ATTORNEY-GENERAL v MUSONDA AND OTHERS (1974) ZR 220 (SC)

SUPREME COURT (CIVIL JURISDICTION)
DOYLE CJ, BARON DCJ AND GARDNER JS
19th DECEMBER 1974
SCZ Judgment No. 45 of 1974.

Flynote

Tort - False imprisonment - Exemplary damages - Principles on which awarded.
Tort - False imprisonment - General damages - Reason for detention being unlawful - Relevance of quantum for basic loss suffered from deprivation of liberty - Relevance in considering questions of exemplary damages or aggravation.
Tort - False imprisonment - General damages - Proper approach to period of detention.
Tort - False imprisonment - General damages - Whether plaintiff 's social, economic and political standing should be taken into account.
Tort - False imprisonment - Damages - Cost of visits by members of family or business manager.

Headnote

The respondents had been detained under orders of the President made under the Preservation of Public Security Regulations. The appellent had failed to supply grounds of the detentions within the period of fourteen days, as required by the then s. 26A (1) *(a)* of the Constitution and the detentions had thus become unlawful. The appellant had not contested the issue of unlawfulness and judgment had been entered in default. Each of the plaintiffs had been awarded a sum of K20,000 as general damages.

DOYLE CJ
Held:

(i) Exemplary damages may be awarded where the defendant has acted in contumelious disregard of the plaintiff's rights. The court should consider first what sum to award as compensation, taking into account the whole of any aggravating conduct of the defendant, and only if this sum is inadequate to punish and deter the defendant should award some larger sum. Lord Devlin's "if, but only if" dictum in *Rookes v Barnard* [2], adopted in *Times Newspapers* v *Kapwepwe* [3], reaffirmed.

(ii) The fact that a person could have been lawfully detained, and would have been so detained if a technical requirement had not been overlooked, may be relevant in considering questions of exemplary damages or aggravation but does not affect the basic loss he has suffered flowing from the deprivation of his liberty so as to entitle him only to nominal damages.

(iii) A period of detention must be regarded as a single period and not a succession of days or weeks or months; one cannot arrive at a compensatory award by deciding what would be an appropriate award for some shorter period such as a day or a week or a month and multiplying it.

(iv) In considering what is a proper award of general damages the plaintiff's social, economic and political standing must be taken into account.

(v) (*per* Gardner, JS and Baron, DCJ, Doyle, CJ, expressing reservation) A person who is wrongfully imprisoned under conditions whereby he is allowed to receive visitors is entitled to recover the reasonable expenses incurred in visits made to him by his wife and family, and also by his business manager.

Cases cited:

(1) *Attorney-General v Chipango,* (1971) SJZ 55

(2) *Rookes v Barnard* (1964) 1 All ER 367.

(3) *Times Newspapers Zambia Limited v Kapwepwe,* (1973) ZR 292

(4) *Kawimbe v Attorney-General,* (1974) ZR 244

Cases referred to:
Constitution of Zambia, s. 26A (1) *(a)* (now Article 27 (1) *(a)*).
Preservation of Public Security Regulations, Cap. 106.
The Attorney-General, the Hon. A M Silungwe, SC and A M Zamchiya, State Advocate, for the appellant.
A P Annfield, Peter Cobbett - Tribe & Co., for the respondent.

Judgment

Baron DCJ: The nine respondents, to whom I will refer as the plaintiffs, were detained under orders of the President made under the Preservation of Public Security Regulations. The appellant, to whom I will refer as the defendant, failed to supply grounds of the detentions

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within the period of fourteen days as required by the then section 26A (1) *(a)* of the Constitution, and on the authority of *Attorney-General v Chipango* [1] the detention became unlawful. The defendant did not contest this issue of unlawfulness and judgment was entered in default The periods of detention were in the cases of the first, second, third, sixth, seventh, eighth and ninth plaintiffs from 21st October, 1972, to 4th May 1973, a period of just under six and a half months and, in the cases of the fourth and fifth plaintiffs, from 21st October, 1972, to 30th December 1972, a period of a little over two months. In dealing with the question of general damages the learned judge clearly overlooked that two of the plaintiffs had been in detention for the shorter period; indeed, he said in terms "the period of unlawful detention for all is the same . . . all nine plaintiffs were in detention for approximately seven months. " In considering what was a proper award of general damages he rejected the submission of Mr Annfield, counsel for all the plaintiffs that the court must take into account each plaintiff's social, economic and political standing in the society and said that their "personal, social, economic and political prestige past or present is irrelevant". I cannot subscribe to this view, and it is significant that in arguing this point in the court below the Attorney-General is quoted in the judgment as having said: "What should be considered is not whether they were leading political or business figures at some distant past date but what was their social, economic and political standing immediately before the relevant detention period began."

