

CIV/T/143/94IN THE HIGH COURT OF LESOTHO

In the matter of :

BOTHATA TAOLE

Plaintiff

vs

LIRA LERATA

1st Defendant

NTONA LERATA

2nd Defendant

MAKHULA NKAUBE

3rd Defendant

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 14th day of October, 1994

This is a judgment by default of appearance against the three defendants. Mr. Nathane appeared for the plaintiff. At the time of the hearing of formal evidence of the plaintiff (who gave sworn evidence), the second defendant had since died of assault. He was assaulted by some other people and the third defendant was in prison on a conviction for theft.

The plaintiff's counsel asked for amendment to some portion of the summons (which referred to a wrong name other than that of the plaintiff). It was a typographical mistake. I granted

the amendment.

The claim of the plaintiff is for:

- (a) Judgment in the sum of M90,000.00 as damages for assault.
- (b) Interest thereon at the rate of 18% a *temporae morae*.
- (c) Costs of suit.

The plaintiff gave evidence as follows: The plaintiff stays at Mauteng Ha Sanaha in the district of Maseru. He knows the defendants and apparently they were fellow villagers. The plaintiff is about sixty two (62) years of age. Only one defendant could have been over the age of thirty (30) years. The other was definitely below the age of thirty (30) years. They all were very young and fit to be his (Plaintiff's) sons.

On this fateful day of the 9th November 1991 at about 4.00 o'clock in the afternoon there had been a down pour of rain and there were puddles of water all over. Plaintiff was on his way to report to his chief about a quarrel involving his son and one TSEKO. A fight had in fact taken place. It was on his way that the three defendants waylaid the plaintiff, assaulted him with

sticks until he fell into a ditch of water (a furrow) and then fell unconscious. It looks like he fell unconscious on two occasions. To this he testified because after the first occasion it was when one of the defendants came back and made a slashing wound with a knife below plaintiff's chin and just near the neck itself. It was about this time when the movement (like a housewife cutting meat) was made to his neck that he fell unconscious. It is a little around this time as plaintiff recalls that quite hazily he heard the voice of his chief calling out: "Please take him to the wheelburrow". It could have been: "Please take him in a wheelburrow". Plaintiff says he was taken to Morija Hospital. He spent one night there and the following day he was taken to Queen Elizabeth Hospital in Maseru where he spent two weeks as an in patient. He was released but came back to the latter hospital to be admitted as an in patient for another two weeks, and was released. He has to attend at the hospital on check-ups occasionally to date.

When just outside the village plaintiff saw three people running towards him, one was raising a stick. It was the three defendants. One of them seemed to overtake him and now appeared from his front. The other two appeared from the back. There was sound of gun fire from the one who approached from the front. He became confused but was able to observe that the one in front was also wielding a gun. Plaintiff became confused. The one in

front approached to hold him. It was then that the assaults began from the other two. It was with sticks. He fell unconscious. This is the first occasion when he fell unconscious.

The plaintiff sustained three serious wounds namely, two injuries on both knees one with a bruise and another with an open wound and a deep wound on the top right side of the head, including the wound below the jaw which I have already described and a fracture of the jaw on two places (as plaintiff indicated). Plaintiff stated that blood had to be drained from the wound on his skulp (a depressed fracture). It is this wound which has rendered the left hand disabled, numb and unable to hold. He says it is useless. The injury on the jaw has resulted in the plaintiff being unable to chew properly (without pain) to date. I have not heard plaintiff to say that the knife wound or below the chin has disabled him in anyway except the disfigurement.

The plaintiff was a heavy duty vehicle driver and he earned M500.00 per month. I was not informed whether at the time of the assault the plaintiff was employed and if so where he was employed. The plaintiff has a wife and school going child (doing Form B) to support.

The plaintiff endured a lot of pain and suffering and he was

extremely humiliated as he says by the assault "by small boys". He would have felt a lesser humiliation as he says, had the assault been carried out by the defendants' fathers. I felt sympathy with this statement and the sentiment from a man of the community to which he belonged.

Two exhibits were put in. It was exhibit A which is the medical examination book (Bukana ea Bophelo) and medical report. In both these exhibits the injuries, the medications and the observations are amply shown. Also shown were the medical fees in the sum of M153.00 in the exhibit A and the following recorded observations:

- (a) Report on injuries (1) head injury. (2) numbness or loss of sensation and weakness of left arm. (3) Fracture - mandible and numbness of jaw.
- (b) Injuries caused by: sharp and blunt object.
- (c) Injuries dangerous to life? Yes.
- (d) Injuries permanent? Yes.
- (e) Is complainant admitted in hospital? Yes.

(f) Or treated as an out-patient. Also as an out patient.

I am bound by law to make an award of damages when the unlawful acts have been proved. These assaults were absolutely unprovoked and otherwise unjustified. I would regard the amount of damages as being a bit inflated. The Plaintiff is quite advanced in years and an ordinary person of our rural community in this country. To this remark I speak about the claimed amenities of life. The element of contumelia has quite often been regarded as the more serious aspect of damages compared to pain, shock and suffering. The aspect of fair shock and suffering like all measures of general damages are often difficult to quantify (see Teboho Khosi vs Attorney General & three Others CIV/T/507/90 1st March 1994, Monapathi J, Unreported).

I award a total amount of M12,000.00 in damages as follows:

(a) Pain and suffering	M 3,000.00
(b) Loss of amenities	M 5,000.00
(c) Contumelia	M 4,000.00

M12,000.00

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I would award costs to the Plaintiff on the High Court Scale.



T. MONAPATHI
JUDGE

For the Plaintiff : Mr. H. Phoofolo for Mr. H. Nathane