

IN THE HIGH COURT OF LESOTHO

In the matter of :

PETER MOHALE Plaintiff

v

MOHAU	1st Defendant
MAKARA	2nd Defendant
ANDRIES	3rd Defendant
SEBOKA	4th Defendant
NOLUTSHUNGU	5th Defendant
SOLICITOR GENERAL	6th Defendant

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 28th day of June, 1983

In this action the plaintiff Peter Mohale claims damages for assault against five police officers and the Solicitor General (as representing the Government) in the sum of M5011.70 split into

M4000 for pain and suffering
M1000 Contumelia
M11.70 Medical expenses

The medical reports are agreed to by both parties' legal representatives and the dispute centres about the way the plaintiff received his injuries. I will go into some details later suffice it now to say that the plaintiff swears he received the injuries at the hands of the five police officers, whilst three of the police officers swear that the plaintiff fell or jumped from the police landrover in which they were carrying him to "show them where he had buried money" allegedly stolen by him from his former employer after the plaintiff had confessed to them that he committed the theft; and two police officers swear they were not there at all. The plaintiff was employed as a driver in Care Lesotho and was involved in an accident in a vehicle belonging to the organisation. They apparently held him to be at fault and wanted to deduct M30 per month from his salary, presumably until the repair bill is settled, but the plaintiff thought that that "was too much" so he left the service of Care and repaired to his home. That was in October 1978.

On the 29th October 1978 in the middle of the night three men appeared at his home who included a gentleman called Gilmour or Gilman, who was the plaintiff's superior officer at Care Lesotho. W/O Katane was in charge. They took him without further ado to the charge office where he was kept overnight. These persons are not defendants to the action, but the plaintiff says that next morning W/O Katane told him that Gilmour or Gilman, had informed the police, that in his (Gilmour or Gilman's) absence from his house, he (the plaintiff) had gained entry thereinto and stole the keys to the office safe and emptied it of M20,000 in cash. This allegation the plaintiff denied. The plaintiff adds that the police asked him to account for his movements the previous day, which he did, and mentioned that he was with a Mr. Makhene who worked for Lesotho Fibre Glass and lived in Lekhaloaneng. They proceeded there and took from that house a pair of shoes and a rope. Then the police went to his own house and searched it. They found nothing. They took him to the police station where he spent another night.

The following day 31st October 1978 the plaintiff was called to W/O Katane's office and asked if he still denied he stole the money. He replied he did. He was returned to the cells.

At 8 p.m. someone took him out and handed him to Trooper Seboka (D4) who insulted by saying that he, the plaintiff, was a bastard, and handcuffed him with one hand. The plaintiff resisted this manoeuvre with his left hand, but Seboka kept pushing, and plaintiff resisting, until Seboka got him to the charge office, where he saw Mohau(D1) Makara (D2) Andries (D3) and Nolutshungu (D5). Seboka was trying to put a brown plastic bag over his head, and the plaintiff, was also resisting that. His hands were then handcuffed from his back, and his head covered by force by the plastic bag. They threw him into a landrover and he felt three persons sitting on him. He could not see but thought the vehicle travelled first on a good road and thereafter on a bad road. The vehicle then stopped and he was thrown on his belly. He testifies further that:

- (1) He was flogged for a long time on the soles of his feet.
- (2) Nails and pins were applied between the toe nails and the toes.
- (3) The handcuffs were twisted (presumably with a stick) and his right hand was fractured.
- (4) He was pierced many times on the ankle.

/(5) Fire

- (5) Fire was applied to his ankle.
- (6) He was pierced and burnt with fire on the top of his toes and left leg.

His head was covered throughout.

They then took him back to the charge office where the handcuffs and bag were removed. He could identify the five defendants. There was no question of mistaken identity he says because he knew them all from the days when he worked in the American Embassy.

He was taken to hospital at 12.30 a.m. The police told the doctor that plaintiff had fallen from the vehicle. He interjected to the doctor that he had not fallen but was beaten. The doctor put a splint and told the police to bring him the following day. They went back to the charge office but the officer in charge of the cells refused to accept him on the ground that his condition when he left the cells was not the same condition as when he was brought back. He was left to lie in the passage the rest of the night.

In the morning W/O Katane instructed Mohau (D1) to take him home. He replied that he should be taken to hospital not home since he has been injured. The police did so Mohau and Nolutshungu accompanying him to the hospital. There he was admitted as an in-patient and spent two months. He had an operation on his hand by Mr. Siddique with a plate inserted for the fracture bones to unite.