The learned judge awarded to each of the plaintiffs a sum of K20,000 as general damages; he expressed himself as awarding this sum "to mark my disapproval of the action taken by the detaining authority in breach of the guarantees contained in Part III of the Constitution of Zambia." The learned Attorney-General understandably attacks this award on the ground that this language indicates that the learned judge was awarding exemplary damages and that he should have apportioned the award as between compensatory and exemplary damages; the learned Attorney-General attacks the award on the further ground that the defendant's conduct in this case was not deserving of punishment. I have to draw attention again to Lord Devlin's famous "if, but only if", dictum in *Rookes v Barnard* [2] (which the learned judge himself cited but unfortunately did not apply) and to the terms in which this court adopted that dictum in *Times Newspapers Zambia Limited v Kapwepwe* [3] at page 144, where we said that the court:

". . . should consider first what sum to award as compensation and that this sum should take into account the whole of any aggravating conduct of the defendant, and that only then should [it] turn to consider whether [it] proposed award is sufficient to punish and deter the defendant."

The learned judge did not consider first what sums he had in mind to award as compensatory damages including special damages, and in failing to do so he was clearly in error. Quite apart, therefore, from the question

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whether the award of K20,000 should be disturbed as being excessive the learned judge has erred in his approach as a matter of law, and in my view this court must approach the question of general damages *de novo.*

It is convenient to dispose immediately of the question of exemplary damages. Such damages may be awarded where a defendant has acted "in contumelious disregard of a plaintiff's rights." Certainly the plaintiffs were detained in breach of their rights under the Constitution, but I can see nothing in the defendant's conduct in this case which can be said to be contumelious or *mala fide*. In my view this is not a case in which it would be proper to award exemplary damages.

Turning now to general damages, I will deal first with a general proposition advanced by the learned Attorney-General. He argued that the damages should be only nominal because the compensation was in respect of the infringement of a right and not for any actual loss suffered, and that there was in fact no loss suffered because the unlawfulness of the detention was the result of a purely technical oversight.

There are two basic errors in this argument. First, it reduces itself to the proposition that because the plaintiffs could have been lawfully detained, and would have been lawfully detained if the technical requirement in question had not been overlooked, they are entitled only to nominal damages. This is an unacceptable proposition. The circumstances giving rise to the unlawfulness may be relevant in considering questions of exemplary damages or aggravation, but they do not affect the basic loss suffered by the plaintiffs. The plaintiffs are entitled to be compensated for the deprivation of their liberty and for all other aspects of loss or damage flowing from that deprivation, and the reason why the detention was unlawful is not relevant to the question of compensation, save to the extent that any aggravating conduct of the defendant may have increased the hurt or indignity and prompt the court to make a higher award of compensatory damages.

Secondly, the learned Attorney-General's argument confuses the question of compensation for the deprivation of liberty and the other aspects of loss or damage flowing therefrom with compensation for the denial of a statutory right. This latter is a separate issue; compensation for the denial of a statutory right is recoverable even though the breach of the statutory provision in question does not render the detention unlawful, and it is in such circumstances that the compensation may in appropriate cases be only nominal. Thus, if a detained person were, in breach of section 27 (1) *(d)* of the Constitution, denied reasonable facilities to consult a legal representative, and assuming (but without deciding) that this denial does not render the detention unlawful, it would be quite proper for the court to award damages in respect of the deprivation of the right, in addition to making any other order which the justice of the case might require.

The plaintiffs had all been political figures to some degree or other and were people of standing in the community. They were detained in a prison, and while no question of ill - treatment arises in this case the conditions

under which they were detained were anything but comfortable. The food was not what they were accustomed to and their families provided them with additional food. In the recent case of *Kawimbe v Attorney-General* [4] this court pointed out that a period of detention must be regarded as a single period and not a succession of days or weeks or months, and that one cannot arrive at a compensatory award by deciding what would be an appropriate award for some shorter period, such as a day or a week or a month, and multiplying it. Taking all factors into account in this case, and looking at the periods of detention as single periods, I am of the view that an appropriate award of general damages in the cases of the first, second, third, sixth, seventh, eighth and ninth plaintiffs is K5,000 and in the cases of the fourth and fifth plaintiffs is K2,000.

