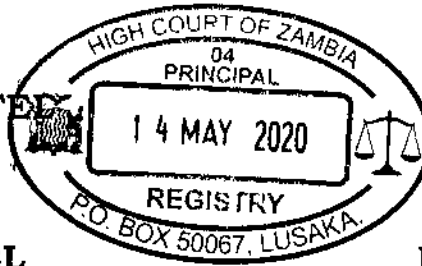


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2015/HP/2298

BETWEEN:

HASEENAH ADAM PATEL



PLAINTIFF

AND

ZARINA LETITIA PATEL

DEFENDANT

**Before Honourable Mrs. Justice S. M. Wanjelani on 14th day of
May, 2020.**

For the Plaintiff: Mr. G. Phiri, Messers PNP Advocates

For the Defendant: Mr. B. Banda, Messrs Legal Aid Board

JUDGMENT

Cases referred to:

1. *Fagan v. Metropolitan Police Commissioner* (1969) 1 QB 439.
2. *R v Donovan* (1934) 2 KB 498
3. *R v. Miller* (1954) 2 ALL ER 529
4. *Zambian Breweries Plc V. David Chibwe Selected judgment No. 41 of 2017*
5. *Collins v Wilcock* [1984] 3 All ER 374

The Plaintiff herein commenced this matter against the Defendant on 1st December, 2015, by way of Writ of Summons and Statement of Claim, seeking the following reliefs:

1. *Damages for assault.*

2. *An order of injunction restricting the Defendant, her servants, agents and whomsoever from threatening and/or assaulting the Plaintiff or coming close to her.*
3. *Interest.*
4. *Any other relief that the court may deem fit.*
5. *Costs*

According to the Statement of Claim, the Plaintiff is a step daughter to the Defendant. It was averred that on or about 15th November, 2015, at around 21:30 hours while at home in Villa Wanga, the Defendant was involved in an altercation with her husband, who is Plaintiff's father.

It was vied that the Defendant had sought to grab from the Plaintiff's father, a bag containing a fire arm and the latter called the Plaintiff for help. Due to the aggressive and uncontrollable conduct of the Defendant, the Plaintiff, in attempting to restrain her was assaulted and severely beaten by the Defendant.

The Plaintiff averred that the Defendant had slapped her, grabbed her hair and banged her body and head on the kitchen door, and further sat on top of her tummy and continued slapping the Plaintiff and hitting her on the head. It was further stated that after the Plaintiff's father managed to pull the Defendant off the Plaintiff, the Defendant rushed for the bag containing the gun and threatened to kill everyone.

In a defence filed on 19th January 2016, the Defendant denied the Plaintiff's allegations and averred that as she was being choked by her husband, she pushed the Plaintiff and did not know how the

latter fell. She added that the Plaintiff was not injured by her, to warrant the Court to grant the reliefs being sought.

The Plaintiff, **Hassenah Adam Patel** (PW1), testified that on 15th November 2015 at around 21:00 hours, she was with one of her cousin in their bedroom when they heard sounds of wardrobes being banged on the walls in her father's bedroom as the Defendant and the Plaintiff's father were fighting, with the Defendant hurling insults and threatening.

PW1 stated that after sometime, her father called for her and when she went there, she saw the Defendant holding a bag containing a fire arm which she wanted to take out. She averred that the Defendant was threatening to kill everyone in the house and it was then that the Plaintiff tried to calm her down as the younger children were sleeping.

PW1 also stated that she told the Defendant that she was reeking of alcohol and the latter responded that it was her life and she could do what she wanted and then slapped her, grabbed her hair, threw her on the floor with force and sat on top of her and continued beating her up.

The Witness informed the Court that at this point, the Plaintiff's cousin and father came and tried to get the Defendant off and when she got off, the Defendant continued holding on to the Plaintiff's hair and dragged her on the floor from the kitchen to the dining room.

According to PW1, after the Defendant let go of her hair, she rushed for the fire arm and threatened to kill everyone in the house. After a struggle PW1's father, her cousin and herself, they managed to get the fire arm away from the Defendant.

PW1 narrated that at this point the two younger children were awake and they went to the Defendant who threw one against the dining table and the other against the foot of the table. PW1 added that they then took the children outside and were supposed to leave for the Police Station but, the Defendant locked her father in the house where they heard them arguing and things were being thrown. PW1 further stated that her father's tenant called the Police who came and they all went to the Chelston Police Station.

