

IN THE LESOTHO COURT OF APPEAL

In the matter between:

ALAIN ANDREW

APPELLANT

AND

LESOTHO TELECOMMUNICATIONS CORPORATION

RESPONDENT

HELD AT:

MASERU

CORAM:

STEYN, JA  
KOTZÉ, JA  
LEON, JA

JUDGMENT

STEYN, J.A.

Appellant sued Respondent in the High Court for payment of the sum of M355,800 as damages. His cause of action is crisply stated thus in his declaration:

"4.1 During the period between 12th December 1991 and 10th February 1992 Plaintiff's telephone line number 325465 was out of order.

4.2 Plaintiff duly informed Defendant that his telephone line was not operational but despite several reminders Defendant negligently failed or neglected to repair Plaintiff's telephone line."

To this pleading Respondent noted an exception that the claim is bad in law and does not disclose a cause of action on the following grounds:

"1. In terms of section 50 of the Lesotho Telecommunications Corporation Act No.12 of 1979 the Corporation shall not be liable to loss or damage which may occur in consequence of (a) failure to provide or delay in providing a telecommunication service, the telecommunication installations and plant associated therewith or a service ancillary thereto; (b) of failure, interruption, suspension or restriction of a telecommunication service or service ancillary thereto or delay of, or fault in, communication by means of a telecommunication service; (c) of failure of telecommunication installations and plant."

This exception was upheld in the Court below. It is against this order that Appellant now appeals.

Extensive grounds of appeal were filed and elaborate heads of argument presented in support of the appeal. Mrs. Kotelo who appeared for Appellant in this Court in my view correctly confined her argument to ground 4 of the grounds of Appeal which reads as follows:

"Inasmuch as Section 50 which limits Common Law rights ought to be interpreted strictly the Court erred in not recognising that it does not authorise Respondent to fail to maintain existing telephone lines."

This ground requires a consideration of meaning and ambit of section 50 of the Telecommunications Act 1979. This section provides the following:

\*50. (1) The Corporation shall not be liable to loss or damage which may occur in consequence -

- (a) of an officer failing in his duty with respect to the receipt, transmission or delivery of a message;
- (b) of failure to provide or delay in providing a telecommunication service, the telecommunication

installations and plant associated therewith or a service ancillary thereto;

- (c) of failure, interruption, suspension or restriction of a telecommunication service or a service ancillary thereto or delay of, or fault in, communication by means of a telecommunication service;
- (d) of failure of telecommunication installations and plant, or
- (e) of error in, or omission from a directory for use in connection with a telecommunication service.

(2) No officer shall be liable, except at the suit of the Corporation, to loss or damage in the case of which the liability of the Corporation is excluded by sub-section (1)."

Counsel for Appellant contended that sub-section 1(b) had no application to the facts of this case, these provisions related to loss or damage that may occur pursuant to events that relate to the provision or installation of telecommunication service or plant. Its provisions could not be invoked in respect of circumstances such as are pleaded in Appellant's declaration - i.e. a failure or neglect to repair an already installed service.

In regard to sec. 50(1)(c) she argued that these provisions should be narrowly construed so as to apply only

to loss or damage resulting from extraneous events and not attributable to any act or omission attributable to the negligence of the Respondent or its servants.

This argument cannot be sustained. It is true that if these provisions couched in the wide terms in which they are, were to be given their ordinary meaning, Respondent would be placed in a highly privileged position. Yet the Court is bound to give the words in the statute their ordinary meaning. They are wide and indeed unqualified. Nowhere do they import any limitation of the kind suggested by Counsel for the Appellant.

See in this regard Lensing v. Kimberley Munisipaliteit 1976(3) SA 615 at 617 (H) to 618 A.

See also Harold Steven and Co. Ltd. and Others v. Post Office 1978(1) All E.R. 939 and American Express Co. v. British Airways 1983 All E.R. 557, at 560 J - 561 A.

It is true that in the instant case the legislature does not specifically advert in Section 50(1) to acts or omissions of an official as in the proclamation construed in Lensing's case supra; however the words it uses are of an unqualified import and when ascribing to them their ordinary

meaning must be held also to include such actions or omissions. Indeed it would be necessary to add words to the statute such as e.g. "save and except for negligent acts or omissions of the servants of the Commission" for these protection clauses to have the limited meaning contended for.


Then, as Mr. Penzhorn for Respondent pointed out, such a construction would make a nonsense of sub-section (2) of Section 50 cited above. Indeed it would do violence to the provisions of Section 50 read as a whole to construe them as submitted on Appellant's behalf.

Like Lord Denning in Harold Stephen and Co. Ltd. v. Post office cited above,

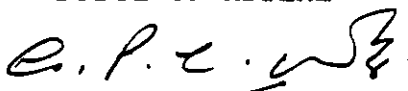
"... one has great sympathy with the plaintiffs in the most injurious situation in which they have been placed, and although one would like to help them if one possibly could, it seems to me that the Courts probably have no jurisdiction in view of the Statute."

The wording of the Statute in the present case similarly prevents the Court from coming to Plaintiff's assistance.

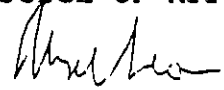
The Appeal is dismissed with costs.

  
.....  
J.H. STEYN  
JUDGE OF APPEAL

I agree

  
.....  
G.P.C. KOTZÉ  
JUDGE OF APPEAL

I agree

  
.....  
~~R.A. LEON~~  
JUDGE OF APPEAL

Delivered at Maseru This 22<sup>nd</sup> Day of January, 1994.