

LIZZIE MUKUMBA  
versus  
THE MINISTER OF HOME AFFAIRS  
and  
THE COMMISSIONER OF POLICE

HIGH COURT OF ZIMBABWE  
KUDYA J  
HARARE, 23, 24 and 29 July 2009

**Civil Trial**

*Ms. M S Mutambasere*, for the plaintiff  
*K Gutu*, for the defendants

KUDYA J: The plaintiff issued summons against the defendants seeking damages in local currency arising from an assault perpetrated against her by members of the police riot squad during disturbances that occurred in Budiriro on 24 March 2002. At the commencement of trial I granted with the defendants' consent the amendment to the claim in the sum of US\$4 368-00. The plaintiff holds the defendants vicariously liable for the delict committed by one of their employees. The defendants deny all liability.

The plaintiff and her daughter Theresa Mukumba testified on what transpired on the day in question. She was a member of the Movement for Democratic Change and was in her house. At around 6 pm she requested her son who was in grade 6 at the time to latch the metal sliding gate to her residence. A stick of six policemen in full riot gear forced their way into the premises and house. They were dressed in blue combat trousers, grey shirts and helmets with visors. They wielded baton sticks. The police threw tear smoke canisters on her verandah. The smoke filtered into the house causing her eyes to tear and her nose to run. She was pushed aside and one of them proceeded to her bedroom where her 82 year old invalid mother was being fed by Kundai, one of her daughters. She cried as she recounted the senseless assault on her bed-ridden mother. Kundai was taken outside the house to the garden where she was beaten up. She followed behind asking the policeman why he was doing so. Other policemen were simultaneously taking out other members of her family like Theresa and her husband and some tenants who lived at the premises to the garden and beating them up. One policeman

clapped her on both her ears ten times with both his hands. A baton stick was used to beat her on the shoulders. The assaults left her ears ringing and her head and body in excruciating pain.

She was ferried by an ambulance to a house in the Avenues in the city centre for three consecutive days where she was treated by Dr. Frances Lovemore. The medical report, exh 1, showed that she complained of a headache, deafness and ringing in both ears; painful shoulders and generalized body pain. On examination the doctor found tenderness on her upper back. She did not observe any visible injuries. She treated her with simple pain-killers. She could not ascertain the number of blows delivered or the extent of the force used and concluded that there was no possibility of permanent injury.

Theresa confirmed the plaintiff's testimony on how the police forced their way into the premises and house and how they used brutal force to indiscriminately assault all the people who were in the premises. While she agreed with her mother that a tear smoke canister was fired in the premises, she differed with her on when this was done. Her mother said it was done when the police initial entered the premises but she said it was done as they were leaving in a bid to smoke out rioters they suspected were hiding in the avocado trees that abound on the premises.

Mr *Gutu*, for the defendants, contended that both witnesses' evidence was inconsistent with the declaration, their respective summaries of evidence and with each other. In both their evidence in court, the two witnesses omitted to mention as they had in their plea and summaries that the policemen carried guns. Assistant Inspector Edmore Chirume, who was the sole witness for the defendants, stated that members of the riot squad who attended the Budiriro political disturbances carried amongst other equipment and weaponry riot guns and AK 47s. In her testimony, the plaintiff stated that tear smoke canisters were thrown on her verandah while Theresa described the short booming sound made by a tear smoke gun before tear smoke started filtering into the house. In my view therefore, there was no real discrepancy between the declaration and their summaries of evidence on the one hand and their evidence in chief on the other. The second attack was that the plaintiff in her summary of evidence stated that the door to the main house was broken down while in her evidence in chief she averred that it was the door on the sliding gate that was broken down. Again, the discrepancy was not a material one. A door was broken down as the police forced their way into her premises. The last discrepancy was the averment by the plaintiff that tear smoke was thrown as soon as the police arrived at the premises which contradicted Theresa's version that it was thrown as a

parting shot. I did not find this discrepancy material. The fact of the matter was that tear smoke was used at the premises in question. The after effects of the tear smoke that were described by the defendants' witness were experienced by the plaintiff.

I found the plaintiff and her witness credible witnesses who related what transpired at their home on the day in question. They had no reason to mislead the court. They did not exaggerate the events. At the time they did not believe they could seek compensation for what had happened, which they ascribed to misfortune. She filed the present claim at the instigation of a local human rights organization. The probabilities confirm their testimony. The police were in the vicinity at that time dispersing rowdy youths affiliated to the Movement for Democratic Change who were stoning a house in the neighbourhood and hurling insults at them. They gave chase to these youths. It accords with the probabilities that in giving chase these policemen mistakenly believed that the youths had sought refuge on her premises.

The defendants led evidence from Assistant Inspector Edmore Chirume who was a sergeant at the time. He took part with 19 other members of the riot squad in quelling the riotous behaviour of some rowdy youths affiliated to the Movement for Democratic who were stoning a house in Budiro 2. He confirmed that the incident took place about the same time that the plaintiff was assaulted by men in riot gear. He stated that some of his colleagues gave chase to the youths. He alleged that the breaking of the riot took about 5 minutes. He denied that any members from his company entered the plaintiff's premises and caused the mayhem described by the plaintiff. He was not a credible witness. He was guarded in his responses. He was visibly uneasy in the witness box. He deferred most of the questions that were asked to his section commander who was not called to testify. His evidence on how the riot was broken lacked candor. He stated that his troop patrolled the area until midnight. Mr *Gutu* conceded that his estimation of the time it took to break the riot, chase the youths and regroup was an exaggeration. The inescapable conclusion being that he gave false testimony in this regard in a bid to dissociate some of his colleagues from the conduct attributed to them by the plaintiff.

