

IN THE HIGH COURT OF LESOTHO

Held at Maseru

CIV/T/703/2019

In the matter between

NTABANYANE MALATALIANA

PLAINTIFF

And

COMMISSIONER OF POLICE

1ST DEFENDANT

ATTORNEY GENERAL

2ND DEFENDENT

Neutral Citation: Ntabanyane Malataliana vs Commissioner of Police & Another [2023] LSHC 29 CIV (10th February 2023)

CORAM : T.J. MOKOKO J

HEARD : 15TH DECEMBER 2022

DELIVERED : 10TH FEBRUARY 2023

SUMMARY

Delict- claim for damages for medical expenses, pain and suffering, contumelia, and unlawful detention. Plaintiff arrested and detained by the police- assaulted during the detention- nature of the injuries-

ANNOTATIONS

Cases

1. *Attorney General and Others v Phiri Appeal NO. 161/2014 (2017) ZMSC 63(29) Sue 2017*
2. *Attorney General of the Gambia v. Tobe 1985 LRC (Const.) 536*
3. *Commander of the Lesotho Defence Force and others v Letsie 2009-2010 LAC 549*
4. *Commissioner of Police and Another v. Rantjanyane 2011 LSCA 42*
5. *Huntley v Attorney General of Jamaica (1995) 1 ALLER 308*
6. *Khecaline and Another v Commissioner of Police and Others CIT/T/133/2000 (2001) LSHC 24 September 2001.*
7. *Koeshe v. Commissioner of Police and Others CIV/T/264/13*
8. *Losetla v Commissioner of Police and Another 2014 LSCA 45- 24 October 2014*
9. *Mokete Jonas v. Commissioner of Police C of A (CIV) 53/19 [2020] LSCA 37 (30 October 2020)*
10. *Neo Masupha v Commissioner of Police and Another CIT/T/149/2005. A case of Police brutality delivered on 15 February 2010.*
11. *Officer Commanding Mafeteng Police Station v Tjela C OF A (CIV) 53/19*
12. *Officer Commanding Roma Police Station v Khoete C of A (CIV) 70/2011 delivered on 17 April 2012.*
13. *Pitt v Economic Insurance Co. Ltd 1957 (3) S.A 284 (D)*
14. *Sandler v Wholesale Coal Suppliers 1941 AD, 194 at 199*
15. *Tefo Caswell Koeshe v Commissioner of Police and Another Caswell CIV/T/264/13*

Books

1. *LAWSA Vol.14 Part 1 Para 118 (3rd edition C OF A (CIV) 53/19*

JUDGMENT

INTRODUCTION

[1] The plaintiff instituted an action against the defendants for payment of damages in the sum of M250,000.00, broken down as follows;

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|--|--------------|
| 1. Medical expenses | M200.00 |
| 2. Pain, suffering and discomfort | M100, 000.00 |
| 3. Contumelia | M100, 000.00 |
| 4. Unlawful detention | M49, 800.00 |
| 5. Interest thereof at the rate of 18.5% from the date of issue of the summons | |
| 6. Costs of suit. | |
| 7. Further and or alternative relief. | |

[2] The defendants defended the matter, by filing their notice of intention to defend and the plea. The Pre-trial Conference was duly held, and the parties agreed that the contested issues were liability and quantum.

BACKGROUND

[3] It was a matter of common cause that the plaintiff was arrested by the Thaba-Tseka Police, on the 8th April 2019. Upon his arrest the plaintiff was detained at Thaba-Tseka Police holding cells. The plaintiff stated that while in detention he was assaulted by the Police. On the other hand, the Police admit that the plaintiff was arrested and detained at Thaba-Tseka Police holding cells but deny that the plaintiff was assaulted. Lastly the plaintiff claimed that he was unlawfully detained, and the defendants deny that the detention was unlawful. The defendants therefore denied both the liability and the quantum of damages claimed.

