

CIV\T\278\88IN THE HIGH OF LESOTHO

In the matter between:

REVEREND ABEL NKILO NHLAPO

Plaintiff

and

COMMISSIONER OF POLICE

1st Defendant

OFFICER COMMANDING (RLMP BUTHA-BUTHE)

2nd Defendant

THE ATTORNEY GENERAL

3rd Defendant

JUDGMENT

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 17th day of September, 1991

The plaintiff is claiming payment of an amount of M15,050-00 in respect of medical expenses and pain and suffering of his son Tseliso Nhlapo who was allegedly shot by police. He also claims interest at the rate of 11% per annum on the amount claimed and costs of suit.

The defendants have pleaded that the son of the plaintiff was not shot by the police who were on duty at Crocodile Inn of the night of the 24th April, 1987.

The first witness called by the plaintiff is Dr. P. Sekhesa. His evidence is that on the 25th April,, 1987 he examined one Tseliso Nhlapo and found a gunshot wound on the upper 1\3 of the left forearm. The bullet was not inside the wound because there was an entry wound and an exit wound. Only the tissue had been

destroyed. He cleaned the wound and gave the patient some drugs after bandaging the wound. His medical report and the receipt for medical services are Exhibits "A" and "B" respectively.

The plaintiff testified that one day in 1987 his son Tseliso Nhlapo went to a concert at Crocodile Inn. On the following morning Tseliso reported to him that he had been shot on the arm. He saw the wound and took his son to Butha Buthe Government Hospital. The nurse at the hospital referred them to the charge office where they made statements and were given a medical form. They returned to the hospital where his son was treated. He was not satisfied with that treatment and that is the reason why he went to Dr. P. Sekhesa for further treatment of his son. Plaintiff says that his son appeared to be in great pain for the whole day even after he had received treatment. The wound took about a month to heal.

Tseliso Nhlapo testified that on the night of the 24th April, 1987 he attended a music festival in the hall at Crocodile Inn. While he was outside the hall a fight broke out inside the hall. Many boys were fighting and they came out of the hall. During that commotion there were policemen inside and outside the hall. Those policemen who were outside started shooting at the people who were fighting near the door of the hall. It was during the shooting that his left arm suddenly became numb and he saw blood flowing down towards the hand. When he came to the gate he noticed that he

had been shot with a gun because there was an entry wound and an exit wound. He says that he does not think that there were any other people who were shooting other than the police. He did not see the person who shot him but the gun reports from small guns came from where the police were standing. He admitted that the police he saw were wearing uniform and were holding big guns. When it was put to him that the police fired in the air with their big guns in order to quell the disturbance he said he does not think that there were any civilians who were armed with guns because the people who were fighting had no knives and used their hands. He does not know that only two policemen were assigned to the concert at Crocodile Inn but he saw about six policemen.

Lebesa Lebesa was in the company of Tseliso when the disturbance started inside the hall. The police were near the door of slots machines room and started shooting when the commotion was near the door of the hall. He then heard Tseliso say that his arm was numb and he saw blood flowing down to the hand. They left for home. Lebesa testified that it is not possible that there could have been civilians who were also shooting with small guns. The police used only big guns and were pointing in the direction in which he and Tseliso were standing. He denies that the police shot in the air because the arm of Tseliso went numb at the time the police were shooting. The police were the only people who were shooting. He says that there were more than six policemen outside the hall.

The first witness called by the defendants is Sergeant Seturumane who testified that on the 24th April, 1987 he and Trooper Mahase were given duty at Crocodile Inn where there was a concert. They were to preserve peace and tranquillity at that concert. Before they went there he went to the armoury and obtained two SLR rifles and bullets. He took one rifle for himself and gave another to Trooper Mahase. They were wearing police uniform. He saw many people who were holding knives which were unclasped. It appeared as if they were intending to attack another group of people. He cocked his rifle and fired in the air three times. The people immediately dispersed and got out of the gates. After that he heard two gun reports from smaller guns coming from the main gate from the direction of Anus Garage. He says that he and Trooper Mahase were the only policemen who were on duty at the Crocodile Inn that night. They had no small guns.

