

IN THE HIGH COURT OF LESOTHO

In the matter of :

JONATHAN PEETE

Plaintiff

v

1. NTIEA RAMETSE }
2. MOTINYANE RAMETSE }

Defendants

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr.
Justice T.S. Cotran on 4th January, 1983

The plaintiff, a messenger in the local court of Bela Bela, is claiming the sum of M15,000 general damages for pain and suffering and the sum of M25 special damages for medical fees, from the two defendants jointly and severally, for an alleged unlawful assault on his person.

The defendants are brothers. In their plea first defendant admits assaulting the plaintiff by hitting him with a stick on the head but says the circumstances under which he did do were justified. The second defendant denies assaulting the plaintiff at all.

The story that emerges is as follows :

The first defendant is the chairman and one of the messengers of the chieftainness of Nokong in Bela Bela in the district of Berea. On or about the 13th December 1979 the plaintiff's cattle were impounded for grazing in a reserved area. The plaintiff sleeps at his place of work during the week but goes home at the weekends. He had been informed by his wife that their cattle have been impounded and that she had arranged for payment of the fine (M3.50) and had got the cattle released. The plaintiff says his cattle (7 heads) were the only cattle impounded. The first defendant says that other people's cattle had been impounded as well and that the plaintiff was not singled out. He added that another

/messenger

messenger of the chieftainess did the impounding.

At about 5 p.m. first defendant went to visit his brother second defendant at his home. The plaintiff says that the path from his place of work passes the house of second defendant and whilst on his way home he saw the first defendant, and his brother, at the forecourt and he went to ask the former for a receipt of the fine his wife had paid. The plaintiff was on horseback. As soon as he arrived he says the first defendant stabbed him with a sword on the mouth and the second defendant hit him with a knobkerrie three times on the head. He went to hospital on the 14th December and spent a month as an in-patient. He suffered severe pain and was speechless for a month.

The defendants were prosecuted at T.Y. They were found guilty of assault with intent to do grievous bodily harm and fined M50 each or 5 months imprisonment. They appealed but the Judge (Rooney J) enhanced their sentence to 12 months imprisonment.

The doctor's evidence as deposed to in the magistrate's court was admitted by consent. He confirmed that the plaintiff was speechless when admitted. He had a large swelling in the scalp and the doctor thought the force used was moderate to severe. The plaintiff spent 16 days in hospital (not a month) and when discharged still had difficulty in his speech. The doctor examined the plaintiff again on the day he gave evidence (on 14th April 1979) by which time the plaintiff had a slight improvement. The doctor thought his condition will stabilise after 18 months.

This was over three and a half years ago. There is no further medical evidence. When the plaintiff appeared before me he spoke with no difficulty and I think he got over the worse a very long time ago. He never lost his job and he gave me no details of loss of amenities of life or of anything else for that matter.

First defendant testifies that the fine levied on plaintiff's trespassing cattle was paid not to him but to the chieftainess herself and the plaintiff's wife got a receipt. He was present when this happened. He went to

/visit

visit his brother(second defendant) and whilst there the plaintiff arrived on horseback in a belligerent mood. The plaintiff's usual path does not pass second defendant's house. Plaintiff dismounted and was the first to strike. First defendant says he warded off the blow and struck the plaintiff with a stick once. He says the plaintiff was not assaulted by second defendant.

Second defendant says the plaintiff carried two sticks and was the initial aggressor. He denies that he hit the plaintiff himself.

A witness called Pula testifies that he was at the chieftainess's place and the plaintiff had earlier in the day been enquiring about first defendant in an angry mood and when he did not find him he rode away saying he was going to kill him.

I do not think that I am bound by the fact that the two defendants have been convicted and I have to consider only the evidence before me.

On balance of probabilities the plaintiff was in fact looking for first defendant, perhaps not to assault him, but to argue and quarrel with him. There has been trouble between them before over the subject of illicit grazing. I think the plaintiff by coming to second defendant's home when it was unnecessary for him to do so has provoked the two defendants to a certain extent.

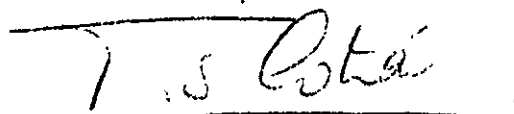
The principles governing a case of this nature are summarised in McKerron's Law of Delict 7th Edition p. 1561 as follows :

"It is submitted that the principle of retorsion - in the modern law at any rate - has no application to 'real' injuries, and that, unless a case of self-defence can be made out, an assault can never be justified on the ground of provocation, however, is a ground for mitigation of damages; so much so that the court may, on proof of provocation, refuse to assist the plaintiff, and hold that by reason of his having provoked the assault he is not entitled to any damages".
(See also cases cited).

I do not think the defendants made out a case for self-defence but they are liable for damages reduced to a

sum commensurate with the almost total lack of evidence on prognosis of the plaintiff's health after April 1979.

I assess the general damages suffered at M400. I accept the quantum of special damage. I give Judgment for M425 against both defendants jointly and severally the one paying absolving the other. Costs are awarded to plaintiff on the magistrate's court scale.

A handwritten signature in dark ink, appearing to read "T. S. Ota", is written over a horizontal line.

CHIEF JUSTICE
4th January, 1983

For Plaintiff : Mr. Masoabi

For Defendants: Mr. Matsau