

CIV/T/507/90

IN THE HIGH COURT OF LESOTHO

In the matter between

TEBOHO KHOSI

Plaintiff

and

2ND LT. BABELI
SERGEANT SAKOANE
COMMISSIONER OF POLICE
ATTORNEY GENERAL

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant

JUDGMENT

Delivered by the Honourable Acting Judge Mr T. Monapathi
on the 1st day of March, 1994

Plaintiff filed summons on the 19th December, 1990 in an action in which she claimed payment of damages in the sum of M20,176 00 being damages plus interest thereon at the rate of 11% per annum from the 27th August 1990 to the date of payment, costs of suit and lastly alternative relief Defendant filed a plea in defence against the plaintiff's claim and the matter was set down for hearing accordingly.

The parties Counsels Mr T J Mohapi and Mr T Mohapi

informed me at hearing that the defendants admitted liability but do not agree on the quantum of damages and they want the same to be put to proof. The parties agree that the following heads of damages be put to proof, namely, (a) Contumelia (for which Plaintiff claimed (M15,000) (b) pain, shock and suffering (for which Plaintiff claimed M5,000) (c) Medical expenses (for which Plaintiff claimed (M176 00). Mr Mohapi put in the evidence of two witnesses, namely P W 1 Mrs Teboho Khosi, (Plaintiff) and P W 2 Mrs 'Mampesa Letsie.

Plaintiff says that at about 1.00 o'clock after mid-day, she had just had a light sleep when she heard heavy footsteps of people who then got into a nearby room. It was clear that the people were running. She was shocked by the incident as a result of which she opened her door and went outside and whereupon she saw a policeman standing near a fence, a few paces away. This police officer instructed Plaintiff to tell those boys to come out of the room. Apparently these people who were running got into the room nearby hired by the mother of one of the boys who was Plaintiff's neighbour. Plaintiff says she duly knocked at the door and shouted out for those boys to come out but in vain. She stood at the door for a few minutes when she saw a group of police officers, apparently having alighted from a vehicle at the road nearby. It was not made very clear as to how the group had separated from that first police officer. But it turned out that

he was part of them

Plaintiff goes on to say that having moved off a few paces from that door where she was knocking she began to observe that those policemen who had just appeared from the road were rushing towards her, in a threatening and a fighting mood. The police officers literally pounced on the plaintiff and started to assault her with fists and sjambocks all over the body until she fell down. After she fell down, she was kicked about her body and specifically at the belly which resulted in her urinating and having menstrual flow. It was revealed in her evidence that at the time of her falling she was already handcuffed. These handcuffs were released only after this shameful assault. She rose up. At the time of assault many fellow villagers of Mohalalitoe and Maseru East had congregated to watch these assaults. This included P W 2 as she later revealed. Plaintiff does not remember the exact number of police officers who actually administered the assault. It appears that all in all they could not have been more than three at any given time. She says they inter changed, came and went away. Of those who actually did the assault she is able to remember only Sakoane, the second defendant. It was revealed that the 2nd Lieutenant Babeli who was also present most probably as the head of the group and most likely he was that officer who stood against the fence and issued out instructions to the 2nd defendant and other

police officers

Plaintiff states that after the assault one senior officer offered to take her either to the Police Station or to the hospital on condition that she changed into another dress. She refused. She says she was bleeding from the nose, the mouth and from some part of the face. It was recorded that on arrival one of the police officers said " 'nyopa 'm'ao tooe u tia ba nts'a bashemane bao" (your mother's vagina, you will take out those boys). This should capture the mood of the police officers on their arrival. Plaintiff says she later moved about towards the Main North I Highway and towards Kentucky Fried Chicken shop, hoping to end up at the Police Charge Office or the hospital. She was in a state of emotional confusion and as she says she was roaming about. She ended up by being picked up by Traffic Police who took her in a van to the Police Charge Office and ultimately to the hospital, after being given a Police medical form (RLMP 47). A doctor examined her. She was given some medicines and pills and later she left. She was in extreme pain as she did say in her evidence.

