

THE ATTORNEY-GENERAL v FRED CHILESHE NGOMA (1987) Z.R. 80 (S.C.)

SUPREME COURT  
NGULUBE, AG. C.J., GARDNER, AG. D.C.J., AND SAKALA, J.S.  
4TH MAY, 1987  
(S.C.Z. JUDGMENT NO. 18 OF 1987)

**Flynote**

Damages - Assault and false imprisonment - Serious misconduct by police - Effect on level of damages.

**Headnote**

The respondent was stopped at a road block by police officers. After initial conversation police officers accused him of boasting. He complained to a senior police officer about harassment and was told he would be handcuffed. Thereafter he was

p81

grabbed by the throat, his arm was twisted, and he was kicked until he fell down. On the ground he was continually choked and kicked and lost consciousness. When he regained consciousness he found himself handcuffed in a police station. He felt pain in his chest and was assisted by three police officers to a cell. He was taken to hospital where he was found to have a cracked rib and abrasions on the chest. He was kept in hospital one night.

The deputy registrar awarded K1,500.00 for assault and K7,000.00 for false imprisonment and distress, with interest. The appellant appealed contending the level of damages was too high and that at the trial the respondent had asked for a higher figure in damages for the assault than for the false imprisonment.

**Held:**

The conduct of the police was seriously wrong and must be reflected in the damages.

**Case cited:**

The Attorney-General v Martha Mwiinde (1987) Z.R. 71

For the appellant: D. L. Goel, Senior State Advocate

For the respondent: B. C. Willombe, M.M.W. and Company

---

**Judgment**

**GARDNER, AG.D.C.J.:** delivered the judgment of the court.

This is an appeal from an award of damages by a deputy registrar under a consent judgment for assault and false imprisonment. In this judgment we will refer to the appellant as the defendant and the respondent as the plaintiff as they were in the court below.

The facts of this case were that on the 17th of April, 1981, the plaintiff was driving his car from

Lusaka to Kafue River Motel and in the course of his journey he passed through two road blocks and reached a third road block where he was stopped at 0900 hours. The police on the Lusaka side of the road block allowed him to pass and so did the policemen on the Kafue side but, after he had passed the second policeman and was intending to turn right, the policeman called to him to stop and when he did so, he was told to pick up some orange peel which he had thrown out of the window of his car. After he had picked up the peel he was ordered by the police to park the car on the side of the road, and, when he told the policemen in answer to a question that he was an engineer by profession, the policeman was infuriated and accused him of boasting. After a short while a women police officer came to the plaintiff and accused him of being proud because he was driving a Falcon motor car. When the plaintiff insisted on seeing a senior officer he was sent to a man in civilian clothes on the other side of the road where he had to wait in a bus shelter. After some time the first uniformed policeman called to tell the plaintiff that whatever he did he would be kept there for the whole day. When a senior police officer arrived later the plaintiff complained to him about the harassment he had undergone and the senior police officer threatened to handcuff him. The plaintiff pleaded with the senior officer to tell his constables to leave him alone, but the officer spoke to them in a casual manner, and, as a result, two or three police officers attacked the plaintiff. One grabbed the plaintiff by the throat whilst one twisted his arm and another kicked him until he fell down. As he lay down they continued to choke and kick him, as a result of which he

p82

lost consciousness until he woke later to find himself in a police station with his hands handcuffed. He felt a pain in his chest and was unable to walk on his own, so that he had to be assisted by three policemen to his cell. Later he was taken to the University Teaching Hospital where after examination by a doctor, he was found to have a cracked right rib and abrasions on the right side of his chest. He was kept in hospital for the rest of the night until he was discharged the following morning. Four days later he threatened to sue the police for the assault and false imprisonment and he was then charged with having been drunk and disorderly on the day he was apprehended. A year later he was tried for that offence and acquitted. He gave evidence that he was a teetotaler and thus his breath could not have smelt of alcohol as alleged by the police and the only smell on his breath could have been that of an orange which he had eaten.

At the hearing for assessment of damages, the plaintiff gave evidence that at the time of the incident he was on his way to play tennis and was deprived of the opportunity to do so.

The learned deputy register awarded damages in the sum of K1,500.00 for assault and battery, K7,000 for false imprisonment, humiliation, embarrassment and distress and K200.00 for loss of a tennis game making a total of K8,750 with interest at six percent from the 17th of April, 1981.

(Gardner, Ag. D.C.J., then dealt with those grounds of appeal, which are not the subject of this report).

Following the case of the *Attorney- General v Mwiinde* (1), it is our view that in this case there was certainly aggravating conduct by the policeman concerned and it was proper for the exemplary element to be taken into account when awarding the compensatory damages. It appears to us that this is exactly what the learned deputy registrar did, because although he made no separate award

for exemplary damages, he criticised the conduct of the police and said that he would award damages to show the police that they could not deprive a person of his liberty with impunity.

Turning to the last ground of appeal, which is a general one that the damages awarded were excessive and unreasonable, Mr Goel argued that in the circumstances of this case and in comparison with similar awards approved by this court in the past the award of damages was so excessive that this court should not uphold it.

In reply, Mr Willombe on behalf of the plaintiff has argued that inflation since the awards of damages in the past for the same tortious conduct must be taken into account and that the conduct was in fact such as to merit the damages awarded.

A further point raised by Mr Goel was that there was no properly produced medical report to support a finding that the plaintiff suffered from a cracked rib. In cross examination the plaintiff produced a medical report showing the injury, and we are satisfied that, although, the document should have been produced in the plaintiff's examination - in - chief, the cross-examination let in the document, with the result that it is properly on the record.

We bear in mind that we can only interfere with an assessment of damages if it is wrong in principle or if the amount of the award is so totally unreasonable as to be excessive. As we reiterated in the *Mwiinde* case it is not sufficient for this court to say that had we tried the case we would have awarded different damages. The damages must be wholly wrong before we will interfere.

p83

Mr Goel has drawn our attention to the fact that, in his final submission at the trial, counsel for the plaintiff said that he asked for a high figure for the assault and a lower one for the false imprisonment. In the event, the learned deputy registrar awarded K1,500 for the assault and a far higher sum of K7,000 for the false imprisonment. We consider that the proper way to approach this case is to view the total damages as a whole. The assault took place during the time of the false imprisonment and one could hardly be separated from the other. We will also take into account that there has been inflation since some of the earlier cases decided on this issue in Zambia, apart, of course, from the case of *Mwiinde* to which we have referred. In that case we found that a police officer had recklessly shot at and injured the plaintiff and for that reckless assault we awarded K20,000 apart from the damages for pain and suffering.

In the case at present before us no weapon at all was used but we do take into account the fact that a number of policemen attacked and beat a defenceless member of the public for no reason whatsoever in a public place, and that during the course of that beating they attempted to choke him and kicked him while he was still on the ground. We cannot but agree with the learned deputy registrar that this conduct was very serious indeed, coupled with the fact that the appellant was deprived of his liberty with the consequent humiliation and embarrassment. We agree with Mr Willombe that damages in this case must be of a high degree.

We find no reason to interfere with the award of damages made by the learned trial commissioner.

The appeal is dismissed with costs to the respondent.  
Appeal dismissed

---