

IN THE HIGH COURT OF LESOTHO

In the matter between :

ANTHONY CLOVIS MANYELI

Plaintiff

and

VINCENT MAKHELE
DESMOND SIXISHE

1st Defendant
2nd Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 29th day of August, 1983.

Plaintiff has filed with this court a summons commencing action in which he sues the two defendants for damages for defamation. In his declaration to the summons as amplified by further particulars, plaintiff has averred, in part, that:

" 7.

On or about 28th JUNE, 1980 and at MOKEMA, LESOTHO, defendants made and published the following statement regarding the plaintiff, namely, that he, together with one BIEMANS, unlawfully stole the property of the members of the ROMA VALLEY CO-OPERATIVE.

8.

On or about 13th JULY, 1980, in the course of a meeting held at MAFEFOANE, LESOTHO, Defendants repeated the said statement.

9.

At a meeting held at MOKEMA, LESOTHO, on or about 28th JUNE, 1980, defendants

2/ distributed

distributed and thereby published a written statement in which plaintiff was accused of endeavouring to bring communism into LESOTHO. He was also accused of raping women, murdering people and of robbing people of money, vehicles and household goods. He was also accused of burning down the shop of Chief MASERIBANE, and that he injured the servants of the said Chief MASERIBANE. He allegedly spoke ill of the police force and was a thief who stole livestock. They accused plaintiff of being untrustworthy and an enemy of Chief LEABUA JONATHAN. They alleged that plaintiff spoke ill of the said Chief JONATHAN and other leading members of the Party and that plaintiff was not loyal to his own party.

10.

All of the aforesaid statements and/or publications:

- 10.1 Were made with reference to the plaintiff and were so understood;
- 10.2 Were made and/or published unlawfully;
- 10.3 Were made and/or published with the intention of defaming the plaintiff;
- 10.4 Were defamatory per se, alternatively contain the innuendo ^{That} plaintiff is a criminal, murderer, thief, rapist, and that he is dishonest, untrustworthy, immoral and that he acts improperly.
- 10.5 Were understood by the hearers and/or readers of the said statements and/or publications as referring to plaintiff and of being defamatory as set out above.

11.

As a result of the aforesaid defamatory statements, plaintiff was injured in his good name and reputation and has suffered damages as follows :

- 11.1 In respect of the verbal statement, referred to, on 28th JUNE, 1980
..... R10,000,00.

- 11.2 As regards the verbal statement,
referred to, on 13th JULY, 1980...R10,000.00
- 11.3 In respect of the aforesaid
written statement published on
28th JUNE, 1980 as aforesaid ... R30,000.00

12.

Defendants are liable towards plaintiff
for payment of the aforesaid amounts in
solidum.

WHEREFORE PLAINTIFF CLAIMS FROM DEFENDANTS IN
SOLIDUM:

1. Payment of the amount of R10,000,00
2. Payment of the amount of R10,000,00
3. Payment of the amount of R30,000,00
4. Payment of interest on the aforesaid
amounts at the rate of 6% per year from
date of judgment herein to date of
payment.
5. Costs of suit.
6. Further and/or alternative relief.

The defendants opposed the action and to
plaintiff's declarations as aforesaid, their plea, as
amended, was, in part, as follows:

"As paras 7,8,9,10,11 and 12 thereof

Defendants deny each and every allegation
herein contained as if specifically
traversed and denied and puts plaintiff to
the proof thereof.

ALTERNATIVELY and in the event of this
Honourable Court finding that one or both
Defendants did publish and distribute the
said written statement as alleged, which
is denied Defendants aver that the occasion
of the publication thereof was under the
circumstances privileged.

Wherefore First and Second Defendants pray
for an Order in terms whereof Plaintiff's
claims be dismissed with costs."

4/ Two witnesses

Two witnesses were called in support of plaintiff's case and he himself testified on oath. Although they did not call any witnesses on their behalf, the defendants themselves gave evidence on oath.

The fons et origo of the matter was an article, of which the plaintiff was admittedly the author, that appeared in the "Moeletsi oa Basotho" issue of 15th June, 1980. The article was written in the Sesotho language and bore the heading in very prominent block letters :

"NAKO EA HORE BAKRISTE BA IKHETHELE TSELENG
TSE PELI."

A fair translation of that article was handed in as annexure "C" to Exhibit "A". It reads :

"Time Christians Chose Between two Roads.