PLAINTIFF'S EVIDENCE

[4] The plaintiff testified that he was telephonically called by a person who claimed to be working at the Thaba-Tseka Magistrate Court, instructing him to report himself at the Magistrate Court. He complied with that instruction, and while at the Magistrate Court, he was instructed by one Lesua Phihlela to go to the bank and withdraw some money, so that the money could be transmitted to his wife, who claimed that the plaintiff was not maintaining her. He proceeded to the bank, and after withdrawing the money, he was instructed to take it to the Police. He testified that he was arrested on the 8th April 2019 and was released from the detention on the 11th April 2019. That as soon as he entered into the Police station, the Police started assaulting him, clapping him on the face and hitting him with fists, on the face, ears and head. That the police ordered him to stand on his toes against the wall. The Police accused him of spending his money on other women, at the expense of his family. The police took his bankcard and the money and handed them over to his wife.

[5] The plaintiff testified further that one Police officer took him to the CID Office, and while in that office, the police covered his head with a jacket, and then two Police officers, started assaulting him with the pick helve or pick handle on the waist. Thereafter, the Police locked him up in the cell. The next day, the Police continued to interrogate him about the armed robbery that allegedly took place at Lesobeng. When he denied any knowledge about the alleged robbery, the police covered his face with the jacket and lashed him with a sjambok. After this ordeal, the police took him back into the holding cell. That he felt dizzy as a result of the assaults.

[6] The following day, plaintiff was told to go outside the cell and was later released from custody. The plaintiff went to his relative's house at Thaba-Tseka. The next day he went back to the Police Station to make a request for the

medical form. From there he proceeded to the hospital for medical attention, and the medical practitioner filled the medical form. Lastly, the plaintiff testified that he felt insulted and his dignity assaulted, when he was assaulted in front of his wife.

[7] Makatleho Khanyetsi (P.W.2) testified that she came to learn of the arrest of the plaintiff by the Police. That around 17:30 hours on the 8th April 2019, she went to the Police Station to see the plaintiff. When the plaintiff came out from the cell, she observed that the plaintiff was limping, and that his eyes were red, and the other eye was swollen. The witness testified further that on the 9th April 2019, between 16:00 hours and 17:00 hours, she went to the Police Station, once again to see the plaintiff and bring him some food. The witness stated that she observed that the plaintiff was dizzy. On the 10th April 2019, she proceeded to the Police Station, around 12:00 p.m. as duly instructed to do so by the Police. Lastly, she testified that on Thursday, the 11th April 2019, she learned from her husband, who had gone to the Police Station, that the plaintiff had been released from the Police custody between 10:00 a.m. and 11:00 am. Under cross-examination, this witness was adamant that the plaintiff was released from the Police holding cells on Thursday, the 11th April 2019, despite the occurrence book and the register book, which both showed that the plaintiff was released on the 10th April 2019.

DEFENDATS' CASE

[8] The defence called its first witness, namely Sub Inspector Tsoinyane (D.W.1). He testified that he works at Thaba-Tseka Police Station, in Child and Gender Protection Unit (CGPU) and that on the 8th April 2019, his office called plaintiff to report himself at his office, regarding the complaint laid by the plaintiff's wife, for non-payment of maintenance. While they were busy mediating between the parties (the plaintiff and his wife), Detective Nkholi

from CID arrived and asked them to release the plaintiff to the CID office, as soon as they were done with him. Sub Inspector Tsoinyane denied that they assaulted plaintiff, while he was in CGPU Office. Later, the CGPU Office handed over the plaintiff to the CID office.

[9] The defence called its second witness, namely Mamoeketsi Khatala (D.W.2). She testified that she was 66 years old and resides at Litsoetse Sehaula, in the Thaba-Tseka district. That the plaintiff is her son in law, as he is married to her daughter. She testified that on the 8th April 2019, she was at her home at Litsoetse in the Thaba-Tseka district, and that she never set her foot at the Thaba-Tseka Police Station, on the material date, or at any time whatsoever. Under cross-examination, she stated that she has been sick since 2012 and particularly in 2019, as she could not walk, due to her health condition at that time.

