

DELIWE CHINYMBA
versus
CHRISTINA MAJAWALA

HIGH COURT OF ZIMBABWE
BERE J:
HARARE, 28 and 30 September 2009

B. Maruva, for the plaintiff
J. Zuze, for the defendant

BERE J: Plaintiff issued summons in this court on 29 September 2005 seeking various damages as captured in her summons and declaration.

Her amended declaration points to the abandonment of her defamation suit and continuation with the rest of the claim.

According to her declaration the plaintiff's claim for *contumelia* as well as other damages stem from her alleged unlawful eviction which was accompanied by assaults by the defendant and the defendant's employees who are alleged to have assisted defendants in unlawfully evicting the plaintiff.

Plaintiff's declaration further points to the other damages having occurred as a result of the damage allegedly caused by the defendant and her employees during the mayhem which was linked to the defendant's alleged unlawful eviction.

Claims for damages require that tangible evidence be led to sustain such a suit. Plaintiff is expected to table before the court evidence which show on a balance of probabilities that the claim as framed is sustainable. Damage claims are not based on speculation or conjecture. It is eminently important that every averment be properly supported and proved.

Through her own testimony the plaintiff was never assaulted and this runs contrary to her declaration. That she was never assaulted was supported by her own daughter Memory Chinyemba who was called to support the story as told by the plaintiff. The two witness's evidence was at variance in many respects where it mattered most. The record of proceedings bears testimony to this.

In stead, the plaintiff testified to the effect that she was merely referred to as an idiot and a thief. Her own daughter did not hear these words being uttered. The position of the plaintiff's daughter is consistent with the evidence as narrated by the defendant and her own witnesses who gave a consistent story of what happened on the day the defendant took occupation of some rooms at 1252 St Marys' Township, Chitungwiza.

That there was nothing consistent with the allegations made by the plaintiff is by implication supported by the failure by the plaintiff to cause the arrest of the alleged assailants by the police officers from the station where the plaintiff claims to have sought refuge on the date the defendant took occupation. It is inconceivable that if the defendant had behaved in the manner dramatised by the plaintiff the police would have failed to criminally deal with such hooliganism.

There was not the slightest attempt made by the plaintiff to prove her claim for damages to her property, what the court had at the closure of the plaintiff's claim were unsubstantiated averments in the plaintiff's declaration and the annexed schedule.

In this regard, at the time the defendant testified, she had really no reason to even respond to the plaintiff's claim for damages as nothing in that direction had been established. The schedule on its own did not speak to the court about the alleged damages to the plaintiff's property. The approach adopted by the plaintiff was extremely lackadaisical and no court would be moved to award damages in such a scenario.

There is every reason to believe that the plaintiff had some other motives in bringing this action. This becomes clear if one considers the well told position of the defendant and well supported by her witnesses. Defendant's story was well told and well supported and was easy to follow and it would have been extremely difficult for the court not to accept wholesale that story.

Plaintiff's story was a total fabrication and such abuse of the functions of this court must be condemned in the strongest possible terms and must be met with an appropriate order of costs to discourage frivolous and vexatious litigation.

Plaintiff's salvation is that the defendant did not ask for costs on a higher scale, for this is a classic case where such costs would have been awarded without any hesitation. It remains mysterious that this case was allowed to go beyond the closure of the plaintiff's case.

One gets the impression the plaintiff took advantage of her professional placement to abuse this court. Such conduct must be discouraged and condemned.

Consequently the plaintiff's claim is dismissed with costs.