

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

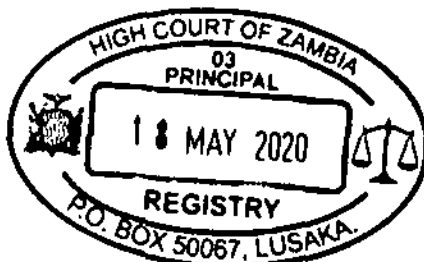
2019/HP/0174

BETWEEN:

DAUTI MULEYA

AND

THE ATTORNEY GENERAL



PLAINTIFF

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 18<sup>th</sup> DAY OF MAY,  
2020**

*For the Plaintiff : Mr C. Andeleki, A. Mbambara Legal Practitioners*

*For the Defendant : Attorney General's Chambers*

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## **J U D G M E N T**

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### CASES REFERRED TO:

1. *Hicks v Faulkner Haukins 1878 8 QBD 167*
2. *Silungwe v The People 1974 ZR 130*
3. *Attorney-General v Musonda and others 1974 ZR 220*
4. *Kawimbe v Attorney-General 1974 ZR 244*
5. *Attorney-General v Kakoma 1975 ZR 212*
6. *In Re Siuluta and three others 1979 ZR 14*
7. *Daniel Chizoka Mbandangoma v The Attorney-General 1979 ZR 45*
8. *M. Mutemwa v Attorney-General 1979 ZR 251*
9. *Richman Chulu v The Attorney General 1983 ZR 33*
10. *The Attorney-General v Sam Amos Mumba 1984 ZR 14*
11. *Attorney General and others v Masauso Phiri SCZ No 28 of 2017*

LEGISLATION REFERRED TO:

1. **Criminal Procedure Code (CPC), Chapter 88 of the Laws of Zambia**
2. **Zambia Wildlife Act No 14 of 2015**

OTHER WORKS REFERRED TO:

1. **Clerk & Lindsel on Torts, 19<sup>th</sup> Edition, London, Sweet & Maxwell, 2006**
2. **Clerk & Lindsell on Torts, 20<sup>th</sup> Edition, Sweet & Maxwell, London, 2010**

Suing by way of writ of summons and statement of claim on 4<sup>th</sup> February, 2019, the plaintiff claims;

1. *Damages for false imprisonment.*
2. *Damages for personal injuries resulting from torture and emotional distress.*
3. *Exemplary damages.*
4. *Interest.*
5. *Costs.*
6. *Further or other relief that the court may deem fit.*

The statement of claim shows that the plaintiff is a subsistence farmer in Nyawa village in the Kazungula District of the Republic of Zambia. He states that on or about the 27<sup>th</sup> November, 2018, at dawn, he heard a loud knock on the door of his house, followed by a voice directing him to open the door. When, he asked who was knocking, he was told that it was the police.

The plaintiff further states that when he opened the door, he saw three (3) people, that is two (2) men and one (1) woman, who identified

themselves as Zambia Wildlife Authority police officers from Mulobezi, and they told the plaintiff that they wanted the AK47 rifle that the plaintiff used for his poaching activities in the Game Management Area, (GMA). It is stated that the plaintiff informed the officers that he had never owned the firearm, but one of the officers hit him with a but stalk on his left eye, and the plaintiff started bleeding profusely.

It is also stated that the plaintiff was told that unless he surrendered the AK47 assault rifle, he would be beaten to death. The statement of claim goes further to state that after the plaintiff was assaulted, he was bundled up and taken to Mulobezi's Mulanga camp, where he was detained for twelve (12) consecutive days, without being charged, and he was tortured. Further, he was deprived of food, as he was fed only once a day.

The statement of claim further states that the place where the plaintiff was detained was filthy with poor ventilation, and that it was clearly an illegal detention facility, that is not gazette by the government of the Republic of Zambia, and it is merely used to torture suspects. The plaintiff avers that during the period of his detention, he was not taken to the hospital for the treatment of his injured left eye, and that he was only released on police bond, without being charged with any offence, when his condition deteriorated, as a result of the torture and injuries.

The plaintiff also states that he was told to present himself before the Livingstone Subordinate Court on 2<sup>nd</sup> January, 2019, and when he did, he was informed by the Zambia Wildlife prosecutor that his matter was not cause listed to come up that day. The statement of claim goes further to state that when the plaintiff made follow ups with the Livingstone Warden of the Zambia Wildlife Authority, who is in charge of Southern

Province, he was informed that the officers belonged to the Zambia Wildlife Authority.

The plaintiff avers that as a result of the arbitrary apprehension, assault, and torture, he has suffered irreparable damages, loss of reputation, pain, and emotional anguish. It is the plaintiff's contention that he has never in his life engaged himself in any criminal activity, let alone possessed an AK47 rifle.

