

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

RAMPHEI MPHEI Appellant

v

TSAANE RAMOCHELE Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 15th day of January 1982

This is an appeal against the Judgment (dated 14th February 1980) of S.L. Mapetla a Resident Magistrate sitting at Mafeteng in which he awarded Tsaane Ramochele (respondent and original plaintiff) the sum of M300 as damages for defamation. Ramphei Mphei (the appellant and original defendant) is alleged to have uttered the following words at a market place in Mafeteng on or about the 6th June 1974.

"Tsaane Ramochele is a thief. I shall eventually call in the police so as to have him arrested and beaten to death. He is a proud one who takes other people's animals without mercy".

I shall for convenience refer to the parties as plaintiff and defendant.

The plaintiff did not issue summons until the 9th December 1975, i.e. 18 months after the event. He demanded M500 as damages.

In his plea, filed on the 26th January 1976, the defendant:

- (1) denied that he ever uttered the words complained of at the market place and put the plaintiff to the proof thereof, and
- (2) that if he did he was justified in doing so because the plaintiff took his cow and used it without permission and refused to replace it after promising to do so.

The plaintiff replied on the 6th June 1976 that he never took the defendant's cow as alleged and put the defendant to the proof thereof.

/The trial

The trial started on 15th July 1977, but was not completed until 19th October 1979. It is not necessary for me to go through the evidence in detail suffice to say that two witnesses, called by the plaintiff, testified that they heard the defendant say this to a crowd of seven or eight people. There was no evidence to show that those others had a clue who the plaintiff was.

The defendant denied that he was at the market place on that day at all saying he had been visiting a herbalist at Gidion's and called his wife to support him. When the defendant went into the box (apart from denying that he was at the market place on 6th June 1974) his defence was that the plaintiff was indeed a thief, and not only in respect of the defendant's own cow referred to in the pleadings but also in respect of sheep and cattle stolen from other persons as well. Indeed the defendant did enlarge further upon other aspects of the plaintiff's character.

The magistrate

- (1) was satisfied that the words were actually uttered and believed plaintiff's two witnesses and rejected the defendant's testimony and also his wife's, and
- (2) was satisfied that the defendant's allegation that plaintiff stole his own cow was not true. The record of evidence shows the reasons clearly.

I am not prepared to disturb findings of fact. An appellate court is not in the same position as the trial court on matters of credibility. I have not heard the evidence or seen the witnesses the magistrate had. Unless there are cogent reasons to do so an appeal court is loathe to interfere.

Now Mr. Kolisang's main submission is that the magistrate was adversely influenced by the defendant's rather wild allegations against the plaintiff when giving evidence in the box. He submitted that what was said by the defendant against the plaintiff in court was privileged. He referred to McKerron on Delict 7th Ed. p. 194 wherein the learned author writes:

"Statements made in the course of judicial proceedings by the parties to a suit, or by witnesses, attorneys, advocates, magistrates or judges are provisionally protected, provided they are relevant to the matter in issue. A similar privilege attaches to statements made in the course of quasi-judicial proceedings.

The privilege is not easily defeated; especially

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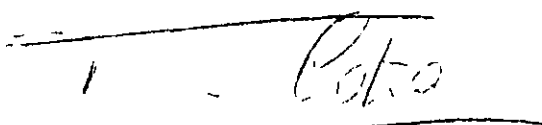
in the case of statements made by persons appearing in a representative capacity before judicial or quasi-judicial tribunals. As has been pointed out, such persons must be allowed considerable latitude as to what they say in presenting their principal's case and trying to persuade the tribunal to adopt a view favourable to him".

Mr. Kolisang's argument is that the impressions that the magistrate had formed about the defendant should not have been taken into account when he had to assess his credibility on the main issue of whether the words were actually uttered at the market place, which was a separate issue from the views expressed by the defendant when in the witness box.

With respect ^{to} the qualified privilege the learned author refers/has no relevance to a case of this nature. It applies only if the plaintiff had lodged a separate action for defamation based on the words allegedly uttered in Court. The point here is that the plaintiff's witnesses were found more reliable than the defendant's and what the defendant had said on cross-examination was merely taken into account in assessing his credibility.

I myself would not have awarded R300, since only two people appear to have been interested in the utterances. It was not in permanent form, i.e. in a news paper or in writing. However the plaintiff had not asked for interest and it had taken the plaintiff quite a long time to have his character vindicated.

I would affirm the award of M300 without interest and dismiss the appeal with costs.


CHIEF JUSTICE
15th January 1982

For Appellant : Mr. Kolisang

For Respondent: In Person