It is long, on many occasions and even with comparisons, that I have advised and warned Leabua Jonathan about the danger that will befall him for befriending P.F. which is his enemy, the enemy of B.N.P. and Basotho. All that I said P.F. would do to him have been fulfilled as I said. For how many times have I advised him that P.F. would make all his friends turn away from him. I have often stated that the aim and intention of P.F. is to capture Lesotho Government for communists.

Today it is clear that we have come to crossroads. Chief Leabua has placed the B.N.P. members in trouble by setting Sixishe at them, whom I wonder if there is one B.N.P. member who can tell us how he gets involved in the administration of B.N.P. when his home is in Thembuland in the Cape. He has already been in Russia as he himself states. As I write this he has again gone to the communists. It seems like he is undergoing a training to learn ways which a communist Government adopts in oppressing a nation that does not like communism. We of Maama area say it will be our dead bodies which will go to communism.

5/ I wonder

I wonder if Chief Leabua is a Catholic like myself. Is the insult that Sixishe has insulted the Father of Catholics in all the world (me inclusive) nothing to Leabua? I say this because this insult came out of his messenger's mouth. Chief Leabua is dead silent.

In Lesotho we say the messenger does not have to be blamed for messages he conveys, it is the person who sent him that has to be blamed - "moro-muoa ha a na lonya, lonya le na le khaloli". His Excellency the Head of Catholic Church in Lesotho has already stated that the Catholic Church has nothing in common with communism.

A testing time has come to Christians. There has come a time when Christians have to choose between two roads; to listen to the Church or the Government, to hear God or man. The B.N.P. members have to choose between two roads; to adhere to the B.N.P. manifesto which says "We are against leaders" who "work together with communist countries in deliberately placing the future Lesotho in danger" or to go with those "who through receiving monies from communist countries have become Russian and Chinese stooges. Not through our own liking we have been brought to this point which I call cross roads, and we have to choose between two roads.

At a pitso which was held at Taung on 24-5-80, Chief Leabua said to the Bataung that a Nationalist who publishes his news through Leselinyana is a Judas Inscariot. All Christians know from the Bible that Judas is the man who rebelled against the Lord Jesus, he befriended the enemies of Jesus and planned with them to kill him. Chief Leabua should know that Bataung (of whom I am a member) have never been rebels and will never be.

In Lesotho history there have been rebels. During the 1865 war (Ntoa ea Seqiti) the person who rebelled against Basotho was Chief Molapo (Mokoena, not a Motaung). Was it not the sons of Molapo who lived at a place of one boer by the name of Janefeke? During Gun War (1880) it was the son of Molapo, Jonathan who rebelled against the Basotho and joined their enemies to fight them. It appears like a Molapo it is a great pride to rebel which even Chief Jonathan Molapo himself is proud of because when he sings his praises he says .

"Tsukulu of Leribe rebels
Seoezha meets Mokutu half
way. The Whirlwind of
Lejaha's battalion!"

In 1865 when it was fierce Molapo joined the enemy (Boers) to fight Basotho. In 1880 when it was bad, Jonathan Molapo joined the enemies (English) to fight Basotho. Today in 1980, Chief Leabua when it is bad he joins the enemy (communist Russians) to fight B.N.P. members, Christians, Basotho. For this reason and many others, if Chief Leabua still wants rebels like Judas he should go to Leribe, he will find them there, not anywhere else.

A.C. Manyeli - Roma"

(my underlining)

Defendants' evidence was that Plaintiff was Ex-Cabinet Minister in the ruling Basotho National Party (B.N.P.) and one time the Party's elected representative for Maama constituency. In 1975, plaintiff lost favour with the party and by the decision of the Executive Committee was expelled from the Party ranks. The decision was endorsed by the committee of Maama constituency. Plaintiff was therefore, no longer regarded as a B.N.P. member. Notwithstanding the Executive Committee's decision which was accepted by the committee of Maama constituency,

7/ plaintiff was ...

plaintiff was holding himself out as a member of B.N.P. and the Party's representative for Maama constituency thus creating confusion among the B.N.P. followers. The article, annexure 'C' to Exhibit A, was a clear example of plaintiff's persistent attempts to sow the seeds of division among the followers of B.N.P. by launching false attacks against the leadership of the party.

