

THE ATTORNEY-GENERAL v FELIX CHRIS KALEYA (1982) Z.R. 1 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER AND MUWO, JJ.S.
10TH MARCH AND 8TH JUNE, 1982
(S.C.Z. JUDGMENT NO. 13 OF 1982)
APPEAL NO. 10 OF 1979

Flynote

Damages - Appeal - Powers of appellate court to interfere with.

Damages - Assessment of - Factors to be considered - Police Officers assault - Whether aggravating factor.

Headnote

The respondent cross-appealed against the quantum in award of damages of K100 for false imprisonment and K50 for assault and battery. He had been arrested by the police as a suspect in a case involving the killing of a police officer and assaulted in custody; only being released nine hours after witnesses failed to identify him.

Held:

- (i) Before an appellate court interferes with the findings of the trial court as to the amount of damages, it must be shown that the trial court has applied a wrong principle or has misapprehended the facts, or that the award is so high or so low as to be utterly unreasonable, or is an entirely erroneous estimate.
- (ii) In assessing damages for wrongful detention the factors to be considered include duration, sanctity of personal liberty, presence or absence of the suffering of anxiety or indignity, manner and circumstances of detention, and the reasonableness of the explanation for the detention.
- (iii) The assault of the respondent by many police officers while he was detained is a serious matter which may be taken as an aggravating circumstance in the assessment of the damages.

Cases cited:

- (1) *The Attorney-General v Kakoma* (1975) Z.R. 212.
- (2) *Kawimbe v The Attorney-General* (1974) Z.R. 244.
- (3) *Safike Chunga v The Attorney-General* 1976/HN/540 (Unreported).

For the appellant: F. Mwiinga, Senior State Advocate.

For the respondent: L. Nyambele, Cave Malik and Co.

Judgment

NGULUBE, D.C.J.:

This is a cross-appeal from a decision of the High Court in which the respondent was awarded damages against the appellant in the sum of K100 for false imprisonment and K50 for assault and

battery. The appellant filed notice abandoning his appeal and the case proceeded on the respondent's cross-appeal against the High Court's assessment of the damages. The writ claimed damages for -

- (a) assault and battery;
- (b) false imprisonment; and
- (c) slander

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The learned trial judge found the claim in respect of slander not proved and awarded the damages I have just referred to in respect of the false imprisonment, assault and battery.

The facts as found by the learned trial judge and insofar as they are material for the purposes of this appeal were that, on 15th November, 1975, at about 0200 hours, the respondent was taken into custody by the police as a suspect in a robbery case in which a police officer had been killed at a bank. The respondent was interrogated and an identification parade was conducted where none of the witnesses identified the respondent and two other suspects. By 1400 hours after the parade aforesaid the other suspects were released but, as the learned trial judge found, the respondent was wrongfully detained for a further period of nine hours until at 2300 hours when he was released. During the period that the respondent was in the hands of the police they assaulted him and, as the medical evidence showed, he sustained a soft tissue injury on the left forearm, abrasion on the right scapula region, and tenderness on the anterior aspect of the neck. The respondent had been beaten with fist blows, short batons and rifle butts. The court below accepted that the police had subjected the respondent to unpleasant treatment.

In dealing with the quantum of damages in respect of the false continued imprisonment for the period of nine hours the learned trial judge found that there had been no evidence with regard to the circumstances of the initial arrest and detention to suggest damages other than a sum limited solely to the loss of liberty for a period of nine hours. Relying on *The Attorney-General v Kakoma* (1), where K350 was awarded in respect of loss of liberty for twenty-three hours, and *Kawimbe v The Attorney-General* (2), where K200 was awarded in respect of loss of liberty for two days, the learned trial judge made an award in the sum of K100. In *Kawimbe* (2), when the matter came before this court on appeal, Baron, D.C.J., who delivered the majority decision stated that before an appellate court interferes with the finding of the trial court as to the amount of damages, it must be shown that the trial court has applied a wrong principle or has misapprehended the facts or that the award was so high or so low as to be utterly unreasonable or was an entirely erroneous estimate of the damages. I agree with those principles of law. There is of course no scale or table of damages per hour, per day, or for any period whatsoever. While the duration of the wrongful detention is certainly a material factor to be taken into consideration, all the circumstances of each individual case have to be taken into account, bearing in mind the sanctity of personal liberty, the presence or absence of the suffering of anxiety and indignity, the manner and circumstances in which the detention was effected, the reasonableness or otherwise of any explanation that the defendant has offered for the unlawful detention and so on.

Mr Nyambele, counsel for the respondent, has argued that the damages awarded in respect of the false imprisonment were totally inadequate. He cited in support an unreported High Court decision

in the case *Safike Chunga v The Attorney-General* (3), a case in which Bweupe
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J., who had tried this case now under consideration, had awarded a single lump sum of K5,000 for false imprisonment, assault and battery on a plaintiff by the police. The facts of that case are distinguishable and in any event the basis for the making of such a single lump sum award was not stated. Mr Mwiinga argued, on behalf of the Attorney-General, that this court should follow the *Kakoma* (1) and (*Kawimbe* 2) cases and uphold the award made by the court below. On the facts as found by the learned trial judge and going by the local precedents which favour moderate figures consistent with Zambian values under the prevailing economic and social situation, I would find that the court below had applied the correct principles and that the award of K100 in respect of the false imprisonment was entirely reasonable. I am unable to interfere with this award.

The respondent was also assaulted. In assessing the damages under this head the learned trial judge simply stated:

"The plaintiff has suffered pain due to injuries sustained at the hands of police officers. I would award him K50 for assault and battery."

Mr Nyambele has argued that this award was totally inadequate having regard to the aggravating circumstances. Mr Mwiinga conceded that police officers are not entitled to beat up suspects and finally opted to leave the question of damages under this head in our hands. This Court was asked to find that there were aggravating circumstances in this case. At first, it was argued on behalf of the State by Mr Mwiinga, Senior State Advocate, that the medical report showed that the injuries referred to only entitled the respondent to the damages which the trial judge assessed in respect of the assault, namely, K50. His argument was that the respondent's claim that he had been severely beaten up and lost consciousness whilst in the hands of the police was untrue as the medical report proved to the contrary. In fact the medical report indicated that the respondent suffered injuries consistent with his allegation of assault. His allegation may well have been exaggerated but there is no doubt that he was assaulted.

I find that the respondent was assaulted by many police officers who suspected him to be involved in a robbery in which a police officer was killed. 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. In view of the fact that the assault was carried out by police officers, that the injuries were painful and taking into account that fists, short batons and rifle butts were used, I would find that the award of damages in the sum of K50 was totally inadequate and I would substitute an award of K300.

The result is that I would dismiss the appeal in respect of the award of K100 for false imprisonment. I would allow the appeal in respect of

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the assault and battery and set aside the award made by the court below and substitute an award of K300.

In view of the fact that the respondent was successful in the overall appeal in that I would award an increase in damages, I would award costs to the respondent both in this court and in the court below.

Judgment
Gardner,

J.S.:

I

concur.

Judgment
Muwo,

J.S.:

I

also

concur.

Appeal allowed in part
