

IN THE HIGH COURT OF LESOTHO

In the matter of :

SIMON FRANK MAPETLA Plaintiff

V

THE SOLICITOR GENERAL Defendant

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice
J.L. Kheola on the 30th November, 1984.

On the 3rd May, 1983 the plaintiff issued a summons against the defendant. He claims payment of the sum of M50,000.00 damages suffered by plaintiff as a result of wrongful and unlawful arrest, detention and assault perpetrated on the plaintiff by certain members of the Lesotho Mounted Police acting within the scope and during the course of their employment with the Lesotho Government.

In his declaration the plaintiff averred that the defendant is cited in these proceedings as representing the Government of Lesotho. That on or about the 26th day of November, 1982 and in Maseru plaintiff was wrongfully and unlawfully arrested by certain members of the Lesotho Mounted Police (National Intelligence Service) among whom were Warrant Officer Seshophe, Sergeant Ratsolo and Trooper Motaung. Subsequent to that arrest plaintiff was wrongfully and unlawfully detained at the Maseru Police Headquarters for the period 26th November, 1982 to the 29th November, 1982.

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As a result of the said wrongful and unlawful acts plaintiff has suffered damages in the total amount of M50,000.00 made up as follows:

Damages for:

- (a) Unlawful arrest - R10,000.00;
- (b) Unlawful detention R30,000.00;
- (c) Assault - R10,000.00.

Plaintiff has averred that the requisite statutory notice has been duly given to the defendant by the plaintiff.

A Notice of Appearance to defend was entered on the 6th May, 1983 and a plea was lodged with the Registrar on the 14th June, 1983. In his plea the defendant admits that the plaintiff was arrested on the 26th November, 1982 but denies that the arrest was wrongful as alleged or at all. He contends that the arrest was lawful and it was in pursuance of the provisions of the Internal Security Act. He denies that the plaintiff was assaulted during his detention from the 26th November, 1982 to the 29th November, 1982.

So much for the pleadings.

The first witness called by the plaintiff is Dr. Maitin who testified that towards the end of 1982 he examined the plaintiff. He did not give him the medical certificate immediately after the examination but about two weeks later the plaintiff came back and asked for it. He gave it to him. That medical certificate was handed in as an exhibit "A". The doctor found the plaintiff to be in a poor physical state suffering from generalised rheumatic symptoms

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and moderately severe bronchial infection which had to be treated. He also was emotionally disturbed and suffering from insomnia for which therapy had to be given. The plaintiff was very nervous and very depressed.

The doctor told the Court that he had known the plaintiff for a very long time and that he had been the plaintiff's family doctor for a very long time. The plaintiff had always been a very very jolly person despite whatever he was suffering from but on this occasion the plaintiff was very depressed and nervous.

The plaintiff stated that he is the chief of Masianokeng and was born on the 13th January, 1907. He has 10 children and they all went to school. The eldest son Joas Tseliso Mapetla was the Chief Justice of this country. The other son Moabi Mapetla was the Permanent Secretary for Finance and another child is a doctor at Queen Elizabeth 11 Hospital. The plaintiff joined the civil service in 1925 and was an interpreter in the High Court till he retired in 1965. He has never been involved in any litigation in Courts and has a clean record. On the 26th November, 1982 the plaintiff was at work at Anglo Collieries Recruiting Organization where he was employed as a clerk. Three men were ushered into his office by the manager. He (plaintiff) asked them who they were. They were W/O Seshophe, Sgt. Ratsolo and Tpr. Motaung.

The three police officers searched in his desk and found a 1970 copy of "Makatolle" newspaper. They asked the plaintiff if he did not know that "Makatolle" was banned. He explained to them that at the time the ban was made he already had that copy of "Makatolle." They also found an

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electric cable and W/O. Seshophe said it could be used as an explosive. The manager interrupted them and said the cable was the property of the firm.

After the search in the office was completed the plaintiff was taken to his home at Masianokeng about 8 miles from the town. When they arrived at Masianokeng the plaintiff was asked whether he had any firearms. He said he had several firearms, ammunition and permits. He produced the firearms and their respective permits which were stapled together and gave them to the police. They told the plaintiff that they could not see a permit for the single barrel shotgun and that he would have to answer for that. The plaintiff insisted that the permit they wanted was amongst the others.