In his evidence, plaintiff admitted that he was Ex-Cabinet Minister in the Government of the ruling B.N.P. and in 1975 a decision purporting to expel him from the Party membership was taken. However, the people who took the decision had no legal right to do so and his purported expulsion was, therefore, illegal and of no effect. He was, therefore, still a B.N.P. member and the Party's representative for Maama constituency. As regards the article published in the "Moeletsi oa Basotho" newspaper, plaintiff's contention was that it was nothing but a strong warning to the Prime Minister against the danger that would befall him for befriending people he (plaintiff) referred to as members of the "Popular Front" which was his enemy, the enemy of B.N.P. and the Basotho. Asked what he meant by "Popular Front", plaintiff said it was a name given to certain people (of whom 2nd Defendant was one) by their acts. Whatever that means I have read plaintiff's article and there is no doubt in my mind that it is not only critical of but belittles the Party's leadership in the minds of the right thinking people and the words I have underscored in paragraph 5 of that article clearly indicate that it incites division among the followers of B.N.P.

After reading the article, 1st and 2nd defendants who were respectively the Secretary-General and the

8/ Executive Secretary

Executive Secretary of the B.N.P. concluded that it was an attack on the Party's leadership and openly encouraged division among the Party followers. They, therefore, brought the article to the attention of both the Chairman and the leader of the Party for their necessary decision as to what steps should be taken to counteract its inevitable effects. The decision was that as a remedy to the inevitable effect of plaintiff's article, a reply should be made to give a lie to what he had said in that article. To this end the defendants were given a mandate to convene Pitsos within the area of Maama constituency where plaintiff was mainly operating. Consequently two pitsos were held within Maama constituency, the first at Mokema on 28th June, 1980 and the second at Mafefooane on 13th July, 1980. At both these pitsos, the defendants were the guest speakers.

It was common cause that in his speech at Mokema and Mafefooane pitsos, the 2nd defendant concentrated on plaintiff's expulsion from the party membership and defended himself against the accusation made by the plaintiff in the abovementioned article published in the "Moeletsì oa Basotho" newspaper that he (2nd defendant) had insulted the Pope by libelling him a communist.

The crucial speech was that given by the 1st defendant at Mokema and repeated at Mafefooane pitso. He had admittedly opened his address by reading out plaintiff's article in the "Moeletsì oa Basotho" newspaper.

According to plaintiff's evidence in the course of his speech, 1st Defendant accused plaintiff of being disrespectful to the Prime Minister by referring to him simply as "Leabua" i.e. without attaching any Title.

9/ 1st Defendant also....

1st Defendant also said during the term of his office as Cabinet Minister in the Government of Lesotho, plaintiff had not been a successful minister and, in fact, did not do much for the people of Maama constituency. He uttered and, therefore, published the defamatory words or statements complained of ad para 7 of the declarations to the summons.

The defendants' version was that after reading plaintiff's article in the "Moeletsı oa Basotho", 1st defendant commented on the article paragraph by paragraph. It was in the course of his comment on the article that 1st defendant pointed out that plaintiff was disrespectfully referring to the Prime Minister simply as "Leabua" without attaching a title of any sort. He also mentioned that in his term of office as Cabinet Minister in the Government of Lesotho, plaintiff had not been a very successful minister and illustrated the point by reminding the constituents that it was plaintiff as a Minister of Education who had introduced the system of automatic promotion into the Educational policy of this country which system turned out to be a complete fiasco. 1st defendant further mentioned that plaintiff was not doing much for the people of Maama constituency and again illustrated the point by pointing out that plaintiff was the Chairman of Roma Valley Co-operative Society in the Maama constituency but his (1st defendant's) office was being inundated with complaints that people could only invest into but not borrow from the society. The affairs of the Society were known only to plaintiff and a certain Biemans but no longer disclosed to the members. Plaintiff and Biemans had, therefore, changed the purpose for which the Society had been established. As a reply to the complaints, 1st defendant, therefore, assured the people that he would cause what he termed an "audit investigation" into the whole matter.

Defendants denied that in his speeches both at Mokema and Mafefooane, 1st defendant had used the word "stole" as alleged ad para 7 of the declaration to the summons. As the "audit investigation" he had in mind had neither started its work nor submitted any report, 1st defendant was, at that time, not in possession of facts on which he could have based the accusation that plaintiff and Biemans had stolen the society's money or property.