Turning now to the claims for special damages, I cannot refrain from making one general comment. Claims were made in respect of damage to and loss of motor vehicles; for instance, one of the plaintiffs claimed in respect of the damage to his vehicle caused in an accident in which his wife was involved while she was on her way to see him. It is in my view

absurd to suggest that this damage is attributable to the false imprisonment, and I am amazed that such a claim should have been made. Again a claim was made in respect of the loss of a radio. If the prison authorities lost or damaged the radio belonging to one of the plaintiffs I do not suggest that he has no remedy - the authorities can no doubt be held responsible in some other proceedings, but the loss cannot be claimed in this action. The plaintiffs' approach seems to have been that whatever loss they have suffered while in detention is recoverable as special damages. This is a fallacious proposition. Before a loss is recoverable in these proceedings whether under the head of general damages or as special damages, that loss must not be too remote, there must be a direct causal connection between the detention and the loss.

As to the individual claims, I have had the opportunity to read the detailed analysis prepared by my learned brother, Gardner; I agree with his conclusions and have nothing I wish to add.

Judgment

Gardner JS: I have read the judgment of the learned Deputy Chief Justice with which I respectfully concur. I therefore agree with the awards of general damages as set out in that judgment.

With regard to the claims for special damages, there are two general points I would like to make before dealing with these claims in detail.

(i) Supplementary Food: Whilst detained all the respondents were provided with food by the detaining authorities and in most cases if not all they complained that it was bad and inadequate. They claimed that they had to purchase extra food for themselves elsewhere and they claim in this action the cost of such extra food. In my view it cannot possibly be argued that as a result of the false imprisonment the respondents had to buy food. They would have had to buy food

in any event, if they felt it was necessary, whether or not they were in detention or falsely imprisoned. I would not allow any of the claims under this head.

(ii) Most of the plaintiffs in this case claimed as special damages the travelling expenses incurred by their wives and families in visiting them. The learned Attorney-General argued that assuming such expenses were allowable only the bus fare in question should be allowed. I would have no hesitation in agreeing that where a cheaper method of travel is available a person who chooses a more expensive method must expect to pay the difference himself; this is certainly a principle applicable in the taxation of costs where travelling expenses of legal practitioners or witnesses are involved. However, as in those cases, the question is whether the expenses have been reasonably incurred. It does not follow that a more expensive method of travel will be held to be unreasonable if for instance the times of the trains and buses did not fit in with permitted visiting hours, if difficulties might be encountered in getting to the prison from the bus - stop, and so on.

The next problem is to decide on whom the *onus* lies to show that the method of travel chosen was in fact reasonable. Speaking for myself, if the wife of a detainee says that she used her car for the purpose of visiting her husband I would *prima facie* regard this as a reasonable thing to do, and in the absence of evidence establishing that in fact it would have presented no real difficulty or inconvenience to travel by a cheaper method I would allow the travelling expenses based, in the absence of evidence on the point, at the standard rate allowed to Government officials travelling on duty in their own vehicles.

I will deal with the claims for special damages in respect of each of the respondents.

1. *Peter Musonda*

(1) *Radio*. This is a claim for loss or damage to a radio taken by the prison authorities from the respondent when he was detained. One of the witnesses for the appellant produced a radio in court which was apparently working and said that it belonged to the respondent.

This witness was not cross - examined nor was there any application made by the respondent's counsel to call evidence to rebut the allegation that the radio produced belonged to the respondent. In any event the loss or damage to the radio cannot be said to be a direct consequence of the false imprisonment and although the respondent may have a claim in respect of some other tort in connection with the radio his claim in this action should fail.
(2) *Supplementary Food*. For the reasons I have given I would not allow this claim.
(3) *Damages to car.* The respondent's car was damaged while it was being driven by his wife when she came to visit him in