The police officers then said they wanted his letters and all the documents he had. The documents were given to them and they examined them and they finally seized six copies of articles he had written to the newspapers - four articles had appeared in the "Leselinyana la Lesotho" and two in the "Rand Daily Mail" of Johannesburg. At 1.00 p.m. the police officers left and promised plaintiff that they would return after lunch and take him back to work. At about 2.15 p.m. they arrived and took the plaintiff to the charge office. It was not explained to him why he was being taken to the charge office. When they arrived at the charge office Tpr. Motaung explained to him that he had been instructed to lock him up. It was his first time to be in a cell; its size was about 4 paces x 6 paces. There was a window high up on the wall, there was a mat on the floor and about 5 blankets and a latrine bucket but there was no toilet paper.

/He was

He was given no food that day. He slept in the cell that night and felt very depressed. At 9.00 a.m. on the following day he was given something to eat, and again at 3.00 p.m. he was given some bread and milk.

Plaintiff told the Court that when he was mentally troubled and lonely in the cell he saw Hilton Hotel building through the window; he took the blankets and piled them below the window and stood on them. He then started counting the windows of the hotel and trees near it. He stayed in the cell for the whole day on the 27th November, 1982. On the 28th November, at 3.00 p.m. he was taken from the cell to C.I.D. offices and put into an empty room. As he was standing there alone, a person appeared with a blanket stretched in front of him, so that he could not see him; he went behind him and covered him with a blanket. As that person was holding him with the blanket he ordered him to come. Plaintiff followed him and that person asked him who he was. He said he was Mapetla. He pulled him to the extent that he sort of ran after him; meanwhile that person was saying: "Mokhehle's Mapetla, Mokhetle's Mapetla, Mokhehle's Mapetla." He says he was never a member of any political party in this country.

He was taken to another office and made to sit on a chair. When he was uncovered there were five people sitting in front of him. They were Tpr. Motaung, Sgt. Ratsolo, Mr. Letuka and another person who used to give him meals in the cell. Mr. Letuka asked him what he was. He said he was a chief. He (Mr. Letuka) got very angry and said he was a better and senior chief than him. At this stage he was again covered with a blanket, and then he was asked how he and Mokhehle and their colleagues formed the

/L.L.A.

L.L.A. He said he knew nothing about the L.L.A. As he said so he heard the foot steps of a person running towards the office on the right side, he came back and hit him on the head with something like a rubber knobkerrie. While this was going on they were still asking him questions and also insulting him with his mother's private parts. They held his ears and shook him, they also slapped him. They prodded him on the chest with something like a muzzle of a gun. The insults hurt him very much because they were uttered by people much younger than him.

As the interrogation went on Mr. Letuka left for the adjacent office, he came back and uncovered him. He then put the muzzle of a pistol on his (plaintiff's) forehead and said he should choose death or life. They said if he was not going to tell them what they wanted they would press him and it would come out through the anus. Mr. Letuka asked him about the articles he had written to the press and said: "Mapetla, you have destroyed this nation with your papers, this nation no longer wants to follow the authority. You are not aware of how big your influence is over this nation." Plaintiff explained that he wrote articles for the press because he wanted things to return to normal in this country and that elections should be held.

They again covered him with a blanket over his head and one of them kept on bringing additional blankets and put them over him. The weight of the blankets caused him to sweat and he was also suffocating. They started to remove the blankets one by one till only one blanket remained. They again started to put them back on top of him one by one

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and when they put the eighth blanket over him he fell down. The blankets were removed and he was ordered to stand up but was unable to do so. He asked for water and they gave it to him. As he was unable to stand up on his own the policemen supported him and conveyed him into a vehicle. Mr. Letuka told him that the interrogation would continue on the following day and that he would be treated well. The interrogation had lasted more than two hours. He was taken back to the cell and he felt physically and mentally exhausted and depressed.

On the following day the interrogation started at 10.00 a.m. and it was conducted by a different set of men. He admitted that he assisted one Sekhesa to flee the country. Plaintiff explained that Sekhesa had been his friend for a long time. On the 23rd October, 1982 Sekhesa arrived at his home and informed him that he was fleeing from "Koeeko" (police) and he gave him refuge in his house. He advised Sekhesa that if he wanted to leave the country he could cross the border at Dondon %.