His health condition when giving evidence was that

- (a) his right hand was painful and he was unable to claw his fingers,
- (b) still has problems with the other injuries.

The second witness for the defendant was Mr. Siddique the surgeon.

The first medical record, admitted by consent, is Exhibit C which is the Form LMP 47 given to a patient by the police allowing him to receive treatment. It is dated 1st November 1978 and at the last page there is an entry, put by someone we do not know, which states "injuries all over the body" The second relevant entry is "He has been assaulted by the police". We do not know who wrote that remark and it is not evidence but the information must have come from the plaintiff and is consistent with what he told the Court. The doctor (not

/Mr. Siddique)

Mr. Siddique) states further that he found a fractured right radius and ulna, that the injury was not dangerous to life, and that he was admitted on 1st November 1978, On 14th November 1978 the same doctor noted that "reduction had been done two times with failure and degree of disablement will be determined by the surgeon later."

Mr. Siddique attended to the patient and gave a report on 2nd August 1979. That would be 8 months after the event. Mr. Siddique testified in Court. The report is self-explanatory and will be reproduced in full.

"Bophelo bo bottle ke leruo la
Sechaba
Health is wealth
Tel 22501 - Ext 151

Queen Elizabeth II
Hospital
P.O. Box 122,
Maseru 100
Kingdom of Lesotho

August 2, 1979

Dear Sir,

re: MR. PETER MOHALE -HOPITAL NO. 018562

Please refer to your letter dated 24th April, 1979 which was addressed to the Medical Superintendent and I have received it only last week. This is due to new changing secretarial staff and I shall try to rectify this. In future it will be more quicker if department of surgery medical reports are addressed to me and there will be no confusion.

Mr. Mohale was admitted to this hospital on 31/10/78 with an alleged history of assault. He had abrasions of both wrists and fracture of right radius and ulna. He had poor sensations of both hands and movements of left wrist were very weak.

Manipulation and reduction of his right forearm fracture was tried on 3rd and 7th November, 1978 but satisfactory position could not be obtained. An open reduction was done on 14th November, 1978 and fracture was fixed by metal plate. He was given intensive physiotherapy for his hands movement which showed sign of recovery. He was discharged from the hospital on 13th December, 1978 and Plaster was removed after 6 weeks. He continued physiotherapy with gradual improvement.

I have seen him today and he complains of feeling of coldness of right finger, inability in bending his right elbow fully and some difficulty in typing.

ON EXAMINATION: A young healthy man of average built. General examination did not reveal any abnormality. Rt. Arm shows scars on the dorsum of wrist and 10 Cm. scar of the operation. Lt. Arm shows scar on the wrist and forearm. There is a scar on right ankle and left great toe.

Right Arm: There is no wasting of the muscle and power is normal. The sensation of right hand diminished compared to left but this does not follow any pattern of nerves.

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The Elbow joint is normal and has full range of movement. The wrist is normal and has full range of movement. The fingers also have full movement. There is (five) limitation of pronation and supination of forearm.

Left Arm: There is no weakness of the arm. The movements of all the joints are full and sensation normal.

CONCLUSION: Mr. Mohale suffered fracture of right forearm and multiple abrasions. He needed an operation for proper reduction of his fractures. He had nerve contusion of both arms which has recovered. The coldness of right hand will also improve. His slight limitation of right forearm movements will persist.

Yours sincerely,

(Sgd) M.A. SUDDIQUE O.B.E.
F.R.C.S.(Eng)

Mohaleroe, Sello & Co.,
Mohokare Chambers,
P.O. Box 619,
MASERU. 100
Lesotho "

The surgeon had been called to give evidence on 3rd April 1982, i.e. almost three years after his first report. Considering the fact that he sees hundreds of patients, and the fact that no detailed notes were made on admission, he cannot say if the patient was burnt and pierced. He himself saw no such injuries. The ankle injury was minor. What was serious was the fracture of the wrist.

The good surgeon was requested to give a final report and he did so. This was admitted by consent and is reproduced below :

" Department of Surgery

M.A. Siddique
B.Sc F.R.C.S(Eng.)Fics
Head of the department

Q.E. II Hospital,
P.O. Box MS 122,
MASERU. Lesotho

4/8/82.

Honourable Chief Justice,
High Court,
Maseru.

My Lord,

I have been asked to examine Mr.Tseliso Peter Mohale for his injuries and give a final report.

Mr.Mohale is complaining pain and weakness of right forearm and numbness of tips of fingers and thumb of right hand.