Be that as it may, one thing clear is that the complaints which 1st defendant said inundated his office about the plaintiff and Biemans were not a sort of laurels or praises on their dealings in the affairs of the Society. They were certainly complaints depicting plaintiff and Biemans as dubious characters and, in my view, publication of the existence of such complaints together with the statements that plaintiff had not been a successful Cabinet Minister and had not done much for the people of the constituency of Maama tended to bring plaintiff into contempt and diminish the esteem he ought to have been held as an ex-Cabinet Minister and Chairman of the Co-operative Society of the people of Maama constituency. They were, in my opinion, defamatory statements for as Mckerron says in his invaluable work, The law of delict (7th ed) at p. 171

"A defamatory statement is one which tends to diminish the esteem in which the person to whom it refers is held by others."

It is important to emphasise at this stage that, on the evidence, the defamatory statements were alleged to have been uttered by the 1st defendant alone, in the course of his addresses at Mokema and Mafefooane pitsos, and Mr. Jordaan who appeared on behalf of the plaintiff

in this case conceded, rightly so in my opinion, that should the court decide in favour of the plaintiff damages should be awarded against 1st defendant alone in respect of these statements.

It was common cause that at the Mokema meeting certain pamphlets (written in the Sesotho Language) were distributed among the people who had gathered for the meeting. One of the pamphlets was handed in as annexure "A" to exhibit "A". A fair translation thereof was also handed in as annexure "B" and it reads as follows ;

" BASOTHO NATIONAL PARTY

Mr. Antony Manyeli is an enemy of B.N.P.

You will remember that the committees received a letter that was informing you about the decision of the Executive Committee, through which letter all members of our Party were made aware that an ex-Minister of Education, A.C. Manyeli, is no longer a member of Basotho National Party (B.N.P.). This decision to expel Mr. A.C. Manyeli was reached and put into effect by the Executive Committee on the 11th November, 1975 under section 7(2)(ii) of our Party Constitution.

Although it is now over five years since Mr. A.C. Manyeli was expelled from the Party, he still goes about deceiving the BNP members and some other people who do not know that he is no longer a Party member, he also creates confusion among our Party members.

The Committee at Maama's constituency No. 27 where Mr. A.C. Manyeli once stood for elections as a BNP member also agreed with the decision of the Executive Committee in this regard that it should have nothing to do with Mr. A.C. Manyeli because of the enmity which he now has towards our party. Mr. A.C. Manyeli has tried for a long time

and with many methods to sneak through to the leadership of the party - under the boers' deceit - and also tried to depose our Party leader, Chief Leabua Jonathan, from his post but he hopelessly failed.

When Mr. A.C. Manyeli became aware that his intention of insurgency had failed today he is out on campaign of deliberately hurling blatant lies against Chief Leabua Jonathan and some of our Party members who are in the executive. Manyeli says Chief Leabua Jonathan is a communist and that he sells Basotho to the communists.

This is a lie similar to the one that was fabricated by the Basotho Congress Party (BCP) and Marematlou Freedom Party (MFP) a few years ago, when they said you should not elect Basotho National Party (BNP) because Chief Leabua would sell you to the Boers. The BNP members refused to heed those lies, they elected Basotho National Party to lead them to an independent Lesotho; to date (under BNP) Lesotho still belongs to Basotho. The development and success that have been reached by Chief Leabua Jonathan's government is admired by the whole world which have aroused envy in the minds of the enemies of this country.

We all know that Chief Leabua Jonathan is a perfect Christian who is firm to his religion and who has always disagreed with the parties that wanted to turn Lesotho into a communist country and a spring board for those who wanted to fight South Africa with fire-arms; this is the reason why he stopped Communist Party of Lesotho to function in 1970.

It is Chief Leabua Jonathan who is still fighting a fierce battle to day against communism which Manyeli himself and Ntsu (assisted by the boers) are trying to introduce into Lesotho.

EXAMPLE NO.1

By raping people's wives (as they did with Basotho women in Butha-Buthe district and raped an Indian woman at Mafeteng).

EXAMPLE NO. 2

It is Manyeli and Ntsu Mokhehle who fight and kill Basotho Chiefs (as they did with the late Chief Lepatoa 'Mou in Butha-Buthe district).

EXAMPLE NO. 3.

It is Manyeli and Ntsu Mokhehle (assisted by the Boers) who have gone out on campaign mercilessly slaughtering innocent Basotho (as they did to our Party members at Kolo, that is the late Mr. Sello Mpakanyane and Mrs. 'Mathabo Kolonyane; they also cruelly murdered a young woman by the name of 'Manyeoe Leloha of Butha-Buthe district).

