



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NO. 281 OF 2017**

**BETWEEN**

**V/H CHIBATHI ..... CLAIMANT**

**AND**

**G.V.H. MAKWALE, HIZDORY MANGOZO, KHUNYA MANGO,  
MAI TIMBA, MAI CHIBISA, ALINDIINE TEPUWA,  
JAMES GREY, MADZUNZO MAKWALE AND  
OTHER UNKNOWN PERSONS ..... DEFENDANTS**

**CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR**

Chirwa, of Counsel for the Claimant

Counsel for the Defendants, absent

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The claimant brought proceedings against the defendants claiming damages for harassment and intimidation, special damages and costs of the action. Judgment on liability was entered for the claimant on 1<sup>st</sup> February, 2018. The matter has now come for assessment of damages.

## The Evidence

In 2013 the claimant was lawfully installed as Village Headman Chibathi under Group Village Headman Tambala in the area of Senior Chief Mabuka in Mulanje after a long standing wrangle between his clan and that of Group Village Headman Makwale. On 16<sup>th</sup> July, 2017 death occurred in the claimant's area and the defendants took charge of the funeral. They proceeded to arrange for the digging of a grave at the claimant's graveyard without informing him as is required by custom. The deceased was not a relative of the defendants and in any event funeral arrangements should have been left to the claimant. On 17<sup>th</sup> July, 2017 the claimant sent Osman Mapira, the Village Development Committee Chairperson to go and check if the defendants were proceeding with the grave digging. Osman Mapira was heavily beaten and assaulted resulting in deep wounds in the head and massive bleeding. The matter was reported to Mulanje Police and to Senior Chief Mabuka. The defendants also destroyed the claimant's house and hall together with his household property all valued at K1,839,000.00. They also took the sum of K295,000.00 from his bedroom.

The destroyed items are:

- (a) destroyed house valued at K1,400,000.00;
- (b) video screen valued at K7,000.00;
- (c) hair dressing equipment valued at K8,000.00;
- (d) missing household items valued at K420,000.00;

At the time the case came for hearing, the claimant was living in hiding as the defendants had vowed to beat and kill him.

## Applicable Law and Analysis

A person who suffers injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – *Elida Bello v Prime Insurance Co. Ltd* Civil Cause No. 177 of 2012.

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded by awards made in decided



cases of a broadly similar nature – *Wright v British Railway Board [1983] 2 AC 773*. The court, however, considers the time the awards were made and currency devaluation – *Kuntenga and Another v Attorney General* Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include pain and suffering. These are assessed by the court. Pecuniary loss must be pleaded and proved. In *Renzo Benetollo v Attorney General and National Insurance Co. Ltd* Civil Cause No. 279 of 1993 the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded.

### Pain and Suffering

Pain and suffering is attributable to the claimant's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced – *Sakonda v S.R. Nicholas* Civil Appeal Cause No. 67 of 2013. While pain is attributable to the physical pain caused by or consequent upon the injury, suffering relates to the mental element of anxiety, fear, embarrassment and the likes - *Zagwazatha v Attorney General* [2016] MWHC 512.

It is clear from the evidence that the claimant suffered a lot. He had anxiety and fear when the defendants vowed to beat and kill him. As a result of that, he was living in hiding. The claimant is a Village Headman. It is so embarrassing for a person of his authority to leave his house and live in hiding.

This court, therefore, awards the claimant a sum of K3,000,000.00 as damages for harassment and intimidation.

### Special Damages

Special damages are supposed to be pleaded and proved. The claimant pleaded and gave evidence that the defendants destroyed the claimant's house and hall together with his household property all valued at K1,839,000.00. They also took the sum of K295,000.00 from his bedroom. He listed down the destroyed items as:

- (a) destroyed house valued at K1,400,000.00;
- (b) video screen valued at K7,000.00;

- (c) hair dressing equipment valued at K8,000.00;
- (d) missing household items valued at K420,000.00;

There is no further evidence to show the extent of the damage to the house and hall i.e. whether it was the whole house and hall or parts thereof. There is no evidence to show what was damaged for him to arrive at the sum of K1,400,000.00 as regards the house. The claimant did not inform this court the exact household items that went missing for the court to appreciate the sum of K420,000.00 being claimed.

The evidence generally shows that the house and hall were damaged and that some household items went missing. This court awards the claimant a sum of K700,000.00 as damages for destroyed house and hall, and missing household items.

The evidence also shows that a video screen worthy K7,000.00 and hair dressing equipment worthy K8,000.00 were destroyed. Money amounting to K295,000.00 was stolen from the claimant's bedroom. This court awards the claimant these sums.

#### Conclusion

The claimant is awarded a total sum of 4,010,000.00. The claimant is also awarded costs of this action.

Pronounced in court this 26<sup>th</sup> day of June, 2019 at Blantyre.



**EDNA BODOLE**

**ASSISTANT REGISTRAR**