In the defence filed on 20<sup>th</sup> March, 2019, the defendant denies that Zambia Wildlife Officers went to the plaintiff's house on or about the 27<sup>th</sup> November, 2018, and they assaulted the plaintiff demanding that he surrenders the AK47 rifle that he was using for his poaching activities. It is the defendant's defence that on 26<sup>th</sup> November, 2018, a team of officers from the Department of National Parks and Wildlife under the Ministry of Tourism and Arts, received information that there were illegal hunting activities that were taking place, and that there cases of illegal possession of firearms in Ntunga Plains, Sichifulo Game Management area in the Southern Province.

The defendant denies that the officers assaulted the plaintiff, and he started bleeding profusely, or that they threatened him as alleged, stating that the plaintiff admitted to owning an AK47 rifle, and he had told them that he had sold it to his friend who lived two (2) kilometres away from the plaintiff's house. The defendant also denies that the officers told the plaintiff that unless he surrendered the AK47 rifle, he would be beaten to death, or that the plaintiff was bundled in a vehicle and taken to Mulobezi's Mulanga camp, where he was detained for twelve (12) consecutive days, while being tortured and without being charged.

It is the defendant's defence that it acted within the confines of the Zambia Wildlife Act No 14 of 2015, and the Firearms Act, Chapter 110 of the Laws of Zambia. Further, that the plaintiff cooperated with the investigation officers, and he voluntarily offered to lead the officers to his friend's residential address, whom he said he had sold the AK47 rifle. The defendant also denies that the plaintiff was severely tortured and deprived of food, being only fed once a day during the period of his detention, and that he was detained in a filthy and poor ventilated room, which is not a gazette detention facility, but is just used for torture.

The defendant avers that the plaintiff's detention was legal, and that he was released from custody upon satisfying the conditions of his police bond, without unreasonable delay, as provided by the law. It is further the defendant's defence that the plaintiff was asked to provide sureties to execute the police bond, and the officers were informed that the plaintiff's father would only be available two (2) days after the incident.

The defendant denies that the plaintiff was only released after his condition deteriorated, as a result of the torture and the assault, and that he was told to appear before the Livingstone Subordinate Court on his release on 2<sup>nd</sup> January, 2019, stating that the plaintiff was in perfect health condition, and he did not require medical attention.

The defendant admits that the plaintiff made follow ups with the Warden for Southern Province, who confirmed that the officers were from the Department of Wildlife. It is however denied that the plaintiff suffered irreparable damage, loss of reputation, pain and emotional anguish as a result of the arbitrary apprehension, assault and torture. The defendant contends that there was reasonable and probable cause leading to apprehension and detention of the plaintiff.

The defendant states that the apprehension of the plaintiff was meant to help with investigations regarding the commission of the alleged offences, and was done within the confines of the law. It is also stated that immediately the plaintiff secured sureties, he was released on police bond.

At the trial, only the plaintiff and his witnesses were before court, and there being an affidavit service showing proof of service of the notice of hearing, I allowed the plaintiff to proceed. The first witness was the plaintiff. It was his testimony that around 03:00 hours on the morning of 27<sup>th</sup> November, 2018, he was at home sleeping when he heard the dogs barking. He then heard a voice say open the door, and when he asked who it was, he was told that they were police officers.

The plaintiff further testified that as he dressed up, the people forced themselves into his house, and two (2) men and one (1) woman who said they were Wildlife Officers pointed a gun at him, and told him to give them the gun. When the plaintiff told them that he did not have a gun, the officers said that they would search for it, and they started beating him, telling him that they would kill him if he did not give them the gun.

Still in his testimony, the plaintiff stated that he was pulled outside the house, as he just wore a bum short, and there, the officers continued beating him. He also stated that there were other officers outside the house, and he was taken into a vehicle, and was told that he was being taken to his friend's house. It was stated that the vehicle stopped a short distance from his house, and the officers continued beating the plaintiff.

He was asked to show the officers his friend's house, but he told them that he did not know who they were looking for. From there, they

proceeded to Malimba where the officers got off the vehicle leaving him handcuffed, and the officers returned with Kelvin Sikayamba, whom they were also beating, and they asked him to produce the gun. The plaintiff stated that Kelvin was handcuffed together with him, and they were beaten. It was further the plaintiff's testimony that they were driven to Chief Nyawa's palace, and from there, they were taken to the Wildlife Offices in Livingstone, and they arrived there around 20:00 hours.

Continuing with his testimony, the plaintiff stated that there the beatings continued, and they were taken to Mulobezi, and arrived around 05:00 hours, and they were detained in a small room. He explained that there, he was given a vest to put on, and that he had not been given food the whole day. It was only around 16:00 hours that they were removed and they were beaten, given a small portion of nshima, and they were asked where the gun was.

