

IN THE HIGH COURT OF LESOTHO

In the matter of :

MOTHETSI MAFEREKA Plaintiff

v

1. THABO MOOJANE)
2. MOSHOESHOE KHOMOTSANE) Defendants

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 30th day of December 1983

This is an application to rescind a default judgment entered into by Kheola AJ in favour of the plaintiff in the sum of M20,354.82 against the two defendants jointly and severally. It is necessary to review the facts which gave rise to this application.

On or about 25th August 1981 along the Hlotse-Pitseng road, and at Hlotse bridge, a collision occurred between two motor vehicles namely a bus registration number C 0346 owned by the first defendant and driven by the second defendant and a Gallion grader registration number LXA 4560 owned by the Lesotho Government and driven allegedly in the course of his employment by one Ntsie Zakaria Marimo. The owner of the bus, Thabo Moojane, then issued summons against the Solicitor General representing the Government of Lesotho alleging negligence on the part of the driver of the grader and claiming the amount of M48,000 damages being

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the value of the bus apparently a total write off. The Solicitor General filed a plea denying liability. The case (CIV/T/390/82) is still pending.

The plaintiff Mothetsi Mafereka was a passenger for reward on that bus. There was third party cover for passengers. The plaintiff was very severely injured and was paralysed from the chest downwards.

The Lesotho National Insurance Corporation admitted liability and compensated Mothetsi Mafereka in the sum of M12,000 which is the maximum amount allowed under the law. Since his injuries were very substantial he issued summons against the owner of the vehicle Thabo Moojane and the driver of the vehicle Moshoeshoe Khomotsane at common law claiming the balance of the damages he had allegedly suffered. Both defendants entered pleas to defend. They clearly intended to deny liability and by inference they attributed the damages suffered by the plaintiff entirely on the driver of the grader because they have clearly sued the owner thereof. After a number of letters exchanged between Mr. O.K. Mofolo for the plaintiff and Mr. Snyman representing the two defendants no plea was filed. They were barred from pleading. At the date of hearing Kheola AJ refused further extension or lifting the bar and proceeded to hear evidence and then entered judgment for the plaintiff as aforesaid in default.


There are many reasons why this application ought to be granted at any rate on the question of liability. The default judgment was entered at the time when attorney for the defendants was engaged on a long murder trial before Mofokeng J. There was also difficulty in communication between the plaintiff's and defence attorneys occasioned by the well known delays on the borders between the Republic and Lesotho at the material times which also

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hampered the defendants from seeing their lawyer and visa-versa.

In short I am not satisfied that there was wilful default in filing the plea certainly not by the defendants themselves. The attorney was somewhat negligent but it does not always follow that the Court should penalise the party concerned, and I am unable to say that their defence is groundless. In cases of motor accidents involving serious personal injury there are many factors to be considered including the question of contributory negligence, joinder of third parties, and apportionment of damages. Whilst confirming the quantum of damages I set aside the judgment on the question of liability. Leave is given to the defendants to file a plea within 21 days from today and to take steps, if they wish, or so advised, to join third parties to enable the Court to determine the issue fairly once and for all.

Costs of the application shall be paid by the defendants in any event because Mr. Mofolo was probably technically correct in resisting the application though I think he would have been wiser if he had not.


CHIEF JUSTICE

30th December 1983

For Defendants/Applicants : Mr. Koornhof
For Plaintiff : Mr. O.K. Mofolo