

**CIV/T/401/95**

**IN THE HIGH COURT OF LESOTHO**

In the matter between :

V M MALEBO

PLAINTIFF

and

THE MINISTER OF AGRICULTURE  
COMMISSION OF INQUIRY  
THE ATTORNEY GENERAL

1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT  
3<sup>RD</sup> DEFENDANT

**Reasons for Judgment**

**For Plaintiff** - Mr. M. A. Ntlhoki

**For Defendant** - Mr. T. Makhetha

**Delivered by the Honourable Mr. Justice T. Monapathi**  
**on the 4<sup>th</sup> day of May 2000**

I have already made a ruling in this matter on the 17<sup>th</sup> day of April 2000 which was noted by Adv. Z. Mda.

The Plaintiff was one of the debtors according to the findings of a

Commission of Inquiry. The Commission was established in terms of Public Inquiries Act No.1 of 1994 per Legal Notice No.114 of 1993, by His Majesty, into Co-operatives and Cooperatives movement in Lesotho and more particularly a co-operative known as Co-op Lesotho. Co-op Lesotho was a major Co-operative with a network of depots selling agricultural products. The Commission which was chaired by Mr. Justice M.L. Lehohla completed its report on or about 29<sup>th</sup> November 1991 which it submitted to the First Defendant on the 30<sup>th</sup> November 1993. A copy of this three hundred and fifty six (356) page report was put before the Court as annexure "A" to Defendants plea.

The parties agreed that the Court should decide a certain two issues in this dispute which would be most convenient to decide before any evidence was led, if such evidence would be necessary. The two issues were:

- " (i) Whether or not the commission made a finding that debtors were responsible for the downfall of Co-op Lesotho.
- (ii) Whether or not, if the answer to (i) above be in the affirmative such finding, if any taken together with the whole contents and the nature of the report, is reasonably capable of bearing any defamatory meaning or such meaning claimed by the Plaintiff."

The said Commission's report contained annexure "BBB1" which was a list of names of individuals the Commission reported to have been indebted to the said Co-op Lesotho. There were other lists of traders/debtors "BB2", Societies "BBB3" and Government Ministries and Projects - "BBB4". Amongst the reported debtors was Plaintiff whose name appeared in "BBB1" and who was reported to have been indebted to the said Co-op Lesotho in the sum of Eight Thousand and Nine

Hundred and Forty Three Maloti and Fourteen Lisente (M8,943.14). One of the debtors was Lesotho Agricultural Development Bank (LADB).

The respective contentions of the parties in relation to the disputed issues above (i and ii) in the second paragraph of this judgment were as follows: According to the Plaintiff there was a finding per report that debtors were responsible for the downfall of Co-op Lesotho . Consequently, because admittedly Plaintiff's name appeared in the list of debtors Plaintiff had been stated as having ben responsible for the downfall of Co-op Lesotho and that that had been defamatory of the Plaintiff.

Defendants contended that there was no such finding per the report that debtors had been responsible for the downfall of Co-op Lesotho. That if such finding was made in the report, which was not conceded, in view of the whole contents and nature of the report it was not reasonably capable of bearing a defamatory meaning.

The parties agreed, pursuant to the statement of the case pursuant to High Court Rule 32 (1) (2) and (3) read with (7), as follows:

- “(i) In the event of this Honourable Court finding/holding that per the report there was alleged finding by the Commission that the debtors were responsible as alleged, the immediate question to be decided would be whether or not given the contents of the report as a whole and the nature thereof, such a finding was reasonably capable of bearing defamatory meaning.
- (ii) In the event of being held that the finding, if any is reasonably capable

of bearing a defamatory meaning, then the matter would be subjected to trial so that whatever defences have been raised in the pleadings are tested.

- (iii) In the event of the Honourable Court finding/holding that there was no such finding per the report that the debtors were responsible as alleged then that would be the end of the matter and the whole proceedings.
- (iv) In the event of this Honourable Court finding/holding that per the report there was the alleged finding by the Commission, but that the finding is not reasonably capable of bearing a defamatory meaning, taken together with the whole contents and then nature of the report, then that would be the end of the matter.”

I would say from the onset that the suggestion about the finding of debtors “as responsible for the downfall of Co-op Lesotho” was misleading in the sense that the Commission was looking at various causes of the downfall of Co-op Lesotho. This meant that there could be a number of other factors. And indeed many factors were found. And more than five hundred (500) debtors were unearthed. The parties however most usefully spoke about “the whole contents and the nature of the report.” This suggested that the inquiry could not as a fact have had its eyes on one factor as a sole cause but on a number of causes as the terms of reference indicated. A reference to the introduction of the Commission and the terms of reference would bear fruit, as showing the true nature of the report.

It was said in the report that the Commission had been set up against the background of a general downward trend in the Co-operative movement in Lesotho

which had culminated in the closure of Co-op Lesotho. Its depots and warehouses had been closed around the country and its staff had been laid off on the 19<sup>th</sup> March 1993. Co-op Lesotho had grown into a giant according to local standards. It had provided sizeable employment opportunities and had run extensive network of facilities primarily for agricultural inputs. "Co-op Lesotho was also viewed as an apex organization for the Co-operative movement in Lesotho."

