

IN THE HIGH COURT OF LESOTHO

In the matter between:-

EDWARD LEHATSOE

Plaintiff

and

RUSH & TOMPKINS B.V.

Defendant

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 30th day of June, 1989.

On the 28th October, 1987 the plaintiff instituted an action against the defendant in which he claims:

- (a) Judgment in the sum of M47,500-00 as damages;
- (b) Interest thereon at the rate of 11% a tempore morae;
- (c) Costs of suit;
- (d) Further and/or alternative relief.

In his declaration the plaintiff stated that he is the owner of the following motor vehicles: G 0354, CFC 2858 and BFG 115T. That

during January, 1987 the defendant's employees (whose further particulars are to the Plaintiff unknown) during the course and within the scope of their employment with the defendant in the construction of Mohale's Hoek - Quthing public road wrongfully, unlawfully and intentionally damaged plaintiff's abovementioned motor vehicles, six residential flats and one roundavel belonging to plaintiff at plaintiff's home at Mekaling.

As a result of the aforesaid damage plaintiff alleges that he has suffered damages in the sum of M47,000-00 calculated as follows:

- (a) Damage to motor vehicles - M23,500
- (b) Damage to buildings - M24,000.

On the 26th January, 1988 the defendant filed a request for further particulars in which it, inter alia, asked for the following:

- (a) How exactly is the sum of M23,500-00 being alleged as damage to motor vehicles arrived at?
Full particulars of the alleged damage done to each motor vehicle are required.
- (b) How exactly is the sum of M24,000-00 being the alleged damage to buildings arrived at?
Full particulars of the alleged damage done to each of the buildings are required.

On the 3rd February, 1988 the plaintiff supplied the further particulars in the following manner:

- (a) M8,000-00 in respect of vehicle CFC 2858.
M9,500-00 in respect of vehicle BFG 115T
M6,000-00 in respect of vehicle G 0354.
- (b) M14,000-00 in respect of flats 1,2,3 and 4.
M 6,000-00 in respect of flats 5 and 6.
M 4,000-00 in respect of Rondavel.

The defendant was still not happy with further particulars supplied and on the 11th February, 1988 it filed a request for further and better particulars in the following terms:

- (a) An item by item specification of the exact parts damaged and the cost of repair thereof in respect of each of the motor vehicles allegedly damaged by Defendant's employees is required.
- (b) An item by item specification of the exact damage allegedly done to Plaintiff's flats and rondavel by Defendant's employees, as well as the cost of repairing same, is required.

On the 17th February, 1988 the plaintiff refused to supply the further and better particulars on the ground that they are not strictly necessary to enable the defendant to plead.

The present application is for an order to compel the plaintiff to supply not only the further and better particulars requested on the 11th February, 1988 but also the market value of the motor vehicles and the buildings prior to and after the alleged damage.

Mr. Mohau, counsel for the defendant, referred to Rule 21 (6) (a) and (c) which provides that a plaintiff who sues for damages must set out particulars of his claim in such a manner as will enable the defendant reasonably to assess the quantity thereof; in all cases the particulars must be set out in such a manner as will enable the defendant, if he so desires, to make a reasonable tender.

There are many decisions of the Courts of the Republic of South Africa in which it was ruled that a plaintiff must, either in his declaration or in particulars subsequently furnished, give the defendant sufficient information to enable him to decide whether he ought to make a tender, e.g. Rosen and Engelstein v Hawkins, 1937 T.P.D. 410 at p. 414; Margau v. King, 1948 (1) S.A. 124 at p. 130 (W). But as Roper, J. pointed out in Reid, N.O. v. Royal Insurance Co. LTD., 1951 (1) S.A. 713 (T.P.D.) at p. 717:

"They do not mean that when the plaintiff comes to his damages he must set them out precisely under different headings so that the defendant may be able to ascertain exactly what sum he must tender in order to escape liability for costs. What is required is that there shall be sufficient particularity to convey to the defendant the ground, or where there are more, the grounds upon which the claim is based, so that he may be able to decide whether he has a good defence to a whole or a portion of the claim, and if not whether he ought to make a tender."

The plaintiff's claim is for damages to his motor vehicles and to his buildings. The defendant wants to know the extent of that damage. With regard to the motor vehicles it wants to know what parts were damaged and the costs of repairing or replacing such parts. The usual practice in this Court is to furnish the defendant with a

quotation by a garage or to attach receipts of the parts which the plaintiff bought. A quotation from a garage has a great deal of evidential weight and may enable a defendant to make a tender.

In the present case the plaintiff has just given figures as damages to each vehicle without the particulars of how he arrived at those figures. I am of the opinion that that is not enough to enable the defendant to make a tender, if he so desires. The plaintiff has even refused to furnish the particulars regarding the market value of his motor vehicles prior to and after the damage allegedly caused to them by defendant's employees.

Regarding the buildings the defendant wants to know the extent of the damage. Were walls and roofs brought down so that the plaintiff may have to rebuild the entire building? The market value of the houses at the relevant time is required.

I am of the opinion that the particulars requested by the defendant are necessary to enable it to plead or to make a tender, if it so desires - I make the following order:

- (a) The plaintiff is ordered to furnish the defendant with the further particulars requested in paragraphs 1 (a), (b), (c) and (d) of the Notice To Compel dated the 29th February, 1988.
- (b) The further particulars referred to in (a) above shall be furnished to defendant within thirty (30) days from the date of this judgment; and if the plaintiff fails to do so within thirty (30) days paragraphs 5 and 6 of his declaration shall be struck out.

- (c) The plaintiff shall pay the costs of this application.

J.L. KHEOLA
JUDGE

30th June, 1989.

For the Plaintiff - Mr. Rieko
For the Defendant - Mr. Mohau.