P W 2 corroborates the Plaintiff as regards all the assaults at the scene as a neighbour and having been part of the large crowd watching the sordid proceedings. She however does not recall seeing the Plaintiff fall although she saw the proceedings.

to an end She speaks of the events as being toward 4 00 o'clock in the afternoon She does not remember the number of policemen who participated in the assault and cannot estimate their number She witnessed a lot of bleeding and furthermore she observed Plaintiff to have urinated She did not observe that plaintiff ended up having menstrual flow In my view it should have been difficult to observe this or alternatively this aspect is normally embarrassing not only to our women folk but to all, that it justifies this witness' reticence I formed an opinion that P W 2 was an honest witness Indeed she was asked a very very few questions

Plaintiff was inclined to exaggerate certain things or refuse to concede points in evidence which she should have conceded Plaintiff asked at the Court to believe she had a broken or dislocated jaw, that Dr Tsotsi refused to have her as an inpatient at the hospital to enable her to be operated upon and that she had to consult a private doctor Dr. Ngakane, on seven occasions on each occasion paying an amount of M55 00, and that she was granted peace-meal leaves of absence from work totalling close to six months I was not persuaded The view I formed was that due to the assaults Plaintiff jaws must have swollen with limitations to the opening of the mouth She had a laceration on the right thumb a contusion on her left buttock and loin There must have been several bruises of a benign kind

on the face Her face must have been swollen Her condition was not such that she could have been admitted as an inpatient in hospital The likelihood is that she later consulted Dr Ngakane but not as many occasions as she suggests Plaintiff could possibly have incurred medical expenses not in excess of M176 00 This head of damages ought to fail for absence of proof of receipts This is a class of damages normally called special damages for which there is need to have specific proof

Plaintiff says as a result of the assaults and the resultant inability to lift heavy objects she had to be transferred to a new post as a Receptionist. She had been a Cook before This may be true but I am not inclined to believe that any of this assaults could have resulted in any permanent disability to the Plaintiff The alleged injury to the spine or the back could be related to the difficulty in lifting heavy objects. In the absence of medical opinion to support these allegations I was unable to reach any conclusion in Plaintiff's favour that it was a serious injury.

The beating up of the Plaintiff was completely unjustified. That is why Defendants admitted liability Plaintiff suffered contumelia in the extreme A lot of people watched this shameful assaults on a married woman with the results, some of them are disgraceful as they are. Plaintiff was in extreme emotional

disturbance This is explained by her later going about or roaming aimlessly I found no proof of shock in the medical sense as an equivalent of nervous shock. (See the Law of Delict, R G Mckerroh 7th Edition - Footnote 57 - page 154) I believe Plaintiff experienced a lot of pain She must have felt great injury to her person and dignity. Her claim for contumelia is well founded

This is the background against which I asked Counsel to address me later on quantum of damages after a few days' adjournment This I had to do with a view to enable Counsel to look at few decided cases to guide the Court I must point out that besides the evidence of Plaintiff and P W 2 no proper medical evidence or admissions were put in or agreed upon. The Crown did not put in any evidence


Counsels have put before me a number of good decisions on the subject of claims for pain, shock and suffering and contumelia I need only to state a few namely, Lehlohonolo Mokutlu v Solicitor-General and Two Others CIV/T/221/80, 29/04/83 (unreported) Seetsetsa Mahao v Rantsebo Suping Ramalefane, CIV/T/546/83 9/09/87 (unreported), P A Noto v Thabiso Sekeleoane, CIV/T/415/84, 7/04/89 (unreported) Moeketsi Morake v Victoria Hotel and 4 Others CIV/T/874/86, 21/10/88 (unreported), Rapou Rapou v Ntsokoane Ntsokoane (CIV/T/278/87,

3/06/91 (unreported) Lineo Maphathe, lipolitiki Lekhoaba v Lesotho Electricity Corporation CIV/T/89/81, CIV/T/35/87, 22/01/89 (unreported), Karabo K Mohau, Salemane Phafane v The Commissioner of Police and Another CIV/T/390/88 and CIV/T/391/88, 3/01/89 (unreported), Pholo v Attorney General CIV/T/601/89 3rd May 1990 (unreported), Solicitor General v Simon Frank Mapetla C of A (CIV) NO 17 of 1984 26/07/1985 (unreported) These decisions prove that no cases are alibe It is difficult to measure contumelia, pain and suffering in terms of money It is not the purpose of the law to punish but to seek to compensate the Plaintiff as much as possible with the aid of whatever evidence and information at the Courts disposal, based on broad general considerations. Of these decisions I have found Moeketsi Morake v Victoria Hotel most instructive I have not been able to trace this case of Boo1 v Minister of Police and Others 1979 This South African case of Ramakulvsha v Commander Venda National Force 1989 (2) SA 813 I also found very useful

I have found that there is a tendency to inflate these kind of claims This claim is an example of such inflated claims I however hesitated to award costs on the magistrate's court scale

Consequently I would make the following award in favour of the Plaintiff.

- (a) For general damages in respect of
pain and suffering M3,000.00
- (b) For contumelia M3,600.00
- (c) Cost of suit



T MONAPATHI

Acting Judge

For the Plaintiff Mr T J Mohapi

For the Respondents Mr T. Mohapi (noted by Miss Tau)