

PARDON CHITONGO  
versus  
COMMISSIONER GENERAL OF POLICE  
and  
MINISTER OF HOME AFFAIRS & CULTURAL HERITAGE

HIGH COURT OF ZIMBABWE  
MHURI J  
HARARE, 8 March and 03 August 2022

### **Civil Trial**

*Mr P B Saurombe* with *Ms F Iliff*, for the plaintiff  
*Mr D Jaricha*, for the defendants

MHURI J: Plaintiff issued summons against the defendants claiming the following damages arising from injuries he allegedly sustained when he was shot at on the 14<sup>th</sup> January 2019 during violent demonstrations in Epworth.

He claimed the following damages:

- a) Special damages for hospital and medical expenses.
- b) Special damages for past loss of earnings.
- c) For loss and or reduction of future earnings.
- d) For future medical expenses.
- e) Being general damages for nervous shock, pain and suffering, humiliation, embarrassment, affront to dignity and degrading treatment.
- f) For permanent disfigurement, permanent disability and loss of amenities of life.

Plaintiff's case was to the effect that on the 14<sup>th</sup> January 2019, he was shot by the Police and he sustained severe injuries.

The issues that were referred to trial for determination were three and these are:

1. Whether or not a member of the police service unlawfully shot the plaintiff in the course and scope of his/her employment with the defendants.
2. The nature and extent of injuries sustained by the plaintiff as a result of the shooting.
3. The nature and quantification of damages for which the defendants are liable.

Plaintiff testified that he is aged 25 years and was 22 years of age as at 14 January 2019. He was employed as a commuter omnibus driver earning US\$65.00 per week. As from the 14 January 2019 he is not doing anything as a result of the injuries he sustained.

On 14 January 2019, he left his home going to work in Epworth. He proceeded to his uncle's residence (Blessing Mutseta).

During this time, there were stay away demonstrations in Epworth. The Police were chasing after people who had stormed the Police Station. At his uncle's residence he stood underneath a tree where he witnessed confrontation between the police and the demonstrators. The police were throwing teargas at the demonstrators who, because there is no Durawall at his uncle's premises, would run passing through the yard. He then saw the police driving within the residential area and firing shots. Some members of the police were on foot firing shots. He tried to find a way to leave the uncle's residence and proceed to his home and in the process, he was shot by the Police. A bullet went through his body and came out through his back. He fell down and was ferried to a private clinic Overspill Epworth and later was referred to Parirenyatwa Hospital. He was admitted in the Intensive Care Unit for 8 days and stayed in the hospital for 3 months. He was later referred to Ruwa Rehabilitation Centre where he was admitted until the 10<sup>th</sup> of October 2019.

Plaintiff insisted that it was the police who shot him, as it was the Police who had guns and whom he saw firing at the demonstrators.

As a result of the shot, he sustained injuries on the lungs, liver, kidneys and spinal cord, the result of which he will not ever walk again, he is not able to pass urine comfortably. He still experiences pain and he has to take tablets on a daily basis. By consent, he submitted a bundle of receipts, medical prescriptions, affidavits and reports to support his case.

It was his evidence that, he is permanently wheelchair bound as such he can no longer work. He still needs medication, he needs re-skilling, he is always house bound and this is traumatizing. His prayer was that the police pay him so that he gets medication and money to fend for himself as he used to.

Under cross-examination plaintiff maintained his story as narrated in his evidence-in-chief. He maintained his evidence that he saw the police, some who got into a lorry, others on foot and were holding guns coming out of the Police station. He stood his ground that none of the protesters had guns but it was the Police who shot him. Further that it was not only him who was shot.

He insisted that the Police cannot deny that they shot him because it was them who had guns. He remained where he was shot at because there was nowhere he could escape through. When it was put to him that the police say they never had guns, he responded:

“It is easy to deny an offence. Everyone I saw holding a gun was in police uniform. The group of protestors I saw I never saw anyone holding a gun. I saw all of them that had been coming towards where I was.”

The next witness to testify on behalf of plaintiff was his father Teerai Chitongo. He narrated that on the 14<sup>th</sup> of January 2019, he rushed to the scene after he heard that plaintiff had been shot whereupon he ferried him to hospital. On the day, there was commotion as people and the police were chasing each other. The police officers were in uniform and were holding firearms.

He took plaintiff to a private clinic in Epworth where he was advised to take him to Parirenyatwa Hospital where he also made a report at the Police Post. He failed to do so at Epworth Police Station because he had been denied entry into the Police Station. He was in the Intensive care unit for 8 days and stayed admitted at this hospital for 3 months and later referred to Ruwa Rehabilitation Centre where he stayed for 4 months. He narrated that, the next day, 15 January 2019 he re-visited the scene of the shooting and he picked 2 bullet heads from the area plaintiff was shot. The bullet heads were tendered as Exhibit D.

