

OFTEN TSHUMA

Versus

CLIFFORD TSHUMA

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 21 JUNE AND 22 NOVEMBER 2007

R Moyo-Majwabu, for plaintiff
C Dube, for respondent

NDOU J: Most facts are fairly common cause in this matter. The parties were married to each other in 1979. The marriage was dissolved on 8 April 2005. It is common cause that on or about 28 December 2003 the defendant assaulted the plaintiff. The issues are the severity (or the seriousness) of the assault, its exact nature and in particular whether it resulted in permanent disability and loss of amenities of life. The quantum of damages is also in issue. The plaintiff claims \$200 million damages for the assault. In this case it is the plaintiff's words against that of the defendant. There are no witnesses besides the parties themselves. From the parties' respective testimonies it seems to me that the issues are limited to question of the quantum of damages. I will therefore focus on this material issue in dispute. The defendant's case seems to emphasise that he cannot afford the \$200 million claimed by the plaintiff.

The medical practitioner who examined the plaintiff's injuries opined that they were serious resulting in her arm being plastered. The plaintiff stated that she suffers lingering pain and she can no longer do heavy manual work. The plaintiff is aged 56 years. She testifies that she is no longer able to fend for herself. From the evidence it is apparent that the parties lived in harmony and peaceful existence for over thirty (30) years as wife and husband. In the circumstances, the defendant states that he was provoked to

assault the plaintiff. He says he regrets that he ended up assaulting the plaintiff. The defendant testified that he does not have regular employment but now works per invitation. He said throughout the thirty years he has provided for the plaintiff and the family.

It is trite that it is not easy to quantify the level of damages in such assault cases – *Gurura v Chabawa* HB-12-98. But reference to comparable cases though never decisive, is instructive but one has to study the full judgment and the pain and loss of amenities involved and not simply the injuries – *Garikai v Kwenda & Anor* HH 194-91 and *Nyabadza v Makuni & Ors* HB-12-06.

In casu, I have looked carefully at the medical evidence adduced on the extent of the injuries and loss of amenities as the plaintiff is a subsistence farmer. I have also looked at the following comparable cases – *Hodges v Watson* HB-46-89; *Ndlovu v Negasha* HB-106-90; *Manyemba v Muzukwa* SC-163-90; *Chadwick v Chand* HH-262-91 and *Mkhize v Gumede* HB-110-91.

Having done so, I have exercised my discretion on the most appropriate figure of quantum of damage. I have also taken into account the major decline in the value of the Zimbabwe dollar – *Chimutepa v Gwenzi* 2001 (2) ZLR 222 (HC).

In the circumstances I award the plaintiff general damages for pain, suffering and loss of amenities in the sum of \$100 000 000,00 with interest thereon calculated at the prescribed rate from the date of the issue of summons to date of payment in full. The defendant shall bear costs of suit.

James, Moyo-Majwabu & Nyoni, plaintiff's legal practitioners
Lazarus & Sarif, defendant's legal practitioners