

IN THE HIGH COURT OF LESOTHO

In the Matter between

HLOPHEHO MOEKETSE

Plaintiff

and

JOSEPH LEPEKOLA MATELA  
SOLICITOR GENERAL

1st Defendant  
2nd Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 25th day of April, 1986.

In an action brought by the Plaintiff against the Defendants for damages, the Defendants have raised a point in limine that the action is prescribed and must, therefore, not be entertained.

The background of this case is that on 27th August, 1984, Plaintiff filed with the Registrar of this Court Summons commencing action in which he sued the defendants for damages in the sum of M50,000.

The declaration, as amended and amplified by further particulars, disclosed that on 5th November, 1983 1st Defendant, acting in the course of his duties as a police officer in the employ of the Lesotho Government represented in this case by the 2nd Defendant, unlawfully shot and injured the Plaintiff. Consequently, the Plaintiff suffered damages in the sum of M50,000 being in respect of pain, suffering, medical expenses, loss of profit and amenities of life.

In their plea, the Defendants conceded the shooting but denied that it was unlawful. They stated that 1st Defendant shot the Plaintiff in self-defence and for that reason acted lawfully. Consequently the Defendants denied any liability to the Plaintiff. In any event, Plaintiff instituted his action after the period of six (6) months,

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from the date on which the cause of action arose, had elapsed. His action was, therefore, prescribed in terms of the Police Order No. 26 of 1971 (as amended) of which S.60 provides

"60. For the protection of persons acting in pursuance of this Order or any regulations made thereunder, every civil action against any such person in respect of anything done or omitted to be done in pursuance thereof shall be commenced within six months next after the cause of action arises and notice in writing of any civil action and of the substance thereof shall be given to the defendant at least two months before the commencement of the said action,

Provided that the court may for good cause shown, proof of which shall lie upon the Applicant, extend the said period of six months."

Mr. Tsotsi conceded on behalf of the Plaintiff that the action was commenced after six months from the date on which the cause of action arose, had expired and no written notice of the action and the substance thereof had been given to the defendants two months before the commencement of the action. He contented, however, that as the defendants' plea was that 1st defendant had shot and injured the Plaintiff in self-defence and, therefore, acted lawfully he needed no protection and could not be protected by the provisions of S.60 of the Police Order 1971.

Mrs. Ntsonyana for the Defendants took the view that as a police officer acting in the course of his duties 1st Defendant was acting in pursuance of the Police Order 1971 and was, therefore protected in all he did by the provisions of S.60 thereof.

One of the leading cases in which the question of the scope of the words "acting in pursuance of this order or any regulations made thereunder" was considered is Masikane v. Smit and Another 1965(4) S.A. 293 where Viljoen, J. dealing with S.32 of the South African Police Order No.7 of 1958 which is almost identical with S.60

of our Police Order 1971 had this to say on the issue

"I agree with Mr. Rosenthal that acts done "in pursuance of the Act", of which the policeman and the State must have notice, are intended to be wrongful acts. It has never been suggested that only regular or lawful acts fall to be embraced by the words "in pursuance of the Act." There are numerous cases decided in the past which laid it down that acts done "in pursuance of the Act" are unlawful or irregular acts creating a liability for the policeman and/or for the State. As early as 1907 this point was dealt with in Natal in the matter of Matiwane v. Nhlozana (1907)28 N.L.R. 532 at p.535, where Dove-Wilson J.P. is reported to have reasoned as follows

"The contention of the Respondent in the appeal is that that section can only give protection in the case of acts which are lawfully executed in pursuance of the Act. If that contention is right, there appears to be no meaning in the section, because it is obvious that where anybody does lawful act in pursuance of the Act, he needs no protection, and no action lies against him whether brought within four months or not."

There can be no doubt, therefore, that if 1st Defendant shot and injured the Plaintiff in self-defence he acted lawfully and on the authority of the abovementioned decision the provisions of S.60 of the Police Order, 1971 did not apply. In any event, whether or not 1st Defendant in fact acted in self-defence is a matter that can, in my opinion, be established on the evidence.

In the premises, I come to the conclusion that the point of law raised by the Defendants, in limine, ought not to succeed and it is accordingly dismissed with costs.

B.K. MOLAI

JUDGE

25th April, 1986.

For Plaintiff  
For Defendant

Mr. Tsotsi  
Mrs Ntsonyana.