IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE **CIV. TRIAL NO. 143/08**

In the matter between:

THABO MAGAGULA **Plaintiff**

And

V.I.P. PROTECTION SERVICES (PTY) LTD	**1st Defendant**
PHILEMON MAZIYA	**2nd Defendant**
THOKOZANI SHONGWE	**3rd Defendant**

Dates heard: 8, 9 and 15 April, 2009
Date of judgment: 11 August, 2009

Mr. Attorney J.M. Mavuso for the Plaintiff
Mr. Attorney S. M. Simelane for the 1st Defendant

J U D G M E N T

MASUKU J.

[1] Allegations of ill-treatment of one Thabo Magagula, the Plaintiff herein, at the hands of men he alleges were security guards in the employ of the 1st Defendant,

namely the 2nd and 3rd Defendants, has resulted in the present claim.

[2] In his particulars of claim, the Plaintiff alleges that on 18 September, 2001, he was unlawfully assaulted by the 2nd and 3rd Defendants at the Swazi Plaza, Mbabane. He alleges further that in so assaulting him, the said Defendants were acting within the scope of their employment and in the course of duty with the 1st Defendant. As a result thereof, the Plaintiff claims *inter alia:* General damages in the amount of E50,000.00; Contumelia in the amount of E20,000.OO and Discomfort in the amount of E30,000.00.

[3] Shorn of all the frills, the 1st Defendant, in its plea, denies liability for the amounts claimed or at all and to that end, alleges that on the aforesaid day, the 2nd and 3rd Defendants, who were then employed by it, were both on official leave and not at work. Consequently, it is averred that they could not have been acting with in the

scope of their employment or in the course of duty when they allegedly assaulted the Plaintiff. In essence, liability for the amounts claimed is denied.

[4] It is common cause in such matters that the onus to prove that the Plaintiff was assaulted as alleged; by the said Defendants; and in the course of duty and within the scope of their employment with the 1st Defendant, lies with the Plaintiff. This, he is enjoined to prove on a balance of probabilities. Once the assault is proved, the burden shifts to the Defendant to justify the assault. Should he succeed in regard to the matters mentioned above, the Plaintiff is also enjoined to prove the damages he suffered under the different heads.

[5] In support of his claim, the Plaintiff testified under oath and called one witness, who incidentally bears the same name as the Plaintiff. Briefly recounted, the evidence of the Plaintiff acuminates to this: Around the date in

question, he was in the employ of Sales House, a shop situate at the Swazi Plaza in Mbabane.

[6] On 18 September, 2001, it is his evidence that whilst standing outside Sales House, talking to one Thabo Magagula, his namesake, the 2nd Defendant, whom he knew as an employee of the 1st Defendant and who was dressed in the 1st Defendant's uniform, approached them and advised them to move away from where they were standing. Maziya gave no explanation for his instruction, regardless of the queries raised by the Plaintiff, who pointed out that he did not understand why he had to move as he was standing just outside his place of work.

[7] The 1st Defendant and Thabo then moved from the right side of the door to Sales House to the left and continued their conversation. The 2nd Defendant, who was now in the company of the 3rd Defendant, a fellow employee, who was also in uniform, confronted them again and the former told the latter that the Plaintiff was the man who

was obstinate and was refusing to move despite being instructed to do so. The 3rd Defendant, speaking in a strong tone insisted that the two Magagulas should move away. It was the Plaintiffs evidence both the aforesaid Defendants were carrying batons and walkie-talkies.

[8] Seeing the two men were uncompromising, the Plaintiff then suggested to Thabo that they should move towards the bus terminus since there appeared to be a problem with the aforesaid Defendants. They accordingly walked towards Arthur Kaplan, a shop then situate at the said Plaza only to be confronted by a *posse comitatus* of guards from the 1st Defendant's company. They descended on the Magagulas, surrounded and overcame them.

[9] Seeing their number and the fact that they were armed with batons, the Plaintiff decided to humble himself as it dawned on him immediately that he could be assaulted at any time. At that point, Maziya got hold of the

Plaintiffs shirt and trousers and started to drag him all the way to where Standard Bank is situate, where they met another security guard, who enquired from Maziya what the Plaintiff had done and Maziya let go of the Plaintiff.

