

IN THE HIGH COURT OF LESOTHO

In the matter of :

THABO KHELELI

Plaintiff

V

THE SOLICITOR GENERAL
THE COMMISSIONER OF POLICE
THE OFFICER COMMANDING
(Mafeteng)

1st Defendant
2nd Defendant
3rd Defendant

REASONS FOR JUDGMENT.

Filed by the Hon. Mr. Justice M.L. Lehohla
on the 1st day of March, 1989.

In terms of summons sued out of the office of the Registrar of this Court on 11th April 1984 the first defendant now Attorney General and two others were sued by plaintiff for

- (1) payment of M20,000 being damages for unlawful detention, assault and torture by police while plaintiff was in the latter's custody;
- (2) Costs of suit; and
- (3) further and/or alternative relief.

At the start of the trial a preliminary application was made on behalf of the defendants by their counsel for the dismissal of the action. The application was opposed. A decision on the application was held in abeyance pending the hearing of evidence.

At the completion of that hearing of the evidence the court upheld with costs the preliminary application in favour of the defendants. As to the balance of the case that consisted of the evidence led in Court each party was ordered to pay its own costs.

/Save

Save to state that on the evidence led plaintiff seemed to have made a good case I need not deal with that aspect of the matter because the case turned on the points raised in limine after all. These were set out in the application in terms of Rule 32(7). This application was on notice, filed and served in the Registrar's office and on plaintiff respectively on the same day i.e. 4th February, 1988.

The Rule provides that

"If it appears to the Court mero motu or on the application of any party that there is in any pending action a question of law or fact which it would be convenient to decide either before any evidence is led or separately from any other question the court may make an order directing the trial of such manner as it may deem fit, and may order that all further proceedings be stayed until such question is disposed of."

With respect to the question of law raised the Crown relied on the General Amnesty Order number 2 of 1986, section five of which says :-

"No proceedings whether civil or criminal shall be brought in any Court of law against the Government in respect of proceedings arising out of offences to which the King's grant of amnesty relates."

Section 6 provides

"This Order applies only to offences of a political nature committed before the coming into operation of this Order."

It seems plaintiff was detained in police custody in 1983 under provisions of the Internal Security Act, it having been suspected that he was engaged in activities intended to subvert the authority of the Government.

Section 2 of the above Order provides that the King has granted amnesty to any Citizen of Lesotho who;

/a(ii)

a(ii) "being inside Lesotho is liable to criminal prosecution for acts which constitute offences of a political nature"

Evidence revealed that the investigation that was being carried out was in connection with offences of a political nature. Provisions of this Order make it irrelevant to consider whether a detainee in those circumstances was convicted or sentenced. Thus I am not persuaded to the view that the court should take that into consideration.

As to the question of fact raised in limine I have no doubt that breach of provisions of Rule 15(2)(a) and (b) has been committed, but would have considered condoning the breach if plaintiff's cause was not flawed on other more weighty grounds.

Section 3(1) of the Indemnity Order number 9 of 1987 says

"Notwithstanding any law to the contrary, no action or other legal proceedings whatsoever, whether civil or criminal shall be instituted in any court of law against

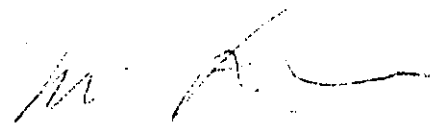
(a) the crown

(b)

(c) an officer or member of the Royal Lesotho Mounted Police;
for or on account of any act
..... done for the suppression of
internal disorder"

(2) If any such proceedings shall have been instituted whether before or after the passing of this Order, they shall forthwith be discharged and made void and no order for costs shall be made against the crown....."

The reading of the word "shall" imports a peremptory force into the Order. Consequently the Court's decision is as set out in paragraph three of the reasons given for this judgment.



J U D G E.

1st March, 1989.

For Plaintiff : Mr. Rakuoane

For Defendants : Mr. Mohapi.