EXAMPLE NO. 4.

They are the ones who burnt the two boys of Mr. Kopano Chere in his cattle post hut at Ralobisi at Marakabei.

EXAMPLE NO. 5.

They are the ones who took away by force monies, vehicles and some other business and household property from Basotho (as they did to Tseliso M. Makhele and Mr. William Mbangula and many business people in the country).

EXAMPLE NO.6.

They are the ones who burnt Chief Maseribane's shop and caused injuries to his employees.

EXAMPLE NO. 7.

They are the ones who go about speaking ill of our respectable police and misrepresenting them to the nation with the intention of spoiling relations between the police and Basotho.

EXAMPLE NO. 8.

They are the ones who go about stealing Basotho's livestock and stealthily going to religious ministers and some christian organisations under guise of sheep while in fact they are wolves in sheeps' skins.

The BNP members have always said Manyeli is not trustworthy and that his talks and movements were questionable. Some even said Manyeli wanted to usurp the party leadership and to depose Chief Leabua Jonathan and his Deputy, Chief Sekhonyana Maseribane because (Manyeli) hates the Chiefs.

It has now become cristally clear and plain that Manyeli has bitter hatred towards our Leader, Chief Leabua Jonathan and some other Party members who are in the executive. He speaks ill of them and calls them by shameful names. Manyeli is on campaign to mar the BNP leadership to the nation. He has recently shamefully lied that the Party Executive Secretary, Mr. Desmond Tsepo Sixishe, said the Pope Joannes II of the Catholic Church is a communist. Mr. D.T. Sixishe, as we all know him, is an Englican and therefore cannot in any way insult or distort what the Holy Father, the Pope, stands for.

There is no person who is not aware that in recent years, when the members of BCP were attacking the Catholic Church trying to burn it and also at the time when the same BCP members wanted to bring it to an end (because they alleged that it was the Catholic Church Ministers who had made BCP lose the elections) it was Mr. Sixishe (this very one) through his newspapers who said and uncompromisingly protected the church and the ministers.

In his acts of valour you will recall how Mr. Desmond T. Sixishe was called by many names such as a refugee who had been bribed by Roman Catholic Ministers and staunch catholic women government to go about telling lies. This is what is said by Mr. Manyeli today when he emphasises how Mr. Sixishe is not a Mosotho and a BNP member.

According to Mr. Manyeli the only people that are Basotho are those of Bataung clan like himself. A person who is possessed of sober and sound mind may pause here and quickly ask himself how Mr. Sixishe could somersault and insult the Pope!

After Manyeli was rejected by Maama people and had been expelled from the party, he visited one boer by the name of Van der Berg, and that boer advised him that if the BNP members refused to dance to his tune - he should use teachers and ministers who were his friends (like Ntsu Mokhehle did when he wanted to use the Lesotho Evangelical Church as a means to achieve his goal) to start on a low scale a party called "Christian Democratic Party" and then say how Chief Leabua Jonathan and BNP are now communists.

At all places where Manyeli sneaks in to speak ill of Chief Leabua and our party, Christians refuse to be deceived; Manyeli failed and left in an embarrassing manner as the devil did when he had failed to beguile the Lord Jesus. Manyeli is ridding himself of the embarrassment by writing dreams and lies about our leader in the boers' newspapers and the local newspapers like "Moeletsu" and "Leselinyana".

We end up by expressing our gratitude to people at Maama's and other places in Lesotho who refused to swallow this bait of Manyeli and other enemies of Basotho. We convey to you the hearty gratitude of our leader Chief Leabua Jonathan for the hard work, courage and trust which the BNP members have shown him and also for supporting our government during trying times. The leader says you should be vigilant and hold fast in your prayers to your All-mighty God. It is through your untiring work, being firm to your religion and your support to the government up to this stage that we have succeeded to defeat the enemies of Basotho. The Leader assures you all of his loyalty to you, the Party and to consider your wishes foremost.

"Forward ever even amidst the hardships"

"Victory over Basotho nation hardship".

BASOTHO NATIONAL PARTY, P. O. Box 124, MASERU, 100. LESOTHO."

It was not disputed that the words describing plaintiff as a criminal, murderer, thief, rapist, etc.

in the above quoted pamphlet were defamatory per se. However, the defendants' denied that they were the authors of the pamphlets nor had they anything to do with its distribution at the Mokema Pitso.