The first issue referred to trial was whether or not the plaintiff was assaulted by members of the Zimbabwe Republic Police in the course and scope of their employment. Assistant Inspector Chirume admitted that it was unlawful for members of his squad to enter a private home and mete out instant justice on law abiding citizens who were minding their own business. It is clear that the plaintiff took no part in the disturbances. She could not even at the

time pass for a youth. I am satisfied from the evidence led that the plaintiff was assaulted by members of the riot squad. I answer the first issue in the plaintiff's favour.

The next issue concerns the amount of damages due to the plaintiff. She is bound by her pleadings and cannot be granted the figure of US\$10 000.00 which she sought in her evidence in chief without first amending her pleadings. The cases that I was referred to took place during food riots which rocked Harare in January 1998 resulting in the shooting of the plaintiffs in those cases. These were *Musakidzwa v Minister of Home Affairs & Anor* 2000 (1) ZLR 405 (H); *Mugadza v Minister of Home Affairs & Anor* 2001 (2) ZLR 134 (H) and *Chirinda v Minister of Home Affairs & Anor* HH 150/2003. Musakidzwa was awarded general damages in the sum of \$40 000.00 on 29 March 2000; Mugadza was granted general damages in the sum of \$100 000.00 on 22 August 2001 while Chirinda was granted general damages in the sum of \$1.5 million on 17 September 2003. These cases had far more serious repercussions to the plaintiffs than the present one.

In *Mapuranga v Mungate* 1997 (1) ZLR 64 (H) at 77D-E MALABA J, as he then was, stated thus on assault:

“Every person's body is however sacred and inviolable. No other man has a right to meddle with it in the slightest manner except in the circumstances prescribed by the law. The person assaulted is entitled to damages even though he suffered no severe pain or any damage at all other than the insult of having his bodily integrity interfered with: *O'Kelly v Jamieson* 1906 TS 822, *Stoffberg v Elliot* 1923 CPD 152.”

Mapuranga did not receive serious physical injuries. His forehead was swollen. He was given pain killer tablets and discharged from hospital on the same day that he visited it for treatment. He was awarded damages for assault of \$500.00 on 8 January 1997. The injuries sustained by the plaintiff in the present case were more serious than those suffered by Mapuranga.

In *Terera v The Minister of Defence* HH 21/2007, the plaintiff an elderly woman who was beaten by soldiers who had been deployed to thwart the Final Push in the security of her home on 4 June 2003 was awarded \$4 million in assault damages on 28 March 2007. She was beaten by rifle butts, baton sticks and booted feet. She had tell-tale signs of assault on her buttocks and body. In *Mugwagwa v Minister of Home Affairs & Anor* HH183/2004, the plaintiff was beaten by plain clothes police officers with baton sticks as he lay on the ground on the buttocks, under the soles of his feet and groin. He was beaten on his way to the police station and at the police station until he fell unconscious. Mugwagwa was awarded damages

for pain and suffering in the sum \$210 000.00 and punitive damages in the sum of \$90 000.00 on 24 November 2004.

When damages were awarded in *Mapuranga v Mungate*, in January 1997 \$10.50 in local currency was equivalent to US\$1.00. When *Musakidzwa v Minister of Home Affairs & Anor* was decided in 2000 the exchange rate was \$38.00 to US\$1.00; *Mugadza v Minister of Home Affairs & Anor* in 2001 it was \$55.00 to US\$1.00; *Chirinda v Minister of Home Affairs & Anor* in September 2003 it was \$824.00 to US\$1.00. When *Mugwagwa v Minister of Home Affairs & Anor* was determined in November 2004 the exchange rate had deteriorated to \$5 730.00 to US\$1.00 and by March 2007 when Terera was awarded \$4 million the exchange rate should have been \$250 000.00 to US\$1.00 but stood at \$250.00 to US\$1.00 after the revaluation of the local currency by the removal of three zeroes with effect from 1 August 2006 in terms of the Presidential Powers (Temporary Measures) (Currency Revaluation) Regulations SI 199/2006.

Mapuranga's award was equivalent to US\$50.00; Musakidzwa's was equivalent to US\$1 052.00; Mugadza's to US\$1 818.00 and Chirinda's to US\$1 820.00. The cases of Mugwagwa and Terera are almost comparable to the present matter though the facts have extensive variations. In United States dollars, the two were awarded damages equivalent to US\$52.00 and US\$16.00. I have also considered the eight criteria suggested in *Minister of Defence & Anor v Jackson* 1991 (4) SA 23 (S) at 27E-28A to guide me estimate a fair and just award of damages. General damages are not a penalty against the wrongdoer but compensation for the victim. In addition the award must reflect the state of economic development and current economic conditions in the country.

I estimate that the damages due to the plaintiff for pain, suffering and shock to be in the sum of US\$200.00. It was improper, undesirable and unlawful for members of the riot squad to invade the residence of a peaceful and law abiding citizen and fire tear smoke canisters before indiscriminately assaulting all the occupants at the plaintiff's residence. Punitive damages in the sum of US\$100.00 will go some way towards underscoring the outrageous nature of their conduct.

Accordingly, there will be an order for the plaintiff against the defendants jointly and severally, the one paying the other to be absolved, for:

- (a) Payment of the sum of US\$200.00 for pain and suffering
- (b) Payment of the sum of US\$100.00 being punitive damages
- (c) Costs of suit.

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*Zimbabwe Human Rights NGO Forum*, plaintiff's legal practitioners  
*Civil Division of the Attorney-General's Office*, defendants' legal practitioners