

IN THE LESOTHO COURT OF APPEAL

In the matter between:-

NKAU MATETE

Appellant

and

THE MINISTER IN CHARGE OF POLICE AND 2 OTHERS

Respondents

HELD AT MASERU

Coram:

Plewman, J.A.
Tregove, J.A.
Ackermann, J.A.

J U D G M E N T

Plewman, J.A.

The Appellant (Plaintiff in the Court a quo) instituted action against the Respondents (Defendants in the Court a quo) for damages for his wrongful detention. I shall refer to the parties as the Plaintiff and the Defendants. In his declaration the Plaintiff alleged that he had been wrongfully detained at the Mokhotlong Police Station from the 25th September, 1979 to the 14th November, 1979 and again initially at Mokhotlong and then at Maseru from the 19th November, 1979 to the 18th March, 1980 (the second period of detention thus totalling 120days). In their plea the defendants admitted liability but put in issue the quantum of the damages claimed.

On the 22nd March, 1984 A Pre Trial Conference was held in terms of Rule 36 of the High Court Rules. The parties minuted an agreement in the following terms:-

"Both sides agree that Plaintiff's detention during the period from the 19th November, 1979 to the 18th March, 1980 spanning 120 days was unlawful and the Plaintiff is entitled to damages."

On this basis the matter proceeded to trial and on the 10th November, 1987 (there were numerous postponements) Molai J. awarded the Plaintiff the sum of M3 000 and costs. The Plaintiff asks this Court to increase the award.

In his judgment Molai J. relied upon the provisions of Section 12 (3) (a) of the Internal Security (General Amendment) Act of 1974 for holding that 60 days of the 120 days of the Plaintiff's detention was not illegal. He accordingly based his award on the illegal detention of the Plaintiff for 59 days. The record shows that the Defendants at no time sought to amend their plea to raise the legality of portion of the period of detention as a defence. Furthermore the Defendants were not given (indeed they did not seek) leave to withdraw the concession made at the Pre-Trial conference. In these circumstances the conclusion that the learned judge misdirected himself is unavoidable. This Court must therefore itself assess the damages and it is at large to substitute its own assessment of an appropriate award for that made by the learned judge.

In arriving at its own view on the matter it serves to note that the learned judge addressed the issue of damages on the basis that the Plaintiff was "an ordinary peasant" who had been illegally deprived of his personal liberty but that "he suffered no physical assaults and tortures." It has not been contended that in respect

of the agreed 120 days during which he was detained between the 19th November, 1979 and 18th March, 1980 this later statement was incorrect nor has it been contended that the learned judge's description of the Plaintiff is unfair. It has been argued, on the basis of a comparison with certain unreported cases, that the awards made therein may simply be increased in relation to the length of the Plaintiff's illegal detention when this is compared with the periods of detention which were found in those cases. I do not regard this as a reliable method by which to assess damages nor do I find sufficient similarity between the cases relied upon and the present case to render a reference to the awards made as guidance in the present case. I should perhaps add that the status of the respective Plaintiff is not the basis upon which the distinctions lie. Taking all the factors mentioned by the learned judge and the longer period of detention into account I believe that this Court should increase the award but that an award of M5 000 would be appropriate. I therefore make an order upholding the appeal and substituting the award made by the learned judge the sum of M5 000. The Plaintiff is entitled to the costs in the court below and by reason of his success also to the costs of the appeal and I so order.

C. PLEWMAN
(C. PLEWMAN)
Judge of Appeal

I agree (Sgd)

J. TRENGOVE
(J. TPENGOVE)
Judge of Appeal

I agree (Sgd)

L. ACKERMANN
(L. ACKERMANN)
Judge of Appeal

Delivered at Maseru this 28th day of July, 1988.

For the Appellant - Mr. W.C.M. Maqutu
For the Respondents - Mr. Mohapi.