In her continued testimony, PW1 stated that she narrated what occurred to the Police Officers and the Defendant was placed in a cell, while she went to Levy Mwanawasa Hospital as her lip was cut, her head was aching, she was feeling dizzy and she had bruises on her cheek.

The Witness testified that she paid for the Medical Report and was given a Receipt, as shown in the documents at Pages 1 and 2 of the Plaintiff's Bundle of Documents. She added that she took the Medical Report back to the Police Station.

Under cross-examination, PW1 testified that the Defendant was her step mother and that the Police had opened a docket but there was no appearance at the Subordinate court.

PW1 denied the assertion that they attacked the Defendant and that the injuries she sustained were not inflicted by the Defendant but from injuring herself against a table. She stated that she knew that the bag contained a gun and saw the Defendant holding it against her chest, threatening to kill everyone. She added that the fight started from her father's bedroom and moved to the dining room and the kitchen.

PW2 was **Geraldine Leane-Rama**, who testified that the Plaintiff was her cousin while the Defendant is her aunt, her late dad's sister. Her testimony mirrored that of PW1. She stated that she heard the Plaintiff trying to calm the Defendant down and the next thing she heard was a slap and when she rushed into the kitchen, she found the Defendant on top of the Plaintiff banging her head on the floor.

PW2 averred that she quickly ran to stop the Defendant but the latter was holding the Plaintiff's waist and when she tried to hold the Defendant's hands, the latter grabbed the Plaintiff's hair and dragged her across the floor.

It was PW2's testimony that after they managed to separate them, the Defendant rushed for the gun and started threatening to kill everyone in the house but after much struggle, the uncle got the gun from the Defendant and gave it to them to put in the Safe.

PW2 further testified that with the noise, youngest children woke up and went to the Defendant crying but she threw them against the table and chair respectively. She said they went outside with the

children while the Defendant and the Plaintiff's father continued fighting and arguing in the house.

In her continued testimony, PW2 stated that they later went to the Police station and when the Police wanted to arrest the Defendant, she collapsed and they rushed her to Levy Mwanawasa Hospital.

Under cross-examination, PW2 stated that she did not know who had withdrawn the complaint from the Police Station as they were advised to resolve the issue as a family. She added that she did not see the Defendant slap the Plaintiff and that they did not gang up to attack the Defendant. She said that the Defendant was her aunt and that she had not been promised anything by the Plaintiff but she had come to Court to tell the truth.

PW3 was **Adam Marcus Patel**, the Plaintiff's father and the Defendant's ex-husband who testified on 15th November, 2015, when he with his children came back from visiting his mother, they found the Defendant outside and she appeared drunk. He stated that he asked the children to go to the bedroom as he was avoiding an altercation because the Defendant was violent when intoxicated.

PW3 stated that at the time, the Defendant and himself were going through some marital issues and she said she was leaving, and she wanted the title deeds to the house he had helped purchase on the Copperbelt. PW3 narrated that as he opened the Safe to get the title deeds, the Defendant immediately reached for a bag which had a fire arm and proceeded to remove it from the bag.

PW3 said that the Defendant left for the dining room while they were arguing and she was threatening to shoot everyone in the house.

He said that he called for the Plaintiff to help calm the Defendant down but that the Defendant slapped the Plaintiff, pushed her to the floor and started beating her while she was sitting on her stomach. His narration of the incident from this point was similar to that of PW1 and PW2.

Under cross-examination, PW3 stated that the Defendant was violent when intoxicated and that prior to the dispute before Court, she had beaten the children but it was decided to resolve the matter as a family. He added that his ex-wife was a threat as she had a firearm and the only bigger person then was his daughter.

He said he saw the Defendant slap the Plaintiff but he was advised by the Police Victim Support Unit to resolve the issue as a family, however the Defendant and her family refused. He said all this was before the divorce and that he was not trying to get back at his ex-wife.

The Defendant, **Zarina Patel** (DW1) gave evidence in support of her defence and testified that on 16th November 2015, she had gone to visit her mother's house and upon her returning she went to her room and her husband PW3 followed her. DW stated that she asked PW3 for her documents that he had in his Safe.

She stated that she was asking for her Passport, Birth Certificate and Title Deeds which he took out and put on the dining table but

because of the problems they had been having, PW3 started beating her up, strangling her and she could not breathe as he held her in a chokehold.

DW testified that she tried to free herself from her husband's grasp but she was very weak, and that the Plaintiff then came to separate them. She said she then just saw the Plaintiff on the floor. She stated she did not assault the Plaintiff as she was the one being beaten by her husband and that he had caused the Plaintiff to fall to ground. DW narrated that because of the noise, the younger children who were sleeping woke up.

