

CIV\T\58\95IN THE HIGH COURT OF LESOTHO

In the matter between :

'MAMOSITO AGNES LETOAO

Plaintiff

and

SEABATA MASELELA

Defendant

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 6th day of March 1995

This is one of the claims for damages for the unjust and unlawful killings whose circumstances seems not only most bizarre but whose mystery is increased by the fact that defendant while served with summons claiming for huge sums of money decide not to defend the claims. The Defendant was in prison when he was served with the summons and had only been served on the 10th February 1995.

The Plaintiff, who is a widow of the deceased (NAPO LETOAO), gave viva voce evidence to support her application for a judgment by default. She claims for payment of damages for sums of moneys

as follows:

1. M104.44 being compensation for loss of maintenance.
2. M1,639.70 being medical and hospital expenses.
3. M1,580.00 being funeral expenses.

And in addition interest thereon at 18% from date of judgment, costs of suit and further and alternative relief.

The Plaintiff was married to deceased by civil rites on the 23rd June 1978 and the marriage subsisted until on the 20th January when the deceased died as a result of a gun shot wound. At the time of the deceased's death there were four (4) children borne out of the said marriage, namely, Mosito, a boy born on the 7th April 1981, Nthabiseng, a girl born on the 6th October 1984, Mamotebang, a girl born on the 15th March 1988 and Manapo, a girl born on the 10th January 1991. The deceased was at the time of his death employed at Lesotho Airways Corporation and had been so employed since 1986 and had been earning M457.75 per month. When the deceased died he was about thirty seven years of age having been born in 1955. It means that if the deceased lived up to the age 55 years, being the normal age of retirement, he would have lived for a further 19 years. It was on that basis

of 19 years multiplied by the monthly wages of M457.75 which the Counsel for the Plaintiff persuaded me that it was such an amount or its total that the deceased would have been able to support his family with. This added to a total of M104,362.44 which I accepted as correct. This did not take into account the various increases that would be made in the future to the salary. Indeed the amount did not take into account the fact that some of the children if not all would have become independent along the line. But then the deceased would still be breadwinner to his wife. I do not think this Court could be obliged to undertake such actuarial contingencies unless strongly persuaded to do so.

Indeed after his injuries the deceased was hospitalized in the Morija Scott's Hospital in Maseru where he was hospitalized for four (4) days. On the 3rd December 1992, deceased was transferred to Pelonomi Hospital in Bloemfontein where he was hospitalized. Since deceased could not respond to any medical treatment, he was discharged but died at his home on the 20th January 1993. The various exhibits and receipts testify to the consequent hospital medical and funeral expenses which I have found proved and for which I have awarded damages which will be stated at the end of this judgment.

On this fateful afternoon the Plaintiff was at his courtyard at Mazenod Ha Nko in the district of Maseru. Not very far from

her was her husband. A distance away the Defendant was heard to say in Sesotho, "Napo ke batla ho feta ka bolokolohi mona." (Napo, I want to be able to pass freely here). The deceased is reported to have replied that he did not understand what the Defendant was saying. There was a sound of gun report. The shooting seemed to be directed at the deceased's dogs which in turn seemed to be barking out fiercely. Then the Defendant was moving towards the house where the deceased was seen to be making effort to control and calm the dogs. Deceased is said to have even picked up a stick to beat up the dogs to calmness. It seemed that if the deceased did not act that way the dogs would succeed in attacking the Defendant. There was another sound of a gun report emanating from where the deceased and the Defendant were. The Plaintiff had then been about 15 paces from the deceased. At that time the dogs had run off. Immediately after gun report the deceased was seen coming slowly towards his house with a wound on his head which was bleeding profusely. He fell down a few feet from his house. The Plaintiff went to the assistance of the deceased who had fallen face down. An attempt was made to have the deceased sit up. This was unsuccessful. Attempts were made to stop the bleeding. It was not successful. The deceased had fallen unconscious but was still alive.

One villager went to the chief to make a report about the injury to the deceased. Villagers came to assist. One had a

blanket which was used to cover the deceased. All in all the deceased was eventually taken to hospital as aforesaid. He had been unconscious since the injury. The hospital authorities informed the Plaintiff that her husband would not recover. There had been a clot resulting from a bleeding into the brain, the skull having been fractured. The so called cerebral haemorrhage. This sad information was relayed to the Plaintiff during the last days of the deceased's life, to explain why the deceased was released from hospital when not having recovered at all, but to allow him to have a peaceful death at his own home.

The Plaintiff was able to disclose that this apparent reference to freedom of passage statement by the Defendant probably meant that the deceased's dogs were very fierce and threatened passage of people past the deceased's home which was along a pathway. Defendant's child was once chased by the dogs. Plaintiff further disclosed that the deceased was not a well liked person in the village. I did not feel that these factors had much effect on the circumstances of the stark unlawfulness of the attack nor the amount of damages claimed.

In the premises I decided that the Plaintiff's claim ought to succeed and I allowed the claim as follows against the Defendant:

1. Payment of M104,362.44 being compensation for loss of maintenance.
2. Payment of M1,580.00 being funeral expenses.
3. Payment of M1,639.70 being medical and hospital expenses.
4. Interest thereon at 18% from the date of judgment.
5. Costs of suit.

The total of the first three claims is an amount of M107,312.14.

T. MONAPATHI
JUDGE