The plaintiff testified that he was detained with Kelvin until 13<sup>th</sup> December, 2018, and that during that period, they did not bath, and they slept on the floor of the room, that they also used as a toilet. Further, they would eat from the same room, and they had no blankets. It was stated that the plaintiff fell sick, and his collar bone was in pain. When he asked to be taken to the hospital, he was asked where he had seen a person who was in police custody being taken to the hospital.

The plaintiff told the court that Kelvin's father went and signed police bond for him, after statements were recorded from them. He testified that he was forced to write a statement in which he said that he did not know why he had been apprehended, and he signed it. Thereafter, he was given police bond, and he identified page 1 of his bundle of documents as the

police bond form which indicated the date that he was to appear in court, being 2<sup>nd</sup> January, 2019.

Further in his testimony, the plaintiff told the court that Kelvin's father gave him K100.00 for transport, and when he arrived home, he found that his wife and children had left. Then on 2<sup>nd</sup> January, 2019, he went to the Livingstone Subordinate Court, and he was informed that his case had not been cause listed. He also testified that he went home and the Wildlife Officers had never been in touch with him since then.

On what the impact of his apprehension had had on him, the plaintiff testified that members of his family had left, and that people in the village think that he owns a gun. The plaintiff testified that the Wildlife Officers did not charge him, and he asked that he be compensated for what had been done to him. He also stated that his wife and children ran away when he was apprehended, as they were scared, and as a result, his goats and chickens had been stolen.

The second witness was Basta Rhodes Mapulanga. He is a neighbor to the plaintiff. His evidence was that on 27<sup>th</sup> November, 2018, around 04:00 hours, he went outside after he heard the dogs barking. There he found the plaintiff's wife who was half dressed, and she informed him that the plaintiff had been apprehended by people she thought were soldiers. PW2 saw a vehicle parked about fifty (50) metres away from the plaintiff's house, and he proceeded to the plaintiff's house, and found him being beaten outside.

When PW2 asked the people that were beating the plaintiff what he had done, he was told that it was none of his business, and that if he insisted, he would be apprehended together with him. PW2 saw the



plaintiff being put in a vehicle, and that at the time, his eye was bleeding. From there, PW2 went back to his house, and when it was light, he went to Nyawa area where the Wildlife officers had camped.

He found the plaintiff and Kelvin, who were handcuffed together, and they had been beaten. The plaintiff even had a swollen collar bone, while Kelvin's mouth was swollen, and he was bleeding from his mouth. It was further PW2's evidence that after the two (2) were taken to Chief Nyawa, PW2 returned home and informed their families. Later that afternoon, he saw the plaintiff and Kelvin being driven to Zimba.

Then on 28<sup>th</sup> November, 2018, PW2 followed there to give the plaintiff money for food, but he did not find him, and he also went to Mhlanga camp in Mulobezi, and he still did not find the plaintiff there. As he had no money, he returned home.

Kelvin Sikayamba was PW3. He is the person that was apprehended together with the plaintiff. His evidence was similar to that given by the plaintiff, testifying that he was also awakened around 04:00 hours by a knock on his door. That when he asked who it was, the door was kicked in. PW3 explained that he was held by the neck as he lay on the bed, and he was apprehended, and that at the time, both himself and his wife were naked.

PW3 also testified that he was taken outside where he was told to give the officers the gun, and when he said that he did not have one, he was beaten. From there, he was given a pair of trousers to wear and a t-shirt, and he was handcuffed and taken to a vehicle. He stated that he found the plaintiff and Daniel Mabututu who were handcuffed, and the three (3) of them were beaten, and asked where the gun was. PW3 also testified

that they taken to Nyawa were Daniel was removed, and then PW3 and the plaintiff were handcuffed together.

He went on to testify that they were taken to Chief Nyawa, and from there, they were taken to Livingstone where they were again beaten, and they arrived around 15:00 hours. PW3 testified that they were then driven to Mulobezi, and that along the way, the officers drank beer, and urinated on them. Like the plaintiff, he testified that they arrived around 04:00 hours, and were put in a room, and were only given food around 16:00 hours. He added that they were given water in a 750milliliter bottle.

On the room in which they were detained, PW3 testified that it was in a house, and that the room had metal bars on which they were handcuffed, and that it had no toilet. Thus, they would do everything on the floor, and would be removed around 16:00 hours every day, and be made to sit by the door. In terms of what they ate, PW3 told the court that they were given three (3) lumps of nshima every day at 16:00 hours, with 750 milliliters of water. They were kept there up to 13<sup>th</sup> December, 2018.

PW3 confirmed the plaintiff's testimony that they slept on the floor and they were not given any blankets. He also testified that they were a lot of mosquitos there, and that he fell sick, and he had a running stomach. It was also his evidence that his father went and signed police bond for him on 13<sup>th</sup> December, 2018, which stated that they should appear before the Livingstone Subordinate Court on 2<sup>nd</sup> January, 2019. PW3 clarified that they were given police bond on 13<sup>th</sup> December, 2018, and not 30<sup>th</sup> November, 2018, as indicated on the form.

