

**CHARLES CHIPOYA v THE ATTORNEY-GENERAL (1988 - 1989) Z.R. 72
(S.C.)**

SUPREME COURT
GARDNER, AG. D.C.J., BWEUPE AND CHAILA, AG. JJ.S.
9TH DECEMBER 1987 AND 11TH AUGUST 1988
(S.C.Z. JUDGMENT NO. 14 OF 1988)

Flynote

Damages - Effects of - Exemplary element contained in compensatory damages Damages - Inflation - Effect of on interest.

Headnote

The facts of the case were that the appellant was walking very late at night to his home from a bar when he was stopped by a police patrol. He was then taken with others, who were also picked up, to a police station. The appellant was ordered into a cell but resisted by putting his hands against the sides of the door. He was then locked on a verandah. Four police officers then assaulted him, carried him to the reception area where an officer jumped on his leg and fractured it. He was not charged with any offence. He was taken to hospital where a screw was inserted in the leg. He was off work for three months and then given light work. At the trial he complained of pain and produced a medical report that indicated the possible later onset of osteo-arthritis. His disability was assessed at 3%. He was no longer able to run and felt pain when he used the leg. The trial Judge found for the plaintiff and awarded total damages of K1,750.00. The plaintiff appealed solely on quantum.

Held:

- (i) Where aggravated damages are justified the compensatory damages should contain an exemplary element.
- (ii) The appropriate rate of interest should be calculated after taking into account that the damages already reflect the effect of inflation.

Case referred to:

- (1) The Attorney-General v Ngoma (1987) Z.R. 80

For the appellant: J. Kabuka, Messrs Forest Price and Company.
For the respondent: R.O. Okafor, Senior State Advocate.

Judgment

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

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This is an appeal against the quantum of damages awarded by the High Court in a case of false imprisonment and injury.

The facts of the case were that the appellant who at the time of trial was forty-one years of age, was walking at 23:15 hours in Chingola on his way home from a bar when he was accosted by a police patrol and asked where he was going. When he replied that he was on his way home the police asked the appellant and his friend to get into their police vehicle. Thinking that they were going to be taken home the appellant and his friend accepted the invitation of the police and found that they were taken together with others, who were picked up on the way, to the police station. At the police station, the police ordered everyone into a cell and the appellant refused to enter the cell demanding to know why he was required to do so. The appellant was not charged with any offence so he resisted the efforts of the police to force him into the cell by putting his hands against the sides of the door. The appellant was then locked on the verandah. Shortly afterwards four police officers came and assaulted the appellant and carried him to the reception area where one of the officers jumped on the appellant's lower leg, as a result of which the leg was fractured. The appellant was then taken to the hospital where he was operated on and a screw was inserted in the leg just above the ankle. The appellant was off work for three months, and when he returned, was given light work to do. At his trial he still complained of pain and produced a medical report to the effect that he had suffered a fracture of the right lower leg and there was a possibility of osteo-arthritis developing later. The disability was estimated to be about 3%. He himself gave evidence that he was no longer able to run, and felt pain when he used that leg.

In his judgment the learned trial Judge found in favour of the appellant on the facts, that is to say, he accepted that the appellant had been committing no offence when he was picked up by the police whilst walking home and that he had suffered a broken leg as a result of a deliberate assault by the police as alleged by the appellant. When making his award the learned trial Judge commented that there was no evidence as to what was the likelihood of osteo-arthritis and when it could be expected to develop. He then awarded a total sum of K1,750.00 damages.

Mr *Kabuka* on behalf of the appellant has appealed against the award of damages on the ground that it was totally inadequate, and has also asked that interest should be awarded on whatever sum is considered appropriate by this Court.

In reply Mr *Okafor*, on behalf of the State, has argued that it was reasonable to imprison the appellant for walking at 23:15 hours without giving a satisfactory explanation to the police. He also argued that the time of the imprisonment was only eight hours, after which the appellant was released into hospital and that the award made by the learned trial Judge was adequate.

As we see it, the appellant is entitled to damages for false imprisonment, assault, pain and suffering and continued disability. As to the assault, although no exemplary damages were claimed, we confirm that in such cases the compensatory damages must contain an exemplary element. As the assault occurred during the course of the false imprisonment we would

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say, as we said in the case of the *Attorney-General v Ngoma (1)*, that it is proper to deal with both heads of damages together. This case is very similar to the *Ngoma* case in which the claimant was wrongfully arrested and attacked by a number of police officers who kicked him to the extent that he received a cracked right rib. In the *Ngoma* case however there was no surgical operation and no

evidence relating to pain and suffering or future disability. The damages awarded in that case were K8,500 and we consider that that is an appropriate sum to be awarded in this case under the heads of false imprisonment and assault. As to the pain and suffering in respect of the three months during which the appellant was unable to work because of his injury and permanent disability of about 3% together with the possibility of osteo-arthritis (which we accept frequently follows a traumatic injury of this nature), we have considered the awards in similar cases, and, taking account of inflation and the devaluation of the kwacha at the date of the trial judgment (17th June 1986), we would award the sum of K6,000 under this head. Total of our award therefore would be K14,500, which is so much higher than the award of K1,750.00 by the learned trial Judge that it is proper for this Court to interfere on the grounds that the original award was totally inadequate.

With regard to interest, we agree that this is a appropriate case for such an award, and in view of the fact that the damages we have awarded reflect the devaluation of the kwacha, we consider that the rate of interest should take that into account when reflecting a proper recompense for the time during which the appellant has been deprived of what is due to him. We therefore award interest on the total of the sums awarded at the rate of 8.5%.

The appeal is allowed and we award damages as follows:

Assault and false imprisonment, K8,000; pain and suffering and permanent disability, K6,000, with interest thereon at the rate of 8.5% per annum from the date of the assault, namely 16th July 1981, until the date of this judgment.

Costs of this appeal to the appellant.
Appeal allowed.
