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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 423 OF 2016

BETWEEN

GREY KAMWANA CLAIMANT

AND

THE ATTORNEY GENERAL DEFENDANT

CORAM : HER HONOUR E. BODOLE, ASSISTANT REGISTRAR

Mzembe, of Counsel for the Claimant

Ms. Micongwe, of Counsel for the Defendant

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimant brought proceedings against the defendant claiming damages for unjustified assault and battery, loss of liberty and dignity, injury to feelings, mental anguish, disgrace and humiliation, loss of amenities of life, exemplary damages, and costs of the action. Judgment on liability was entered for the claimant on 23rd May, 2017. The matter has now come for assessment of damages.

The Evidence

The claimant in his witness statement testified that on 22nd April, 2016 around 7 pm the claimant was ferrying some passengers in a Mazda Bongo minibus registration number MJ 244. He stopped to refuel the motor vehicle at Siyanana Filling station next to Unilever offices in Limbe. While at the Filling station, he and the passengers were beaten up for no valid reason by some Police Mobile Force (B Company) Officers (PMF) who were also refueling their motor vehicle. He was taken to Limbe Police station and was left at the reception area. The Police officers at Limbe Police station released him and took him to Queen Elizabeth Central Hospital where he received emergency treatment and was properly treated the following day.

As a result of the assault and battery the claimant sustained injuries. The claimant testified that he sustained blunt force trauma to his left side of the head which caused swelling and bleeding. His left eye was severely injured, both eyelids were grossly swollen. According to the medical report on the first day he went to the hospital, it is recorded that the claimant sustained a small cut on the lower left eyelid. The injuries were to be reviewed the following day. Upon review it was found that he had hyper pigmented eyelids, hyperemia, and ecchymosis. He had clear cornea and clear lens. The medical report also showed that he sustained an injury which started with the word 'traumatic' but the next word was illegible.

As a result of the injuries he sustained, the claimant was unable to see out of his left eye for over two weeks. He now has blurred vision in his left eye. His left eye constantly sheds tears especially when there is sunlight or windy conditions. He experiences constant headaches. He is unable to enjoy watching his favourite spot football due to his vision problems and headaches. He has problems walking as he cannot seem to properly see (depth perception). He has a hard time driving any vehicle. He has scars on his face and body and under his left eye. His quality of life and ability to enjoy life with his family has been greatly and negatively affected.

The claimant further testified that during the ordeal with the PMF Officers, he was denied his freedom of movement and liberty without any just cause. He was mercilessly beaten, arrested, detained and transported to Limbe Police station although he did not commit any crime. At the Police station, he was exposed to

insanitary environment which was a risk to life and health and caused him great fear. The ordeal left him mentally, physically and emotionally drained and confused.

During cross-examination, the claimant testified that his occupation is driving. He is currently driving a 2 tonner motor vehicle. The claimant was able to read very small print even though he said in his witness statement that he had blurred vision. He did not have any medical evidence to show that he is still having blurred vision and headaches from the time of the accident to this time. He said that he was injured on the left eye only because he was hit by a button stick twice on the side of the head. He sustained a small cut on the lower left eye lid. He then tried to show the scar on the upper left eye lid. The court noted that there were no scar or scars around his left eye or area where he said he was hit by the button stick.

He further testified that he went alone to the hospital because the Police just released him. He went back home and went again the following morning where he was treated as an out-patient.

Applicable Law

A person who suffers bodily 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 Company 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 affordable 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, loss of amenities of life and disfigurement. These are assessed by the court. Pecuniary loss must be pleaded and proved - *Renzo Benetollo v Attorney General and National Insurance Company Ltd* Civil Cause No. 279 of 1993.

Assault and Battery

Damages for assault and battery are awarded to compensate the claimant not only for the physical injury suffered but also to the injury to his feelings. Thus damages may be awarded for the indignity, mental suffering, disgrace and humiliation that may be caused – *Donald Ngulube v Attorney General* Civil Cause No. 1569 of 1993. In *Chiyenda v Attorney General* [2006] MWHC 74 the court stated that:

“Where the assault and battery has resulted in physical injury, the damages are calculated as in any other action for personal injury. That is, he may recover for both his pecuniary losses and non-pecuniary losses. The pecuniary losses comprise two separate items viz. the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury. The non-pecuniary losses comprise pain and suffering, loss of amenities of life and loss of expectation of life.”

Pain and Suffering and Loss of Amenities of Life

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.

Loss of amenities is attributable to deprivation of the claimant's capacity to engage in some sport or past-time which he formerly enjoyed – *Kanyoni v Attorney General* [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do.