He also confirmed the plaintiff's testimony that when they went to the Subordinate Court in Livingstone on 2<sup>nd</sup> January, 2019, there were no Wildlife Officers there, and their case had not been cause listed. PW3 added that they went to the Wildlife offices where they were told that the officers there knew nothing about the matter. From there, they went home, and had not been contacted by the Wildlife Officers since.

The last witness was Sebius Sikayamba, PW3's father. He confirmed PW3's evidence that PW3 was picked up by the Wildlife Officers on 27<sup>th</sup> November, 2018. His evidence was that PW3 lived two (2) hundred metres from his house, and that after he heard the noise outside, he had gone out and found a man and a woman holding PW3 who was naked, by the waist. PW4 also testified that PW3 and his sister were beaten, and after that PW3 was given some clothes to wear, and he was put in a vehicle where they found the plaintiff.

It was also PW4's evidence that the plaintiff and PW3 were taken to Nyawa and when he followed them, he found the plaintiff bleeding from the ear, while PW3 had a cut on his ear, and he was bleeding. He stated that the two (2) were driven on the Livingstone road, and he followed, and went to Livingstone Central Police where he was told that they were not there. PW4 thereafter proceeded to the Wildlife Provincial Office where he was told that he should check at Mhlanga in Chief Moomba's area or Mulobezi in Western Province.

PW4 stated that he went Mhlanga on 30<sup>th</sup> November, 2018, where he was told that the two (2) were in Mulobezi. His evidence was that he found them in a house in Mulobezi, which is not police custody, and the Officer in Charge there asked PW4 to give them the gun. He explained that he was not allowed to see PW3 and he returned home the next day.

He only went back to Mulobezi on 12<sup>th</sup> December, 2018, and the following day, he proceeded to the police station, and the Criminal Investigations Officer (CIO) said that he could see PW3. He testified that when he saw PW3 and the plaintiff, they were in bad condition, and PW4 asked the CIO if the two (2) could be released on police bond. The CIO told him that he was following up a case in Moomba and he should wait until 14:00 hours. It was PW4's evidence that it was only after statements were recorded from the two (2) around 19:00 hours, that they were released on police bond.

He explained that he signed the police bond at page 1 of the plaintiff's bundle of documents on 13<sup>th</sup> December, 2018, and that he was told that the two (2) should appear at the Livingstone Subordinate Court on 2<sup>nd</sup> January, 2019. PW4 also testified that he went with the two (2) to Livingstone on 1<sup>st</sup> January, 2019, and the next day, they went to Court.

There, they were directed to the Wildlife prosecutors who informed them that there was no case at the Livingstone Subordinate Court, and that they should go back, and they would be informed. PW4 concluded his testimony by stating that they had not been called to appear before the Livingstone Subordinate Court to date. That marked the close of the plaintiff's case.

I have considered the evidence and the submissions. It is common cause that the plaintiff together with PW3 was apprehended by officers from the National Parks and Wildlife Office on suspicion that were involved in illegal poaching. It is not in dispute that the plaintiff alleges that the officers demanded that they produce the gun that was being used to carry out the illegal poaching. It is not in contention that the plaintiff alleges that he was detained until 13<sup>th</sup> December, 2018, and that he was

beaten, tortured and starved during that period, in a facility that is not gazetted for detention.

It is also not in dispute that the plaintiff alleges that he was detained without charge, and that on his release on police bond, he was told to appear before the Livingstone Subordinate Court on 2<sup>nd</sup> January, 2019. That when he did, he found that there was no case against him, and he has not been tried to date. The question is whether he is entitled to the reliefs claimed?

The first claim is for damages for false imprisonment. On what constitutes false imprisonment, the plaintiff in the submissions relies on ***Clerk & Lindsel on Torts, 19<sup>th</sup> Edition, London, Sweet & Maxwell, 2006*** at page 16, which defines false imprisonment as;

***“The unlawful imposition of constraint on another’s freedom of movement from a particular place”.***

Further, that the case of ***Attorney General and others v Masauso Phiri*** <sup>(11)</sup> defined false imprisonment as;

***“Unlawful and intentional or reckless restraint of another person’s freedom from a particular place”.***

It is submitted that it was held in the above case that there can be no false imprisonment, if the person’s arrest is justifiable, or if there is reasonable and probable cause for restraint. That in this case, the plaintiff was held for seventeen (17) days without being charged with any offence, and therefore, there was no justification for his arbitrary detention, assault and torture. Further, that his detention was illegal, and that any arrest should be based on reasonable and probable cause, and not on rumours.

