



The Judiciary  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL CAUSE NUMBER 439 OF 2008**

**Between**

**SINOYA MAINJA..... CLAIMANT**

**-and-**

**MANOBEC LIMITED.....DEFENDANT**

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**CORAM: A.J. Banda, Assistant Registrar**

Mrs. T. Mauluka, for the Claimant

Mr. Makwinja, for the Defendant

Mr. Mathanda, Clerk/ Official Interpreter

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Banda

**ASSESSMENT ORDER**

**1. Background**

The claimant obtained judgement in his favour in his suit against the defendant for damages for pain, suffering and loss of amenities of life. He was a guard at the premises owned or occupied by the defendant and he was hit and injured by a security gate that flew open by the wind as it was only stopped by a stone and not a metal pin. The honourable justice Kamwambe having found the defendant liable ordered that damages be assessed before the registrar in his judgment of 15<sup>th</sup> April, 2015. Assessment hearing in this matter took place on 26<sup>th</sup> April, 2018.

## 2. Evidence

Sinoya Mainja adopted his witness statement. By the statement, he told the court that he was a guard at the defendant's premises and he was injured when the gate that was not stopped properly by a metal pin flew open and hit him on his foot and injured him. He was treated for his injuries at Queen Elizabeth Central Hospital. He tendered his medical report.

The tendered medical report shows that he had soft tissue injuries in the right foot. The report further shows that he was given a cold compress and had the foot x-rayed. There is no report of a fracture. It was stated that the claimant would be on physiotherapy for one month and that he would be examined further after the month. He was given drugs such as brufen, paracetamol and aspirin. Permanent degree of incapacity was assessed at 3%.

Mr. Sinoya Mainja further testified that he still feels pain in the foot and that he cannot walk properly.

## 3. Issue

The only issue in this matter is the quantum of damages that the defendant must pay as compensation to the claimant for pain, suffering and loss of amenities of life.

## 4. Facts and Law

Damages are the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of all the losses she has suffered. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

“The law demands that the plaintiff [now called the Claimant], as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*.”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable

damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

#### Comparable Cases

The claimant through counsel submitted two cases to guide the court in arriving at the right quantum. In the first case of **Elizabeth M'madi v. Reunion Insurance Co Ltd, High Court, Principal Registry, Civil Cause No. 385 of 2011**, the plaintiff was awarded K550, 000.00 as damages for pain and suffering for a cut on the left foot. This was in May, 2102. In the other case, the court made an award of K400,000.00 in January, 2012, as damages for pain and suffering to a plaintiff who suffered a big wound on the right dorsal foot. This is the case of **Tivesi Nyasindo v. Dickson Dzuwa and the Attorney General, Civil Cause No. 178 of 2011**.

The defendant through counsel cited the case of **Mrs. Conella Chimulomo v. Prime Insurance Company Limited, High Court Principal Registry, Civil Cause No. 2014 of 2008** where the court awarded a sum of K500,000 on 29<sup>th</sup> May, 2015 as damages for pain and suffering and loss of amenities of life, for soft tissue injury to the leg that was swollen for three weeks.

Counsel for the defendant submitted that K250,000.00 would be appropriate compensation as the claimant in this case did not proffer evidence relating to loss of amenities of life, and as such he should only be compensated for pain and suffering. Damages are paid under the head of loss of amenities of life to compensate the claimant's deprivation of the pleasures of life, which amounts to substantial loss, and this is whether the claimant is aware or not of that loss. See **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA)**. In this matter for example, the claimant stated that he felt pain in his foot. that has made walking a difficult task. People do enjoy a pleasure walk, to avert boredom at times or as an exercise. Clearly the claimant was deprived of this and pleasures ancillary to walking during his time of extreme pain.

It is however, my opinion that he only had soft tissue injuries that should heal eventually. If the problem was more serious than soft tissue injuries the x-ray would have shown. He will not have further deprivation long term, even though walking for a longer distance may give some pain.

With the foregoing, I am of the opinion that K420,000.00 is adequate for pain and suffering and that K135,000.00 is reasonable compensation for loss of amenities of life.

## **5. Conclusion**

The defendant is awarded a total of **K555,000.00** as damages for pain, suffering and loss of amenities of life. The issue of costs exercised my mind. I considered whether the damages as awarded would not have been within the jurisdiction of the subordinate court. The answer is in the affirmative. Would it be proper therefore to order that costs be on the subordinate court's scale in line with section 31 of the Courts Act? Even though damages are at large, looking at comparable cases, a claimant should have an idea of the range of damages that can be awardable- see the case of **Engen Limited v. Alice Joshua Miscellaneous Civil Appeal Number 15 of 2013, High Court, Principal Registry (unreported)**. I have resolved that question to use my discretion under Order 31 (3) (b) of the Courts (High Court) (Civil Procedure) Rules, 2017 to order that the defendant pays costs of the claimant for the assessment hearing at **K50,000.00**.

Made this 3<sup>rd</sup> day of July, 2018



**Austin Jesse Banda**

**ASSISTANT REGISTRAR**