

IN THE HIGH COURT OF LESOTHO

In the Matter of :

Mpiko Tlali

Plaintiff

v

Kokoana Liau Mathapolane

1st Defendant

Tahlo Liau Mathapolane

2nd Defendant

J U D G M E N T

Delivered by the Hon. Acting Judge Mr. Justice J.L. Kheola
on the 26th day of September, 1983

By summons dated the 7th August, 1978 the
plaintiff herein is claiming:-

CLAIM A

(i)	Medical fees	R	6.70
(ii)	Air Fare	R	5.00
(iii)	Possessions	R	80.00
(iv)	Pain, Shock and suffering	R	5,000.00

CLAIM B

(i)	Mealie Crops	R	500.00
(ii)	Tufts and blue grass	R	224.00
(iii)	Potato Crops	R	320.00
(iv)	Wool R100.00 x 3	= R	300.00
(v)	Sheep	R	2,000.00
(vi)	Costs of suit		
(vii)	Alternative relief		

/at the trial ...

At the trial the plaintiff abandoned the whole of Claim B and item (iii) of Claim A. The 2nd defendant did not make any appearance in this proceedings because he was not properly served with the summons.

In his particulars of the claim the plaintiff alleges that on or about the 24th June, 1975 at Bokong ha Suane, the 1st and 2nd defendants assaulted him with sticks and stones knocking him off his horse, thereby inflicting severe injuries to him. He alleges that he was hospitalised from the 26th June, 1975 to the 2nd September, 1975.

In his plea dated the 19th February, 1980 1st defendant denied having assaulted the plaintiff. He denied all the allegations made by the plaintiff and put him to prove them.

Plaintiff testified that on the 24th June, 1975 he was digging some potatoes on his field situated at a place called Roiselane. The field is very large and its western side extends to the other side of a hill. While he was digging potatoes someone shouted at him and told him that there were some sheep causing damage to his mealie crop on the western side of the hill. He rushed there and found forty sheep which he identified as those of 1st and 2nd defendants. He drove them to the pound and informed the chief that he wanted R80 as compensation for the damage caused to his mealie crop.

On his way back to the field he met the 1st and 2nd defendants who were holding timber sticks wrapped in a tape and they appeared to be belligerent.

/1st defendant ...

1st defendant asked him why he had decided to drive his sheep to the chief's pound instead of bringing them to him. Before he could answer this question 1st defendant rushed at him and hit him with a stick. Plaintiff warded off the blow with his left hand. That blow broke his wrist and the wrist watch. He dismounted his horse. 1st and 2nd defendants attacked him with their sticks, hitting him all over the body and breaking both his arms as he tried to ward off the blows with them. The beating went on till he lost consciousness. When he came round he noticed that he was surrounded by many people. He noticed the following injuries on himself: a broken left hand including two fingers, the right arm was broken at three places, the waist was broken and there was a deep wound below the right knee.

Plaintiff was eventually flown to Maseru Queen Elizabeth II Hospital where he was admitted on 26th June, 1975 and discharged on the 2nd of August or September, (the witness was not sure of the month).

P.W.2 Hlakae Manama testified that he was at plaintiff's field on 26th June, 1975. He saw when plaintiff seized the sheep which were causing damage to his mealie crop and drove them to the chief's pound. While plaintiff was still at the chief's place he saw 1st and 2nd defendants pass near the field. They were going in the direction of the chief's place. He saw when the defendants met with the plaintiff and they attacked him with the sticks they were holding. He rushed to them but arrived there after the defendants had finished assaulting the plaintiff.

P.W.3 Constable Mathapolane confirms that the plaintiff was assaulted on 26th June 1975 but he never saw his assailants.

/The first ...

The first defendant testified that he never assaulted the plaintiff that day. He was at his shop which is about 34 miles away from the scene of the assault. At the shop he was in the company of his two shop assistants. He told the Court that he never told his counsel that he was at his shop when the assault took place. He said he would not be calling his shop assistants to give evidence before this Court.

The plaintiff and his witness (Hlakae) were subjected to a careful cross-examination by Mr. Monaphathi but they remained unshaken and were quite sure of the identity of plaintiff's assailants. They struck me as truthful witnesses. There is no doubt in my view that the plaintiff was assaulted and he received very severe injuries. It was at broad daylight when the attack took place and the defendants are well known to the plaintiff and his witness. I see no reason why the plaintiff could possibly let his assailants go free and substitute them with the defendants. The reason for the assault is that the plaintiff had impounded defendants' sheep instead of taking them to them.

I found the 1st defendant to be not honest with this Court as well as with his own counsel. Mr. Matsau, who appeared for the plaintiff, contended that the 1st defendant's plea amounted to a bare denial and yet it appears that on the day of the assault 1st defendant was away at his shop. He never raised this defence of alibi in his pleadings, nor did he inform his counsel. In my view the defence of alibi is nothing but an afterthought and must be rejected. To show that it is not true, the 1st defendant is not even willing to call witnesses who are readily available to him to come and

/confirm

confirm his story. I am of the opinion that the plaintiff has proved on a balance of probabilities that the 1st defendant assaulted him on the 26th June, 1975.

The question of quantum of damages for pain, shock and suffering has been made difficult by the fact that no medical evidence was led and no explanation was given as to why the doctor who treated the plaintiff was not called. During the trial I saw that the report was in the hands of Mr. Matsau and that he was about to ask the plaintiff to hand it in when an objection was made. It appeared that the dates on the report conflicted with the evidence of the plaintiff so much that its author had to be called as a witness to explain it. There is no doubt in my mind that the plaintiff sustained serious injuries as a result of which he was admitted at Queen Elizabeth II Hospital on 26th June 1975 and discharged on or about the 2nd September, 1975. The period of his stay in hospital is proved by the receipts (Exhs A & B) which were issued on the 2nd September, 1975 when he was discharged from the hospital. P.W.3 Constable Mathapolane was obviously mistaken when he said the plaintiff was discharged from the hospital during the beginning of July, 1975. He had earlier said that the plaintiff had remained in hospital for more than a month; but from 26th June, 1975 to the beginning of July is not a month. It must be borne in mind that the witness is an illiterate man and that the events in this case took place more than 8 years ago.

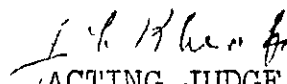
I have come to the conclusion that the plaintiff was hospitalised for more than two months and that when he was discharged on or about the 2nd September, 1975 his arms and hand were still in plaster of Paris. I am

/of the opinion ...

of the opinion that the length of the period the plaintiff remained in hospital will give me some sort of a guide in my assessment of the seriousness of the injuries and the quantum of damages. In Lepolesa Mahloane and others v Julius Letele 1974-1975 L.L.R. 255 it was held that although there had been no expert medical evidence before the Central Court, the respondent had given oral evidence as to the injuries suffered by him and the Court had also been able to observe his injuries in order to assess the quantum of damages. In the present case plaintiff gave oral evidence and was corroborated by p.w.3 Constable Mathapolane that his arms and hand were broken. I did not observe any injuries or scars because Mr. Matsau never asked the Court to do so. It may be that because the injuries were inflicted eight years ago nothing could be seen. The fractures may have completely healed.

There will therefore be judgment for the plaintiff for:-

- (a) R6.10 for medical expenses;
- (b) R5.00 for air fare from Khohlonts'o to Maseru;
- (c) R1,000.00 for pain, shock and suffering;
- (d) Costs of suit.


ACTING JUDGE
26th September, 1983

For the Plaintiff : Mr. Matsau

For the Respondents : Mr. Monaphathi