Under cross-examination he says that after three weeks he received a report that a person was shot during the concert at which he was on duty. He was surprised because no report had been given to him earlier. He was told that the case was being investigated and that eventually he will be required to make a report. As the people were going out of the gates he stood where he was when he fired in the air to make sure that the people cleared the hotel area. He did not take the trouble of finding out who were using small guns. He did not mingle with those people because he thought they might be carrying dangerous weapons. He

was about ten paces from the door of the hall and was able to see that those people were holding knives because there is a light above the door of the hall.

Trooper Mahase testified that he was inside the hall when he heard three gun reports outside. He came out through the emergency door because there was a commotion at the main door. When he came out he saw people running away and at the same time he heard two gun reports from small guns coming from the direction of Anus Garage. He says that he did not know who was using small guns because he and Sergeant Seturumane were armed with rifles and had no small guns. He heard after two weeks that a person had been shot during that disturbance and he was surprised because no report was made that a person had been shot.

Staff Sergeant Motsokane handed in as an exhibit a .22 bullet which was given to him by Tseliso Nhlapo who found it on the lumbar jacket he was wearing on the night he was shot. He says that the docket was closed in 1987 because of lack of evidence. The office found that it was not necessary to take statements from the two police officers who were allegedly on duty on that night.

In a civil case the burden of proof is on the plaintiff to prove his case on a balance of probabilities. "It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not,' the burden is discharged, but

if the probabilities are equal it is not." Per Lord Denning in Miller v. Minister of Pensions (1947) 2 All E.R.372 at 374.

The evidence adduced by the plaintiff's witnesses is that the shooting with small gun or guns came from where the police were standing and that there were about six policemen. On the other hand the police say the shooting came from the direction of Anus Garage. The police allege that they totally ignored that shooting and made no attempt to find out who was shooting and shooting who. Why did they not suspect that whoever was shooting was likely to injure them. They did not even take cover because they did not know the target. Do they want this Court to believe that a trained policeman could behave in such a stupid way and take such obvious risk. I am sure that if the shooting with small guns did not come from them they would have taken some precautions to see that they were not hurt. They would have also taken some steps to try to arrest the person or people who were doing this kind of thing. It is altogether improbable that they would have completely ignored the shooting. The truth seems to be that they ignored the shooting with small arms because they knew where it came from and who was shooting. They or one of them did the shooting.

The sluggish and almost irresponsible manner in which this case was handled by the police clearly indicates that they had something to hide. The shooting took place on the night of the 24th April, 1987. On the following day the plaintiff and his son

made their statements to the police. One would have thought that the investigator, whoever he was, would have immediately asked the policemen who were on duty to make their statements or to submit their reports because these are the people who were at the scene of the alleged crime. He never sought any assistance from them until he closed the docket for lack of evidence. I find it improbable that if the police were investigating this case in a fair and genuine manner they could ignore the very people who were at the scene of the alleged crime. Sergeant Seturumane and Trooper Mahase have not made any reports up to now and the docket was secretly closed without their evidence being recorded.

Evidence was given to the effect that the police were in uniform and that they were not carrying any small arms. There is nothing to stop police to carry small arms as well as the rifles at the same time. To suggest that they do not have small arms as staff sergeant Mots'oane did is incredible and ridiculous.

As regards damages I am of the view that they have been greatly inflated. The injury was not all serious. The doctor testified that only the tissue was destroyed. The complainant was treated as an out-patient. It seems to me that an amount of M1,500 would be adequate.

In the result judgment is entered for plaintiff in the amount of M1,500 for pain and suffering; M15 for medical expenses and

costs.

J. L. Kheola
J. L. KHEOLA

JUDGE

For Plaintiff - Mr. Mphalane

For Defendants - Mr. Mohapi.