The witness narrated further that plaintiff was a commuter omnibus driver before the shooting. He now takes care of him from his own salary and from monies borrowed.

Under cross-examination, the witness also stuck to his story as given in his evidence-in-chief. He maintained that the Police had guns firing and people were running away.

The next witness to testify on behalf of the plaintiff was Doctor Noah Madziwa, a specialist general surgeon who attended to plaintiff at Parirenyatwa Hospital. He testified that he was assisted by two junior doctors. On observing plaintiff, he noticed that:

1. The liver was bleeding
2. The right kidney was ruptured
3. The right colon was perforated.
4. Right forearm was fractured.
5. A burst fracture in L3 and paralysis on the lower limbs.

He had to immediately do surgery to save life. He could not save the right kidney so he removed it. He managed to stop the bleeding. His speciality is on liver, kidney and colon so he referred plaintiff to a neuro-surgeon to attend to the injury to the spine. He abided by the

contents as deposed to in the medical affidavit compiled by Doctor B Tsuro who was one of his assistants on 24 June 2019.

The witness testified that the injuries were life threatening and Plaintiff will never be able to walk again. He is wheel chair bound for life and the wheel chair has to be replaced every so often. There is loss of amenities, he needs training and counselling. The injuries he sustained being permanent, there is no surgery that can remedy his state.

Under cross-examination, he was asked:

“With your vast experience did you recover any bullet head or residue from a gun on plaintiff?”

His response was,

“When someone has a gunshot wound, my aim is to save life, attend to injury and not to look for bullet heads. From my assessment it was a high velocity injury, which means the missile went in and came out and can even shoot 2 to 3 people.

From the injuries the bullet came out.”

He was certain that the injury was consistent with a gunshot from a high velocity, missile which went through the liver, lung and shattered the spine. He explained that high velocity is any missile going 500 metres per second and what you see from outside is not what may be inside, whereas a low velocity is a stab and is what you see from outside and which you can observe and say let us wait and see.

With the doctor’s evidence, the plaintiff closed his case.

For the defence, only one (1) witness was called. Chief Inspector P Mangwende. He was the Officer-In-Charge Epworth at the time. He narrated that;

On the particular day he was on duty as officer responsible for night operations in Chitungwiza District. While at Makoni Police Station he received a phone call at around 0400hours to the effect that many roads leading to Epworth had been blocked with boulders by unidentified people. He, in the company of 5 members of the District reaction group with tear smoke ammunition drove to Epworth Police Station. At the station there were about 8 to 12 Constabulary members. About 200-300 demonstrators approached the station at Chiremba road at about 0730 hours and by then some 3 to 4 motor vehicles with smashed windscreens had come to the station. He managed to make a report and called for assistance from Chitungwiza Headquarters.

He testified that the character of drills by demonstrators clearly showed that they had some form of military training as the commands to bring down the fence was done in extended line formation and was so precise. They also had buckets of water and wet towels and would

dive to dip the cannisters into buckets of water so as to diffuse the smoke. He managed to get assistance from a donor site and from Chitungwiza and Support unit.

On the question as to how the tear smoke was dispensed, he testified that, he had hand grenades and cannisters propelled by firearms. To the question on whether the demonstrators were armed with firearms, pistols rifles, etc., he testified that he did not get an explicit report of arms they had, but could not rule out firearms as the characters were of such military precision, and that, these were deviant characters of the army. If given military commands they would respond in a drill fashion and lie down. The possibility of such people having arms could not be ruled out.

As regards the firearms, he testified that he had 1½ inch signal pistol and riot guns. These are public order firearms that fire tear smoke, one cannister at a time and are fired 45° into the air so that the cannister drops in front of or in the midst of the demonstrators if it hits a target, the injuries sustained are burns, breathing complications, bruises, they do not pierce.

As regards the bullet heads (Exhibit D) he was of the view that they could be from an AK 47 rifle. If they were fired from the place they were picked, it meant that plaintiff was shot at close range. He denied having AK 47 rifles with Exhibit D rounds.

He surmised that there is a possibility that plaintiff was involved in a criminal activity elsewhere or he was involved with the army details who were traversing Chiremba road. He might have been shot at Munyuki which is 5 kilometres away and is the site where motor vehicles were attacked. He did not receive any report of any person having been shot.

Under cross-examination, the witness abided by his evidence-in-chief. He responded that he was restricted at the Police Station. He characterized the weapons the demonstrators had, as slings, catapults and stones. He responded that an AK 47 rifle is big just like a riot gun. He agreed that it cannot be hidden.

