



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 987 OF 2015**

**BETWEEN**

**STEVE FRED ..... CLAIMANT**

**AND**

**G4S SECURE SOLUTIONS (MALAWI) LIMITED ..... DEFENDANT**

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

Sauti, of Counsel for the Claimant

Mwandira, 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 pain and suffering, loss of amenities of life, special damages, and costs of the action. Judgment on liability against the defendant was made by the court on 3<sup>rd</sup> November, 2017 on a contributory negligent basis of 10% and 90% as against the claimant and defendant respectively. The matter has now come for assessment of damages.

## The Evidence

The claimant was employed as a dog handler by the defendant. On 24<sup>th</sup> November, 2014, he was assigned by his supervisor to take a dog outside the defendant's premises. As he took the dog out of the kennel and tried to handle it, the dog turned and mauled him. As a result he sustained injuries.

The claimant sustained multiple wounds on the left upper and lower limbs, and multiple wounds on the chest and abdomen. His scrotum was partly bit off taking off one testicle. He had difficulties in walking due to the severe amount of pain he was experiencing. He was treated as an outpatient from 24<sup>th</sup> November 2014 to 26<sup>th</sup> December, 2016 at Queen Elizabeth Central Hospital. As a result of the injuries he sustained, he has visible scars on the parts of his body where he was injured. His physical day to day life has been affected.

The claimant is claiming damages for pain and suffering, and loss of amenities of life. He is also claiming a sum of K10,500.00 as costs for procuring medical report.

## General Law on Damages

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 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, loss of amenities of life and disfigurement. 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.

It is clear from the evidence that the claimant went through a lot of suffering and was in great pain and is still suffering. He sustained multiple wounds on the left upper and lower limbs, and multiple wounds on the chest and abdomen. His scrotum was partly bit off taking off one testicle. He had difficulties in walking due to the severe amount of pain he was experiencing. He has visible scars on the parts of his body where he was injured. He was treated as an outpatient for 13 months at Queen Elizabeth Central Hospital.

### Loss of Amenities of Life

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.

The claimant's physical day to day life has been affected. He is no longer the same since the occurrence of the accident. He is, therefore, incapable of enjoying life as he used to.

### Special Damages

Special damages are supposed to be pleaded and proved. There is no evidence to show that the claimant expended the amount he is claiming for procuring the medical report from Queen Elizabeth Central Hospital. This is a free hospital so if some money had been spent, that should have been shown to the court. However,

this court is mindful of the fact that the claimant had to travel to the hospital from home in order to obtain the medical report. Reasonable compensation for that is fair and just.

#### Award of Damages

In ***Alex Kameko v Starplex Industries Limited*** Personal Injury Cause No. 882 of 2012 the claimant's middle and index finger were amputated due to a plastic making machine grounding his fingers. He was awarded a sum of K2,000,000.00 In ***Geoffrey Mapemba v Prime Insurance Company Limited*** Civil Cause No. 229 of 2012 the claimant sustained head injury, deep cut wound on the forehead, cut wound on the right eye and bruises on the shoulder, ribs and leg. He was awarded a sum of K3,200,000.00 as damages for pain and suffering, and loss of amenities of life on 28<sup>th</sup> April, 2014. The injuries suffered by the claimants in the above cited cases are more or less similar to the injuries suffered by the claimant in the present case.

I, therefore, award the claimant a sum of K2,600,000.00 as damages for pain and suffering, and a sum of K1,500,000.00 as damages for loss of amenities of life. He is also awarded a sum of K3,000.00 as costs for procuring the medical report, and costs of the action.

#### Conclusion

The awards are made on a contributory negligent basis of 10% and 90% as against the claimant and defendant respectively.

Pronounced in court this 24<sup>th</sup> day of October, 2018 at Blantyre.



**EDNA BODOLE (MRS)**

**ASSISTANT REGISTRAR**