

CIV\T\311\94

IN THE HIGH COURT OF LESOTHO

In the matter between :

CHAKA CHAI RAMAFIKENG

Plaintiff

and

JULIUS RALETSELA

Defendant

JUDGMENT

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

The Defendant was served with summons and did not respond in anyway. That is why the Plaintiff applied for a judgment by default of appearance of the Defendant for damages. The Plaintiff put in *viva voce* evidence which was also supported by a medical certificate termed "treatment instructions" which I marked Exhibit A. The certificate reports most saliently that the Plaintiff was "shot with a rifle as it was high velocity wound I removed the sutures and sent him for X ray. This showed simple fracture of his 3rd and 4th metacarpal bones of his right hand which is also his dominant hand."

The Plaintiff's claim was for payment of damage of :

1. A sum of M5,000.00 for assault on the eye,
2. A sum of M5,000.00 for pain and suffering.
3. A sum of M10,000.00 for assault by a rifle.
4. A sum of M10,000.00 for pain and suffering on same.

I thought the assaults on the Plaintiff were quite irresponsible and unjustified. The circumstances showed that drinking could have contributed somewhat to this incident. It was not clear whether the presence of the Plaintiff's girlfriend could have also contributed. It was this girlfriend of the Plaintiff who the Plaintiff, following on a message previously received, had waited for, for more than an hour at a place called Whitehouse at one Lithabaneng junction in the district of Maseru. Both parties are members of the Royal Lesotho Defence Force stationed at Makoanyane.

The Plaintiff was about to go with that girlfriend of his at about 10.00 p.m. when the Defendant (still in uniform) arrived at the said drinking place. The Plaintiff had in fact told his girlfriend to go and wait outside the drinking place when

Defendant asked Plaintiff why he was in a hurry to go. Plaintiff had replied that it was not Defendant's business. Apparently the Plaintiff in reply to Defendant used the word "monna" (man) which the Defendant objected to and asked the Plaintiff why he referred to the Defendant in that manner. In most communities in our land a senior male would object to the use of the word by a junior one. This is so, usually when it is used in an unfriendly attitude or with lack of respect. Clearly the Plaintiff did not accept the Defendant's intervention to his going away with his girlfriend at the time that Plaintiff was intent on going. The Defendant there and then hit the Plaintiff with a fist on the eye and lip which resulted in some of the injuries on which one of the Plaintiff's claim is based. But more followed after this initial assault.

The Plaintiff proceeded outside to follow his girlfriend whereupon the Defendant followed. It was moonlit and not dark outside, that is why Plaintiff was able to identify the Defendant who threatened that he would shoot the Plaintiff until he excreted (u be u nyele). The Plaintiff was carrying a bottle of beer and immediately heard a gun report and felt that he was shot on his right hand. He was shocked and called out to Defendant that he has already shot him. There was a lot of blood from this open wound on his hand. He could no longer walk unassisted. He was hospitalized and sutured at Makoanyane. The following day

he was attended to by a doctor who made the report in Exhibit "A". He removed the sutures "which are not usually made on a gun shot wound" as the Plaintiff reported.

In addition to the gun shot wound the Plaintiff had swollen lips and an injured eye which has permanently lost focus or has a bad vision. The use of his dominant hand has been permanently affected and as a result he has failed a test which would depend on optimum use of his hand "currently he has not regained fully function of his hand with limited flexion and poor grip", as stated in the medical report.

The use of firearms is rampant and unjustified and results in unnecessary injuries on innocent people more often than not. In this instant matter I awarded damages to the total sum of M8,000.00 with costs. The damages were as follows:

1. Assault on the eye and the lip, pain and suffering - M3,000.00. That is M2,000.00 for assault and M1,000.00 for pain and suffering.

2. Assault by shooting, pain and suffering - M5,000.00. That is M3,000.00 for assault and M2,000.00 for pain and suffering.

As in most claims in the past I also felt that these claims were a bit inflated, but the costs were still to be on the High Court scale.

T. MONAPATHI
JUDGE