On the reinforcements from Chitungwiza, he testified that he had no idea how many they were and that it was not for him to account for them. He did not observe the kind of arms they were carrying. He admitted that the team he had at the police station had assault rifles including AK 47 rifles. He maintained his position on the three scenarios that possibly could have led plaintiff to be shot. He denied the possibility of any of his members he had control over shooting plaintiff. As for the investigation into the shooting, his response was that this was for the investigation department as it was a criminal offence. He denied sending away anyone who came to make a report.

### **ANALYSIS OF WITNESSES EVIDENCE**

It is common cause that on the day 14 January 2019 they were demonstrations in Epworth and there was commotion between the demonstrators and the police. This commotion turned violent. The officer-in-charge Epworth had to call for reinforcements from Chitungwiza, Support Unit and others.

Plaintiff gave his evidence well. He clearly and in detail narrated the events of the day. He was not shaken under cross-examination. He stuck to his story and maintained that it was the police that had firearms and it was the police that shot him in the process of them dispersing the demonstrators.

Plaintiff in my view gave credible evidence which was also corroborated by his father Teerai. Teerai gave evidence of what he saw and did when he got to where plaintiff was and saw that he had been shot. He did not exaggerate his evidence, to support his son's story. His testimony that he proceeded to the police station to make a report but was barred from entering rings true. There was commotion, demonstrators being chased away from the Police station, so the defence witness's testimony that no one was being barred from the station cannot reasonably be true. He corroborated the plaintiff's testimony that it is the police who had firearms. He was not shaken under cross-examination, I therefore find his testimony credible.

Doctor Madziva's evidence was also straight-forward. He narrated what he did when he attended to plaintiff. He maintained that the injuries suffered by plaintiff were gunshot – from a high velocity missile. He gave his evidence very well and could not be shaken under cross-examination. He explained the effect of the injuries sustained and what would be needed as future medical care. His evidence is accepted in total.

The defence witness in my view was not totally truthful. He surmised four scenarios which could have led plaintiff to be shot. He denied that police shot the plaintiff, he however admitted that the police were armed with guns. He stated that the demonstrators uprooted the sign post, pulled down the perimeter fence, were using slings, catapults and stones. He did not say any one of the demonstrators had a firearm. At first, he stated that due to security reasons his station had no firearms. Under cross-examination he admitted he had AK 47 rifles at the station and that his team had assault rifles including AK47 rifles. He did not have any idea of the reinforcement he got from Chitungwiza. He said Chitungwiza is a substantive stand-alone station and he could not account for it and yet he had asked for assistance from it. He could not dispute that they had firearms. The scenarios that he gave, cannot be accepted.

Considering the events as narrated by plaintiff, it cannot be true that, plaintiff was shot elsewhere during some criminal activity, was involved with the military or shot at Munyuki which is 5 kilometres away or shot at by a demonstrator. If he was shot elsewhere, he could not have been found at his uncle's place which is kilometres away. The bullet heads would not have been found at the place they were found by his father. It was not stated that the military was involved in quelling the commotion. It was stated that the demonstrators had no firearms.

Having considered all the evidence led by the witnesses, it is my conclusion that plaintiff was unlawfully shot by a member of the defendants and this was during the course and scope of his/her employment.

### **DAMAGES**

Plaintiff is claiming damages as a result of the injuries he sustained from the shot. His evidence as corroborated by Doctor Madziwa was that he is now permanently disabled, he is now wheelchair bound for life, he lost a kidney, his colon, liver, lumbar vertebrae L3 were damaged.

Plaintiff's claim is as follows;

- a. ZWL252 302.00 special damages for hospital and medical expenses.
- b. ZWL471 500.00 special damages for past loss of earnings
- c. ZWL1 000 000.00 for loss and or reduction of future earnings
- d. ZWL1 279 520.00 for future medical expenses
- e. ZWL1 600 000. 00 being general damages for nervous shock, pain and suffering, humiliation, embarrassment, affront to dignity and degrading treatment.
- f. ZWL1 600 000.00 being damages for permanent disfigurement, permanent disability and loss of amenities of life.

It is an established position of the law that a party who claims damages must plead and prove damages so sought by leading evidence. The defendants' position is that plaintiff has failed to prove his case on a balance of probabilities, as such his claim must be dismissed.

- Plaintiff is claiming special damages for hospital and medical expenses and other related expenses.

He substantiated his claim by producing exhibit A which is a bundle of medical documents Exhibit A none of which was disputed by defendants. The medical affidavit by Dr Tsuro which shows the extent of injuries plaintiff suffered, a report from Dr R Musara stating that the plaintiff is now a paraplegic who requires:

- Linen savers and latex gloves box every 2 weeks.

