

**NDABEZINHLE MAZIBUKO**

**Versus**

**CHIEF SUPERINTENDENT SITHOLE**

**And**

**THE COMMISSIONER OF POLICE**

**And**

**THE MINISTER OF HOME AFFAIRS**

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 3 OCTOBER 2006 AND 15 JANUARY 2009

*S Chamunorwa* for plaintiff

*Ms D Vundla*, for defendants

Civil Trial

**NDOU J:** The plaintiff is a legal practitioner practising with Messrs Calderwood, Bryce Hendrie and Partners Legal Practitioners in Bulawayo. He has sued the defendants for payment of damages for assault, injuria and impairment of dignity following the defendants' actions of forcibly and under injurious circumstances removing or causing to the removal of the plaintiff from Bulawayo Central Police Station on 14 February 2003. The background facts are the following. It is common cause that there was a demonstration on 14 February 2003. Several persons were arrested for participating in the demonstration which the police regarded as unlawful. Several legal practitioners, including the plaintiff, attended at Bulawayo Central Police Station in order to assist their arrested clients. The said legal practitioners were denied access to their clients by *inter alia*, the 1<sup>st</sup> defendant. The legal practitioners' reaction was to refuse to leave the police station before they saw their clients. They insisted that they have access to their clients. The 1<sup>st</sup> defendant ordered that the legal practitioners be removed from the police station. This order was carried out resulting in the actions that form the subject matter of these proceedings. There is a dispute as regards the manner of the removal of the plaintiff

from the police station and such a factual dispute can only be resolved by considering the evidence of the witnesses in turn.

**Ndabezinhle Mazibuko**

He testified that he was duly admitted as a legal practitioner in 1994 and he is a partner at the above-mentioned law firm. Regarding the events of 14 February 2003 he said he attended at Bulawayo Central Police Station to take instructions from his client who had been arrested. At the station he was referred to the 1<sup>st</sup> defendant whom it was advised was the man in charge. The 1<sup>st</sup> defendant was in the courtyard, and this is where his clients and other arrestees were. The plaintiff said he duly identified himself to the 1<sup>st</sup> defendant as a legal practitioner but the 1<sup>st</sup> defendant, who for some reason appeared agitated, ordered him to immediately leave the police station. He was also told why he could not have access to the clients. At some point, the plaintiff was joined by other legal practitioners namely, Ms Perpetual Dube, Kucaca Phulu and Mr Mkwanzani. They had all come to the police station to take instructions from their respective clients. He and the other legal practitioners did not leave as demanded by the 1<sup>st</sup> defendant. They insisted that they be allowed access to their clients as 1<sup>st</sup> defendant could not give a valid and legal reason why they could not, while the 1<sup>st</sup> defendant stood resolute in denying them access without explaining why. The 1<sup>st</sup> defendant then started pushing him trying to get him to leave and when he failed to move him, he enlisted the help of his subordinates. The 1<sup>st</sup> defendant instructed members of the Police Reaction Group (“PRG”) more commonly known as “Riot Police”, to remove the plaintiff and his colleagues from the police station. He and the other legal practitioners were pushed, shoved, poked with baton sticks and had explicit invectives unleashed on them. The plaintiff said that this assault started from the courtyard, continued into the charge office and stopped in the street outside the police station. He said he was assaulted in full view of his clients, other police officers and members of the public, some of whom were going about their ordinary business and had to stop and watch the unfolding spectacle of the legal practitioners

being assaulted and insulted. The plaintiff said he was deeply humiliated and thus suffered a knock on his fair and impeccable reputation and dignity. For good measure, the plaintiff stated that the 1<sup>st</sup> defendant and his subordinates were acting in the course and scope of their employment and as such the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were liable. I am satisfied that this witness gave his testimony very well. He did not seek to exaggerate the unlawful actions of the 1<sup>st</sup> defendants and his subordinates.

**Kucaca Ivumile Phulu**

He said he is a legal practitioner and partner at Coghlan and Welsh Legal Practitioners. He has been a legal practitioners of six years experience. As alluded to above, he is one of the legal practitioners who was present. His testimony is corroborative of that of the plaintiff. Like the previous witness, he gave his evidence in a coherent and logical manner. His demeanor was not shaken under cross-examination. The long and short of it is that I find that these two witnesses gave credible testimony.