[10] Lastly, the defence called Constable Machaba (D.W.3). He testified that he is stationed at Thaba-Tseka Police Station, in the CID office. That the plaintiff was a suspect in a robbery that allegedly occurred at Lesobeng in the Thaba-Tseka district. As a result of that suspicion, the plaintiff was arrested and detained at Thaba-Tseka Police Station. This witness testified further that upon the detention and the release of the plaintiff, both the cell register book, and the occurrence book were filled in, indicating the exact date of the detention and release from detention. He denied that the plaintiff was assaulted in any manner whatsoever, during his detention. According to this witness, the plaintiff was arrested and detained on the 8th April 2019 and released on the 10th April 2019. He said that both the cell register and the occurrence book, evidenced this fact.

ASSAULTS – EVIDENCE ANALYSIS

[11] The plaintiff has testified that he was assaulted by the police. He described in detail how he was assaulted and the items that were used to perpetrate the said assaults on him. To prove the alleged assaults, plaintiff tendered in the medical form, and it was marked exhibit “1”. The medical form bears the Lesotho Mounted Police Service, Charge Office, date stamp of the 11 April 2019. The names that appear on the medical form are Malataliana Ntabanyane, who is the plaintiff in these proceedings. The medical form also bears Paray Mission Hospital stamp, dated 12th April 2019. The Medical Practitioner who examined the plaintiff, recorded that the plaintiff had conjunctival haemorrhage on both eyes and bruises on the right buttock. The degree of force inflicted was considerate, there was no danger to life, degree of immediate disability was none, degree of long-term disability was none, and the plaintiff was treated as outpatient.

[12] The plaintiff testified that he was assaulted with fists on the face, ears and head. He testified further that he was assaulted with a pick helve on the waist and whipped with a sjambok. Makatleho Khanyetsi (P.W.2) testified that she observed that the plaintiff’s eyes were red and that the other eye was swollen. She went further to state that the plaintiff was limping and appeared to be dizzy.

[13] The medical form clearly corroborates both the plaintiff and P.W.2’s evidence that the plaintiff had sustained injuries on the face, especially on the eyes. The medical form goes further to corroborate the plaintiff’s testimony, that he was assaulted with the pick helve or handle on the waist. This is corroborated by the medical form, which indicates that the plaintiff had some bruises on the right buttock.

[14] However, the defendants vehemently deny that the plaintiff was ever assaulted. The defendants tendered cell register book, exhibit “3” where it was

recorded that the plaintiff was in good condition, upon the detention. The same cell register book shows that on the 10th April 2019, the plaintiff was in good condition, when he was released from the custody. Under cross-examination, Constable Machaba testified that both the cell register and the occurrence book are filled in by the Police, and the detainees do not counter-sign them. It is therefore not surprising why the condition of the plaintiff upon his release, was recorded as good. There is no doubt that the plaintiff had been assaulted in the manner he had described in his testimony.

CONTUMELIA

[15] It was the plaintiff's claim that when he arrived at the Police Station, he found his wife and mother in law sitting in the CGPU Office. The Police accused him of neglecting to support his wife. They further accused him of spending his money on other women, at the expense of his wife. They then started assaulting him, right in the presence of both his wife and the mother in law. He testified that he felt insulted and his dignity assaulted, by the fact that the assaults were done on him, in the presence of his wife. On the other hand, the defendants denied that the plaintiff's mother in law, was ever present at the Police Station, on the material date. The defendants denied further that the plaintiff was assaulted, not to mention in the presence of his wife. This court has found that there is no evidence on the balance of probabilities that the Mamoeketsi Khatala (D.W.2) was present at the Police Station on the material date. The court rejects the plaintiff's evidence that D.W.2 was present at the Police Station on the 8th April 2019. This court is cognisant of the fact that the defence does not deny that the plaintiff's wife was present at the Police Station, in CGPU Office, where the assaults started. It is worth mentioning, that the plaintiff testified that the assaults started while he was in CGPU Office. It cannot be disputed that the said assaults on the plaintiff took place, in the

presence of the plaintiff's wife. This court therefore agrees with the plaintiff that he felt insulted, by the assaults meted on him right in front of his wife.