[10] Maziya continued to hold the Plaintiff with his hand however, and led him to the 1st Defendant's office which was situate at the Swazi Plaza car park. There, they found one Andreas Dlamini who was known to the Plaintiff as he also worked at the Plaza. Andreas appeared to be in authority. The guards reported the Plaintiff to Andreas. The Plaintiff enquired from Andreas what crime it is that he had committed but Andreas did not say anything sensible. Andreas released the Plaintiff and indicated that he would speak to his security officers.

[11] It was the Plaintiffs evidence that when he was dragged by the officer aforesaid, this was in full view of many members of the public. As a result, many people

congregated in order to see what was happening to the Plaintiff. Some people decided to follow Maziya as he dragged the Plaintiff to his final destination. Finally, the Plaintiff confirmed that he was claiming the amount of E100,000.00.

[12] In cross examination, the Plaintiff was taxed on a number of issues. The cross examination was largely geared to him explaining the details of a number of things, including the colour of the uniforms allegedly belonging to the 1st Defendant's staff; the description of Maziya. The Plaintiff described the uniform as a grey shirt with navy trousers and a maroon beret and was marked VIP but was not sure if Protection Services was also inscribed thereon.

[13] It was put to the Plaintiff that he was never manhandled by the 1st Defendant's staff and it was further denied that the uniform he described belonged to the 1st Defendant as it was not then in existence. The Plaintiff stated that although he could not exactly recall the colour of the

uniform, he remembered distinctly that it was from the 1st Defendant. He could also not recall where exactly the inscription VIP was on the uniform. The Plaintiff also failed to properly describe the batons and their length.

[14] Asked as to how he knew Maziya who dragged him, the Plaintiff testified that he used to see the man on patrol in the Plaza but only made investigations as to his name after the incident in question. He was taxed as to why he did not mention this issue in his evidence in chief and the Plaintiff stated that his lawyer never asked him about it.

[15] It was put to the Plaintiff that the 1st Defendant never maintained an office at the Swazi Plaza as testified by the Plaintiff and that evidence to that effect would be led. The Plaintiff maintained his evidence in that regard and stated that he believed that the VIP officers stationed at

the Swazi Plaza reported at that very office. It was also put to him that the Andreas he referred to was not in the employ of the 1st Defendant but the Plaintiff remained unmoved in his evidence.

[16] It also emerged in cross-examination that the Plaintiff was insulted by the 3rd Defendant, who allegedly said he was defecating. Quizzed as to why he did not mention this in his evidence in chief, the Plaintiff stated that it merely slipped his mind and denied that he did not mention it because it did not happen. In further cross-examination, the Plaintiff stated that he did not suffer any bodily injuries during the confrontation. It was also his evidence that he did not report the incident to the police for the reason that he was advised by his lawyer that it was not important to so report.

[17] It was also put to the Plaintiff that he was not assaulted by the persons he claims did for the reason that Thokozane Sicelo Shongwe was only employed in 2006 and that

evidence to that effect would be adduced by the 1st Defendant. The Plaintiff maintained his evidence and stated that he never made mention of the said Sicelo in his evidence. It was also put to him that the 1st Defendant would deny that the 3rd Defendant was in its employ in 2001. The Plaintiff stated that he saw the 3rd Defendant on the day in question and subsequent thereto at the Swazi Plaza.

The Plaintiff also denied suggestions that on the date in question that the 2nd and 3rd Defendants were not in the 1st Defendant's employ and that they were not acting in the scope of their employment and in the course of duty with the 1st Defendant. He pointed out that these men were in uniform bearing the 1st Defendant's name.

PW2 was Thabo Cedric Magagula, to whom reference was made by the Plaintiff in his evidence. He, in large measure, confirmed the Plaintiffs evidence regarding the incident outside Sales House. For that reason, I need not

spend much time on what he testified to. What is important, however, is that he confirmed that the Plaintiff was dragged by VIP officers towards Edgars store all the way to the car park. For his part, he followed behind in order to see where the Plaintiff was being dragged to. He turned away when they were next to Standard Bank.

[20] PW2 also confirmed that there were some people who watched the entire episode involving the Plaintiff and who were anxious to know what the Plaintiff had done and where he was being dragged to. PW2 also confirmed that the guards who dragged the Plaintiff were in VIP uniform. It was his evidence though that he did not know any of the guards. Lastly, it was PW2,s evidence that as they dragged him, the Plaintiff remarked that he should not be dragged as he was not a criminal but all his words fell on deaf ears as the guards continued to drag him away.

