

IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NUMBER 1361 OF 1994



BETWEEN:

C. GAMA ..... PLAINTIFF

and

ATTORNEY GENERAL ..... DEFENDANT

CORAM: E.B. TWEA, REGISTRAR  
Masumbu, Counsel for the Plaintiff  
Defendant/Counsel absent



RULING

This action was brought by the plaintiff for personal injuries, assault and battery. The plaintiff sought that these be exemplary. At the end of the day the defendant did not defend the action and judgment was entered for the plaintiff.

It was the plaintiff's story that on the evening of 5 December 1992, he left his place of work at Alekeni Anene Restaurant in Lilongwe for his home. At about 7.35 p.m. while walking home, the Police Mobile Force men shot at and injured him. The bone of his left leg was shattered and he was hospitalised for three months. This, notwithstanding he was referred for further treatment in South Africa. His claim is based on the injuries and expenses incurred as a result thereof.



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The issues of liability was determined by the judgment. What remains to be determined is the amount of damages that the court would award for the plaintiff's suffering.

The plaintiff called one witness, himself, the defendant declined to call any witness. However, in its submission, while admitting liability, called on the court to award damages as per pleadings only and no more than that, although it was agreed that the plaintiff's writ was only generally endorsed. Both parties made submissions on the case from which I will consider the basis of this assessment.

The plaintiff's evidence was that he was hospitalised at Kamuzu Central Hospital for three months and underwent 15 theatrical procedures: including bone grafting from his ribs and skin grafting from his hip. The treatment was not completely successful and he was referred to South Africa. He attended Dr. M.S. Mahomed Clinic twice and is required to continue to do so. He is currently dependent on crutches, the shot wound is not healed, he still feels a lot of pain, his leg has shortened, he has lost his independent life and is dependent on his parent in-laws, his pursuit of leisure is destroyed and cannot conduct his publican business anymore since he sold his capital goods to pay for his medical expenses. The medical report PEX6, does corroborate his self-acquisition of essential drugs.

This is the essence in the evidence. I now have to turn to the damages: personal injuries, assault and battery.

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In his evidence the plaintiff gave evidence which centred on pain, suffering and loss of amenities and earnings and special damages. The defendant in their submission sought to exclude special damages which was not pleaded. This would, in my view, be so. I note that the plaintiff had produced documentary evidence on medication and cost of trips to South Africa but I have no evidence of referrals. I must say that one is entitled to seek medicare, but where one chooses one mode and changes to a more expensive one without any proof of failure of the first choice, as is my view of PEX6, I do not think the court should penalise the defendant unless this is specifically pleaded. In this case, I do not think the cases of Renzo Benefolo vs. Attorney General and NICO, cc 279 of 1993, District Registry and Jarney Brown Chikumba vs. Manica Freight Services PR Cc 13 of 1990, are applicable. There is no explanation as to why the plaintiff chose to use more expensive mode of treatment. PEX6 does not support this. I grant the defendant's prayer and I will not include the cost of the plaintiff's South African trips in the damages since it was only necessitated by his drive to check other horizons than lack of attention within this jurisdiction.

There is no contention on other damages and I note that the plaintiff is, as per PEX6, 50% disabled, he will not enjoy life as before. The head of general damages has not been challenged as to particulars. I will, therefore, grant the plaintiff K60,000 for pain, suffering and loss of amenities.

Loss of earning had not been pleaded but it is not disputed that the man was employed and that this is part of general damages. The plaintiff only gave his age and not his liability and there is no indication as to how much he earned from his business as a publican. In such circumstances, I can not have any formula for calculating what he would have earned. I will thus treat this head as general damages and grant K 78,000 damages for loss of earning for a 31 year old publican who was in regular employment.

In all I grant the plaintiff K138,000 damages with costs.

PRONOUNCED in Chambers this 25th day of March 1996, at Blantyre.



E.B. Twea  
REGISTRAR