Loss of Liberty and Dignity/False Imprisonment

Damages for false imprisonment are awarded for loss of dignity. Factors considered in arriving at the award include injury to the reputation, mental suffering, the discomfort that may be caused by the false imprisonment and the attendant loss of status amongst others – *Mnthala v Attorney General* [2006] MWHC 41; *McGregor on Damages 16th Edition para. 1850-51*.

Damages for false imprisonment need not be made exclusively on consideration of the time factor. In *Donald Ngulube v. Attorney General* (supra) the court stated that:

“In relation to time I would say that longer imprisonment, in the absence of alternative circumstances, should attract heavier awards, shorter imprisonment in the absence of aggravating circumstances should attract lighter awards. What should be avoided at all costs is to come up with awards that reflect hourly, daily and monthly rates. Such an approach could result in absurdity with longer imprisonments and shorter imprisonments where there are assimilating or aggravating circumstances. The approach is to come up with different awards depending on whether the imprisonment is brief, short or very long etc. and subjecting this to other circumstances.”

Exemplary Damages

An award for exemplary damages is exceptional. It is payable, amongst others, to where there is oppressive, arbitrary or unconstitutional action by the servants of the government - *Matanie v Attorney General (Malawi Defence Force)* [2005] MWHC 101. Exemplary damages are not paid as compensation to the claimant. They constitute a punishment inflicted for the tort-feasor's conduct (above and beyond the ordinary liability under general damages) – *Stanley George Kadzakaufa Jere v Attorney General* [2012] MLR 370.

Analysis

The claimant indeed suffered assault and battery at the hands of the PMF Officers. He was arrested, detained and taken to Limbe Police station. He was humiliated, disgraced and he lost his dignity. He suffered physical and mental anguish due to the actions of the PMF Officers.

The claimant testified that he now has blurred vision in his left eye. He is unable to enjoy watching his favourite spot football due to his vision problems and headaches. He has problems walking as he cannot seem to properly see (depth perception). He has a hard time driving any vehicle. His quality of life and ability to enjoy life with his family has been greatly and negatively affected. There is no medical evidence to substantiate his claim that he has blurred vision and that he is suffering from the effects of the blurred vision. The medical evidence shows that his cornea and lens

were clear which means that they were not affected in any way. So from the outset he never had blurred vision.

There is also no medical evidence to show that his left eye constantly sheds tears especially when there is sunlight or windy conditions and this is attributable to the injuries he sustained. As already stated, the cornea nor lens were affected. There is also no evidence to show if the constant headaches he is having are connected to the injury he sustained.

Since the claimant had no blurred vision from the outset, this explains the fact that he was able to go to the hospital on his own on the day of the assault and the day after the assault. That is why he is able to read very small print. This also explains why he is able to continue earning a living as a driver. He is now driving a 2 tonner pick-up instead of a minibus. Surely someone with blurred vision cannot do that. So with good vision, his assertion that he is unable to enjoy watching football and that he has faulty depth perception have no basis. All this shows that the claimant is able to enjoy life as he used to.

As to the claimant having suffered from a blunt force trauma, there is no evidence to substantiate that. The words in the medical report that would have proved that are illegible. Also the claimant did not develop any scars around his left eye or area where he said he was hit by the button stick.

What can be established by the evidence in this court so far is that the claimant sustained a small cut on the lower left eyelid. He had hyper pigmented eyelids, hyperemia, and ecchymosis. He was unable to see using his left eye for over two weeks.

The claimant testified that at Limbe Police station, he was exposed to insanitary environment which was a risk to life and health and caused him great fear. There is no evidence to show what the condition of the place was or how insanitary or unhygienic it was. This court is, therefore, at pains to appreciate how the reception area at the Police station would be an insanitary environment with a risk to life and health.

As regards exemplary damages, the PMF officers had assaulted, battered, arrested and detained the claimant for no valid reason. Their action was oppressive and arbitrary.

Award of damages

This court would make an award of damages that would fairly compensate the claimant. This court takes into account the fact that the physical injury the claimant sustained was not so serious and the imprisonment was brief. This court would also take into account the humiliation, disgrace, loss of dignity and mental anguish that he suffered. This court awards him a sum of K1,000,000.00 as damages for assault and battery, K1,000,000.00 as damages for false imprisonment. The defendant should pay a sum of K4,000,000.00 as exemplary damages.

Conclusion

The claimant is awarded a total sum of K6,000,000.00. The claimant is also awarded costs of these proceedings.

Pronounced in court this 19th of September, 2019 at Blantyre.



EDNA BODOLE

ASSISTANT REGISTRAR