[21] Nothing much of consequence arose in cross-examination save that it was established that there was an

inconsistency between the evidence of the two Magagulas regarding whether they moved from the right to the left or vice versa when approached by the first guard. Further, PW2 testified that he did not witness the second approach by the security guard about which the Plaintiff testified.

It was also PW2's evidence that there were three guards who dragged the Plaintiff way. Two of them held him by his hands and the other with his shirt and trousers. Furthermore, as the Plaintiff was being dragged away, he was resisting by standing his ground at first and this forced the guards to pull him away forcibly. In his estimation, PW2 was about one and a half metres away from the Plaintiff as he was being dragged away by the guards.

This marked the close of the Plaintiffs case. Mr. Simelane appeared to have some difficulty with his witnesses. At the end, the 1st Defendant closed its case without having called any witness. The result was that all the issues that were put to the Plaintiff, including the occasions when it was said that evidence to the contrary would be led on the 1st Defendant's behalf, were

not traversed in evidence. There was, in the circumstances, no application moved for absolution from the instance nor could it properly be moved considering that a Court may have found for the Plaintiff on some of his claims at the close of his case.

[24] The Plaintiff, was not, in my view generally impressive witness. Although he had sounded impressive in his evidence in his evidence-in-chief, under cross examination, there were aspects of his evidence that emerged for the first time under cross-examination although they were important and would have been expected to have been mention in chief. For example the Plaintiff alleged that the 2nd Defendant assaulted him physically. This, he stated, had slipped his mind. Furthermore, he alleged that the 3rd Defendant insulted him by saying that he was defecating. This, he also alleged, had slipped his mind. I shall have no regard for these new pieces of evidence as it would appear that the Plaintiff was hell-bent on embellishing the seriousness of his claim by including additives to it.

Coming to the evidence of the Plaintiff and his witness, although largely corroborative of each other, it is fair to say that there were some inconsistencies in their evidence. These inconsistencies, as I see them, related details of how the two Magagulas were confronted by the said guards and the sequence of their dealings with the different sets of guards. It is my view, however, those inconsistencies notwithstanding, that they were not on material issues and that in any event, regarding the fact of the Plaintiff being manhandled and dragged away, the evidence corroborated and so did it in relation to the allegation that the persons who did so were wearing the 1st Defendant's uniform.

[26] In this regard, although writing in the context of a criminal case, Tebbutt J.A. stated the following, which is equally applicable in civil proceedings regarding the consistency of evidence of witnesses in *Gumedze And Others v Rex* Crim. Case App. 1/05 at page 11 of the cyclostyled judgment:

> "It is well known to our Courts that there are frequently some inconsistencies in the evidence of two or more witnesses.

> Witnesses hear or see events from different perspectives. Then too, their evidence is usually given months or even years later after the events when their memory of them have faded to some extent, particularly in regard to the minor details of them".

[27] It would also not be out of place to quote from the words of Gyeke-Dako J. in *State v Gogannekgosi* [1989] B.L.R. 133 at 140 B-C, where the learned Judge, in his usual eloquence stated the following:

> "For an inconsistency to be material, such inconsistency must in my view, be of a material nature, capable of turning the result of the case one way or the other. For there could hardly be a witness of truth if the principles were otherwise, since in nine cases out of ten, witnesses are called upon to give evidence touching upon matters about which they might have witnessed or given statements months or even years before. In such cases, the possibility of their making a few minor slips which may be in conflict with their previous statements cannot be ruled out. But that should not necessarily make them untruthful witnesses. *Ceteris paribus* the human mind does not normally improve with the passage of time."

It will be seen that events testified about in the instant case occurred more than eight years ago and the witnesses would

be expected, in the circumstances, to make minor slips on the minutiae of their evidence. As indicated, the issues in respect of which there may have been some inconsistencies were not, in my view, crucial issues which had the potential to turn the direction of the trial. This is more so because for its part, the Defendant did not lead any evidence to gainsay that of the Plaintiff, particularly on the crucial issues.

[28] Issues that stand out for determination by the Court are the following:

(a) was the Plaintiff assaulted in a manner that is actionable on the day in question;

(b) if so, was he assaulted by persons who were in the employ of the 1st Defendant?

(c) In so doing, were they acting in the course of duty and within the scope of their employment with the 1st Defendant?

(d) Is the Plaintiff entitled to damages and if so, under which heads?

(e) If so, what should the quantum of such damages be?