UNLAWFUL DETENTION

[16] The plaintiff testified that he was arrested and detained on the 8th April 2019 and released from custody on the 11th April 2019. P.W.2 also testified that on the 8th April 2019, at around 17:30 hours she went to the Police to see the plaintiff. She testified further that the next day, she went to the Police Station to pay a visit to the plaintiff. On the 10th April 2019, she was told to come later to see the plaintiff. At around 12:00 p.m. she went to the Police Station and she managed to see the plaintiff. She testified further that she left the Police Station at around 14:00 hours. Lastly, she testified that on the 11th April 2019, she did not manage to go to the Police station, however her husband informed her that when he arrived at the Police Station, he was informed that the plaintiff had been released earlier that day.

[17] Constable Machaba on the other hand, testified that the plaintiff was released on the 10th April 2019. In support of this fact he tendered in cell register- exhibit "3", which showed that the plaintiff was detained on the 8th April 2019 and released on the 10th April 2019. He further tendered in the occurrence book- exhibit "4", which also showed that the plaintiff was released on the 10th April 2019. Be that as it may, the plaintiff was adamant that he was released on the 11th April 2019. In the same token, under cross examination, P.W.2 insisted that on the 10th April 2019 when she went to the Police Station, she met the plaintiff who was still in detention. That at around 14:00 hours when she left the Police Station, the plaintiff was still in custody, therefore it was not correct that the plaintiff had been released earlier that day, as claimed by the defendants. She further told the court that on the 11th April 2019, she did

not go to the Police Station, rather she heard from her husband that the plaintiff had been released.

[18] Under examination in chief, the plaintiff testified that the day following his release from the detention, he went to the Police Station to get the medical form. He was asked by the court whether the medical form was stamped with the Police Station date stamp indicating the date on which it was given to him. His reply was that it bore the date stamp of the date on which it was released to him. Constable Mochaba confirmed that once the medical form is released to a person, it is stamped to indicate the date on which it was so released to a person making a request.

[19] The medical form- exhibit “1” bears the date stamp of the 10th April 2019. According to the evidence of Constable Machaba, the 10th April 2019 is the date on which the medical form was given to the plaintiff. Plaintiff stated that the medical form was duly stamped on the day it was given to him, and that the date that appeared on the form was the date on which it was released to him. This court is mindful of the fact that, under examination in chief, the plaintiff testified that, the day following his release from the detention, he proceeded to the Police to obtain the medical form. If the date stamp on the medical form is the 11th April 2019, common sense dictates that the day following the 10th is the 11th. This court is further cognisant of the fact that if indeed the plaintiff was released from custody on the 11th April 2019, the next day would have been the 12th. It should further be remembered that the plaintiff testified that after collecting the medical form, he went home to rest, then the next day he went for the medical attention. If this was the case, then the plaintiff would have consulted the doctor on the 13th April 2019. The correct position is that he consulted the doctor on the 12th April 2019, which was the day following the one on which he had collected the medical form from the police. This court

therefore finds that the plaintiff has failed to prove that he was released from custody on the 11th April 2019. The plaintiff's claim for payment of damages for unlawful detention, cannot therefore succeed.

MEDICAL EXPENSES

[20] Plaintiff has claimed M200, 00 for medical expenses. The receipts tendered by the plaintiff show that the plaintiff incurred such expenses in the sum of M60.00. Plaintiff has therefore tendered proof for medical expenses in the tune of M60.00 and not M200.00 as claimed in the summons.

