

Harare vendor wins US\$21k lawsuit against council police

NewsDay By Desmond Chingarande

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A Harare vendor, James Chamisa, has successfully sued Harare Municipal Police for US\$21 000 after he sustained serious injuries following an assault which fractured his ribs.

Chamisa, who was being represented by Kudzayi Kadzere of the Zimbabwe Lawyers for Human Rights, was assaulted in 2018.

According to court papers, on October 4, 2018, Chamisa was wrongly and unlawfully assaulted by municipal police all over the body with batons, fists, booted feet and palms.

The municipal police insulted him over his political choices in full view of the public along the First Street.

Chamisa said at all material times the municipal policemen were acting within the course and scope of their employment during an operation to rid Harare of vendors and touts.

He said as a result of the assault he suffered physical bodily injury and had multiple abraded and bruised parts of the body that included the posterior and front torso, front of thighs, areas above the ankles, the face, as well as upper extremities, associated tenderness of the soft tissues over all the mentioned parts of the body.

Chamisa submitted that he suffered a fractured right hand on the forearm, two fractured ribs on the right side of the rib cage and laceration of the lower lip.

He said he suffered abrasions and bruising of tissues of the torso and limb, split laceration in the vertical pattern on both legs and a non-therapeutic extracorporeal material.

Chamisa was also seeking compensation for psychological injuries, shock, failure to sleep, fatigue and loss of energy and difficulty in concentration and hallucination, poor orientation and difficulty in walking and depression.

“As a result of the foregoing, the plaintiff suffered damages in the amount of US\$31 830 broken down as US\$1 830 for medical expenses, US\$20 000 for shock, pain and suffering, US\$10 000 for contumelia,”* it was submitted.

High Court judge Justice Christopher Dube Banda ruled in Chamisa's favour saying according to evidence the assault was unprovoked, vicious and inhuman.

“No doubt the plaintiff experienced extreme pain and was hospitalised for long periods. The plaintiff was brutally assaulted using batons, booted feet, etc.

“He suffered psychological injury, shock, failure to sleep, experiencing fatigue and loss of energy and difficulty in concentration and hallucination; poor orientation and difficulty in walking; and depression.

“The plaintiff was, on the evidence, peaceful and law-abiding, minding his business. It was improper, undesirable and unlawful for municipal police to violate him in such a violent manner. Punitive and exemplary damages will go some way towards underscoring the repugnance, outrageous, frightening and despicable nature of the assault.”

The judge said Chamisa had not provoked the attackers saying that also called for exemplary damages, adding that his view was that damages for contumelia in the sum of US\$5 000 00 will meet the justice. He also accepted Chamisa's case for damages for medical expenses.

“The plaintiff is clearly entitled to his costs. Accordingly, I hereby order the defendant to pay the plaintiff damages in the sum of US\$15 000 for shock and suffering, US\$5 000 for contumelia and to pay the plaintiff damages for medical expenses in the sum of US\$1 830. Interest on the total amount of US\$21 830,00 at the prescribed rate calculated from the date of judgment to the date of final payment,” Justice Dube Banda ruled.

**In law, "contumelia" means insult, injury, or indignity, typically as a component of a claim for non-patrimonial damages. It refers to conduct that violates a person's dignity and self-esteem, which is a type of harm a plaintiff can sue for under the law of delict. Damages for contumelia are often awarded to compensate for the hurt feelings and humiliation caused by wrongful conduct.*

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