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detention. This damage cannot possibly be said to be a direct consequence of the false imprisonment and in my view this claim for damages is too remote and should not succeed.
(4) *Loss of Ivory Contract*. The respondent claims that at the time just before his detention he had contracted to buy 67 lb of ivory from Mr Robinson Puta. He claimed that as a result of his detention he lost a profit of K560 which he would have made on selling the ivory. The learned Attorney-General pointed out that on the respondent's own figures the profit would have been K535, which did not take into account any expenses or overheads. The respondent called Mr Robinson Puta to confirm the contract, but all this witness could say was: "I remember him talking to me about buying some ivory from me." There is totally insufficient evidence to establish that there was a contract and of the exact amount of the profit which could have been made on sale and in my view the learned trial judge rightly held that there was insufficient evidence to substantiate this claim. I would add that, although the loss of benefit from a contract might be said to be a direct consequence of a false imprisonment, in order to succeed it would have to be shown that such a contract was a special and unusual contract, the opportunity for which would not be likely to be repeated; in this particular instance there is no evidence whatsoever that the respondent cannot renegotiate a contract for the purchase and sale of ivory on the same terms.
(5) *Loss of Respondent's Motor Vehicle*. The respondent gave evidence that he had taken his vehicle into a garage for repairs prior to his detention but, since his detention, he has been looking for his car and presumably cannot find it. The details of this claim are so vague that I agree with the learned trial judge that this claim could not possibly be supported in any event. The loss of the car was not a direct consequence of the unlawful imprisonment.
(6) *Loss of Continental Bar.* The respondent gave evidence that prior to his detention he had agreed to purchase this property from Consolidated Properties and paid a deposit of K1,750 towards an agreed purchase price of K11,000. When he was detained he found himself unable to complete paying the purchase price. He says the deposit was not refunded. In his notice of claim for special damages he says the deposit was K250 and does not explain the difference between that claim and his evidence. Although a Mr Burgiss, an official of a building society connected with this property, was called on behalf of the respondent, he gave no useful evidence apart from indicating that a valuation of the property was far higher than the alleged purchase price of the property. There was no evidence to indicate that the agreement to purchase this property, if there was such an agreement, could not have been revived at a later date. There was insufficient evidence to indicate whether the deposit was irretrievably lost and indeed there is no evidence to indicate what financial loss was suffered in respect of this property. This claim should also fail.

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(7) *Family Visits and Supplementary Food*. I have already indicated that a claim for supplementary food should not succeed. This respondent gave evidence that his wife made twenty - four visits to see him. On the record it appears that his counsel then applied to add a claim for the travelling expenses to the list of particulars of special damages filed at the beginning of the hearing. The learned trial judge refused to allow the inclusion of such a claim at that stage. One of the grounds of the cross - appeal of the respondent was that no

order as to pleadings was made in this case and instead the learned trial judge ordered the respondent to produce in the space of less than three hours (which included the lunch hour) the document headed "Notice of Claims for Special Damages". It was also maintained that the learned trial judge had held that such a document was a pleading and the respondents were bound by it. In my view, in the absence of an order for pleadings the learned trial judge was entitled to make the order that he made, but in so doing and demanding its production within three hours it was unreasonable thereafter to refuse to allow an amendment thereto. The learned trial judge wrongly exercised his discretion in excluding the amendment of the damages as applied for by counsel for the respondent and this aspect of the claim should be dealt with. The respondent had given evidence that he lived in Lusaka and was detained at Kabwe. In my view a person who is wrongfully imprisoned under conditions whereby he is allowed to receive visits is entitled to claim as damages the cost of visits made to him by his wife and family. The necessity for such visits is a direct consequence of the unlawful imprisonment. The difficulty in this case is that no evidence was led on behalf of this respondent relating to the costs of the visits. This was the result of the incorrect ruling of the learned trial judge. The parties have, however, agreed on these expenses, based on mileage at K527.52, and that is the amount I would allow.

(8) *Loss of Malachite*. The respondent claimed that he had purchased K12,000 - worth of malachite in Zaire. The weight of the purchase was 10 000 kg, of which he had imported 300 kg into Zambia, but owing to his detention he lost apparently both the 300 kg and the balance due from Zaire. There was no evidence to indicate how the fact that he was wrongfully detained caused the respondent to lose the 300 kg of malachite now in Zambia and there was also no such evidence to show how it was that the balance of the consignment was not now obtainable from the supplier. The respondent, as held by the learned trial judge, has not succeeded in establishing this loss and this claim should fail.