The plaintiff further submits that if the police believed that he had committed an offence, they should have charged him in accordance with Section 18, and disposed of his case in accordance with Section 33 of the **Criminal Procedure Code (CPC), Chapter 88 of the Laws of Zambia**. However, the plaintiff was not charged with any criminal offence, and therefore, the police bond that was issued to the plaintiff does not qualify as such, as it does not disclose the offence with which the plaintiff was charged.

Therefore, there was impunity and abuse of the powers vested in the Wildlife Officers, and the plaintiff was falsely imprisoned. Still in reliance on the case of **Attorney General and others v Masauso Phiri (11)**, the plaintiff submits that in claims for false imprisonment, it is necessary for the plaintiff to prove nothing but the imprisonment itself. That the plaintiff has shown that he was imprisoned against the provisions of the law, which require that the accused person must be charged within a specified period, and taken before a court of law, as was held in the case of **Attorney-General v Kakoma (5)**.

The plaintiff further submits that it was stated in that case that where an arrest without a warrant is made, it is incumbent upon the police to inform the person so arrested of the grounds of his arrest, unless he produces a situation which makes it practicably impossible to inform him. That the failure to inform the arrested person as soon as is reasonably practicable to do so, of the true reason for their arrest, will in a proper case, constitute false imprisonment.

The plaintiff contends that the officers from the National Parks and Wildlife had no lawful authority or power to detain him for seventeen (17) days without charging him. He states that the conduct of the officers was

not only illegal, but was also a flagrant violation of his fundamental rights and liberties as enshrined in the Bill of Rights, under Articles 15 and 22 of the Constitution.

It is also submitted that a decision to detain a person must be informed by available and reasonable evidence, which was not the case in this matter. Therefore, the detention of the plaintiff resulted in his freedom of movement being curtailed without legal justification, as there was no reasonable and probable cause that he had committed any offence.

On what constitutes reasonable and probable cause, reliance is placed on the case of *Hicks v Faulkner Haukins* <sup>(1)</sup>, where it was stated that;

***“An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed”.***

On how an arrest is made, the plaintiff relies on Section 18(1) of the CPC which provides that;

***“18. (1) In making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action”.***

The submission is that according to this section, an arrest is done by touching or confining the body of the person to be arrested. That in this case, the defendant did not touch or confine the plaintiff, but rather, bundled him a vehicle after assaulting him, and taking him to Mulobezi

Mhlanga camp, where he was detained for seventeen (17) days, without being made to appear before any court of competent jurisdiction.

Therefore, the plaintiff was falsely imprisoned, and to fortify this position, reliance is placed upon the case of ***Silungwe v The People*** (2), where it was held that;

***“That the elements of arrest were physical restraint and a sufficiently stated reason for such restraint and there was nothing to prevent a person arrested from being re-arrested***

***That there was no set formula to use on arrest and the purpose behind the elements of a valid arrest is to ensure that a person arrested without a warrant, and therefore deprived of his freedom of movement, must know why he is being so deprived.”***

Reliance is also placed on the case of ***The Attorney-General v Sam Amos Mumba*** (10), stating that it was held in that case as follows;

***“(i) Where a Police Officer makes an arrest without warrant, it is incumbent upon him to inform the person so arrested of the grounds for his arrest unless he himself produces a situation which makes it practically impossible to inform him.***

***(ii) Failure to inform the arrested person as soon as is reasonably practicable to do so of the true reason of his arrest will, in a proper case, constitute false imprisonment.***

***(iii) It is not enough where a Police Officer makes an arrest without warrant, that a Police Officer has reasons for effecting an arrest without a warrant if such reasons are kept***



***to himself, or if the reasons given are not true. In either situation, such a Police Officer may be held liable for false imprisonment”.***

On the period that the police can detain a person before taking them to court, reliance is placed on Section 33 (1) of the CPC, as well as the cases of ***Daniel Chizoka Mbandangoma v The Attorney-General*** <sup>(7)</sup> and ***M. Mutemwa v Attorney-General*** <sup>(8)</sup>, stating that it is within twenty four (24) hours. It is submitted that in this case, the plaintiff was detained for seventeen (17) days without being charged, and that he was only released on police bond because his health was deteriorating.

The plaintiff reiterates that the police bond does not qualify as such, as it does not indicate the offence with which he was charged. The submission is further that it was improper for the Wildlife officers to detain the plaintiff for purposes of carrying out investigations, and that the officers had no power to do so. To support this position, the case of ***In Re Siuluta and three others*** <sup>(6)</sup> is relied on. That it was held in that case that;

***“The police could only arrest for offences and has no power to arrest persons for the purposes of making inquiries”.***

From the evidence on record, it is not dispute that the plaintiff was detained by officers from the National Parks and Wildlife. What is in contention is his period of detention. The plaintiff alleges that there was no reasonable and probable cause for his detention, and therefore, he was falsely imprisoned. The defendant’s defence is that the plaintiff was apprehended on the basis that the Department of National Parks and Wildlife had received information that there was illegal hunting going on

in Ntunga Plains, Sichifulo Game Management Area in the Southern Province, as well as illegal possession of firearms.

