

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MABHLAKOANA MOLETSANE

Plaintiff

and

TEBOHO MOLAPO

Defendant

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 4th day of June, 1990

In this action the plaintiff is claiming:

1. Payment of four thousand Maloti (M4,000.00) damages for unlawful assault;
2. Payment of two thousand Maloti (M2,000.00) for contumelia;
3. Payment of four thousand Maloti (M4,000.00) damages for pain and suffering;
4. Payment of fifteen Maloti (M15.00) medical expenses;
5. Costs of suit;
6. Further and/ or alternative relief.

It is common cause that on the 3rd May, 1987 the plaintiff and the defendant fought with each other in the house of the plaintiff. The plaintiff sustained certain injuries which led to her admission at Semonkong Methodist Hospital from the 4th to the 6th May, 1987. On examination her injuries were found to be a bruised left eye and oedema. She also complained of pain on the left side of the chest. On the 13th May, 1987 she went for a check-up and it was found that the left eye was still bruised and she had a contusion on the ribs. Her medical reports are Exhibit "B" and "C". It is common cause that she paid M15-00 as medical fees.

It is common cause that the defendant also sustained some minor injuries and was also examined by a doctor at Semonkong Methodist Hospital but was not admitted. On examination it was found that he had a minor laceration on the left earlobe about 1cm long and another 1cm long laceration on the left flank. His medical report is Exhibit "E".

It is also common cause that on the 15th May, 1987 the defendant was charged with assault and causing injuries to the plaintiff. He pleaded guilty to the charge and was sentenced to pay a fine of M40-00 or to undergo imprisonment for a period of four (4) months.

The plaintiff testified that at about 4.00p.m. or 5.00p.m. on Sunday the 3rd May, 1987 she was in one of her two houses when the defendant passed near the house in which she was doing some cooking. She was in the company of one Mapiloko Molapo who is

now late. Some time after the defendant had passed she went to her other house to take some mealie meal. When she entered she found the defendant sitting on her bed. She asked him what had put him on her bed and what he wanted there.

Even before she finished uttering those words the defendant caught hold of her and threw her on the ground or bed and pulled down her panty. A struggle ensued during which the plaintiff tried to resist the pulling down of her panty and also kicked the defendant. The plaintiff says that it was very clear that the defendant wanted to rape her but she was stronger than him and foiled the attempt. Seeing that he was unable to achieve his purpose, the defendant started kicking the plaintiff and hitting her with fists. She sustained an injury on the left eye and on the left flank. The plaintiff was screaming during the fight. As a result of her screams Mapiloko Molapo came and tried to separate them but failed because he was an invalid. The defendant stopped the fight after he had satisfied himself.

The plaintiff denied that she started the fight by hitting the defendant with a pick-axe handle on the left ear and stabbing him with a knife on the left flank.

The defendant's version of the events of that day differs from that of the plaintiff in very material respects. He testified that at the relevant time the plaintiff was his lover. On the morning of the day in question he accompanied his father to Semonkong because he was going back to work. Defendant came back and arrived

back at about 3.00 p.m. At about 5.00 p.m. the plaintiff arrived and invited him to her house. He told her that he was still putting the cattle into the kraal and that he would come as soon as he had finished. The plaintiff went away but came back at about 6.00 p.m. At that time he had finished his work. They went to the house of plaintiff. On arrival there they entered into the house and the plaintiff locked the door. She immediately confronted him and asked him where he had gone during the day. According to their agreement he had to tell her before he went anywhere. She also had to do so. He explained that he had accompanied his father to Semonkong and that because of the presence of his father at home he did not have the chance to report to her in advance.

While he was explaining the plaintiff took a pick-axe handle and struck him on the left ear. He fell down and probably fainted and when he came to the plaintiff stabbed him with a knife on the left flank and continued to belabour him with the pick-axe handle. He managed to stand up and got hold of the plaintiff and hit her with fists in self defence. Mapiloko Molapo came and tried to open the door but found that it was locked. After some time he managed to force it open and found them still fighting. He ordered him to stop and to go to his home. He complied.

This is one of those cases where you have the word of the plaintiff against that of the defendant. The only eye-witness who could help this Court is late. Mr. Mohau, counsel for the

plaintiff, submitted that self-defence was never raised in the defendant's plea. I agree that self-defence does not appear in the plea. The plea was a bare denial with no indication as to what the defendant's version of the events of the 3rd May, 1987 was.

