

IN THE HIGH COURT OF LESOTHO

In the matter between :

THULO MOJAKI

PLAINTIFF

vs

MOHLOMI MOLAHLI

DEFENDANT

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 22nd November 1995

Damages for the death of the deceased, who was only about 19 years, are being claimed by the Plaintiff. Plaintiff is deceased's father. Deceased was not yet in his Form 5 class of study at school. A sum of Twenty Two Thousand, Eight Hundred and Eighty Three Maluti and Forty Eight Lisente (M22,883.48) and costs as being claimed against the Defendant, who is assisted by his father and legal guardian LEFANTSATSA MOLAHLI.

The summons was issued on the 22nd December 1994 and served on the 11th January 1995. There has been intention to defend the action dated the 12th January 1995. No plea has today been filed despite a notice to file same dated

the 14th February 1995. The Defendant was duly barred from pleading. The matter was on the 1st April 1995 duly set for hearing on the 24th October 1995 and then postponed to the 8th November 1995 and the 22nd November 1995 for default judgment when it was finally heard. Before the final date of hearing the Plaintiff's attorneys A. T. Monyako & Co. withdrew and were replaced by B. Sooknanan & Associates.

Formal evidence was given in the form of *viva voce* evidence of the deceased's father, the Plaintiff. The Court made it clear that it could not allow damages for what was called ten head of cattle to raise up the head of the deceased. The first reason is that that is matter for Subordinate Courts and it is only with leave of this Court that the matter would be entertained. Such leave had not been sought. Secondly, despite that the Defendant has not defended the action he surely could not have contemplated a claim in the nature of ten head of cattle to have been intended to be included in the total claim. This was more probably so with the stark absence of particularity found in the plaintiff's declaration.

I was only prepared to make an award of what are essentially financial expenses of special nature. Indeed these included desparate items such as telegrams, uplifting

of mourning cloth and ceremony expenses and shoes to dress the deceased body. These were special damages. They were proved to the satisfaction of this Court. Some insurance houses have resolved to stipulate a fixed amount for burial expenses. These they have done for the reason that with time and change of people's attitudes burials are becoming expensive. Items claimed are becoming fickle and some outright unusual. Burials are becoming big occasions and a show of status. It has been rightly decided that a lot of care should be exercised and a limit imposed. Had it not been the impression the Plaintiff's impression that a claim for ten head of cattle had to be entertained I would have brought in the question of deliberate abuse of the Court's jurisdiction. The summons was drawn by an attorney. Hence my dismay. I would not punish the Plaintiff for the offence.

In the result a much reduced sum of Five Thousand Six Hundred and Eighty Two Maluti and Forty two Lisente (M,5682.42) was awarded by me, with costs of suit on the ordinary scale.

T. V. MONAPATHI
JUDGE

22nd November, 1995

For the Plaintiff : B. Sooknanan & Associates

For the Defendant : No appearance