It may be observed right away that in this article 2nd defendant is referred to as a third person. From this, it may safely be inferred that the article was apparently not written by the 2nd defendant himself. It could have been written by someone who was endeavouring to defend the 2nd defendant and the BNP leadership from the accusation levelled against them by the plaintiff presumably in his article published in the "Moeletsi oa Basotho".

Plaintiff's evidence supported by that of P.W.3, Shale Shale, was that they were among the people who had attended the meeting at Mokema. Shortly after their arrival at the meeting, they noticed that some pamphlets were being distributed. The distributors were apparently the school children but the 2nd defendant was definitely one of them. However, plaintiff and P.W.3 decided to go and greet the 1st defendant who was seated at a table on which there was a bunch of pamphlets. They presumed that it was a bunch of pamphlets that were being distributed by the 2nd defendant and others. On greeting him, plaintiff therefor asked 1st defendant for one of the pamphlets. 1st defendant obliged and at the same time gave a copy to P.W.3 who was next to him (plaintiff). As plaintiff and P.W.3 were returning to take their places in the crowd and before they could even have time to read their pamphlets, the former was accosted by certain women who forcibly took away his pamphlet claiming that contents thereof were filthy and they were therefore, going to burn the

pamphlet. Having been deprived of his pamphlet, plaintiff requested one Paulosi to go and get him another copy from 1st defendant and secretly place it in his (plaintiff's) vehicle. After the meeting plaintiff returned home where he had a chance to read the pamphlet. He was shocked to find that such defamatory allegations could be written and published about him. I must confess that I found it difficult to believe plaintiff that he had waited until he had arrived home to read the contents of this pamphlet. He had already received the pamphlet in his hands. Its very title "Mr. Antony Manyeli is an enemy of the BNP" must have strongly appealed to his curiosity at a mere glance. Indeed, after the pamphlet had been forcibly taken away from him, plaintiff made sure that he obtained another copy which according to his own evidence was secretly placed in his vehicle by Paulosi. A clear indication, therefore, that he was anxious to read the contents of that pamphlet. Unless he had had a chance to read the pamphlet from one of the people who had gathered for the meeting, it seems to me that a natural thing for the plaintiff to do would have been to read the pamphlet as soon as he returned to his vehicle.

As has been pointed out earlier, the defendants denied that they had written or published the pamphlets. According to 1st defendant, after he had returned home on the evening of the pitso, one of the copies of the pamphlet was handed to him by his driver. It was only then that he read it for the first time. Later that evening 2nd defendant called at his house to assess the success of the pitso and he showed him the copy of the pamphlet. They were both surprised by the contents thereof. Although the pamphlet purported to support

the cause for which the BNP stood, the defendants considered its contents to be immature and irresponsible. This was confirmed by 2nd defendant who further told the court that genuine publications issued by the B.N.P. always bore a signature, Party's stamp and were written on official paper bearing the Party's letter heads. As the Executive Secretary, he should know. Since the pamphlet did not answer to those identification marks, it could not, therefore have been an official document issued by the B.N.P.

The defendants were, however, perturbed by the fact that the pamphlet, admittedly defamatory of plaintiff purported, on the face of it, to have been issued by the B.N.P. Headquarters. They, therefore, made investigations to trace its author but all in vain. They concluded that it was one of those anonymous pamphlets often disseminated in this country. They, however, decided to call the attention of both the Party chairman and the leader to the existence of such pamphlets. The decision was that as it was anonymous nothing could be done about the pamphlet.

Although the defendants denied that they had distributed the pamphlets at the Mokema pitso, the evidence of plaintiff and P.W.3 that they did, was corroborated by P.W.2, Fanana Rock Fobo, who testified that after he had arrived at Mokema in plaintiff's vehicle, he parted company with him. He then walked to the spot where people were gathering for the pitso. As he came to the crowd, P.W.2 noticed that certain pamphlets were being distributed by 2nd defendant and some other people. He approached 2nd defendant and asked for one of those pamphlets. 2nd defendant actually gave him one. Annexure "A" to exhibit 'A' was one of those pamphlets.

