

IN THE LESOTHO COURT OF APPEAL

In the matter between:-

JOSEPH MOKETE KOLANE

Appellant

and

ATTORNEY GENERAL

Respondent

HELD AT MASERU

Coram:

AARON, J.A.

PLEWMAN, J.A.

ACKERMANN, J.A.

J U D G M E N T

Plewman, J.A.

This issue in this appeal is whether the Appellant's action brought in terms of a summons served on the 23 March, 1988 has prescribed by reason of the provisions of Section 6 of the Government Proceedings and Contract Act No.4 of 1965. The Appellant's causes of action are formulated in the declaration filed in the

following terms:

"On or about February 1981 some officer (whose full particulars are to the Plaintiff unknown) within the Ministry of Transport and Telecommunications acting within the scope and during the course of his employment with Lesotho Government as such wrongfully maliciously set the law in motion without any reasonable and probable cause, by swearing before some member of the Maseru C.I.D. (whose full particulars are to the Plaintiff unknown) at Maseru a false charge of theft of the sum of M15,777,000 against the Plaintiff and instigating and procuring his arrest and imprisonment."

The causes of action thus framed are thus the wrongs both commonly characterised as malicious criminal proceedings. One requirement for a successful action under this head is the fact that the proceedings must have terminated in the plaintiff's favour and no action will lie until the criminal proceedings have terminated or a decision has been made by the Attorney General not to prosecute. The question is carefully examined in the judgment of Eksteen J. in the case of Thompson and another v. Minister of Police and another 1971 (1) S.A. 371 at 375 where the earlier authorities are reviewed. In the Thompson case it was held that no cause of action arises until the prosecution has been determined.

In the present case the special plea filed was framed on the basis that the cause of action arose "in or about February 1981" - that is, the date upon which the allegedly false charge was laid. At

the hearing the matter was argued on the terms of the Special Plea. No evidence was led and counsel for the Respondent argued the matter in effect as if it were an exception, relying on the declaration for the contention that the cause of action arose on that date. The learned Judge upheld the Special Plea - his judgment is based on an acceptance of the fact that this was the date upon which the cause of action arose.

It follows from what has been said that this conclusion is incorrect. On the pleadings (perhaps not a model of their kind) it would have been open to Appellant to tender evidence to prove that the Attorney General had decided to withdraw the charge, on some date which would have left the Appellant free to proceed with his claim. I pause only to observe that it is not beyond the bounds of possibility that in fact no finality has yet been reached - in which event it may be that the summons is premature. It is also possible that it may have prescribed on the basis of different facts.

However these matters were not canvassed in evidence, and can be left to future possible hearing.

The result is the decision of the Court a quo on the only issue before this Court, namely the validity of the Special Plea, cannot stand. The appeal is therefore allowed and the Appellant is entitled to the costs of appeal. The order of the Court a quo is altered to read "Special Plea dismissed with costs."

Signed:

C. PLEWMAN
Judge of Appeal

I agree

Signed:

S. AARON
Judge of Appeal

I agree

Signed:

L.W.H. ACKERMANN
Judge of Appeal

Delivered at Maseru this 26th day of January, 1990.

For the Appellant - Mr. Pheko
For the Respondent - Mr. Lenono.