The defence also states that the plaintiff admitted owning an AK47 rifle which he sold to his friend, and that he in fact voluntarily led the police to his friend, who lived two (2) kilometres away. The defendant denies that the plaintiff was beaten and tortured, and states that the plaintiff was detained within the confines of the Zambia Wildlife Act No 14 of 2015 and the Firearms Act, Chapter 110 of the Laws of Zambia.

***Clerk & Lindsell on Torts, 20<sup>th</sup> Edition, Sweet & Maxwell, London, 2010*** lists the elements of false imprisonment as;

- “1. The fact of imprisonment; and***
- 2. The absence of lawful authority to justify the imprisonment and for these purposes, imprisonment is complete deprivation of liberty for anytime, however, short, without lawful cause”.***

In the case of ***Attorney-General v Kakoma*** <sup>(5)</sup> cited by the plaintiff it was held that;

***“The fact of detention having been established, the onus was on the defendant to justify such detention, on the facts, manifestly this onus had not been discharged”.***

Therefore, the plaintiff having established the fact of detention, the onus is upon the defendant to justify that detention. While the defence makes reference to the plaintiff having admitted that he owned a firearm, and that he had sold it his friend, and he in fact led the Wildlife Officers to

his friend, who lived two (2) kilometres away, the name of this person whom the plaintiff is said to have led the police to is not named.

It is trite that pleadings state the facts, and not the evidence to prove those facts. The defendant who bears the burden of justifying the detention of the plaintiff should have at least stated as a fact, the person whom the plaintiff is alleged to have sold the gun, and he led them to. Further, the defendant has not pleaded whether as a fact, the gun was found, so that reasonable and probable cause for detaining the plaintiff could have been established.

The defendant simply pleaded that the detention of the plaintiff was in line with the **Zambia Wildlife Act No 14 of 2015**. That Act in Section 9 empowers the Minister in consultation with the Director by notice in the gazette, to appoint honorary Wildlife Police Officers, who are known as authorized officers. Section 19 of the said Act prohibits hunting in national parks or community partnership parks, without a licence issued under the Act.

Section 112 of the Act spells out the powers of authorized officers as follows;

**“112. (1) Subject to the other provisions of this Act, an authorized officer may—**

**(a) at any reasonable time, enter upon and inspect any land, building, premises, tent, vehicle, boat, aircraft or other conveyance where any wild animal, trophy or prescribed trophy may be found or processed, for the purposes of inspection and data collection;**

*(b) demand from any person the production of a licence, permit, certificate or authorisation for an act done or omitted by that person in a public wildlife estate or in relation to which a licence, permit, certificate or authorisation is required under this Act;*

*(c) require a person found within a public wildlife estate who has in that person's possession any wild animal, trophy, prescribed trophy, nest, habitat, stone, vegetation, object, firearm, dart gun, ammunition, spear, bow, arrow explosive, snare, net trap, poison, bird-lime, gin, mist net, contrivance, missile, torch, flare, headlamp or other artificial light to give an account of the manner in which the person came in its possession and where the account given is not satisfactory, arrest and take that person before a court;*

*(d) require the person in charge of any vehicle, boat, aircraft or other conveyance entering Zambia to furnish a list of the names of persons in the vehicle, boat, aircraft or other conveyance and such other prescribed information which is within the power of such person to furnish;*

*(e) search any person whom the authorised officer has reasonable grounds to believe is carrying any wild animal, trophy, prescribed trophy, nest, habitat, stone, vegetation, object, firearm, dart gun, ammunition, spear, bow, arrow, explosive, snare, net trap, poison, bird-lime, gin, mist net, contrivance, missile, torch, flare, headlamp or other artificial light in contravention of this Act or carrying out an activity contrary to this Act;*

*(f) require any person to produce for inspection any wild animal, trophy, prescribed trophy, nest, habitat, stone, vegetation, object, firearm, dart gun, ammunition, spear, bow, arrow, explosive, snare, net trap, poison, bird-lime, gin, mist net, contrivance, missile, torch, flare, headlamp or other artificial light, appliance, article, device or any other thing in relation to or in connection with which, the authorized officer has reason to believe, an offence has been committed or is likely to be committed;*

*(g) seize any wild animal, trophy, prescribed trophy, nest, habitat, stone, vegetation, object, firearm, dart gun, ammunition, spear, bow, arrow, explosive, snare, net trap, poison, bird-lime, gin, mist net, contrivance, missile, torch, flare, headlamp or other artificial light, appliance, equipment, device or other material in connection with which an offence appears to have been committed;*