2. *Faustino Lombe*

(1) This respondent claimed for loss of profit in the fish trade. He was awarded K842 by the learned trial judge and there is no appeal against this award.

(2) *Visits by Family.* With regard to the family visits, however, the learned trial judge, having found that the wife of the respondent visited him in detention on seven occasions, declared there was no direct evidence other than the hearsay evidence of the respondent as to the cost of each trip. He therefore disallowed any payment in respect of

this claim. The learned trial judge in fact misdirected himself when he said there was no evidence as to the cost of the visits because such evidence was given by the wife of another respondent named Mrs Ngandu. The cost which she mentioned was K4 per return trip and this in fact was allowed to her. In my view this respondent is entitled to the same reimbursement and I would therefore award K28 for the seven visits as special damages under this head.

3. *Victor Ngandu*

(1) *Visits by Family*. The learned trial judge awarded K108 under this head and there is no appeal against this award.

(2) *Supplementary Food.* This is not allowable for the reasons I have already indicated.

(3) *Loss of Motor Vehicle EV* 8193. The learned trial judge found on the facts that the vehicle that was in the respondent's possession at the time of his detention was voluntarily handed over by him to a relative and the responsibility therefor was not with the detaining authorities. There was also evidence that in fact the vehicle had not been lost and in the circumstances this claim must fail

(4) *Loss of Fish,* K600. The learned trial judge held that the loss of this fish resulted when it was in the hands of the cousin of the respondent. The learned trial judge chose, as he was entitled to do, to believe the evidence of Mr JB Chisela and Mr BE Chisela, who were called for the defence, and there is no reason to interfere with this finding.

(5) *Loss of Business*. The respondent claimed that he lost business at the rate of K600 a fortnight because of his inability to continue with his fish trade. There was evidence that the respondent intended to engage in the fish trade but his first trip was a failure in that he purchased improperly cured fish. There is no evidence to support the claim that any future trips would or could make a profit. I see no reason to interfere with the learned trial judge's finding that this claim cannot succeed.
(7) *Damage and Loss on Farm*. The learned trial judge did not deal with this claim for the loss of a banana plantation and an acre of green vegetables as a result of damage to an irrigation furrow and a bush fire. The total damages claimed under this head was K900. There was no evidence that the loss of the irrigation furrow and the bush fire were the direct consequence of the unlawful imprisonment and, even if it could be said that the respondent was prevented from looking after his property because of his detention, it was his duty to minimise his loss and in this respect the learned Attorney-General pointed out that he had a large family who could at least have taken precautionary measures. Under this head the respondent claimed that he supplied fruit and vegetables to Mpika Secondary School for K20 per day. In his evidence the respondent stated that in fact the net profit was K10 per week. He said that two of his three men working on the farm disappeared after his detention because his plants were destroyed and it was apparently as a result of their disappearance that he was unable to continue to make his former profit of

K10 per week. In my view these damages are too remote and the claims in respect of the damage to the farm and arising out of the failure of the farm should fail.
4. *Jameson Chapoloko*
(1) *Transportation and Cost of Family Visits*. The respondent's home is in Lusaka and he was detained at Chipata. The respondent's wife and two of the children visited him twice while he was in detention driving there in their own car. The wife gave evidence to the effect that it cost K20 for food for each visit. It was accepted by the trial judge that there were two visits and a claim for damages was sustainable. However, he ruled, as suggested to him by the learned Attorney-General, that the total cost of each trip was K20 and this is the amount he awarded. This respondent appeals on the grounds that no account has been taken of the expenses of travelling to Chipata and back. For this the respondent claimed K80.
There was in fact no evidence of the actual expenses incurred per trip but the respondent in his cross - appeal maintained that the mileage expenses agreed between the parties at 15 ngwee per mile should be allowed. This figure has, according to counsel, not been agreed. The total cost for mileage for both trips at a rate of 7 ngwee per kilometre is in excess of the amount claimed and I would therefore award K120 as claimed.
(2), (3), (4) and (5) *Damage to Motor Vehicles, Windows and Fence and, Loss of Two Dogs.* The respondent claims that the damage referred to was the result of his being in detention. I cannot agree that such damages were the direct consequence of the respondent's being in detention and I see no reason to interfere with the learned trial judge's finding in disallowing this claim.
5. *Robert Kajula*
(1) *Loss of Motor Vehicle.* The respondent gave evidence that he had taken his motor vehicle to a garage for repair but while he was in detention it was sold because he had not paid the cost of the repairs. There was no evidence to show that there was any loss when the vehicle was sold by the garage; whether they were entitled to sell the vehicle at law and whether or not the respondent has a claim against them. It cannot be said that this loss was a direct consequence of the unlawful imprisonment and this item of the appeal must be dismissed.
(2) *Loss of Material for Tailoring*. The learned trial judge did not deal with any of the other claims of the respondent, one of which was for loss of some suit material which he gave to the tailor to be made into a suit but which was sold by the tailor because he did not pay for the cost of tailoring. This claim is remote in the extreme. The respondent has given no

