



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL DIVISION

CIVIL CAUSE NO. 247 OF 2020



BETWEEN

AKIM BOSTON MWALE.....CLAIMANT

AND

ATTORNEY GENERAL (MALAWI POLICE SERVICE).....DEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Mr. Namasala, of counsel for the Claimant

Defendant, absent and unrepresented

Mr. Matope, Official Interpreter/ Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The present assessment follows the ruling by Hon Justice Kenyatta Nyirenda in which he allowed the Claimant's application for an order striking out the statement of defence for non-compliance with Order 13 rule 3(1) of the Courts (High Court) (Civil Procedure) Rules, 2017. Accordingly, the honourable judge struck out the statement of defence and entered judgment in favour of the Claimant for the following;

- i. Damages for pain and suffering

- ii. Damages for general incapacitation
- iii. Damages for loss of amenities of life
- iv. Damages for deformity and/or disfigurement
- v. Damages for false imprisonment
- vi. An award of exemplary damages, and
- vii. Cost of action.

On 5th of October, 2021 I received evidence for the assessment of damages from the Claimant in the absence of the Defendant. The latter was duly served with the notice of assessment of damages but did not attend the hearing.

Brief facts are to the effect that the Claimant was arrested on allegation that he had stolen some items from Farmers World worth over MK6 Million. The police incarcerated him before concluding investigations. He was in custody from 13th March, 2017 to 18th March, 2017. While in custody he was beaten up by the police in a bid to solicit a confession from him. The police used a shovel to beat him up. The claimant sustained serious wounds on his back, and he was treated at Kamuzu Central Hospital. When he engaged a lawyer to help him, the police released him and he was restored back to work without any explanation with regard to the outcome of the police investigations.

The Claimant was the sole witness in this case. Testifying as PW1 he told the court that the conduct by the police was very unprofessional, and he was treated so badly as if he was a human being with no liberties at all. He said he was assaulted by a police woman, and she used a shovel to hit him on his back, trying to force him to confess liability for a crime he did not commit. He said, as a result of the beating, he sustained serious wounds on his back. He added that he was in constant pains for 20 days after the beating. The witness, apart from his Witness Statement, he also tendered a Medical Report which showed that he had sustained bruises on his back and a deep cut wound on his right shoulder, and that the wounds were dressed with Iodine while the deep cut wound was sutured.

The only issue present in this matter is the assessment of appropriate amount of damages under the heads above-outlined.

Damages constitute a remedy that is available to a victim of a wrongful act of another. The wrongful party is the one responsible for compensating the victim. This is a way of trying to restore the position the victim would have been had the accident not happened. This is known as the principle of *restitutio in integrum*. Katsala J in the case of *George Kankhuni v Shire Buslines Ltd, Civil cause no 1905 of 2002*, as quoted in the case of *Chidoola v Chilunga and prime insurance co. Ltd, personal injury cause no 488 of 2014* said that the law demands that the plaintiff should be put in the same position as if he has not suffered the loss.

From the skeleton arguments, I noticed that the claimant was demanding a total of MK45, 000,000.00 in damages. I consider the proposition much on the higher, unfair and unjust considering the injuries suffered by the Claimant in this case. In order to avoid disparities, in my view, the safest way is to direct myself to decided cases in similar matters.

In *Kondwani Munthali vs Fly J. Chikuse and Watch Dog Security Company Limited*, Civil Cause No. 470 of 2019, the claimant who had sustained a fractured left rib and multiple bruises, and whose degree of impairment was assessed at 23% was, on 20th October, 2021 awarded MK2,000,000.00.

In *Chris Kalichero vs Jafalie Simbu and Prime Insurance Company Limited*, Civil Cause No. 205 of 2017, the Claimant, who sustained an ankle fracture on his left leg and multiple bruises, was on 13th October, 2021 awarded MK3,015,000.00 in damages.

In *Mbambo vs Robray Limited*, Civil Cause No. 296 of 2015 where the Plaintiff was detained under similar circumstances, an award of MK1, 350,000.00 was made.

In the present case, the Claimant was detained for about 5 days. He was beaten up by the police to the extent that he sustained a deep cut wound and multiple bruises. The deep cut wound was sutured. Admittedly, the afflictions are serious but not as serious as in the decided cases that were cited by counsel for the Claimant in his skeleton argument. Even the period of detention was not long. He did not bring any evidence with regard to the amenities of life that he alleged

to have lost, and even the award of exemplary damages is not also properly justified. There is again no any serious disfigurement or deformity on the part of the Claimant apart from the few less-serious scars. Indeed, with these observations, MK45, 000,000.00 is too much on the higher side, unrealistic and unjust in the circumstances.

Considering the above, I award the Claimant **MK4, 000,000.00** being damages covering all heads. The Defendant is required to pay the whole amount within 30 days.

Costs are for the Claimant, and shall be assessed separately if not agreed upon by the parties.

Made in chambers today Monday the 20th day of October, 2021.



Brian Sambo
Assistant Registrar