The plaintiff testified that before he was released Mr. Letuka warned him that if he continued to write to the newspapers they would kill him because things were bad in this country. He was also instructed to fill a declaration form in which he recorded that the detention for questioning was in respect of his possession of unlicensed firearm and press articles. He also declared that he had not been assaulted by the police during his detention, therefore he had no complaint against the police. He says what he declared in the form was not true, he was afraid that if he told the truth he would be taken back to the cell. After he was released he remained in bed for a week and was very depressed.

/The declaration

The declaration form was handed in as an exhibit B. It shows that the plaintiff's hand was very shaky when he filled it. Exhibit C is a piece of paper on which the plaintiff printed his name and signed it. This piece of paper was intended for comparison with Exhibit B. It shows that the hand of the plaintiff was fairly steady in Court.

The plaintiff closed his case.

The first defence witness is Lt/Col. Letuka attached to the National Security Services. On the 26th November, 1982 he gave instructions to members of his staff to go and arrest the plaintiff and detain him for interrogation. He was acting in terms of the Internal Security (General) Act 1982. He took this action because prior to the 26th November, 1982 he had information that a person named Thabo Sekhesa, who lives at Moshoeshoe 11, had some connections with L.L.A. - an organization involved in subversive activities against the Government of Lesotho. He decided to arrest Thabo Sekhesa for interrogation and instructed a team of police officers to go to the home of Thabo Sekhesa and arrest him. The team left for Sekhesa's home very early in the morning but found that he had escaped.

On the 2nd November, 1982 Thabo Sekhesa surrendered himself to the police and told them that he had gone out through the window of his house and fled to Masianokeng where he sought refuge in the home of the plaintiff. The plaintiff advised him to leave the country and to cross the border at Dondon. As a result of this information Colonel Letuka suspected that the plaintiff was also involved

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in subversive activities. The interrogation of Sekhesa was completed on the 3rd November, 1982 and he was released.

The interrogation of the plaintiff was done by a team of police under the command of Warrant Officer Ratsolo who was ill in hospital on the day of the hearing of this case. He (Col. Letuka) did not take any part in the interrogation, in fact, he did not even see the plaintiff at all during his detention. All he saw was a report of the interrogation handed to him on the 29th November, 1982. As he was satisfied with the report he ordered that plaintiff be released. He denied that he forced the plaintiff to sign a declaration form. He did not arrest the plaintiff immediately after the 3rd November, 1982 when he learnt that he was involved in subversive activities because the cells were full and he had no place where he could keep him.

The second defence witness is Trooper Mokhojoa. On the 29th November, 1982 Colonel Letuka instructed him and three other officers to interrogate the plaintiff. The other police officers were Warrant Officer Ratsolo, Warrant Officer Lethola and Trooper Griffith. The interrogation started in the morning and was completed before lunch. The plaintiff was very cooperative and no force was used. He (Tpr. Mokhojoa) was not involved in the interrogation that took place on Sunday (28/11/82) and knows nothing about it. He denies that he refused to give the plaintiff toilet paper.

Warrant Officer Lethola testified that on the 29th November, 1982 he received the order from Colonel Letuka that the plaintiff should be released from detention. He gave him a blank declaration form and asked him (plaintiff)

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to fill it up. The plaintiff duly filled the form and declared that he had no complaint against the police. Colonel Letuka was not present when the plaintiff filled the form. The plaintiff was not frightened when he filled the form but appeared to be shaky because of his old age.

Warrant Officer Seshophe also gave evidence but I shall not say anything about his evidence because he did not take part in the interrogation. Although he was the one who was in charge of the team which effected the arrest of the plaintiff he was merely acting under the instructions of Colonel Letuka. His instructions were that he should search the plaintiff for arms and any documents against the Government and also to arrest him because he had assisted Thabo Sekhesa to flee the country.

This was the close of the defendant's case.