evidence as to why he took no action against the tailor apart from saying that he was to have paid for the cost of tailoring within three months. I would dismiss this claim.
(3) *Cost of Family Visits.* The learned trial judge did not deal with this nor did the learned Attorney-General make any submission with regard to this item. The respondent claimed that his immediate family visited him in Kabwe on six occasions. The visits were made by his three wives and

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the respondent gave evidence that the return fare between Lusaka and Kabwe is K2.20. I would therefore uphold this ground of appeal and allow him the sum of K39.60, the amount claimed.
6. *Justin Chimba*
(1) *Loss of Piglets*. The respondent claimed that he had lost 300 piglets and forty - five pregnant sows capable of producing ten piglets each, at a farm at Garnetown, as a result of his being detained. These three claims were rejected by the learned trial judge on the grounds that there was no documentary or oral evidence to support them. The respondent gave evidence that he started rearing pigs in 1969 and by September, 1971, he had 177 sows and one boar. He was detained in September, 1971, and released in September, 1972. In October, 1972, he was again detained and his claim covers the period from October, 1972, until May, 1973. The respondent said when he came out of detention in September, 1972, he found 300 pigs, forty - five sows and one boar. He said his young brother was looking after his piggery whilst he was in that period of detention. He said that after his second detention he had no one to look after his property except his old mother and he told the court that he did not know what had happened to his animals; he only found fourteen sows and one boar. It is clear from this evidence that he himself had not been responsible for looking after the pigs during the first period that he was in detention and he gives no explanation as to why his brother could not continue to look after the pigs during his second detention. It might have been necessary, in order for him to minimise his loss (which was his duty), for him to employ someone to look after the pigs as his brother had done, but his failure to take any steps to protect his property cannot be the basis of a claim for damages arising out of wrongful imprisonment.
The learned trial judge misdirected himself when he said there should have been documentary evidence, but I see no reason to interfere with his decision to disallow this part of the claim.
(3) *Repairs to Respondent's Motor Vehicle.* The respondent cross appealed that the learned trial judge failed to take into account the evidence that the respondent's motor vehicle was damaged in an accident while he was In detention. I agree with the learned trial judge that the accident was In no way a direct consequence of the unlawful detention.
(5) *Supplementary Food*. I have already indicated why this item should not be allowed.
(6) and (7) *Repairs to House and Pig Shelters*. The respondent claimed that his house fell into disrepair during his absence; windows were broken, a toilet was damaged and other damage was suffered. In addition to this the ceiling was eaten by ants. As I have indicated before it is the duty of a person claiming damages to minimise his loss. The learned author of *Clerk and Lindsell on Torts,* 11*th Edition*, at page 202, states: "It is the plaintiff's duty to minimise his damages as far as possible, and therefore anything which must be ascribed to his failure to do so is not recoverable from the defendant. The duty is to act reasonably . . ." In my view, in this

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case it would have been reasonable for the respondent to have asked a member of his family to take care of the house and possibly better still for him to have let the house. But his failure to make any arrangements precludes him from claiming damages.
What I have said above applies equally to the buildings used for pigs; these also fell into disrepair apparently because of neglect but the claim for damages cannot be sustained. In any event these damages are probably too remote.

