

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

MAKOMORENG VITALIS MACHAI Appellant

v

NKO MAHLOANE 1st Respondent

MAHLELEHLELE MAHLOANE 2nd Respondent

SEBOKO MAHLOANE 3rd Respondent

J U D G M E N T

Delivered by the Honourable Chief Justice, Mr. Justice T.S. Cotran,
on the 18th day of April, 1986

This action was filed in November 1978. The trial commenced in May 1980, resumed in February 1986, and completed finally on the 18th March, 1986. The delay may not be a record but I think it is the duty of counsel and attorneys to ensure that delays of this magnitude are avoided.

The plaintiff claims from the three defendants jointly and severally the sum of M5,000.00 as damages for personal injuries allegedly inflicted by them. The particulars state that the sum claimed is for "pain, shock, suffering, contumelia and loss of amenities."

The first defendant admits assaulting the plaintiff but pleads justification on the grounds that he did so in self defence when attacked with a knife by plaintiff who damaged his bags of sorghum. The second and third defendants deny they assaulted the

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plaintiff at all and maintain that they were trying to restrain him from assaulting the 1st defendant when he was causing damage to the bags of sorghum.

The defendants admit the medical evidence, such as it is (Exh A) It is a photocopy and not very clear. We learn that the plaintiff had two wounds on the head, and a very small wound on the left hand. The wounds were not dangerous to life, but the doctor thought considerable force was used. The degree of disability was light to moderate. The plaintiff was admitted to hospital and spent 8 days. He attended hospital twice since discharge. He suffered from nothing thereafter, and suffers from nothing now.

The plaintiff swears he was hit on the head by D1 and D2 from the rear and on looking back saw D3 join D1 and D2. D1 was holding a knob kerrie. The plaintiff says he slipped and fell down and D1 kicked him on the mouth. Plaintiff says he lost his two front teeth. He denied that any of the defendants 2 and 3 attempted to intervene. Plaintiff maintains his sister and mother tried to intervene but were in turn assaulted when they arrived. The plaintiff was supported by Lebusang Thetsane P.W 2 and the daughter (who did not testify) of the owner of the complex, one Amelia Nko, a widow who died in July 1977.

The events leading to the incident, which were mostly common cause, should now be summarised.

Amelia Nko was widow. She lived with her sister, who was the plaintiff's mother. Amelia Nko had no living sons. For the past

thirty years or so the plaintiff was a friend, a relative and a provider and to some extent, the manager of her homesteads and arable lands. He did not live at her home regularly. Nor did Amelia's daughter. She apparently lived a distance away.

It is now common cause that the first defendant is the heir to Amelia's estate he being the eldest brother of her late husband. The other two defendants are junior brothers but all three asserted their rights by moving into Amelia's complex, to the resentment of the plaintiff, his mother and Amelia's daughter

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At the time of Amelia's death the sorghum from the lands had been reaped (either fully or partially) and placed on the floor of one of the huts in her complex. On her death the three defendants arrived and laid claim to all her property including the loose sorghum which they tried to put into bags.

There was great tension because the plaintiff claimed that he is entitled to the sorghum. He says he paid for the ploughing for the seeds, and for the labour. I believe the plaintiff in this respect and indeed the defendants do not appear to deny he is entitled to some but not all of the sorghum but they apparently occupied the widow's house and deprived the plaintiff's mother and Amelia's daughter of access. The defendants started filling the sorghum into the bags.

Now the plaintiff immediately complained to the chief who ordered that the status quo remain as before until the courts decide the issue.

It would seem there was some delay in disposing of the case

and the defendants went back to the chief and told him that the sorghum will deteriorate on the bare floor, and they proposed to put it into bags. The chief, acceding to defendants, but admittedly in the absence of the plaintiff or anybody on his side told them

"You are the heirs and if you want to fill the the sorghum into bags it will be your affair "

The chief himself did not testify, so what the chief said is hearsay, but be that as it may Amelia's daughter travelled to Maseru and informed plaintiff (who had just returned from a conference) of what happened

The plaintiff rushed to Amelia's home. He says he was calm The defendants say he was furious, in a fighting mood and carrying a knife. He started slashing the filled bags of sorghum allowing the sorghum to flow on the floor and they were simply trying to restrain him

I think the truth lies somewhere in between, I do believe that the three defendants did assault the plaintiff as he describes. The defendants interferred with the order of the chief in the first place and the allegation that the chief countermanded his first order has not been substantiated. None of the defendants suffered any injury

As usual in these cases it is difficult to assess the quantum of damages. I think that plaintiff is partly to blame. The injuries were not serious, there were no after effects, and I think the time taken to prosecute this case must somewhat weigh

against plaintiff.

My award is M1,200 to plaintiff with costs.

T.S. COTRAN
CHIEF JUSTICE

18th April, 1986.

For Plaintiff - Mr Maqutu

For Defendants - Mr. Matsau