CIV/T/233/84

IN THE HIGH COURT OF LESOTHO

In the matter of :

THABANG TSEKANA — Plaintiff

V

MINISTER IN CHARGE OF POLICE — 1st Defendant
SOLICITOR GENERAL — 2nd Defendant
MAKHOTLA — 3rd Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 25th day of October, 1989.

I have examined the record of the case and looked at the pleadings. I have also heard witnesses who gave evidence before this Court and finally have just heard the closing arguments.

The point that is foremost and upper most in my mind in coming to a decision that I will give at the end of this is that there seems to be a conflict between what is pleaded by the defence and what was led in evidence. There is this conflict between what is pleaded by the defence and the evidence that was led concerning the interrogation which is admitted in the plea as having been made on the 7th which is the day that the plaintiff says he was subjected to assaults.

The plea shows that the defence admits that there was such interrogation but the witnesses for defence deny any interrogation having taken place on that day. Then arises

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a question :

> "Why should they deny interrogation of the 7th - What is so perculiar about an interrogation having been made on a particular day - an interrogation which otherwise can be made on any other day?

And as properly put on behalf of plaintiff it appears that there must have been something that the defence witnesses were running away from.

I take the view that was stated in some other cases that the good of a defence case arises from a perfect case and the harm arises from any defect whatsoever. As I said I heard the evidence and I have gone through the submissions which have been ably made on behalf of both sides.

I can only refer briefly to some of them. The defence denies assault on the plaintiff, but however admits - this is common cause - that the plaintiff was arrested in April 1983 and he was brought to the charge office in the afternoon of the day in question./

The plaintiff gave evidence himself that on the day that he arrived; that's when he was taken to a room where defendant No.3 assaulted him - true enough the plaintiff and his witness are not at one as to the manner in which the assault is said to have taken place and the surrounding circumstances - he was assaulted.

The plaintiff says the assaults took place in a closed room, P.W.2 says it was not in a closed room; he could see when the assaults were going on. The plaintiff says D.W.2 was the only person who was assaulting him; and a point has been raised in submissions by the defence that the manner in which these assaults could have taken place, if plaintiff is to be believed, appears to be improbable because what it necessitated was that the plaintiff's feet would have had to be lifted by his assailant and at the same time whip lashes administered under foot by him.

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The defence submitted that even if that was to be done, taking into account the ordinary length of a whip, it would seem that performing such a feat would be impossible or performance of such a feat could never be effected with any measure of accuracy which shows that the assaults directed under foot, landed exclusively under foot. But as I pointed out earlier the gravamen of the matter, as far as I am concerned consists in the fact that there has been filed a plea by which the defence is bound hand and foot; namely that this plea shows that the plaintiff was interrogated on that day which the defence witnesses are denying. From this definetely an inference can be made that there are more things which may have been done to plaintiff than have been revealed in evidence. But the denial of these things is of course negatived by what is admitted in the plea. For these reasons then I find that the plaintiff succeeds in his case.

And now comes the question of assessment of his damages. He has claimed a total of M15000 broken down as follows :

R5000 is for pain and suffering;
M4000 is for contumelia; and
M5970 is for loss of earning while
M30 is for Medical expenses.

I am prepared to grant the M30 being in respect of medical expenses. As for loss of earning I think the defendants have made a good case that even according to the medical evidence that plaintiff is relying on, there is no permanent disability; and in that respect then the entire claim is refused under that head.

For contumelia I am prepared to grant him M3000 because the assaults as witnesses said were performed openly. This had in fact injured his dignitas. As for pain and suffering it has often or frequently been stated that there is truly no measure in which this sort of thing can be assessed. Pain is always painful.

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How painful is a matter of the susceptibility of the individual who is subjected to pain. In this respect I find that M5000 is rather on the high side and therefore am prepared to knock off M1000 from that. In short the plaintiff succeeds to the extent that in respect of pain and suffering he is awarded M4000; in respect of contumelia he is awarded M3000.

As for loss of earning the entire claim is dismissed; and finally he will be granted M30 in respect of medical expenses together with costs.

J U D G E.

25th October, 1989.

For Plaintiff : Mr. Maqutu.

For Defendants : Mrs Ntsonyana.