Rule 22 (3) of the High Court Rules 1980 requires that the defendant must, in his plea, admit or deny or confess and avoid all the material facts alleged in the declaration or state which of the said facts are not admitted and to what extent. He must clearly and concisely state all material facts on which he relies.

The defendant's plea does not comply with the requirements of the above Rule. It seems to me that the self-defence he is now raising before this Court is an afterthought. No reason has been given why the defendant's plea is a bare denial when he had good defence of self-defence as he now wants this Court to believe his story. I do not believe that the attorney who drafted the plea may have made a mistake because there is another fact which supports my conviction that the self-defence raised for the first time during the trial is an afterthought.

On the 15th May, 1987 the defendant appeared before Semonkong Local Court charged with assault and causing injuries to the plaintiff. He pleaded guilty and never alleged that he was defending himself. He elected not to go into the witness box and tell the court that he hit ^{her} with fists in self-defence. I know that some of our people who are not familiar with court procedures often

plead guilty without raising self-defence in cases where they have caused severe injuries to their victims who were the original aggressors. In the present case I do not think that this was due to ignorance of the court procedures because even when the matter was handled by his experienced attorney the issue of self-defence was not raised .

I find it improbable that the door was locked when the late Mapiloko Molapo tried to intervene in the fight. There is no evidence that the lock or the door was found to be broken after the fight.

The minor laceration on the left earlobe does not seem to me to be consistent with a heavy blow with a pick-axe handle. The impression created in my mind by the evidence of the defendant was that considerable degree of force was used to inflict the injury because the defendant even fell down from the impact of that blow. If this were true the injury ought to have been fairly severe and the earlobe and the area around it would have been bruised. The doctor who examined the defendant found no contusion. I have come to the conclusion that the defendant cannot be telling the truth that the plaintiff used a pick-axe handle.

On the other hand the injuries sustained by the plaintiff are consistent with severe kicking with boots and hitting with fists. She testified that the assault was so severe that after the defendant had left she was still unable to stand. Her evidence is

confirmed to some extent by the doctor who examined her on the following day that she could still not walk straight. On the 13th May, 1987, i.e. ten days after the assault the bruise on the left eye and the contusion on the ribs were still there and were seen by the doctor who examined her on that day (See Exhibit "C").

An illicit love affair between a married woman and an unmarried young man is usually kept as a secret. I find it most improbable that the plaintiff, who is a married woman and not a common prostitute, could jeopardize her marriage by attacking this young man so fiercely that the whole village would know her love affair with him. Her husband would also eventually come to know although at the relevant time he was at the mines in the Republic of South Africa. I do not think that this was the risk the plaintiff would have taken especially because she did not find the defendant with another woman. I did not get the impression that the plaintiff was such a foolish woman or a simpleton who could be expected to do such a thing.

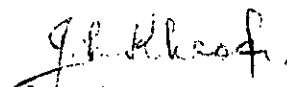
I agree that there is a very remote possibility that by instituting these proceedings the plaintiff is actually trying to save her marriage. I think the possibility is so remote that it has to be discarded outright.

My impression of the plaintiff as a witness was that she was honest and truthful. She gave her evidence well and answered questions very well. The defendant's demeanour did not impress me favourably. He did not appear to be honest.

In my view the plaintiff has proved her case on a balance of probabilities and she is entitled to some damages. However I think she has inflated her damages very much. The tendency is now common of inflating damages in order to bring the case within the jurisdiction of the High Court. The jurisdiction of the Subordinate Courts has been increased in such a way that only very serious cases have to be brought to this Court. (See Subordinate Courts Order, 1988). The present case is not a serious case at all and could have been heard in a Subordinate Court.

The plaintiff claims M4,000-00 for the unlawful assault and M4,000-00 for pain and suffering. I shall award her M1,500-00 and take the two heads as one. Under Contumelia she has claimed M2,000-00. I shall award her M500-00 and M15 for medical expenses.

In the result judgment is granted in favour of plaintiff in the total amount of M2,015-00 with costs.


J. L. KHEOLA
JUDGE

4th June, 1990.

For Plaintiff - Mr. Mohau
For Defendant - Mr. Nathane.