It is trite law that in the case of unlawful arrest the onus is on the defendant to establish that the arrest was legally justified. In Thompson and Another v Minister of Police and Another, 1971(1) S.A. 371 at p. 374 Eksteen, J., put it in the following words:

"Both claims, i.e. in respect of the wrongful arrest and in respect of the malicious arrest, are based on the actio injuriarum and in both instances the animus injuriandi or dolus is an essential element. In the case of wrongful arrest, however, the intention may be said to be direct - dolus directus - as it is done with the definite object of hurting the defendant in his person, dignity or reputation (Melius de Villius on The Law of Injuries, p. 27). The arrest itself is prima facie such an odious interference with the liberty of the citizen that animus injuriandi is thereby presumed in our law, and no allegation of actual subjective animus injuriandi is necessary (Foulds v Smith, 1950(1) S.A. 1 (A.D.) at p. 11). In such an action the plaintiff need only prove the arrest itself and the onus will

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Then lie on the person responsible to establish that it was legally justified. (Thereon v Steenkamp, 1928 C.P.D. 429 at 432; Ingram v. Minister of Justice, 1962 (3) S.A. 225 (W) at p. 227)."

It is not in dispute that the plaintiff was arrested on the 26th November, 1982 and detained in police custody until the 29th November, 1982. If the arrest was lawful it will automatically follow that the detention was also lawful. But if the arrest is found to have been unlawful the detention will also be unlawful. Colonel Letuka told this Court that when he ordered the arrest of the plaintiff he was acting in terms of section 32 of the Internal Security (General) Act 1982. Subsection (1) reads as follows:

"A member of the police force may arrest without warrant a person whom he reasonably suspects to be a person concerned in subversive activity."

Subversive is defined in section 3(1)(F) of the Act and for the sake of easy reference I shall reproduce the whole definition:

"Subversive", without limiting its ordinary meaning, includes -

- (a) Supporting, propagating or advocating any act or thing prejudicial to public order, the security of Lesotho or the administration of justice;
- (b) inciting to violence or other disorder or crime, or counselling defiance or disobedience to the law or lawful authority;
- (c) being concerned personally or by directing organizing or training another person or other persons, in the commission, attempted commission, preparation or instigation of an act involving the use or threatened use of violence, including the use of threatened use of violence for the purpose of putting the public or any section of the public in fear;
- (d) intended or calculated to support or assist or benefit in or in relation to such acts or intended acts as are hereinafter described, persons who act, intend to act or have acted in a manner prejudicial to public order, the

security of Lesotho or administration of justice, or who incite, intend to incite or have incited to violence or other disorder or crime, or who counsel, intend to counsel or have counselled defiance of or disobedience of the law or lawful authority;

- (e) connection, association, or affiliation with, or support for, an unlawful organisation;
- (f) intended or calculated to promote feelings of hatred or enmity between persons or communities in Lesotho;
- (g) intended or calculated to bring into hatred or contempt or to excite disaffection against any public officer, or any class of public officers, in the execution of his or their duties;
- (h) intended or calculated to seduce a public officer from his allegiance or duty;
and "subversive activity" has a corresponding meaning."

Now the question is whether the plaintiff has committed any subversive activity as defined in the Act. Or, to put it in another way, did Colonel Letuka reasonably suspect the plaintiff to be a person concerned in subversive activities. The Colonel has given as his reason for ordering the arrest of the plaintiff the fact that he assisted Thabo Sekhesa to leave the country. The first point the defendant had to prove is that the plaintiff knew that Sekhesa was concerned in subversive activities and assisted and advised him being fully aware of his involvement in subversive activities. The defendant has led no evidence to show that the plaintiff was fully aware that Sekhesa was fleeing from the police because they wanted to arrest him in respect of his subversive activities. He has not called Sekhesa to come and tell the Court what he told the plaintiff about his flight. The plaintiff told the Court that Sekhesa told him that he was running away from "Koeoko" which plaintiff considered to mean "being killed by the police". He told the Court that he

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did not know Sekhesa's political stance.