(8) *Cost of Repairs and Loss of Water Through Damaged Water Pipes.*
This damage cannot be said to be a direct consequence of the illegal detention and I see no reason to interfere with the learned trial judge's decision to disallow this claim.
(9) *Costs of Family Visits.* The respondent claimed for twenty - four trips from Lusaka to Kabwe. It was accepted that the respondent's wife visited him twenty - four times and the learned trial judge considered she should be entitled to the return bus fare for these visits. He therefore awarded K52.80. In fact the respondent's wife used her own car and for the reasons I have given before this claim should be allowed on a mileage basis. For twenty - four trips totalling 7 142 kilometres at 7 ngwee the amount I would award is K500.
7. *Davies Mwaba*
(1) *Loss of Bricks.* The respondent claimed that 150 000 bricks had been prepared for burning but owing to his detention he lost the sale price of those bricks, amounting to K3,525. The learned trial judge rejected this claim on the grounds that the evidence relating thereto was hearsay. The respondent in evidence said: "The number of bricks was 150000. We employed twenty labourers to make the bricks. They were intended to be burnt bricks. After my detention the job was not pursued." In cross examination he gave evidence as to the amount of money that had been paid to the labourers and to the capitao. He said: "I had an agent who personally employed these people. My agent was Mr Weston Zimba, he is now working in Lusaka, . . . I saw the kilns when they were ready for burning . . . I was even shown sheets showing the number of bricks in each kiln." The respondent's agent, Mr Weston Zimba, gave evidence that there were 150 000 bricks; he also gave evidence as to the number of labourers employed and how many bricks they were able to make per day. He said: "The capitao did not count the bricks that were put in the kilns. I was told that for two kilns there would be 150 000 bricks." In re-examination he said: "I used to count the bricks after the workers broke." It is clear from this evidence that the agent was in part relying on the capitao who told him the capacity of the two kilns and this was, therefore, hearsay evidence. The agent himself was supervising the work; he knew how many bricks were being made per day and he used to count the bricks. His evidence, therefore, that there were 150 000 bricks, is acceptable in the absence of evidence to the contrary. This witness also said in his evidence: "No fires were put in the kilns. The bricks were destroyed by rain. I had no money myself to employ someone to bring firewood to give the kilns."

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Nowhere does the respondent say in his evidence why he did not pay for firewood to be supplied for the burning of the bricks so that his agent should continue with the operation. The respondent implies that the work was stopped because of his detention. It is not satisfactorily explained in what way his detention prevented his sending money to the agent but he was not cross - examined about this. The learned Attorney-General objected to this item on these grounds and, although I would find sufficient evidence to show the quantity of bricks and the money spent on them and the money expected to be recovered, I cannot find that the respondent acted reasonably to minimise his loss. I would therefore find that this ground of appeal cannot succeed.
(2) *Loss of Business*. The respondent claimed that his wife had a bottle store and that while he was in detention in Lusaka she spent time preparing his food as the prison diet was inadequate and thereby lost K50 per day in the business. The learned trial judge dismissed this claim by saying "No evidence was given under *(b)*." This was a misdirection because there was in fact evidence; but, in the event this damage is too remote, and the claim must fail.
(4) The respondent cross - appeals that the learned trial judge wrongly ignored the fact that K96 was claimed as cash spent during illegal detention. I agree with the learned trial judge. It was not sufficient merely to state this in the notice of claim. There was no evidence to show why this money was spent and this claim must fail.
8. *Alfred Musonda Chambeshi*
(1) *Loss of Salary*. The respondent claimed, not loss of salary as is indicated in the form of claim, but his loss of drawings from the Kansenji Bottle Store which he used to draw while he

was working there before his detention. The evidence was that the respondent was a shareholder and director of the bottle store and he was supposed to get K600 plus K300 per month from the store. Whilst he was in detention the store was run by his nephew. Evidence was given of the turnover of the business. The respondent's son gave evidence that in his opinion the business at Kasenji Bottle Store was doing very badly but gave no evidence to indicate what loss was suffered. Mr Meki Mwape, who was employed as the manager of Kasenji Bottle Store, gave evidence that before the respondent went into detention the business was doing well but that the turnover dropped from K600 - K700 per day to K400 - K500 per day when the respondent went into detention. He was unable to say what the profit margin was. No evidence was brought to show what loss of profit if any there had been as a result of the respondent's unlawful detention and this ground of appeal must therefore fail.

(2) *Supplementary Food.* For the reasons I have already given this claim cannot succeed.

(3) *Communication.* The respondent gave evidence that he used to correspond with his two wives and children and this cost him between

K200 and K300. Evidence was called on behalf of the learned Attorney-General that letters were sent free and the respondent was unable to give details of any telegrams which he sent. This claim is too vague and I would agree with the learned trial judge that it should fail.