*(h) seize or order the seizure of a vehicle, boat, aircraft or other conveyance carrying any wild animal, trophy, prescribed trophy, nest, habitat, stone, vegetation or object in contravention of this Act or any other written law;*

*(i) seize and detain any domestic animal found in a public wildlife estate without a permit;*

*(j) take all reasonable steps to prevent the commission of an offence under this Act;*

*(k) apply or order the application of measures which are necessary or prescribed for the control or prevention of the spread of animal infections or diseases in consultation with other relevant institutions;*

***(l) destroy or order the destruction of any wild animal, trophy or prescribed trophy which is moved or used contrary to the provisions of this Act; and***  
***(m) order the adoption of measures prescribed to ensure the protection of public wildlife estates and wildlife”.***

In terms of powers of arrest, Section 114 of the Act provides that;

***“114. (1) An authorised officer may arrest a person, without warrant, where the authorised officer has reasonable grounds to believe that the person—***

***(a) has committed an offence under this Act;***

***(b) is about to commit an offence under this Act and there is no other way to prevent the commission of the offence;***

***(c) or is willfully obstructing the authorised officer in the execution of the officer’s duties.***

***(2) An authorised officer who makes an arrest under subsection (1) shall, without undue delay, have the person arrested brought to a police station”.***

Therefore, honorary police officers appointed under the Act have powers to enter any premises, as set out in Section 112 of the Act, and also to arrest any person as provided in Section 114 of the Act. Section 114 of the Act stipulates that where a person is arrested, they should, without undue delay, be taken to a police station.

In this case, the evidence shows that the plaintiff alleges that he was taken to Mulobezi camp, and that he was held in a house in a room

improvised as a cell, where he was handcuffed and detained together with PW3. There, they were beaten, tortured and deprived of food, being only fed once a day at 16:00 hours.

Further, that room had no toilet, and the plaintiff and PW3 had to help themselves on the floor of that same room, should the call of nature arise. Thereafter, they would sleep on their fecal waste, with no blankets for seventeen (17) days. This was not only contrary to Section 114 of the Zambia Wildlife Act No 14 of 2015 which requires that persons arrested be taken to police stations without undue delay, after an arrest is made, but was a violation of the plaintiff's right to dignity, among other rights.

Further, I have noted that the defendant in its defence has not given valid reasons justifying the detention of the plaintiff, and this is even confirmed by the police bond form that was issued to the plaintiff and PW3, which is at page 1 of the plaintiff's bundle of documents. It shows that the plaintiff and PW3 were released on police bond for no suspected offence.

In the case of *Richman Chulu v The Attorney General* <sup>(9)</sup> it was held that;

***“False imprisonment only arises where there is evidence that the arrest which led to the detention was unlawful, since there was no reasonable and probable cause”.***

In the case of *Attorney General and others v Masauso Phiri* <sup>(11)</sup>, the Supreme Court noted that not only lack of reasonable and probable cause amounts to false imprisonment, but also includes the failure to inform a person that is arrested, as soon as is reasonably practical of the reasons for their arrest.

Further, the case of ***Daniel Chizoka Mbandangoma v The Attorney-General*** <sup>(7)</sup> held that;

***“(ii) The arrest of the plaintiff was unlawful. The police can only arrest persons for offences and have no power to arrest anyone in order to make inquiries about him.***

***(iii) It is improper for the police to detain persons pending further investigations without bringing them before court as soon as practicable, but it is equally improper to require persons released on bond to present themselves at the police station for the same purpose”.***

There, while the Wildlife Officers had no powers to arrest the plaintiff for purposes of carrying out investigations, going by the decision in the case of ***Daniel Chizoka Mbandangoma v The Attorney-General*** <sup>(7)</sup>, they had a duty to take him before court as soon as reasonably practicable after his arrest, so that he could be released on bail. What the evidence shows, which was not discredited by the defendant, is that the Wildlife officers kept the plaintiff when they had no reasonable suspicion that he had committed any offence, which makes his arrest unlawful, and it amounts to false imprisonment.

The plaintiff therefore succeeds on his claim that he was falsely imprisoned, and I accordingly so find. As regards the damages for false imprisonment, the case of ***Kawimbe v Attorney-General*** <sup>(4)</sup> held that;

***“The award of general damages in cases of false imprisonment must, where the plaintiff has suffered in his reputation and has suffered also anxiety and indignity, always take into account the circumstances of the arrest and***



*detention, the affront to the person's dignity and the damage to his reputation".*

The plaintiff also claims exemplary damages. In the case of *Attorney-General v Musonda and others* <sup>(3)</sup>, the court held that;

