was awarded K1, 300,000.00 for pain and suffering and loss of amenities after he sustained a cut on the head and chest pains.

In *Petros Lihonga vs. Prime Insurance*⁹ the Plaintiff was awarded K2, 550, 000.00 for an amputated toe for loss of amenities. Similarly in the case of *Litness Zikatiwindu vs. Davie Bailoni et al*¹⁰ the Plaintiff was awarded K4, 000, 000.00 for pain and suffering and loss of amenities after being involved in an accident. He sustained a fracture of the humerus arm, general body pains and had 20% permanent incapacity. Further, in *Allan Steven Banda vs. Pangani Chinguwo et al*¹¹ the Plaintiff was awarded K3, 000, 000.00 for loss of 12

⁴ Civil Cause Number 615 of 2009

⁵ Civil Case Number 913 of 2010

⁶ Civil Case Number 496 of 2013

⁷ Personal Injury No. 368 of 2013

⁸ Civil Cause no. 2820 of 2006

⁹ Civil Cause no. 2417 of 2012

¹⁰ Personal Injury no. 396 of 2011

¹¹ Personal Injury no. 70 of 2015

teeth, fractures on both legs, left hand and collar bone. This Courts therefore awards **K1, 500,000.00** for loss of amenities.

DISFIGUREMENT

I have had the privilege of going through the case authorities the submissions tendered and I must acknowledge the case authorities brought before the court. In *Faith Ching'amba vs Deerless Logistics Ltd*¹² it was stated that;

"Disfigurement is not a matter to be taken lightly and casually it is something that one has to live with permanently"

In that case, the Plaintiff was awarded K500, 000.00 because of the ugly scars he sustained.

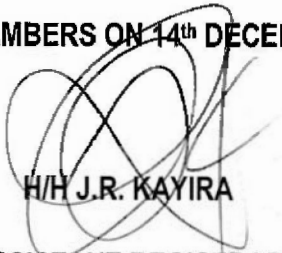
In *Macloud Makunganya vs Prime Insurance Company*¹³ the court awarded K700, 000. 00 for disfigurement, the Plaintiff had a lump on the thigh accompanied by a scar. I therefore award **K2, 000, 000.00** for disfigurement because four years down the line the Plaintiff still has a scar.

COST OF ACTION

I bear in mind that costs are discretionary. In exercise of that power I hereby award the Plaintiff costs of this action.

In summary I award the Plaintiff **K7, 000, 000.00** and cost of action.

PRONOUNCED IN CHAMBERS ON 14th DECEMBER 2015 @4:08PM


H/H J.R. KAYIRA

ASSISTANT REGISTRAR

¹² Civil Cause No. 2888 of 2007

¹³ Civil Cause No. 3 of 2009