QUANTUM- PRINCIPLES APPLICABLE

[21] The Court has to determine the appropriate quantum. In the case of ***Officer Commanding Mafeteng Police Station v Tjela***¹, the Court of Appeal when dealing with the principles applicable in the awarding of quantum had this to say:

“[18] In cases of assault and torture the most important factor that determines the quantum or amount of compensation is the extent of the physical injury to be established with reference to the intensity, nature and duration of the pain and suffering: LAWSA Vol.14 Part 1 Para 118 (3rd edition²)”.

[22] The Court of Appeal referred to the case of the **Commissioner of Police and Another V Rantjanyane**³, where the Court said:

¹ C OF A (CIV) 53/19

² C OF A (CIV) 53/19 at Page 7

³ 2011 LSCA 42.

“Now as a matter of first principle, the assessment of damages is a matter which lies primarily in the discretion of the trial court. The Appellate Court is generally loathe to interfere with such discretion in the absence of material misdirection indicating that the discretion was not exercised judicially or that it was exercised capriciously or upon a wrong principle or an improper basis⁴”.

[23] In the **Commissioner of Police v Tjela**, (*Supra*) the Court of Appeal went on to state it was valiantly argued that, in determining an amount which will be fair in all circumstances of the case, the court should take comfort in the following remarks of **Holmes J.** as he then was in **Pitt v Economic Insurance Co. Ltd⁵**, when he said:

“I have only to add that they must take care to see its award is fair to both sides- I must give just compensation to the plaintiff but must not pour (out) largesse from the horn of plenty at the defendant’s expense⁶”.

[24] In the case of **Commissioner of Police V. Tjela** (*supra*), the Court of Appeal referred to the case of **Attorney General of the Gambia v. Tobe⁷**, where Lord Diplock when delivering the opinion of the Board of Judicial Committee in the Privy Council said:

“A constitution and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the state are to be entitled is to be given a generous and a purposive construction⁸”.

⁴ Commissioner of Police v Tjela (*supra*) Page 9.

⁵ 1957 (3) S.A 284 (D) at 287 E-F

⁶ Commissioner of Police v Tjela (*supra*) Page 9.

⁷ 1985 LRC (Const.) 536 at 565

⁸ Commissioner of Police v Tjela (*supra*) at page 13 at paragraph 34.

[25] The Court of Appeal further referred to the case of **Huntley v Attorney General of Jamaica**⁹, in which Lord Woolf when delivering the opinion of the Board of Judicial Committee of the Privy Council had this to say, when endorsing Lord Diplock's view:

“The court should look at the substance and reality of what was involved and should not be over concerned with what are more than technicalities¹⁰”.

[26] This court has found that the plaintiff has proved that he was assaulted by the Police, while in detention. The issue for determination by this court is the quantum of damages to be awarded to the plaintiff. In determining the quantum of damages, this court referred to the case of **Mokete Jonas v. Commissioner of Police**¹¹, the Court of Appeal said that the quantum of damages falls under the judicial discretion of the court in exercise of which the “*principle of fairness*” is always paramount. The principle was encapsulated by **Holmes J** in **Pitt v Economic Insurance**¹² when he said:

“I have only to add that the court must take care to see that its award is fair to both sides. It must not pour out largess from the horn of plenty at defendant's expense¹³”.

[27] In **Attorney General and Others v Phiri**¹⁴, the court in dealing with the quantum of damages and awards, said that cases must be treated with caution, if it is sought to rely on them as a guide. The award of general damages in cases of

⁹ (1995) 1 ALLER 308 at page 316

¹⁰ Commissioner of Police v Tjela (supra) at page 13 at paragraph 35.

¹¹ C of A (CIV) 53/19 [2020] LSCA 37 (30 October 2020)

¹² (1957) (3) S.A 284 (Page 257 EF),

¹³ Mokete Jonas v Commissioner of Police (supra) Page 4 at Para 10.