Section 18(c) of the Internal Security (General) Act 1982 (hereinafter called the Act) makes it an offence for any person who "inside or outside Lesotho knowingly harbours a person required to be detained under an interim custody order or detention order or gives him assistance with intent to prevent, hinder or interfere with his being taken into custody." A person described in section 18(c) is a person suspected of being concerned in subversive activity (See section 33(1) of the Act). I have underlined the word knowingly as an indication that the intention of the Legislature is to punish people who know that the person they are assisting is concerned in subversive activities. It is clear from the section that mere assistance to a person fleeing from the police is not an offence unless the person knows that the assisted person is a person involved in subversive activities. Thabo Sekhesa did not tell the plaintiff why "Koeeko" was chasing him and he merely assisted a friend because he did not wish to see him die in the hands of "Koeeko". I have come to the conclusion that there is not an iota of evidence to show that the plaintiff knew that Thabo Sekhesa was a person involved in subversive activities at the time he gave him refuge in his house and advised him to leave the country.

I must make it quite clear that if a person who is in lawful custody escapes and another person harbours him knowing well that he has escaped from lawful custody, that other person is guilty of an offence in terms of section 44 (2) of the Criminal Procedure and Evidence Act 1981.

Even under this section it must be proved that the person was in lawful custody. Thabo Sekhesa was not in the lawful custody of the police when he escaped through the window

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and went to the home of the plaintiff. Colonel Letuka made it quite clear that he was acting under the provisions of the Act and not the Criminal Procedure and Evidence Act 1981.

Now I come to the most important part of this case. Colonel Letuka said that he arrested the plaintiff because he gave assistance to Thabo Sekhesa about whom he had information that he was involved in subversive activities. Sekhesa returned to Lesotho on the 2nd November, 1982 and on the 3rd November, 1982 he was interrogated and released because the Colonel was satisfied he was not to be charged. I take this to mean that the interrogation revealed that Sekhesa was not involved in any subversive activities in that no connections between him and L.L.A. could be established. Now the question one may ask is this: if the person the plaintiff assisted to leave the country was found to be not connected with the activities of the L.L.A. nor concerned with any subversive activities why did Colonel Letuka arrest the plaintiff three weeks after he had found Sekhesa to be innocent? What further information did he have showing that the plaintiff was involved in subversive activities as defined in the Act? Surely, Colonel Letuka had convinced himself that the information he had received against Sekhesa was unfounded. He ought to have realized that whatever suspicion he had against the plaintiff had to fall away as soon as he found that Thabo Sekhesa was not involved in any subversive activities.

Mr. Browde, for the plaintiff, has submitted that the arrest of the plaintiff had nothing to do with Sekhesa. He says that the real reason why the plaintiff was arrested is the fact that he published certain articles in the press which were critical of the Government. He contends that it

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is nonsense to say that on the 3rd of November, 1982 Colonel Letuka knew that the plaintiff was a person involved in subversive activities against the State, but left him for nearly a month with his subversive activities simply because there was no cell in which he could interrogate him. I entirely agree with Mr. Browde that the reason given by Mr. Letuka is so untenable that it must be rejected. A person known to be concerned in subversive activities cannot be left free even for a single day because the security of the state is so important that no police officer can take any chances. The truth of the matter is that from the interrogation of Thabo Sekhesa it became clear that the plaintiff was not involved in any subversive activities and that is the only reason why Colonel Letuka did not arrest him immediately after the release of Sekhesa.

I now deal with the articles published in the newspapers by the plaintiff. The defendant has not alleged that any of those articles had subversive material except that they were critical of the Government of Lesotho. If it had been proved that the sort of criticism that the plaintiff made in the articles had a subversive element that would be a different matter. The articles would have been produced before this Court and I would have been given the chance to give my interpretation whether they had any subversive element. As the articles were not exhibited before this Court I have found that the defendant does not intend to rely on them. Be that as it may, Colonel Letuka said one of the reasons why he arrested the plaintiff was that he wrote the articles. I must emphasise that a man cannot be arrested simply because he legitimately criticises the Government. It must be shown that the criticism was subversive to the security of the State in terms of section 3(f) of the Act. In my view the

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defendant has failed to show that the articles had any matter which could reasonably be regarded a subversive to State security. The suspicion Colonel Letuka had created by the publication of these articles, was not based on reasonable grounds.

It was also suspected that the plaintiff had unlicensed firearms. The plaintiff explained to the police officers who arrested him that he had permits for all the firearms found in his possession but he was given no chance to look for the permit. His contention is that all the firearm permits were stapled together and was still amongst the others when he was arrested. The licence was subsequently found by the plaintiff and in my opinion the police officers were negligent and also acted in a high-handed manner in arresting the plaintiff without a warrant. (See section 24(b) of the Criminal Procedure and Evidence Act 1981). I have not seen any provision in the Act authorizing a police officer to arrest without warrant any person suspected of being in possession of a firearm without a permit.