*"(i) Exemplary damages may be awarded where the defendant has acted in contumelious disregard of the plaintiff's rights. The court should consider first what sum to award as compensation, taking into account the whole of any aggravating conduct of the defendant, and only if this sum is inadequate to punish and deter the defendant should award some larger sum Lord Devlin's "if, but only if" dictum in Rookes v Barnard [2], adopted in Times Newspapers v Kapwepwe [3], reaffirmed".*

In the case of *Attorney General and others v Masauso Phiri* <sup>(11)</sup>, the Supreme Court with regard to damages for false imprisonment stated that;

*"In dealing with the quantum, we have looked at the various awards we have made over the years spanning from 1974 when Kawimbe v Attorney-General" was decided to 1999 when we decided the case of Gertrude Munyonsi and Attorney-General v Catherine Ngalabeka. It is clear from the authorities that the quantum of damages cannot be resolved with any precision and that awards in other cases must always be treated with caution if it is sought to rely on them as guides. But in the Kawimbe, Kakoma and Sam Amos Mumbal cases we held that:*

*"The award of general damages in cases of false imprisonment must where these factors are present, always take into account the circumstances of the arrest and detention, the affront to the person's dignity and the damage to his reputation.".....*

*We have also considered what we said in the Felix Chris Kaleya case, that local precedents favour moderate figures consistent with Zambian values under the prevailing economic and social situation. We further take into account inflation, and what would today be the equivalent of the K15,000 (rebased) which we confirmed in the Getrude Munyosin case, although that amount included some exemplary damages. We consider the sum of K10,000 to be appropriate and we award the respondent this amount as damages for the false imprisonment".*

Looking at the fact the plaintiff in this case was detained for about seventeen (17) days in a facility that is not gazetted as a police station, with no explanation being given as to why he could not be taken to a police station without undue delay, as well as the fact that his conditions of detention were deplorable, as he had no blankets, slept on the floor, and in his own fecal waste, went against his dignity as a person, and subjected him to mental anguish.

There was therefore blatant disregard for his rights as a human being, and it is trite, that there is a presumption of innocence, which can be rebutted, on the guilt of a person being established. Taking into account these facts, as well as the aggravated conduct on the part of the officers

from the Department of National Parks and Wildlife, and the guidance given by the Supreme Court in the case of **Attorney General and others v Masauso Phiri** <sup>(11)</sup>, when awarding damages for false imprisonment, I award the plaintiff the amount of K25, 000.00 as damages for false imprisonment.

The plaintiff also claims damages for personal injuries resulting from mental torture and emotional distress. In his testimony, the plaintiff stated that he was beaten when he was apprehended from his home with a but stalk which resulted in injury to his left eye. He further testified that the officers continued beating him and PW3 from the time he was apprehended until he was released on 13<sup>th</sup> December, 2018. He did not produce a medical report to show the extent of his injuries that he suffered.

However, PW2 and PW3 confirmed that they saw him being beaten, and PW4's evidence was that he found PW3 and the plaintiff in very bad shape when he saw them after they were detained. The plaintiff's witnesses' evidence not having been discredited in any way, it is credible evidence that supports the plaintiff's claim.

It is noteworthy though that the plaintiff was not beaten to an extent where the injuries were very severe, that he had to be hospitalized. In the case of **Attorney General and others v Masauso Phiri** <sup>(11)</sup> seen above, it was stated that;

***“Coming to the assault and battery, we recapitulate what we said in the Felix Chris Kaleya case that: “There is no law which authorises the police to beat up members of the public whom they have detained for investigations, and any assault***

*by police in these circumstances must necessarily be viewed as a serious matter. The beating up of suspects, however serious the crime, neither advances the cause of justice nor does it reflect to the credit of the Police Force".*

*We must add that the conduct of the police officers amounted to torture of a suspect in police custody which will not be condoned by the courts, especially that Article 15 of the Constitution, Chapter 1 of the Laws of Zambia proscribes torture or inhuman or degrading punishment, and Zambia is a party to international human rights instruments, including the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which are concerned with the prohibition and eradication of torture. Although the medical report is not on the record, the evidence shows that the respondent sustained swellings all over his body and sores on both legs. We find that these are aggravating factors that justify an award higher than any of our previous awards. Therefore, we award the respondent a sum of K20,000 as damages for the assault and battery".*

In this case, as no serious injury was occasioned to the plaintiff as a result of the assault at the hands of the officers from the National Parks and Wildlife, I award the plaintiff the amount of K5, 000.00 as damages for assault. The total amount of damages awarded is K30, 000.00. The amount shall carry interest at the average short term deposit rate from the date of the issue of the writ until judgment, and thereafter at the Bank of Zambia lending rate until payment.

The plaintiff is also awarded costs, to be taxed in default of agreement.  
Leave to appeal is granted.

**DATED AT LUSAKA THIS 18<sup>th</sup> DAY OF MAY, 2020**

*S. Kaunda*  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**