Was the Plaintiff assaulted and in actionable manner

[29] In regard to the above issue, I am of the considered view that the evidence adduced by the Plaintiff and his witness shows indubitably that the Plaintiff was on the day alleged by him assaulted at the Swazi Plaza in Mbabane. His evidence, as confirmed by his sole witness, is to the effect that he was manhandled by some security guards, held by the shirt of his collar and dragged for a considerable distance and in full view of the members of the public.

In this regard, it is proper to note that the 1st Defendant did not lead any evidence notwithstanding that it specifically denied having assaulted the Plaintiff so in the plea. That evidence therefore stands and the issue of the assault must be considered as proved. There can also be no doubt in my mind that the actions of the persons claimed by the Plaintiff amounted to an assault.

Black's Law Dictionary defines assault at p 114 and 115 in the following language:

> "Any willful attempt to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the victims reason to fear or expect immediate bodily harm, constitutes an assault. An assault may be committed without actually touching, or striking, or doing bodily harm to the person of another."
>
> Any unlawful touching of another which is without justification or excuse."

[32] In their work entitled, Law of Delict, the learned authors Neethling *et al,* 5th ed. Lexis Nexis, 2006, say the following regarding assault at p301-302:

> "It is trite that physical integrity is recognized by our law as worthy of protection. A distinction is made between two aspects of physical integrity which have developed into independent interests of personality, namely *the body itself* and *physical liberty.* The *corpus* (bodily and psychological integrity) is protected against every factual infringement of a person's physique or psyche. Physical infringements may occur with or without violence and with or without pain. . . In order to establish liability under the *action injuriarwn* the bodily infringement need not be accompanied by *contumelia* in the sense

> of *insult.* The following requirements must, however, be present: the infringement must not be of a trivial character *(de minimis non curat lex);* it must be wrongful; and it must be committed *animo injuriandi.* In connection with wrongfulness, the following may be stated: due to the fact that the *corpus* is regarded as being one of man's most valuable interests every factual infringement is in principle *per se contra bonos mores* or wrongful."

I am of the considered view that the evidence adduced by both the Plaintiff and his witness regarding the treatment meted out to the former amounts to an assault as described above. There is no gainsaying that the Plaintiffs bodily integrity was infringed in the open and that the conduct meted out to him must have raised in the minds of the public a suspicion of wrong-doing on his part. There can be no doubt that this conduct was actionable. I am of the considered opinion that all the requirements stated by the learned authors above necessary for a claim of assault have been met, including the requirement of *animo injuriandi.*

In his written submissions, Mr. Simelane, for the Defendants, submitted that in the event the Court finds that the actions

attributed to the security guards is held to be an assault, such an assault was lawful and justified for the reason that the 3rd Defendant was mandated to guard the premises in question and to use reasonable force necessary in the circumstances of any case. It is well to state that the Defendants never raised this purported defence in their plea. It emerges for the first time in the submissions and should therefore not be accepted.

[35] This is further exacerbated by the fact that there was in any event, no evidence led by the Defendants at all and there was in the circumstances, no evidence led to show that the actions of the said guards was justified, the onus in this regard, lying on the Defendants once proved that there was an assault on the Plaintiffs person. A defence must, in the first instance, be averred in the plea, followed by evidence in line therewith. The purpose of pleadings and evidence would be subverted if defendants were to be allowed to cause a defence, not earlier advanced, to mushroom for the first time during oral or written submissions. I therefore find and hold, subject to the other issues which follow, that there was no justification for the

actionable assault perpetrated on the Plaintiff in the instant case.

Were the persons who assaulted the Plaintiff in the 1st Defendant's employ?

[36] As indicated earlier, both the Plaintiff and his witness testified that the persons who assaulted the Plaintiff were dressed in uniform which bore an inscription of the 1st Defendant. In this regard, these witnesses were firm and as constant as the Northern star. They described the uniform fairly well and indicated that it bore colours associated with the 1st Defendant and its inscription. This evidence, in my view, remains uncontroverted and the guards in question were not called to controvert this damning evidence. The question put in cross-examination to the effect that evidence would be led to show that the 1st Defendant would show by evidence that it did not at the time have the uniform described counts for nothing as no such evidence was actually led.

[37] In particular, the Plaintiff indicated that he worked at the Swazi Plaza and he usually saw these guards and that after his ill-treatment by them, he made enquiries to establish, not the identity, but the names of the said guards whom he knew to be in the 1st Defendant's employ. This evidence was also not dislodged by the Defendants and it remains. There was, in consequence, no evidence adduced by the defence which served to controvert the assertions by the Plaintiff. In the circumstances, I find for a fact that the guards in question were in the employ of the 1st Defendant.