Mr. Tampi, for the defendant, has referred me to section 7(1)(f) which reads:

"A person who, inside or outside Lesotho -

(f) supports or benefits who does, intends to do or has done, any act with subversive intention;

is guilty of the offence of subversion and liable on conviction to imprisonment for a period not exceeding five years. In a prosecution for an offence under this section, it shall be presumed, unless the contrary is proved, that the accused had the subversive intention alleged against him under this section."

The plaintiff has not been charged with any criminal offence and bears no onus in the present case. We agreed

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from the outset that the onus was on the defendant to prove that the arrest was legally justified (Thompson's case, supra). The defendant had to discharge the onus on a balance of probabilities.

The plaintiff told the Court that the first session of interrogation took place on the 28th November, 1982. His interrogators were Colonel Letuka, Warrant Officer Ratsolo, Trooper Motaung and another officer who used to give him meals in the cell. He explained in great detail the inhuman treatment he underwent that day. Under cross-examination it was never put to the plaintiff that on the 28th November no interrogation took place. The effect of failure to cross-examine a witness was summarized by Claassen, J. in Small v Smith 1954(3) S.A. 434 at 438 when he said:

"It is, in my opinion, elementary and standard practice for a party to put to each opposing witness so much of his own case or defence as concerns that witness, and if need be, to inform him, if he has not been given notice thereof, that other witnesses will contradict him, so as to give him fair warning and an opportunity of explaining the contradiction and defending his own character. It is grossly unfair and improper to let a witness's evidence go unchallenged in cross-examination and afterwards argue that he must be disbelieved."

The evidence of the plaintiff was not challenged on a very important point that interrogation did take place on the 28th November. The only thing that was put to the plaintiff was that Colonel Letuka did not take part in the interrogation and that he was never assaulted. I am now being asked to disbelieve the plaintiff that he was interrogated on Sunday (28/11/82). This brings me to the question of credibility. The plaintiff gave me the impression of a very creditworthy witness and gave his evidence in a very straight forward manner. At one stage

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At one stage during his evidence-in-chief the plaintiff broke down into tears when he explained how depressed he felt in the cell. He gave me the impression that he was a truthful witness who made no exaggeration, for instance, when he said he fell to the ground when the heap of blankets was placed on him for the first time, he immediately corrected himself and said he only fell on the second occasion. On the other hand Colonel Letuka did not impress me as a truthful witness. For instance, when it was put to him that they degraded the plaintiff by not giving him a toilet paper, he denied this and yet he was not the person in charge of the cell in which the plaintiff was locked. According to him he never saw the plaintiff during the entire episode from the 26th to the 29th when he was released. Now why does he deny that at one stage the plaintiff had no toilet paper in his cell? Trooper Mokhajoa was so evasive that during the cross-examination I had occasion to warn him that if he went on at that rate his entire evidence would be discarded. In any case, he told the Court that he knew nothing about the interrogation that took place on the 28th November, 1982; he said a different group of officers may have interrogated the plaintiff on that day. But as I have already said Trooper Mokhajoa was totally unworthy of credit. He said on the morning of the 29th November Colonel Letuka instructed him and others to go and interrogate the plaintiff. They were four in the office when the order was given. Under cross-examination he attempted to retract from this statement by saying that the order was actually given to his immediate superior officers by Colonel Letuka and they in turn relayed it to him. The probabilities are that the interrogation took place on the 28th November, 1982 during

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which the plaintiff was assaulted, insulted and also humiliated.