¹⁴ Appeal NO. 161/2014 (2017) ZMSC 63(29) Sue 2017

false imprisonment must where these factors are present, always take into account the circumstances of the arrest and detention, the affront to the person's dignity and the damage to his reputation. 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, where the torturous circumstances are more serious, then the awards must reflect this, as well as the impact of inflation in order to arrive at a fair and reasonable amount. The prevailing economic social condition must also be considered.

[28] Having looked at the principles applicable in the award of damages, it is prudent at this stage to look at the quantum of damages that were awarded by the High Court and the Court of Appeal in the past. It is without doubt that each case must be decided on its own merits, but these decisions will shed some light as to what should be considered in the award of damages.

[29] In considering what is fair and adequate, the judge whilst having a wide discretion of how to assess the quantum of damages must;

- (i) Decide each case on its own unique circumstances;*
- (ii) Provide some reasonable basis for the amount awarded;*
- (iii) Generally, have regard to previous awards in comparable cases for guidance, but always bearing in mind that such comparison can never be decisive, but is instructive;*
- (iv) When using not so recent awards, make allowance for depreciation in value of money;*

(V) *Take care to ensure that the award is essentially fair to both parties*¹⁵.

[30] In the case of ***Losetla v Commissioner of Police and Another***¹⁶, plaintiff claimed M250,000.00 for having been assaulted for an hour or so by whipping and kicking all over the body and by suffocating him with a rubber tube. As he struggled while being assaulted his hands were injured by the cuffs. Court of Appeal awarded M45,000.00 in respect of unlawful search, arrest, detention and for shock, pain and suffering.

[31] In ***Officer Commanding Roma Police Station v Khoete***¹⁷, plaintiff claimed M310,000.00 damages. The High Court awarded him M60, 000.00. Court of Appeal reduced that to M15, 000.00. In ***Neo Masupha v Commissioner of Police and Another***¹⁸, plaintiff was awarded a total sum of M100, 000.00 for pain, shock and suffering and contumelia by the High Court.

[32] In ***Tefo Caswell Koeshe v Commissioner of Police and Another***¹⁹, plaintiff was awarded M200,000.00 in damages for unlawful arrest, assault and contumelia, by the High Court. In the case of ***Commander of the Lesotho Defence Force and others v Letsie***²⁰, Court of Appeal reduced the award and suffering and contumelia from M340, 000.00 which was awarded in the High Court to M150,000.00.

[33] In the case of ***Khecaline and Another v Commissioner of Police and Others***²¹, plaintiffs were awarded M50, 000.00 for unlawful or wrongful

¹⁵ Litlhare Sebatane v Medical Superintendent Botha-Bothe & others CIT/T/39/2016, Mkize v Marten 1914 AD at 390.

¹⁶ 2014 LSCA 45- 24 October 2014

¹⁷ C of A (CIV) 70/2011 delivered on 17 April 2012.

¹⁸ CIT/T/149/2005. A case of Police brutality delivered on 15 February 2010.

¹⁹ CCIV/T/264/13

²⁰ 2009-2010 LAC 549

²¹ CIT/T/133/2000 (2001) LSHC 24 September 2001.

detention, pain and suffering. The elements taken into account were; (a) status, position and reputation of plaintiff; (b) humiliation and malice; (c) nature and effect of assault, and (d) nature of suffering.

CONCLUSION

[34] In casu, the court has found that indeed the plaintiff was assaulted while he was in detention at Thaba-Tseka Police Station. Pain and suffering damages refer to an award given by the court to the plaintiff for physical and or emotional pain due to injury. These damages are not the same as compensatory damages, which reimburse the Plaintiff financially, but are not meant to assist the plaintiff with the pain inflicted by the defendant. Generally, if plaintiff has suffered harm as a result of the defendant's conduct, the court will look at the correlation between the defendants' actions and the plaintiff's injuries.