Were the Guards acting in the course of duty and within the scope of their employment with the 1st Defendant?

[38] It is in evidence that the said guards were operating from the Swazi Plaza and maintaining order thereat. There is no denial on the part of the Defendants that at the time in question, they had guards at the premises in question. It was averred on the 1st Defendant's part that the said guards could not have assaulted the Plaintiff because the

2nd and 3rd Defendants were not on duty and were on official leave. No evidence was led by the Defendants in proof of that allegation as neither of the last two Defendants were called to state where they were on the date in question.

It was put to the Plaintiff that the 1st Defendant's witnesses would deny that the Plaintiff was ever assaulted and that they would further deny that 3rd Defendant was in its employ in the year 2001. It was also put to him that the 3rd Defendant would tell the Court that the 3rd Defendant was not in its employ in the September, 2001 on the date he allegedly assaulted the Plaintiff and that if he did so, he was not acting in the course of duty and in the scope oh his employment with the 1st Defendant. None of these issues were raised by the 3rd Defendant in evidence to try and contradict the Plaintiffs evidence.

In the celebrated case of *Minister of Police v Rabie* 1986 - citation (1) S.A. 117 (A) at 134, the Appellate Division formulated the applicable test in the following language:

> "It seems clear that an act done by a servant for his own interests and purposes, although occasioned by his employment, may fall outside the course and scope of his employment, and that in deciding whether an act by the servant does so fall, some reference is be made to the servant's intention. . . The test is in this regard subjective. On the other hand, if there is nevertheless a sufficiently close link between the servant's acts for his own interests and purposes of his master, the master may yet be liable. This is an objective test. And it may be useful to add that 'a master . . . is liable even for acts which he has not authorized provided that they are so connected with acts which he has authorized that they may rightly be regarded as modes - although improper modes - of doing them."

In the circumstances, there are certain facts about which the Plaintiff and his witness testified which remain uncontroverted. In the first place, they both testified that the guards in question, particularly the 3rd Defendant was in the 1st Defendant's uniform and carried with him a baton and a walkie-talkie with which he communicated with his compatriots. Furthermore, both witnesses testified that the said guards instructed them to move away from the area and when they did not move sufficiently away to his liking, the 3rd Defendant called his compatriots who manhandled the Plaintiff and

dragged him away to Andreas Dlamini, who eventually allowed the Plaintiff to be released.

The above facts lead me to the inexorable inference that the said guards, in doing what they did, were acting in the course of duty with the 3rd Defendant and within the scope of employment with it. They had no personal interest in the Plaintiff and his witness moving away from where they were. They were dressed in the 3rd Defendant's uniform; carried tools of trade ordinarily carried by security guards when at work and the place where the Plaintiff was confronted and the manner in which he was confronted and the reason for him to be asked to leave, as stated in evidence, all lead to the ineluctable conclusion that the 3rd Defendant was acting in the course of duty and within the scope of his employment with the 3rd Defendant. I hold the above to be a fact. There was nothing proffered by the Defendants in evidence to dislodge the aforegoing.

Is the Plaintiff entitled to any damages in the circumstances?

What the Court is called upon to consider at this juncture, is whether on the matrix of the evidence as chronicled in the judgment, the Plaintiff is entitled to any damages? A further question that may necessarily have to be answered, is what type of damages he is entitled to, if the question above is answered in his favour. This latter question may have to be answered considering that the Plaintiff has applied for damages under specific heads and the enquiry may have to be whether he has, on the evidence, satisfied the Court that he is entitled to the damages claimed.

[44] I have, on the evidence found that the Plaintiff was indeed assaulted by the 3rd Defendant's employees in the course of their employment and in the course of duty with said 3rd Defendant and that the Plaintiffs bodily integrity was interfered with. In that regard, it is my finding that he is entitled to reparation in order to assuage his wounded feelings and esteem sustained during the aforesaid assault. Once it is established on the evidence that a plaintiff suffered some harm, it naturally follows that he should be compensated as far as money can therefor.

What heads of damage were proved?

[45] It will be clear from a reading of the Particulars of Claim that the Plaintiff in the main claimed damages for pain and suffering; contumelia and discomfort. In cross-examination, it was conceded and correctly so that there was no injury sustained by him. There was, in the circumstances, no pain and suffering to which the Plaintiff could legitimately be entitled. This was again conceded in the written submissions. That claim would certainly fall away as not having been proved in evidence.