I have observed all the witnesses as they testified from the witness box before this court. Nothing in their demeanor made me suspicious that plaintiff and his witnesses were not testifying to the truth when they said they had seen the defendants distributing the pamphlets in the manner they described. It should also be borne in mind that the major role in the distribution of those pamphlets was attributed to the 2nd defendant and not the 1st defendant. If it were suggested that plaintiff and his witnesses were out to incriminate the defendants falsely on this point, one would expect them to have attributed a major role to the 1st defendant who was both the Minister and the Party's General-Secretary and not the 2nd defendant who was, at the time a mere Executive Secretary.

From the witness box the defendants impressed me as shrewd persons. It may well be true that, as they claimed, anonymous pamphlets are often found scattered about in this country and Annexure "A" was one of such pamphlets. On that basis, it could, therefore, justifiably be said there was no conclusive evidence that the defendants were the authors of the pamphlet, Annexure "A". There was, however, evidence that the defendants were seen distributing and, therefore, publishing the defamatory pamphlets. I could find no good reason to doubt such evidence. Even if it were true that the defendants had not written the pamphlets, I find it highly improbable that they could have failed to observe their contents until long after the pitso.

The onus of proof, that the defendants had published defamatory statements and/or pamphlets about him vested in the plaintiff on the well known principle that he who avers bears the onus of proof. From the

From the foregoing, it is clear that I take the view that plaintiff has satisfactorily discharged his onus on this issue. It seems to me that once it has been proved that the defendants published the defamatory statements against the plaintiff a legal presumption arises that they did so animo iniuriandi i.e. they published the defamatory statement intentionally and with the object of injuring or defaming the plaintiff. That presumption is, however, rebuttable.

As has been pointed out earlier, the trouble in this matter started as a result of plaintiff's own article, annexure 'C', published in the "Mocletsi oa Basotho" which article clearly criticised the leadership and incited division among the followers of the B.N.P. Plaintiff had, so to speak, enlisted in a battle against the leadership of the B.N.P. and like any other combatant should have expected to receive some blows from his opponents. As Milne, J. put it in Matiwane v. Cecil Nathan, Beattie & Co. 1972(1) S.A. 222. at p. 227:

"persons who 'enter the list' are not entitled to expect an over-tender regard for their feelings".

However, as indicated in their plea, defendants relied upon the defence of privilege and not justification.

There was evidence scarcely challenged by the plaintiff himself that in 1975 a decision was taken to terminate his membership from the B.N.P. He, however, challenged the legality of that decision and, notwithstanding defendants' claim to its validity, regarded himself not only as a member of the B.N.P. but also as the Party's lawful representative at Maama constituency.

There could be no doubt, therefore, that plaintiff was a controversial figure in the politics of the B.N.P. That being so, it must be accepted that there was a confusion among the constituents of Maama constituency as regards plaintiff's true position in the B.N.P. and the constituency. In my view that confusion created the need for clarification.

In the circumstances, the important question was whether there was a reciprocal legitimate interest between the defendants and Maama constituents to communicate and receive such clarification. Having decided that plaintiff was a controversial figure in the politics of B.N.P. and Maama constituency, it seems to me obvious that the constituents had a legitimate interest to know whether or not plaintiff was their party representative and/or his standing in the B.N.P.

Every political party can ill-afford controversial figures in its leadership as this is bound to sow the seeds of division among the party followers. It follows, therefore, that in the interest of unity among its members, the B.N.P. had a legitimate interest to clarify to the constituents of Maama constituency the confusion created by the controversial position of the plaintiff. It was not disputed that the defendants had their party's mandate to communicate to the constituents clarification regarding plaintiff's true position in relation to Maama constituency and the B.N.P. as a whole. The question whether there was a reciprocal legitimate interest between the defendants and Maama constituents to communicate and receive the clarification on the confusion regarding plaintiff's controversial position must, therefore, be replied in the affirmative.

22/ That granted,

That granted, it must be accepted that, in the circumstances of the present case, the occasion under which the defamatory statements and/or pamphlets were published by the defendants at Mokema and/or Mafefooane pitsos was privileged. As Innes, C.J. once put it in Ehmke v. Grunewald, 1921 A.D. at p. 581 :

"where a person publishing the defamatory matter is under a legal, moral or social duty to do so or has legitimate interest in so doing and the person to whom it is published has a similar duty or interest to receive it, then the occasion of the publication would be privileged."

