

CIV/T/233/87

IN THE HIGH COURT OF LESOTHO

In the matter of :

'MATHABANG NTSAMO

Plaintiff

V

CHIEFTAINESS PASCALINA LETSIE

Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 13th day of April, 1989.

Plaintiff 'Mathabang Ntsamo is suing Chieftainess Pascalina Letsie for damages occasioned by an alleged defamation relating to words which were uttered by defendant against 'Mathabang Ntsamo. The words appear in the summons and have been adequately supported by evidence that has been led before this Court.

In the summons it is set out that the words complained of are that

"This subject of mine did not fall ill. She was killed by 'Mathabang because she called riders for him. These riders have killed him, I shall say these words until I am in the witness box."

These were the words which were said at the funeral of Mapholo Mosoatsi.

I need hardly allude to the fact that this Mapholo somehow was associated with theft of goats of plaintiff. This has not quite come out in the evidence save that a man called Molupe is the one who it appears investigations leading to the arrest of the deceased seemed to connect with the commission of the offence of theft of stock that was lost to plaintiff.

/Plaintiff

Plaintiff, it has been adequately canvassed in evidence, lost her goats and she duly reported the matter to her chieftainess, the defendant, who detailed men to go and look for the goats and village men duly recovered these goats in a matter of not more than twenty-four hours. One would have thought that plaintiff would have been satisfied with this state of affairs, but it turned out that she was not all that happy. So she appealed to the horse-riders who as it appears now went about their job pretty vigorously if not mercilessly which resulted in the death of the deceased. And the words that have been referred to above were uttered at the funeral of this deceased. On that basis I do find that the words were defamatory per se in that they tend to connect defendant with the death of the deceased. I may, even at this moment pause and consider whether one wouldn't consider that they were said in the heat of passion or in circumstances which reveal that there was what is called rixa in other words, in an exchange of angry words due to a sudden provocation or some such thing regard being had to the fact that the chieftainess had done her lot and had managed through her efforts to secure the presence of the lost stock. That plaintiff should resort to the horse riders is a matter that one could regard as having angered the chieftainess. But unfortunately she hasn't come to support just this view at all because she is not before Court and once the plaintiff has established a prima facie case in a case of defamation about the intent with which the words were said, that is, words which are defamatory, then an inference immediately follows that they were said with a malicious intent. And since she hasn't come to discharge the burden that has shifted to her side I find that the plaintiff has made out her case for defamation.

All that now remains at this stage is the question of quantum. It has been said that plaintiff is a person of relatively low standing in her community. But regard also should be taken of the fact that the utterer of the words is not a person of low standing. On the contrary she is a person of authority and persons of authority should be

/careful

Careful at all times that whatever trouble occurs in their areas doesn't occur due to their instigation. That defendant took it upon herself to utter these words and actually go to the extent of saying that she would stick out her claim that plaintiff killed the deceased even in a Court of law I think was not only bold but very daring.

All this, I am saying at the back of my mind still thinking that she might have been moved to this end by her anger, but that has been dealt with earlier and therefore my only mention of it is with regard to damages.

Plaintiff has claimed a sum of three thousand five hundred Maluti as damages which could compensate the injury to her good name and has also asked for costs.

I have taken into account the fact that defendant hasn't really done anything to mitigate this claim of damages albeit that in argument on her behalf it has been said that plaintiff is an ordinary citizen but I don't think ordinary citizens deserve to be treated the way that plaintiff seems to have been treated by defendant.

It is most unbecoming that at a funeral gathering where there are many people including relatives of the deceased who could explode into anything that might injure or cause plaintiff physical harm these words should have been said.

Having said all this I find that the amount that has been claimed could at best meet the justice of this case if a reduction of five hundred Maluti has been made plus costs. In other words judgment is entered for plaintiff in the amount of three thousand Maluti plus costs.

J U D G E.

13th April, 1989.

For Plaintiff : Mr. Pheko

For Defendant : Mr. Moorosi.