[35] Before damages payable to the injured person can be assessed it is necessary that the court should determine factually what injuries were suffered by the plaintiff as a result of defendant's wrongful act.²² The Appellate Division stated in *Sandler v Wholesale Coal Suppliers*²³ held "*Though the law attempts to repair the wrong done to the sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty*".

[36] In awarding damages to the plaintiff for the assaults, the court has taken into account the following factors;

²² The Quantum of Damages, Volume 1: Corbett fourth Edition at page 30

²³ 1941 AD, 194 at 199

(a) that a considerate force was used, during the assaults. The assaults were done on the plaintiff's face, especially on the eyes and head. The court considers that the eyes and head are very delicate parts of the human body. This court has also considered that, the medical Practitioner who examined the plaintiff found that the plaintiff had conjunctival haemorrhage on the eyes. The plaintiff had sustained injuries on the left buttock. The court has taken into account that the plaintiff was assaulted with a pick helve, which is a heavy wooden object. A considerable amount of force was used during the assaults. This court has taken into account the evidence of P.W.2 that the plaintiff was limping when he came out of the Police cell. The court attributes that limping to the assault that was meted out on the plaintiff on the buttocks or waist area of the body. The court has further considered that P.W.2 testified that the plaintiff's eyes were red and the other eye was swollen. The medical form clearly shows that the plaintiff was assaulted on the eyes.

(b) The court has taken into account that the plaintiff is a farmer breeding sheep and cattle in Lesobeng in the Thaba-Tseka district. The court has taken into account that, the plaintiff was labelled as an irresponsible husband and father, who does not take care of his family. His bank card and money were taken from him and handed over to his wife. While in the CGPU Office, the plaintiff was assaulted right in the presence of his wife. This court therefore agrees with the plaintiff that his dignity and reputation was assaulted. The court has considered further that the plaintiff was humiliated by the said assaults on him, more so when the assaults were unwarranted. The court therefore concludes that these assaults on the plaintiff were malicious in all respects.

(c) In assessing the amount for damages, this court is cognisant of the fact that it must take care to see that its award of damages is fair to both sides. The court has further considered the inflation, especially its impact, to arrive at a fair and reasonable amount. The court has further considered the prevailing, economic and social conditions.

[37] Generally the court should have regard to previous award in comparable cases for guidance, but always bearing in mind that such comparison can never be decisive but is instructive. This court has considered all the previous cases referred to above for guidance. In doing so, this court has taken into account the circumstances of each case and the date on which each award was granted. For comparison purposes, this court has considered the facts of the case in casu, and the facts of the previous cases referred to above in this judgment. The court has further considered the time when the awards in those cases were granted, and the current prevailing economic and social conditions. This court has further considered the inflation and the depreciation of the value for money.

DISPOSITION

[38] Having considered all the factors indicated above, this court finds that the Plaintiff should be awarded M45,000.00 for pain and suffering; M60.00 for medical expenses, and M25,000.00 for contumelia, The plaintiff has failed to prove that he was unlawfully detained, and correctly Adv. Chuene abandoned prayer relating to unlawful detention.

ORDER

1. The defendants are ordered to pay a global figure of M70,060.00 to Plaintiff, made up as follows;

(a) M45, 000.00 (Forty-Five Thousand Maloti) as damages for pain and suffering.

(b) M25, 000.00 (Twenty-Five Thousand Maloti) as damages for contumelia.

(c) M60.00 (Sixty Maloti) for medical expenses.

2. The global figure of M70, 060.00 shall attract 12% (Twelve Percent) interest per annum from the date of issuance of summons.

3. The Plaintiff is awarded costs of suit.

T.J. MOKOKO
JUDGE

APPEARANCE:

FOR THE PLAINTIFF : ADV. CHUENE

FOR THE DEFENDANTS : ADV. MOHLOKI

