

CIV/T/66/89IN THE HIGH COURT OF LESOTHO

In the matter between:

MAHLOMOLA KHOACHELE

Plaintiff

and

MOKOTELI LETELE

1st Defendant

TSELISO MAKHOTLA

2nd Defendant

LEKHOLO LIBE

3rd Defendant

MATSITSO THAMAHANE

4th Defendant

MANUEL THAMAHANE

5th Defendant

SEKAMOTHO RANKO

6th Defendant

LEKOKO MOKHUTSOANE

7th Defendant

PHATSOANE MOKHUTSOANE

8th Defendant

CLEMENTI PHATE

9th Defendant

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi  
on the 26th day of January, 1995

The Plaintiff has filed a claim in this Court for damages  
 for:

- |                              |            |
|------------------------------|------------|
| (a) Pain and suffering ..... | M50,000.00 |
| (b) Contumelia .....         | M10,000.00 |
| (c) Medical Expenses .....   | M 509.95   |

"In that on or about 14th June 1988 at or near Masabielleng

Defendants, the other or all of them wrongfully and unlawfully and intentionally assault Plaintiff with stones and sticks as a result of which Plaintiff sustained certain serious injuries."

The Plaintiff has elected to proceed on a judgment by default of appearance against the following Defendant No.1, No.3, No.6, No.7 and No.8 on the understanding that they are sued jointly and severally on paying the other to be absolved. I drew Mr. Nathane's attention to remark of Magutu J. that "The Court has a problem with this type of separation of trials in a claim for damages for assault where damages are claimed jointly and severally against all Defendants". Mr. Nathane's reply was that by proceeding in the instant or presently against the mentioned Defendants that shall have the effect of absolving the other Defendants against whom he has not proceeded. That he is entitled to make that election.

The Plaintiff and the Defendants (who are well known to the Plaintiff) residents of Masabielleng Ha Tsiu in the District of Maseru, where Plaintiff was a chief's messenger, with powers to detain and impound animals which have damaged crops or grazed on reserved pastures. On the day in question at around the hours of 1.00 pm or 2.00 pm the Plaintiff had had under his control certain cattle for Defendant No.4 which he was going to impound, the cattle having damaged certain crops. Defendant No.3 had

along the way attempted to obstruct the animals but the Plaintiff had succeeded to overpower him.

When the Plaintiff was about to enkraal the animals the Defendant No.7 and Defendant No.5 there threw stones at Plaintiff, one of the stones hitting the Plaintiff on the forehead. It was immediately after that the Defendants converged on him assaulting him with sticks continuously over a long period the result being that he fell unconscious. The Defendants had appeared from two directions Mokoteli, Tseliso, Sekamotho Lekholo and Clementi; from below the kraal while Lekoko and Phatsokane came from the other direction. They all assaulted the Plaintiff over his head, the hands and the upper body.

Having fallen unconscious Plaintiff was carried to some cliffs below the village. When he was about to be thrown down the cliffs he came to. He heard one man shouting out from a distance below. The man warned that that was not the best place to throw over the Plaintiff but that there was some other suitable portion where this could effectively be done (so that he can die or be killed). The party then moved further with the limp body of the Plaintiff who was barely able to observe what was intended to be done but powerless to do anything. The suitable spot (along the cliffs) was identified. It was when he was about to be thrown over that he was able to muster just

enough energy to cling to and hold on to one MOKOTELI with whom they eventually went under. He cannot recall what exactly happened afterwards except that he woke up, came to and regained his consciousness in hospital after a week and four days counting from the 14th June 1988. He was released from hospital the following month.

The Plaintiff has since then gone on medical checkups and paid various amounts of money for examination and medicaments. One examination required from him an amount of about M4,000.00 to treat his ears. This he was not able to afford. All in all he paid over M509.95 (as his claim shows). But his was only able to prove this special damages to the amount of M267.00 as shown in the bundle of receipts which were handed in collectively as Exhibit D. The Plaintiff also handed in as Exhibit A being a medical report of the Department of surgery of the Queen Elizabeth II Hospital, Medical Report (RLMP 47) Exhibit D and Lesotho Health Card (Bukana) handed in as Exhibit C."

The Plaintiff suffered a lot of injuries in this brutal assaults whose circumstances I have already described. Included in these are the fractures on two places of the left hand which included a dislocation at the elbow, a fracture on one place on the right hand. He can no longer use his two hands effortlessly or for any work demanding the least of efforts. His ears are

failing. He can only hear the most moderate and controlled noises or sounds. There is need for an operation or treatment at the cost I have already alluded to. Plaintiff can no longer work any fields and has since lost his employment with the Ministry of Interior.

This assault was brutal and seriously intended to kill the Plaintiff. The Plaintiff had been engaged in lawful activity of a public kind. To impound animals. It means that if any of the Defendants disputed the impounding on the reasons, a lawful opportunity was created by this open and undisguised detention of the animals. But the Defendants could not bear to see that happen. They meted out the most humiliating of assaults. These assaults on people engaged in lawful activities are increasing. The Plaintiff has been disabled and disfigured. I took this in the most serious light. I had previously awarded damages in a case almost similarly sordid. It is just that in that case the Plaintiff was a much older person and there had been some fight albeit involving his son prior to the assault (See Bothata Taole vs Lira Lerata & Two Others - CIV\T\143\94, unreported - 14th October, 1994).

That is why in the instant matter, on the 24th November 1994 I awarded damages as follows against those Defendants jointly and severally, One paying the other to be absolved.

(1) Medical expenses	M	267.00
(2) Pain and suffering	M	7,000.00
(3) Contumelia	M	8,000.00

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M15,267.00

Indeed the claim was inflated as this is ow the habit on the part of practitioners. I nevertheless awarded costs on the High Court scale to the Plaintiff.

T. MONAPATHI  
JUDGE

26th January, 1994

For the Plaintiff : Mr. Nathane

For the Defendants : No Appearance