Mr. Browde has submitted that the Court must draw an adverse inference against the defendant for failure to call Trooper Motaung who was available at the time of trial. The Court was informed that Warrant Officer Ratsolo was not available as he was ill in hospital. I agree that in a proper case an adverse inference may be drawn against a party who fails to call a witness who is readily available. The present case is a borderline case. The plaintiff said he was assaulted by a group of officers including Colonel Letuka and Trooper Mokhajoa; the defendant called the two officers and they denied that they took part in the interrogation on the 28th. He may have thought that his case had already been sufficiently proved by the two witnesses. (Webranchek v L.K. Jacobs & Co. Ltd. 1948(4) S.A. 671 (A.D.)). I am unable to draw any adverse inference against the defendant for his failure to call Trooper Motaung. The problem I see is that the defendant conducted his case in such a way that he was not denying that interrogation took place on the Sunday (28/11/82). He failed to challenge the plaintiff on this point and gave the impression that he was admitting this point. Notwithstanding this I thoroughly considered the evidence of Colonel Letuka and Trooper Mokhajoa and came to the conclusion that they were not truthful.

I may summarize the case by pointing out that the question of whether the arrest was unlawful is not decided by reliance on credibility of witnesses; the facts or reasons which prompted the arrest are not in dispute. The only question is whether those reasons may objectively

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be regarded as a sound basis or reasonable grounds for arousing the suspicion of Colonel Letuka that the plaintiff was a person concerned in subversive activities against the State. For the reasons I have attempted to give above my answer is in the negative, i.e. the suspicion was not based on reasonable grounds. My finding is that the arrest was unlawful and it follows that the detention was also unlawful.

As far as the question of assault is concerned that will greatly be determined by credibility of witnesses. For the reasons I gave above I come to the conclusion that the plaintiff has proved on a balance of probabilities that he was assaulted by the police on the 28th November, 1982.

As far as quantum of damages is concerned I have not found much assistance from the authorities. Mr. Browde referred me to a South African case of Ramsay v Minister Van Polisie En Andere 1981(4) S.A. 802. The case is reported in Afrikaans, a language I cannot read. In Ramolefe v The Principal Legal Adviser (1967-1970) L.L.R. 214 at p. 231 Jacobs, C.J. said:

"It is always a matter of difficulty to determine the amount to be awarded for an injuria of this type. Our law has always regarded the deprivation of personal liberty as a serious injury and where, as in this case, one is dealing with a professional man of good reputation in the community it seems clear that the amount awarded should normally be substantial."

In that case the learned Chief Justice awarded R1,500 as damages for wrongful arrest and malicious prosecution. In the present case the plaintiff is a chief of good reputation and his subjects must have known of his arrest.

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It was also proved that he is a respectable citizen of this country and was a civil servant for most of his life and attained the rank of interpreter of the High Court. His eldest son was the first Mosotho to be the Chief Justice of Lesotho. His other children held senior posts in the civil service. It seems to me that very substantial damages must be awarded to the plaintiff for the unlawful arrest and unlawful detention that followed. Nevertheless I must bear in mind that at the relevant time the security police were fighting with a formidable enemy known as the L.L.A. But that did not justify unreasonable behaviour on the part of the police. I am of the view that Colonel Letuka did not act in good faith because the evidence he had before him clearly showed that the plaintiff could not be a person concerned in subversive activities against the State.

Having thoroughly considered the matter and taken into account that the defendant has not challenged the amounts claimed by the plaintiff I have decided to award R8,000 (eight thousand rand) x damages for unlawful arrest and unlawful detention.

As far as damages for assault are concerned Mr. Tampi has argued that medical evidence does not support the plaintiff because it does not refer to any physical injury. I agree, but Dr. Maitin referred to depression. The plaintiff testified that when a heap of blankets was put on him he suffocated and fell down. He felt so weak that he had to ask for water and could not stand on his own without the support of some officers. After he was released from detention he had to remain in bed for a week. In Raputsoe v The Principal Legal Adviser (1967-1970) L.L.R. 133 an amount of R900 was awarded for pain and

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suffering and R3,000 for contumelia. In that case the plaintiff had suffered extensive physical injuries. In the present case the pain and suffering were of very short duration but the shock of suffocation, the insults and the putting of a pistol on the forehead of the plaintiff call for a substantial amount of award. I have decided to award R3,000 (three thousand rand) as damages for assault.

The result is that on the claims for unlawful arrest and unlawful detention and assault there will be judgment for plaintiff for R11,000 as damages. The defendant will pay costs.

ACTING JUDGE.

30th November, 1984.

For the Plaintiff : Mr. Browde

For the Defendant : Mr. T_ampi.