

IN THE HIGH COURT OF LESOTHO

In the matter between:-

LAKIA P. PHOLO

Plaintiff

and

ATTORNEY GENERAL

Defendant

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 3rd day of May, 1990

This is an action in which the plaintiff claims damages in the sum of M20,000-00 and costs of suit. The damages are divided up as follows:-

For pain and suffering	=	M15,000-00
For contumelia	=	M 5,000-00

Initially the defendant filed a Notice of Intention to Defend and a plea. However, at the hearing of this matter on the 19th March, 1990 Mr. Malebanye, counsel for the defendant indicated that the defendant admits liability but contests only the quantum of damages.

The plaintiff testified that he is a senior teller employed by Lesotho Bank. On the 12th July, 1989 he was arrested by the members of the Royal Lesotho Mounted Police acting within the scope and during the course of their employment by the Lesotho Government. He was first taken to the Maseru C.I.D. office and then to the Police Headquarters. On his arrival there his jacket was taken off. A blanket was thrown over his head as soon as he entered into an office. It covered his head and body down to the chest. A rope was used to fasten the blanket around his neck and in addition to that a tyre for a motor vehicle was thrown around his neck. He was then handcuffed and stripped of his pair of trousers and underpant.

The tyre was heavy and he was suffocating because of the blanket covering his head. The policemen who were in that office asked him if he still denied that he stole money from Lesotho Bank. He told them that he knew nothing about the stolen money. At this stage they put crushed stones into his shoes and ordered him to jump up and down to the rhythm of a bell that was being rung. The crushed stones caused a lot of pain to the soles of his feet. In addition to that they tighten the handcuffs on his wrists causing intense pain and the swelling of his hands.

Despite these cruel methods used during his interrogation he continued to deny that he was involved in the theft of his employer's money. He was beaten up with something on the hands and thighs but he did not know what that weapon was. They pinched his thighs with something like a pair of pliers.

As he was being assaulted and ordered to gym in accordance with the rhythm of the bell, he suffocated and fainted. When he regained his senses he noticed that the blanket and the tyre had been removed. His hands were swollen and numb. They ordered him to stand up; but he was unable to do so because of pain and the numbness of his hands. They inserted a stick into his anus, pulled it out and put it into his mouth. They repeated his act twice. Seeing that he was unable to stand they dragged him from that office along the passage and then into another office where the interrogation continued. He still denied any involvement in the alleged crime.

At last he was given his clothes and ordered to put them on. He managed to do so with great difficulty because of the numbness of his hands. He was taken back to the first office and again handcuffed. He was forced to stand on his feet for a greater part of the night but he finally lay on the floor with his hands still in the handcuffs.

On the following morning the handcuffs were removed and he spent the whole day in the office and no further interrogation was made. He was released on the 14th July, 1988. On his release he was unable to walk because of hunger and pain. His hands and feet were still swollen.

On the 16th July, 1988 Dr. Motsamai examined him and found the following:-

1. Half circular skin abrasions both wrists.
2. Bruise left thigh.
3. 2 skin abrasion right thigh
4. Skin abrasion right flank 6 cms.

The patient complained of painful knees and numbness of the right hand.
The medical report is Exhibit "A".

By admitting liability the defendant must be presumed to be saying that the evidence of the plaintiff must be accepted by the Court in toto. Mr. Malebanye, counsel for the defendant, submitted that the injuries, as shown by the doctor's report, were not at all serious. He submitted that the Court should not award punitive damages; that the period of detention was very short and that the injuries sustained by the plaintiff were not serious.

Mr. Pheko, attorney for the plaintiff, submitted that the status of the plaintiff must be taken into consideration, he was a senior member of staff in Lesotho Bank; the assault was degrading and dehumanizing and that the inner feelings of the plaintiff must also be taken into account.


I agree with Mr. Malebanye that according to Exhibit "A" the injuries were neither serious nor permanent. However, there were certain methods of assault which were applied which leave no trace of injury and yet they caused severe pain and suffering. The plaintiff was made to suffocate till he fainted; crushed stones

were put into his shoes and was made to jump; a stick was inserted into his anus and then into his mouth. These are some of the methods of assault that left no visible marks. I have no doubt in my mind that they caused severe pain and suffering.

The plaintiff has claimed M15,000-00 under the head of pain and suffering, but I think he has greatly inflated his damages. Under this head I would award damages in the amount of M5,000-00.

The plaintiff is a fairly senior member of the staff of Lesotho Bank. He was arrested and treated in the most inhuman, degrading and dehumanizing way. By putting the stick into his anus and then into his mouth, the police treated the plaintiff in a very insulting and degrading manner. Under this head I would allow damages in the amount of M2,000-00.

In the result, judgment is granted in favour of the plaintiff in an amount of M7,000-00 with costs.


J.L. KHEOLA
JUDGE

3rd May, 1990.

For Plaintiff - Mr. Pheko
For Defendant - Mr. Malebanye.