

**ATTORNEY-GENERAL v KATWISHI KAPANDULA (1988 - 1989) Z.R. 69
(S.C.)**

SUPREME COURT
NGULUBE, D.C.J., CHOMBA AND GARDNER, JJ.S.
19TH FEBRUARY, 1987
(S.C.Z. JUDGMENT NO. 13 OF 1988)

Flynote

Damages - Inconvenience - Award for - When available.

Headnote

The defendant appealed against the quantum of damages awarded for the value of lost meat, transport costs and inconvenience experienced by the plaintiff after the police wrongly disposed of his game meat.

Held:

Damages for inconvenience cannot be awarded to cover the inconvenience of efforts made by a claimant to pursue his cause of the inconvenience.

Case referred to:

(1) *Mafo v Adams* [1970] 1 Q.B. 548

Work referred to:

Mcgregor on Damages (1980) 14th ed

For the appellant: M.E. Mwaba, Senior State Advocate.

For the respondent: P.C. Zulu, Zulu and Co.

Judgment

GARDNER, J.S.: delivered the judgment of the Court.

This is an appeal from a judgment of the High Court awarding damages for the loss of game meat. In this judgment we will refer to the appellant as the defendant and the respondent as the plaintiff respectively.

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The facts of the case were that the plaintiff was in possession of a hunting licence, and, in or about July and August 1984, shot an eland and a hartebeest which he was entitled to do under the terms of his licence. Because he had transport difficulties the plaintiff returned from Mumbwa district, where he had been hunting, to Lusaka, and he left three of his companions in charge of the game meat, which resulted from the hunting, while he went to Lusaka to arrange for transport. While the plaintiff was away, the police arrested the persons who had been left in charge of the meat, and, although they were shown the hunting licence belonging to the plaintiff, they wrongly formed the

opinion that more game had been shot than was permitted under the licence. The police took possession of the game meat and apparently sold it by auction. In any event, they were unable to return it to the plaintiff, the rightful owner, when he demanded it.

In his judgment the learned trial Judge found that the meat had been wrongly detained by the police, and he awarded damages in the sum of K4,000.00 for the value of the meat; K300 in respect of three journeys made by the plaintiff from Lusaka to Mumbwa and return, and K300 for the inconvenience caused to the plaintiff.

The defendant appealed against the judgment both as to liability and quantum. However, before this Court, Mr *Mwaba*, on behalf of the defendant, indicated that he was not pursuing the appeal against liability but wished only to argue the question of quantum. His first argument was that the K4,000 awarded in respect of the meat from the two animals shot by the plaintiff was excessive and that no evidence had been led by the plaintiff to support his own estimate of the value. He said an appropriate award should be no more than the cost of the hunting licence.

This Court has on many occasions indicated that, in claims for special damages, either documentary or independent evidence should be called in support. By this we mean that, if money is actually paid out by the plaintiff, evidence of such payment should be placed before the Court, and in other cases evidence from someone familiar with the cost of whatever is claimed should be available. In this case there was of course no documentary evidence or other evidence to indicate the precise value of the meat wrongly detained and disposed of by the police, and the plaintiff's advocates saw fit to rely on the evidence of the plaintiff alone to support the estimate of the value of the lost meat. In taking this course the plaintiff's advocates took a risk that the learned trial Judge might say that he was not satisfied with the evidence of the plaintiff alone. However, as there can be no other evidence to support this part of the claim except an estimate of the value, the learned trial Judge was entitled to rely on the unchallenged evidence of the plaintiff if it was accepted that he was telling the truth. In the event, that is precisely what the learned trial Judge's did and there was no impropriety for which the learned trial Judge's judgment in this respect should be set aside. This ground of appeal therefore fails.

With regard to the costs of transport, about which the plaintiff gave evidence that he made three return trips from Lusaka to Mumbwa at a cost of K50.00 each way, Mr *Mwaba* argued that here again there should have been documentary evidence of the cost of the transport and that in

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any event at least one of the trips would have been incurred by the plaintiff regardless of the loss of the meat. Mr *Zulu* on behalf of the plaintiff argued that the plaintiff's evidence as to the cost of the transport had not been challenged in cross-examination and, therefore, that evidence should be accepted.

This is a case where documentary evidence as to how much was paid for the transport could have been obtained by the plaintiff, and the learned trial Judge would have been entitled to indicate that the evidence of the plaintiff alone was insufficient to support this part of the claim. However, as a layman might well not have realised the importance of obtaining formal receipts for what were in

the nature of ordinary taxi fares, the learned trial Judge was entitled to accept the plaintiff's statement as to what he had paid. In the course of his evidence the plaintiff said that he had hired transport at the stated rate from Lusaka to Mumbwa to hunt and we agree with Mr *Mwaba* that the cost of the trip to Mumbwa to hunt and return to Lusaka would have been incurred by the plaintiff in any event. This ground of appeal therefore succeeds as to the cost of one return trip, that is K100, and the damages under this head should be reduced to K200.

Mr *Mwaba's* third ground of appeal related to the damages for inconvenience, and he argued that no damages should have been awarded under this head. Mr *Zulu*, although he supported the award, said that he knew of no authority to justify an award under this head.

The learned author of *Mcgregor on Damages* 14th ed at paragraph 61, in discussing this subject indicates that the expression 'damages for inconvenience' is not generally found in tort, although damages have been expressly awarded under this head in deceit, false imprisonment and nuisance. Of these three examples the cases cited indicate that the torts themselves were the direct cause of the inconvenience alleged. In the case of *Mafo v Adams* (1) where damages were awarded for deceit, the deceit itself caused the plaintiff to make an unnecessary journey, and in the other two examples, it is obvious that false imprisonment itself causes inconvenience and so does nuisance. In the case at present before us the inconvenience which we presume was the subject of the damages awarded by the learned trial Judge was that the plaintiff had to make two unnecessary journeys from Lusaka to Mumbwa and return in order to find out what had happened to his meat. We cannot imagine any cases of the detinue where the plaintiff would not have made at least one wasted attempt to recover his goods and there must be numerous such cases where such wasted attempts involve substantial journeys. In our view damages for inconvenience in tort were never intended to cover the inconvenience of efforts made, in vain, by unsatisfied plaintiffs to obtain what is rightfully due to them. The examples cited in *Mcgregor* are exceptional and relate only to cases where the torts themselves are the immediate cause of the inconvenience suffered in specific cases. It is not intended that such damages should be awarded to every litigant who suffers the inconvenience of having to pursue his claim. We agree with Mr *Mwaba* that there was no justification for the award of K300 damages for inconvenience in this case and this ground of appeal therefore succeeds.

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This appeal is allowed and the award in favour of the plaintiff is set aside. In its place we substitute an award of K4,000 for the value of the lost meat and K200 the cost of two return journeys.

The costs of this appeal will be the defendant/appellant's.

Appeal allowed.