- Gel 750ml every week.
- Gauze roll every month.
- Analgesics for pain tramadol, celecoxib.
- Wheelchair every 2 years.
- High protein diet.
- He will need assistance for mobility.
- He will need vocational training such as those offered at Danhiko.
- Catheters and urine bags changed every 2 weeks.

Other medical documents from Dr G Chatora Medical Imaging Centre, Avenues Clinic, Runyararo Health Centre in Epworth, Parirenyatwa hospital, the Medicine Chest Chisipite, Family Care Pharmacy Chisipite, Netstar Ambulance Service, Guardian Pharmacy, Whitecross Pharmacy, Ambika Pharmacies, Windsor Pharmacy Ruwa, Diamond Pharmacy, Manik Pharmacy, Trinity Pharmacy, Greenwood Pharmacy, Ruwa Rehabilitation Hospital.

Going through the bundle of documents Exhibit A, I find that plaintiff has proved his damages and is therefore entitled to the damages in the amount claimed of ZWL\$252 302.00.

Plaintiff claims special damages for past loss of earnings, and for loss and/or reduction of future earnings. Apart from merely saying he was employed as a commuter omnibus Driver earning US\$65.00 per week, no evidence was adduced/produced to prove this. He did not call the employer or any other person whom he worked with to support his position. It is accepted that it is not in all employment that pay slips are provided particularly in informal employment. It is also noted from the report from Ruwa Rehabilitation Centre that at admission, plaintiff indicated he was not employed. I am therefore unable to grant this claim.

Plaintiff claims future medical expenses. Exhibit B(i) is a quotation from Doctor K Madondoro for Lumbar Deformity Correction and the quote is for US\$12 200.00. A quotation from Family Care Pharmacy Chisipite dated 31 July 2019 for medication that is needed per month from 1 August 2019 in the amount of ZWL\$1 170.00. A quotation from Danhiko Secondary School for registration and boarding fee in the amount of ZWL\$60.00 and ZWL\$3 800.00 respectively and a general psychological assessment report from Dr Farzana Naeem in which she recommended that plaintiff continues psychotherapy with them. I take cognizance of the hyper-inflation currently affecting our economy. Considering that these quotations were issued in 2019 and 2020 and these amounts have changed I will grant the claim of ZWL\$1 279 520.00 as claimed by plaintiff.

Plaintiff claims general damages for nervous shock, pain and suffering, humiliation, embarrassment, affront to dignity and degrading treatment.

It must be recognized that translating personal injuries into money in equating money cannot replace a physical frame that has been permanently injured.

General damages are not a penalty but compensation. The award is designed to compensate the victim and not to punish the wrong doer.

In granting the claim for general damages I am fortified by the above principles which were aptly captured in the case of *Minister of Defence & Anor v Jackson* 1990 (2) ZLR 1(SC).

Doctor Madziwa's evidence gave a clear picture of the extent of the injuries and what surgery he performed to save plaintiff's life. Plaintiff had to be admitted in the Intensive Care Unit for 8 days, stayed in hospital for 4 months and was referred to a rehabilitation centre. Plaintiff is now paraplegic and as Doctor Madziwa said, he will never walk again and that no amount of surgery will make him to ever walk again and that no amount of surgery will make him ever walk again. Plaintiff submitted that because of this condition, he is always house bound. His colleagues now look down upon him. He is always in pain and this was confirmed by his father with whom plaintiff now stays and he has to borrow money for his medication. Embarrassment, affront to dignity and degrading treatment are not applicable in this case, as these are claimable in adultery damages.

I will grant the claim only for pain and suffering, nervous shock and humiliation and in the amount of ZWL\$600 000.00.

Finally, plaintiff claims damages for permanent disfigurement, permanent disability and loss of amenities of life. It goes without saying that plaintiff suffered permanent disfigurement. Doctor Madziwa testified that he could not save the kidney as it was shattered so he had to remove it. Plaintiff is therefore without one kidney, plaintiff's lumbar vertebrae L 3 was shattered, the result being that he is now permanently disabled and is wheelchair bound for life and that there is no surgery that can remedy plaintiff's condition. Plaintiff is permanently disabled therefore he has lost the amenities of life. He is now 25 years of age and according to Doctor Madziwa his life expectancy is 60 years and above and in view of this, loss of amenities cannot be disputed. I will therefore grant plaintiff's claim of ZWL\$1 600 000.00 as claimed.

In the result, the following order is made:

1. Judgment be and is hereby granted in favour of plaintiff in the sum of ZWL\$3 731 822.00 against defendants jointly and severally, one paying the other to be absolved.
2. Payment of interest at the prescribed rate calculated from the date of summons to the date of final payment.
3. Defendants to pay costs of suit.

*Zimbabwe Lawyers for Human Rights*, plaintiff's legal practitioners  
*The Civil Division of the Attorney-General's Office*, respondent's legal practitioners