

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MAKHENKHE SEKEI

Plaintiff

AND

PETROSE MAJORO
MOEKETSI MAJORO
NONE MAJORO
PANDA MOFOLO
MOZELELA LAMANE
TLHOPHEHO MOLATO
BABY MPHEPHE

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant
5th Defendant
6th Defendant
7th Defendant

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 2nd day of February, 1990.

On the 14th September, 1987 the plaintiff issued summons against the defendants in which he claimed M23,090-00 as damages for the loss of his sheep and goats which were negligently killed by the defendants. He also claims interest at the rate of 22% per annum a tempore morae and costs of suit.

All the defendants were served with the summons on the 17th April, 1988. Only the first, the fifth and the 6th defendants have

filed their pleas. On the 19th October, 1989 the plaintiff's counsel, Mr. Rakuoane, indicated that he was proceeding against the second, third, fourth and 7th defendants who have not filed any Notice of Appearance to Defend. He then called the plaintiff and one Mookameli Ngenaphe to give evidence.

In his declaration the plaintiff avers that at all material times hereto, he was a farmer who was lawfully permitted by the Chief of Matebeng to graze his animals at a place called Pekamollo near Mount Tsolo. He annexed a copy of a permit No.617563 dated 20th January, 1986 which confirms that he had permission to graze his animals there. According to the permit one hundred and eighty-seven goats and eighty-four sheep were covered by it.

In February, 1986 the defendants wrongfully and unlawfully seized his sheep and goats at Pekamollo and impounded them. The Chief of Matebeng intervened and released animals to plaintiff.

On the 8th March, 1986 the defendants again wrongfully, unlawfully and maliciously seized plaintiff's animals and impounded them. The plaintiff alleges that his animals were kept in the custody of the defendants for five days and that during that period one hundred and forty-one goats and seventy-three sheep died. The death of the animals was caused solely by malicious, reckless and/or negligent methods of keeping the animals by the defendants in that :

- a) The 1st Defendant's kraal where they were kept was small to accommodate the number of animals which were about Seven Hundred (700) in all and therefore the small and weak ones were trampled upon by the others;
- b) The animals were not let out to graze and drink water.
- c) The animals were not passed to the Ward Chief who would appoint a person to look after them as it is provided in Laws of the Country.

ALTERNATIVELY

The Defendants themselves and/or through their agents failed to exercise reasonable care to safekeep the animals and therefore they negligently caused the death of the animals. The defendants failed to discharge the duty of care once they had taken the animals in their custody.

The plaintiff testified that after he received a report that his animals had been impounded by the defendants he sent one Napo to go and pay pound fees for them so that they could be released. Napo went and came back and told him that the defendants wanted M37-00. From his home the plaintiff could see the kraal in which his animals were kept and he noticed that for the five days that they were kept there they were not allowed to graze. He gave the amount of M37-00 to Napo to go and pay for his animals. The following animals were missing when Napo returned:

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85	She - goats
37	he - goats
19	kid.
23	hammels
38	ewes
12	lambs
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The plaintiff claims M100 for each of he-goats, she - goats and hammels; M80 for each ewe and M50 for each kid lamb; M2000 for the loss of wool and mchair earnings and M3000 for trespass.

Mookameli Ngenaphe testified that the defendants (except the first defendant) arrived at the cattle-post where he was herding plaintiff's animals. They told him that they were instructed by the first defendant to seize the animals and to impound them for grazing at that place which was reserved pasture. He assisted them to count all the animals under his care including some that did not belong to the plaintiff. All the animals were driven to the home of the first defendant and put in a small kraal which had an area of about 120 square metres. The kraal was so small that some animals remained outside; but the defendants caught them and threw them into the kraal on top of others. The kraal was muddy. The animals suffocated and died. When the first defendant noticed that the animals were suffocating he ordered the defendants to take out some of them. They complied and took out only nineteen of them. However, it was too late because some had already died while others were dying.

Mookameli said that during the afternoon of that same day he managed to escape because he was also under detention. He reported the impounding of the animals to the plaintiff.

I have come to the conclusion that the plaintiff has established a prima facie case of negligence on the part of the defendants against whom he has decided to proceed. The prima facie case must now become conclusive proof because the defendants decided not to give any defence.

I have assessed the damages claimed by the plaintiff and have come to the conclusion that they are not unreasonable. However I was not satisfied that the plaintiff was entitled to damages for trespass. If the first defendant is the chief of Tsolo as alleged by the plaintiff in paragraph 12 of his declaration I do not see how trespass can arise. A chief has a right to declare any area under his jurisdiction a reserved pasture. Now if he impounds animals he finds grazing in that area he cannot be accused of trespassing.

Judgement is granted for plaintiff against the second, third, fourth and seventh defendants who are severally and jointly liable the one paying the others being absolved, in the following amounts:-

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- (a) M18,090-00 being for the loss of the animals that died;
- (b) M2,000-00 being for the loss of wool and mohair;
- (c) Interest at the rate of 11% with effect from the date of this judgment and
- (d) Costs of suit.

J. L. Kheola
J. L. KHEOLA
JUDGE

2nd February, 1990.

For the Plaintiff - Mr. Rakuoane
For the Defendants -