(4) *Visits by Family*. The respondent claimed for nineteen trips made to see him in Chipata at a cost of K514. In fact eleven of these trips were said to have been made by the respondent's business manager and the learned trial judge disallowed these. In my view, it is reasonable for a person who is unlawfully imprisoned to be visited by his business manager so that his business can continue. I would therefore allow the expenses incurred by Mr Bwalya Mufonka, the manager, which were presumably paid out of the respondent's business. The respondent, in support of his claim, relied on a list produced by defence witness 1 which was Exhibit D3. This list extends beyond the period during which the respondent was unlawfully detained and, during the period concerned, only one visit is recorded by Mr Mufonka. In fact during the relevant period only twelve visits are recorded. The learned Attorney-General has conceded that the respondent is entitled to the cost of eight visits and this was allowed by the learned trial judge. I would award allowances in respect of nine visits. Of the three remaining visits, one was from the Department of Legal Aid, and there is nothing to indicate the relationship of the other two. The respondent has cross - appealed against the learned trial judge's award of only K11 per visit on the grounds that it does not take into account mileage to and from Chipata. Apart from the evidence of the respondent's son, Abel Musonda Chambeshi, that he drove his own car on a visit which is not recorded in Exhibit D3, and was presumably outside the period of unlawful detention, there was no evidence on behalf of the respondent as to the mode of transport employed by the visitors. The learned Attorney-General conceded in his final address that the return cost was K11 and I take this to mean the return bus fare, although only the single bus fare was referred to by the defence witness, the bus company. In the absence of any other evidence there is no other figure to guide the court and I would therefore allow an award of K11 for nine trips, i.e. K99.

(6) *Loss of Calendars.* The respondent gave evidence that he had arranged for calendars to be printed and had suffered a loss, the amount of which he did not specify. The respondent's son gave evidence that he thought his father paid a deposit of K60 to the company who were to produce the calendars. He sent photographs to his father in Chipata for approval but received no reply. I agree with the learned trial judge that there was no acceptable evidence to support this claim and this ground of appeal must fall.

(11) *Loss of Profits to Bottle Store*. This has been dealt with under the first head of loss of salary.

9. *Josiah Chanka Chishala*

(1) The respondent claimed that he was employed by the National Food and Nutrition Commission on a net salary after tax of K200 per month, plus housing allowance, which was

not taxable, and leave pay at four days per month. The evidence of the respondent is quite clear that

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until the time of his wrongful detention he was employed as claimed and his salary and allowances were also as claimed. The learned Attorney-General submitted the following: "Mr Chishala told the court that he was at some earlier time employed by the National Food and Nutrition Commission and that at the time of his detention he was in the process of returning to the same job." This does appear to be in accordance with the evidence given by the respondent, who did not say that he had at any time left that employment prior to his detention. He merely said: "I will be returning to my previous job." The learned trial judge misdirected himself when he accepted the submission of the learned Attorney-General and, as the loss of earnings must be a direct consequence of the unlawful detention, I would award damages in respect of this claim for the sum of K1,200 loss of earnings, K240 housing allowance and K160 leave pay; making a total of K1600.

(3) *Supplementary Food.* As indicated, this claim cannot be entertained.

For each of the respondents I would award special damages as follows:

	K
1st Respondent, Peter Musonda	
Family Visits	527,52
2nd Respondent, Faustino Lombe	
Fish Trade	842.00
Family Visits	28.00
	870.00
3rd Respondent, Victor Ngandu	
Family Visits	108.00
4th Respondent, Jameson Chapoloko	
Family Visits	120.00
5th Respondent, Robert Kafula	
Family Visits	39.60

6th Respondent, Justin Chimba	
Family Visits	500.00
7th Respondent, Davies Mawaba	Nil
8th Respondent, Alfred Musonda Chambeshi	
Family Visits	99.00
9th Respondent, Josiah Chanka Chishala	
Loss of earnings	1,600.00
Family Visits	22.00
	1,622.00

Judgment

Doyle CJ: I agree with judgments delivered by my learned brothers, with one reservation. I doubt if money voluntarily expended on visits for personal reasons can properly be recovered as special damages.

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The point has, however, not been argued and the State has accepted the principle that they are recoverable, though the *quantum* has been contested. In the circumstances I do no more than express my reservation.

The appellant is entitled to the costs of the appeal and the respondents are entitled to the costs of the cross - appeal.

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