She added that PW3 later called his brother, while she called her brother and aunt and they went to the Police Station where she was given a Medical Report and she later collapsed. DW stated that as a result of the injuries suffered, she could not eat properly and had bruises all over her body. She reiterated she did not assault the Plaintiff as alleged as she was the one who was beaten by the Plaintiff's father.

Under cross-examination, DW testified that she did not push the Plaintiff as reflected under Paragraph 4 of the Defence filed. She added that the Plaintiff had come with force in trying to separate her from PW3 and she fell in the process of pushing PW3. DW insisted that she did not lay her hands on the Plaintiff or cut her upper lip and could not remember if she fell facing the floor or not.

During re-examination, the DW stated that the Plaintiff was not trying to separate them and that she got out of PW3's chokehold by herself.

At the close of the case, respective Counsel informed the Court that they would file submissions, but only the Plaintiff's submissions were on record at the time of writing this Judgment.

In the submissions, the Plaintiff's Counsel reiterated that the Defendant did slap the Plaintiff drag her on the floor whilst banging her head, thereby causing a cut on the lip and the Plaintiff also went through pain and shock. Reference was made to the case of **Fagan v. Metropolitan Police Commissioner**⁽¹⁾, which defines assault and the cases of **R v Donovan**⁽²⁾ and **R v. Miller**⁽³⁾ for the position that assault means any hurt or injury calculated to interfere with the health and comfort of the victim.

It was further submitted that the Plaintiff had fulfilled the essential elements of assault as the Defendant had threatened to kill the Plaintiff when she had rushed for the gun, which was followed by apprehension of force and infliction of force which caused the Plaintiff to be injured.

I have considered the pleadings, oral testimonies and the submissions before me. It is a fact that in civil matters the Plaintiff bears the burden to prove his case on a balance of probabilities, including in **Zambian Breweries Plc V. David Chibwe**⁽⁴⁾ wherein the Supreme Court stated that:

“... It is a time honored principle in civil proceedings that it is for a plaintiff to prove its case against the Defendant even when it is difficult to do so....”

The Plaintiff has claimed, inter alia, damages for assault. Thus, the issue for determination is whether the Plaintiff was assaulted by the Defendant, entitling her to damages.

In the case of **Collins v Wilcock**⁽⁵⁾, an assault was defined as:

“...an act which causes another person to apprehend the infliction of immediate, unlawful, force on his person; a battery is the actual infliction of unlawful force on another person. Both assault and battery are forms of trespass to the person.”

It is not in dispute that on 15th November, 2015 there was an altercation between the Defendant and the Plaintiff's father. I heard the oral testimonies and noted the demeanor of the witnesses. All the Plaintiff's witnesses gave evidence alleging that the Defendant made a number of threats to shoot everyone with the gun and ended up beating the Plaintiff and dragging her by her hair across the kitchen floor. I also noted how all the Plaintiff's witnesses fared under cross examination and the fact that they were not shaken and remained consistent with their narration of events.

On the other hand, the Defendant was not consistent in her testimony as regards her Defence on record and her oral testimony in that she disputed causing the said injuries to the Plaintiff stating that she was the one who was assaulted by the Plaintiff's father and hence could not have inflicted those injuries. While in the Defence on record, the Defendant stated that while she was being choked by the Plaintiff's father, she pushed the Plaintiff and did not know how she fell.

I have further examined the Medical Report on page 1 of the Plaintiff's Bundle of Documents which shows that the Plaintiff had made a statement to the Police that she had been beaten and slapped by her stepmother, the Defendant and had been dragged by the hair. The Medical Doctor's findings show that the Plaintiff had a tender shoulder, albeit, there were no visible injuries.

In addition, PW2, is the Defendant's own niece who was being kept by the Defendant at the time and who in my view, had no motive to lie, confirmed the threats to kill everyone issue by the Defendant and the fact that the Defendant did beat up the Plaintiff.

I therefore find that the Defendant did threaten the Plaintiff and other people in the house and father did beat up the Plaintiff, causing injury.

Based on the foregoing, I find that the Plaintiff has proved her case on a balance of probabilities. I thus find that the Plaintiff is entitled to damages for assault to be assessed by the Deputy Registrar.

I further award the Plaintiff costs of this matter to be taxed in default of agreement.

Delivered at Lusaka this 14th day of May, 2020.



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S.M. WANJELANI
JUDGE