

IN THE HIGH COURT OF LESOTHO

In the Matter of

MOLAHLEHI LEJONE NTJA

Plaintiff

v

NAKO NAU  
MOHLOLO SEKONYELA  
ASHTON MPHOU  
THABO TEKANE

1st Defendant  
2nd Defendant  
3rd Defendant  
4th Defendant

J U D G M E N T

Delivered by the Honourable Chief Justice, Mr. Justice T S. Cotran,  
on the 15th day of April, 1986

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This is an action in which the Plaintiff claims damages for personal injuries allegedly inflicted on him by the four defendants in circumstances that will be described shortly. The claim is against them jointly and severally and consists of -

- (1) M10,000 personal damages for shock pain and suffering, disfigurement, hospitalisation, loss of amenities, and personal disability.
- (2) M10,000 for loss of future earnings in the open market, and reduced life span

- (3) M210 00 special damages for hospitalisation
- (4) M120 00 hospital expenses.
- (5) M2,000 00 for future medical expenses

The four defendants claim that they were "cattle rangers" i e persons assigned by a chief to oversee that no grazing takes place on a particular area of land, and that a "fight" took place which involved the plaintiff and his followers when he and they interfered "and or" resisted the impounding of cattle. The defendants deny assaulting the plaintiff in any way.

The defendants do admit that plaintiff may have been injured in the fight but say they are not responsible for the injuries or in anything following therefrom. The plaintiff had attached to his claim copies of three medical reports. The first annexure A is a police form. From it we learn that the plaintiff was admitted to Scotts Hospital, Morija, on the 10th March, 1982 with a deeply depressed compound fracture of the "R temporo parietal region" which required surgery, that the weapon could have been a stone, and that the force used was "savage". Under the degree of disability, the words "permanent and moderate" are circled (which does not help the Court very much) and that there will be a residual "(L) facial palsy". The plaintiff was discharged on the 25th March. Annexure B is the "Health Book" issued by the Ministry of Health to patients receiving treatment in Government hospitals or clinics. It shows entries mostly of payment made but probably also of treatment received which however is not described, and finally there is Annexure C dated 2-3-83 about a year after the event from Morija Scotts Hospital in which the following final prognosis was expressed.

"In my opinion the patient has recovered well from his serious condition but is unfit for heavy manual work. We have advised him to do light work or clinical work".

Apart from the reports no doctor was called to give viva voce evidence. The defendant's attitude to the medical reports is somewhat neutral. They do not deny plaintiff suffered injuries but they do not admit liability for the injuries and certainly do not admit the quantum of damages claimed.

The plaintiff himself says this "I was a boss-boy in the mines. I had 13 miners under me. I got M420 per month. After the incident I could not get my job back because I was hopeless. I had skull injuries and arm injuries which made me weak. I was refused my job. My skull still goes up and down" (He demonstrated this to the Court). He adds that he cannot hold anything heavy, but claims that he did use bodily power in his supervisory work.

The plaintiff's version of the incident was supported by two witnesses Manko Kopani and Putsoa Ntja (P.W.2 and P.W.3). The four defendants also testified and their version was supported by Mamphamane Mofoka (D.W.5).

The cause of the "fight", if we may call it that, is quite common in Lesotho. Two chiefs are usually involved, each one of them claiming a certain area of land within his jurisdiction. There may or may not have been a prior dispute either before a superior chief or the courts. Sometimes there is an adjudicator. But supposing something was resolved it does not necessarily mean

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that at a later period, often between the successors to the original disputants, it is not revived. Revival usually takes the form of opens the area for grazing, precisely when the disputing chief closes the area for grazing

This dispute about what happened must naturally be decided on bare balance of probabilities and on this balance the demeanor of the witnesses plays an important role

In my opinion the plaintiff and his witnesses were impressive in the witness box and I found them to be truthful witnesses.

I found that the plaintiff has proved his case on balance of probabilities.

The damages to be awarded are however more difficult of assessment. A "miners boss" is a supervising post. It is not a heavy labouring one. It does of course require a healthy person to discharge it, of this I am sure, and I quite believe that when the plaintiff returned to claim his job, he was told that he could not be taken back on account of ill health. He is not however completely unable to earn a living. The Court is handicapped by almost total lack of evidence on the details of damages and I must perforce here do the best I can and base my award on just an informed guess

The plaintiff has completed his treatment and the amount for future expenses must of necessity be small. I award

(a) M2,000 00

(b) M2,000 00

(c) M 210.00

(d) M 80.00

(e) M 300.00

Total . M4,590.30

Judgment is entered for the plaintiff accordingly against the four defendants jointly and severally with costs.



T. S. COTRAN  
CHIEF JUSTICE

15th April, 1986

For Plaintiff - Mr. Masoabi

For Defendants - Mr Pheko