It was not disputed that at the material time 1st defendant was the minister of Rural Community Development and Co-operatives. There was also evidence that numerous letters were being addressed to 1st defendant's office from the people of Maama constituency complaining that the purpose for which their co-operative society had been established was being altered by the manner in which plaintiff (as the chairman) and a certain Biemans were conducting its affairs. The co-operative society was, as a result, facing the danger of collapse. In that event, it seems to me that it cannot be seriously disputed that the people of Maama constituency had a genuine interest to know what steps the authorities were proposing to take to correct the irregularities complained of in the running of their co-operative society and thus save its impending collapse.

As the Minister responsible for the Co-operatives one of the functions of 1st defendant must be to ensure the welfare of the co-operative societies in this country. He had, therefore, a legitimate interest, if not an obligation, to answer the complaints of the people of Maama constituency, regarding the alleged irregularities in the conduct of the affairs of their co-operative society. Assuming the existence of the

23/ complaints, it

complaints, it seems to me that there was a reciprocal interest between the 1st defendant and the people of Maama constituency to give and/or receive an explanation as to proposed remedies to regularise the conduct of the affairs of the co-operative society and thus save it from demise. That granted, it seems to me that on the authority of the decision in Ehmke v. Grunewald, supra, it must be accepted that the occasion under which the defendants are alleged to have published the defamatory words complained of ad para 7 of the declaration to the summons was also privileged.

It now remains to determine whether or not the defendants had abused the privileged occasion under which they had, in my finding, uttered or published defamatory statements about the plaintiff.

As has been pointed out earlier, plaintiff had testified before this court that he was the B.N.P. representative for Maama constituency, a fact which was denied by the defendants. In the article he wrote in the "Moeletsi oa Basotho" plaintiff has invited the followers of the B.N.P. :

"to choose between two roads; to adhere to the B.N.P. manifesto which says 'we are against leaders' who 'work together with communist countries in deliberately placing the future Lesotho in danger' or to go with those 'who through receiving monies from communist countries have become Russians and Chinese stooges."

It is clear from the above quotation of plaintiff's article that the choice is to be made between the adherers to the B.N.P. manifesto (of whom plaintiff claims to be one) and the B.N.P. leaders whom he describes as Russians and Chinese stooges. A

description which is clearly defamatory and far from being complementary to their esteem in a christian country like Lesotho. In my view, if they were to make an intelligent choice, the members of the B.N.P. were entitled to a full knowledge of the people from whom they were to make a choice of their leaders. In his article published in the "Moeletsi oa Basotho" plaintiff had given his side of the story that the B.N.P. leaders were Russian and Chinese stooges. They were therefore, unworthy of the choice of the B.N.P. followers. It was only fair that the B.N.P. leaders (of whom the defendants claim to be) should also give their side of the story. It should be borne in mind that "Moeletsi oa Basotho" is one of the main newspapers in this country. It has a wide circulation both inside Lesotho and beyond the borders. Although plaintiff had written and published his article which was defamatory of the B.N.P. leadership in that newspaper, the defendants confined publication of their equally defamatory statements about the plaintiff within Maama constituency where plaintiff was mainly operating.

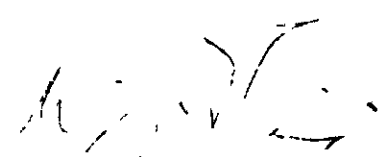
Contrary to what plaintiff had said in his newspaper article, the defendants' professed aim was to clarify to the people of Maama constituency the confusion created by plaintiff's article and to show that it was the plaintiff who was unworthy of their choice. This point 1st defendant illustrated by the examples of how the plaintiff was a failure as a cabinet minister in the Lesotho Government and the chairman of the Roma Valley Co-operative society. The defendants denied that they were the authors of the pamphlet annexure 'A'. In my finding, they had, nevertheless, distributed it at the Mokema pitso. The information contained in this pamphlet was in my view important in as much as it

25/ revealed how,

revealed how, at least in some quarters, the plaintiff was regarded, rightly or wrongly. If they were to make an intelligent choice between the plaintiff and the B.N.P. leaders, the constituents were entitled to know the full story not only about the B.N.P. leaders but the plaintiff as well.

In the premises, I come to the conclusion that it would not be proper to hold, in the circumstances of this case that the defendants have abused their privileged occasion.

Plaintiff's claim is, therefore, dismissed with costs.



B.K. MOLAI,
JUDGE

29th August, 1983.

For the Plaintiff : Mr. A.F. Jordaan
(instructed by Webber Newdigate & Co.)
For the Defendants : Mr. D.J. Lombard
(instructed by Harley & Co.).