What cannot be gainsaid on the evidence, however, is that there was some assault suffered by the Plaintiff and it is clear that the same was committed injuriously and that same was also contumelious. The fact that he was dragged like a criminal in the sight of members of the public must have impaired his dignity and caused a violation of his *corpus* as well, both of which the law safeguards. I was unable, however, to find authority that "discomfort", standing alone, is actionable and

no such authority was cited to me. I can not therefore grant the Plaintiff solatium under that head.

I therefore find that the Plaintiff was assaulted by the 3rd Defendant and for which act the 1st Defendant is vicariously liable. I also find that the said assault was committed in a contumelious manner, in the full sight of the public and with the Plaintiff, as indicated earlier, dragged much against his will, in a well populated area of the city and at a time when he was, in his helpless state, subject to view and suspicion by members of the public. He was dragged for a considerable distance according to his uncontested evidence.

He had, on the evidence, done no wrong save to talk to his friend within the confines of the larger premises of the Swazi Plaza complex. It must be recalled that he worked within the vicinity of the complex in question and it would have made little sense for him, in the absence of a cogent explanation which he sought without success, to leave the entire premises where he worked just to talk to his friend. I must, in this wise comment that there having been no evidence led, there is no reason to justify the actions of the Defendants in the circumstances. This

appears to me to have been a public show of brute power and force by the guards and which violated the Plaintiffs dignity and bodily integrity which should not and cannot be countenanced.

Persons in the Plaintiffs position, who are going about their business even in a crowded area, require to be treated with respect and dignity. If they, for any reason are not behaving properly or as expected or required, or if they impede the movement of others or cause any such disturbance, they deserve to be asked politely to desist from any offensive conduct and if they require an explanation for whatever request is being made, a respectful answer thereto must be returned. We do not live in a police State where the rights, bodily integrity and dignity of citizens are accorded no respect, particularly in public places.

I have not been referred to a case where a similar incident occurred in this jurisdiction. I accordingly have no guidance. That, however, does not detract from the Court's solemn duty to make an award that will take into account the entire circumstances of the matter. In *Esso Standard S.A. (Pty) Ltd v*

Katz 1981 (1) S.A. 964 (A) at 969-70, Diemont J.A. had this to say about the issue of awarding damages:

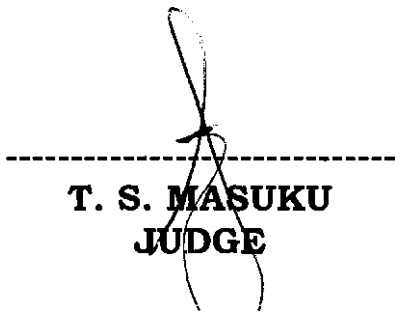
> "It has long been accepted that in some types of cases damages are difficult to estimate and the fact that they cannot be assessed with certainty or precision will not relieve the wrongdoer of the necessity of paying damages for his breach of duty. . . Not only is the principle not a novel one but the English precedents which have given some guidance on the problem have gone so far as to hold that the Court doing the best it can with insufficient material may have to from conclusions on matters on which there is no evidence and to make allowances for contingencies even to the extent of making a pure guess . . . "

[51] The learned author Boberg, The Law of Delict, quoted with approval the remarks of Greenberg J. in *Innes v Visser* 1936 WLD 44, where the following appears:

> "In cases such as the present, where . . . the plaintiff has suffered no pecuniary damages, an award of money is qualitatively an unsuitable compensation. It is, however, the only form of relief available in a civil claim. But the Court should not be induced by considerations of this inadequacy to award globular sums of damages without restraint. The figure of justice carries a pair of scales, not cornucopia."

[52] I will, in appreciation of the foregoing, have regard to the following in arriving at a condign amount of damages in the instant matter: the harsh manner in which the Plaintiff was treated; the fact that he was working within the premises from which he was forcibly removed and with no notice to his employer for his transient absence; had moved away from where he was asked to; the indignity of the assault on his person; the dragging in the full sight of members of the general public and that he had done no conceivable wrong. I also consider adversely the judgment is handed down later than would have been the case all things being equal.

DATED AT MBABANE ON THIS THE 11th DAY OF



T. S. MASUKU
JUDGE

Messrs. Justice M. Mavuso &-€o. for the Plaintiff Messrs. Madau & Simelane for the Defendants
AUGUST, 2009.