On the other hand, three witnesses were called in support of the defendants' case. I will also consider their testimony in turn.

**Donald Sithole: the 1<sup>st</sup> defendant**

He appeared on his own behalf and on behalf of the two other defendants. He denies that he was in charge of the arrestees on the day in question. He is a Chief Inspector and not Chief Superintendent as cited. [This error was subsequently rectified]. He testified that at all material times he was in his office and at no time did he venture into the courtyard. He further said that at all material times the identity of the plaintiff and his colleagues as legal practitioners was not in issue. He disputed that he instructed his subordinates to assault the legal practitioners and that he personally came to know of the assault on the following day. This witness was clearly untruthful. As will appear hereinunder, he deliberately tries to remove himself from the scene.

**Nhamo Makhiwa**

His evidence was brief and material in one respect. He said that on the

material day, as he was on his way to the canteen, whose door leads out to the courtyard, the 1<sup>st</sup> defendant asked him to summon four(4) officers from PRG. He obliged. I am satisfied that he is a truthful witness.

**Maxwell Guvava**

He is a member of the PRG. He said that he was sitting with his colleagues when the 1<sup>st</sup> defendant instructed them to “drive” out the plaintiff and his colleagues. He said that acting on 1<sup>st</sup> defendant’s instructions they did not assault the plaintiff and his colleagues but rather, they used their baton sticks as a barricade, and this was what caused the legal practitioners to leave the police station. What appears clearly in the defendants’ case are irreconcilable contradictions of a material nature. As illustrated above, whereas the 1<sup>st</sup> defendant disputed ever being in the courtyard, the other witnesses placed him at the scene. Whereas the 1<sup>st</sup> defendant disputed that he was in charge of the arrestees the evidence adduced from the other defendants’ other two witnesses is indirectly corroborative of the plaintiff’s case that the 1<sup>st</sup> defendant was in charge on that day. Further, whereas, the 1<sup>st</sup> defendant said that he did not know how the plaintiff and the other legal practitioners left the police station, the last witness said that he was present when the plaintiff and his colleagues were driven out, in fact he said the 1<sup>st</sup> defendant is the one who issued instructions that they be driven out.

Interestingly, the evidence of the 1<sup>st</sup> defendant was in material respects inconsistent with the defendants’ plea and synopsis of evidence. The defendants’ counsel did not seek to reconcile the evidence given by the 1<sup>st</sup> defendant with the defendants’ plea nor their synopsis of evidence. From the credible evidence, the plaintiff’s feelings of dignity and self-respect have been intentionally violated by the conduct of the 1<sup>st</sup> defendant. He was violently driven out of the police station to the street. This, as alluded to above, was done within full view of his clients, other arrestees, police officers and other onlookers. There was no need for the 1<sup>st</sup> defendant to act in this fashion. Injuria is committed when a person, without cause, intentionally violates another’s dignity. A person’s dignity includes his feelings of dignity or self-respect. These feelings may be violated by any conduct that actually

insults a person – *Law of Damages* (1<sup>st</sup> Ed) (Juta) (1993) at 100. In light of the above, I find that the delict complained of has been established by the evidence led on behalf of the plaintiff.

Coming to question of the quantum of damages, I hold the view that this is a proper case for an award of exemplary damages. The plaintiff has established that he is a man of high standing in the society. He is a legal practitioner with more than ten (10) years experience and practising in the city of Bulawayo where this delict occurred. He is considerably well known and has a fair reputation. Indeed in his testimony, the plaintiff stated that some people who witnessed this incident called him later on to find out why he had been treated in such a manner. Further, he stated that he does a considerable amount of criminal work and is thus known to most police officers. This conduct is likely to affect his working relationship with police officers and he was gravely humiliated in front of them. The fact that the plaintiff is a legal practitioner and that the delict was directed against him in his capacity as a professional is grave warranting heavy damages – *Black & Ors v Joseph* 1931 AD 132 at 146.

Accordingly, judgment is entered for the plaintiff against the defendants jointly and severally in the sum of \$1 000 000 000,00 with interest thereon calculated at the prescribed rate from 14 February 2003 to date of full payment. The defendants are ordered to pay costs of this action jointly and severally at the scale of legal practitioner and client.

*Calderwood, Bryce Hendrie & Partners*, plaintiff's legal practitioners  
*Messrs Dube & Partners*, defendants' legal practitioners