Examination of right forearm showed no wasting of the muscles but there is slight weakness of the grip of

/right

right hand. The muscles of elbow and wrist joints are normal.

The movements of right elbow and wrist joints is full and normal. The supination and pronation of forearm is limited by 5 <

There is some tenderness in the middle of the forearm due to the protruding screw. The sensation of forearm and fingers are normal.

X-ray of forearm shows that fracture has healed satisfactorily in good position and there are 2 screws projecting beyond the bone.

Conclusion: Mr. Mohale had fracture of the right forearm bones which has healed well and there is minimal limitation of movement. The pain is due to rather long screws which will be relieved completely by removal of screws.

His weakness of right hand grip is also not severe and his permanent disability can be calculated as 5% of his total capacity.

Yours sincerely,

(Sgd) M.A. Siddique
Surgeon Specialist: "

Det. Trooper Makara (D2) testifies that he was one of the team who interrogated the plaintiff at the charge office. After the plaintiff denied being involved in the theft of M20,000 not once, but three or more times, he finally confessed voluntarily to the officers and said he will take them to the spot where he had hidden the money. He was loosely handcuffed and put on a landrover, Trooper Andries (D3) driving, with himself and Trooper Nolutshungu (D5) in the front seat, and two troopers, Mokone and Moqhobela at the back with the plaintiff. Troopers Mohau(D1) and Seboka (D4) were not there at all.

After passing the LTTC gate on the Mafeteng road Det. Trooper Mokone banged at their window and after the vehicle stopped said the plaintiff threw himself. He went to see plaintiff on the road who complained that his wrist had been fractured. The handcuffs were loosened to relieve the pain. The police vehicle was driven to hospital where the doctor confirmed the fracture. All the plaintiff's evidence was a concoction and a fabrication.

Det. Trooper Andries(D3) testifies that he too was one of the investigating team. He denied that the plaintiff was assaulted or that a plastic bag was put over his head. He adds that plaintiff was interrogated "closely" for some 15 - 20 minutes, denied at first that he stole his employer's money,

/but

but at the end admitted and said he will show them the spot. Then he drove the landrover, with the same troopers mentioned by Trooper Makara, with the plaintiff in the back. He stopped the vehicle when there was banging from the rear and saw the plaintiff on the road. With some embellishments the story is the same as Trooper Makara's.

Det. Trooper Nolutshungu (D5) gave, more or less, the same evidence as Trooper Andries.

The two troopers who, it was alleged, were not at the interrogation or on the trip (trooper Mohau D1 and trooper Seboka D4) testified to this effect.

Det. Sgt Mokone (D6) gave evidence supporting the police story. He added that he himself was on the vehicle at the time of the incident. The evidence I have from Trooper Makara was to the effect that the troopers who were in the back of the landrover with the plaintiff were trooper Mokone and trooper Moqhobela.

I do not know if Sgt Mokone was a trooper in 1978 and I misunderstood the spelling of his name. Be that as it may I have to decide on the credibility of only one man, against the credibility of a posse of policemen, none of whom gave me the slightest confidence that their version was more probable than the plaintiff's for the following reasons :-

1. It is not explained on what basis the plaintiff "confessed" after having denied being involved in the theft so many times before.
2. If that assertion of a confession is true, it is completely beyond my comprehension (if the injuries were the result of an accident (if not an assault) that the police forgot all about the crime and produced not a scintilla of evidence, either of a statement made by the plaintiff to this effect, or any follow up by them to recover the money to which place of secretion the plaintiff undertook to lead them.

Looking at the police witnesses, their demeanour and reactions to questions, they struck me, precisely as Mr. Sooknanan described them, as a bunch whose evidence cannot be trusted.

I have now to assess the difficult question of what damages to award. The medical evidence shows that the plaintiff

/ is now

is now fairly well but with a disability of 5%. Even 5% is too much for a person who is presumed to be innocent until the contrary is proved. On the other hand there is nothing in any of these three reports that substantiates piercing and burning of the toes and leg and soles of his feet. I can only conclude that if they existed none of the doctors thought worth a mention. It is possible there was some exaggeration here.

I would award :

- (1) M1650 for assault, pain and suffering
- (2) M350 for contumelia,
- (3) M11.70 for medical expenses.

making a total of M2011.70.

The respondents will pay the costs.

CHIEF JUSTICE
28th June, 1983

For Plaintiff : Mr. Sooknanan

For Defendants: Mr. Mafisa