The above situation had brought about extensive terms of reference which were contained in the Legal notice 114/1993. Under section 4 of the terms of reference the Commission was asked to examine eight (8) items in all. Under Section 5 the Commission was asked to examine

- (i) Accounting and budget procedures of Co-op Lesotho;
- (ii) .....
- (iii) .....
- (iv) .....
- (iv) Identification of debtors of Co-op Lesotho and any irregularities in respect of accounting procedures relating to debtors and creditors of Co-op Lesotho.
- (v) .....
- (vi) .....
- (vii) .....

So that the Commission was about several issues or causes of the downward trend in the Co-operative movement and closure of Co-op Lesotho. If 5(v) above was to have any meaning identification of debtors by name was clearly the intention of His Majesty in establishing this Commission. There and then a doubt would arise as to whether any intention to injure the Plaintiff in his good name (*animo injuriandi*) can even be remotely suspected. And if not so why?

It has not been difficult for the Court to discover that the Commission did in fact make a finding that debtors were one of the factors that caused the downfall of Co-op Lesotho. I firstly referred to page 82 in paragraphs 26 and 27. There it was recorded as follows:

“ 26

DEBTS

“One other factor that accounted for the bad performance of Co-op Lesotho was slack control of debts on the part of the management. Evidence showed that everybody especially high ranking authorities of that time could accumulate huge debts without anything being done by the authority of Co-op Lesotho.

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So lax was Co-op Lesotho in this regard that it seems possible that if a customer was known to be well to do, he could not only be believed to be in credit but would be granted discounts even when he bought on credit.” (My underlining)

Huge debts and customers not being in credit being granted facilities are spoken about in the clearest of terms as having contributed to “bad performance” and as examples of “laxity” on the part of management and staff.

Secondly it was what was stated in page 178 of the report at paragraph 80.1. These were the lists of debtors and what they owed Co-op Lesotho as shown in the annexures at the end of the report. The total in “BBB2” was M444,107.32. “BB1” had a total of M1,042,461.06. This excluded the two other lists which also ran into huge sums.

Thirdly, there was a finding in the report at page 68 paragraph 18 which was styled: “Back to Colonel Tsotetsi’s involvement in factors which led to Co-op

Lesotho's failure." This could safely be read with the conclusion and finding on page 183 at paragraph 13. It said:

"Some of the debts arose as a result of some military councillors, some ministers and some high ranking government officials treating Co-op Lesotho as a fine source of acquisition of property and thereby showing no intention or preparedness to pay for those goods and services obtained from Co-op Lesotho for instance.

- (a) evidence strongly suggests that some goods and services were provided without any relevant documentation.
- (b) Instances abound in evidence to show how goods destined to Colonel Tsotetsi's place left Co-op Lesotho premises without any proof to the organization for those goods. In such circumstances the conclusion is irresistible that Col. Tsotetsi acquired such goods free of charge and at no mean resultant loss to Co-op Lesotho." (My underlining)

The above revelations needed no comment.

Lastly, on page 183 at paragraph 14 to 184 it was concluded as follows:

"On this basis therefore the Commission is of the firm view that LADB owes Co-op Lesotho M2,525,203.00 as revealed in the exercise undertaken by the Commission at great pains and inconvenience to itself."

The debt by LADB must have caused no mean resultant loss to Co-op Lesotho. That a bank was a big debtor to a Co-operative Society was yet another revelation. It could only be a strange one. The most important thing, however, was that it became beyond doubt that debts and debtors were responsible factor to have brought Co-op Lesotho to its knees. That Col. Tsotetsi was singled out for above comment was not an accident. The Commission had had a lot to say about him. It also spoke of several others. That was one other reason why reading the report

was indeed a voyage of discovery.

In my ruling I added that it might perhaps be found that the Plaintiff was incorrectly cited as a debtor in the event that the matter would be disputed in Court. It might be that the amount owed was inaccurately calculated. This would not make the findings and statements of the Commission defamatory. The principle would be that the proceedings of judicial or Commission inquiry are normally privileged whether provisionally or absolutely. See for instance the case of *BASNER v TRIGGER* 1946 AD 83. There should be a number of such authorities in law reports and textbooks commenting in a similar manner. Some would say that any claim wherein findings of reports or statements by witnesses are being questioned are out of bounds. That is besides whether the Commission of inquiry intended to defame a person of the name or stature of the Plaintiff. Individual witnesses would definitely, without doubt, seek protection from one of various defences raised in the Defendants pleas, including that of privilege as I have spoken about earlier on.

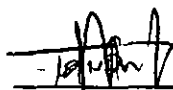
The *dramatis personae* in the report cannot only make one believe that one can never fully understand the people of this country. They reveal that soft and extensive immoral underbelly of lack of respect for public property that is to be found in this country. The thoroughness of the report has exposed the unpalatable manner in which people got their undeserved wealth and gained respect at the same time in this country. Some still expected to be respected. Some were so arrogant not to anticipate that governments will sometimes boldly investigate such conduct by means of public inquiries like the Commission subject of the dispute.

The Court would, as I digressed in my ruling, normally decry the fact that the Plaintiff may not have been informed or have been called before the



Commission about the aspect of his alleged indebtedness as it affected him. On the general need for fairness before a Commission of Inquiry see the case of LESOTHO CO-OPERATIVE HANDICRAFTS LTD AND OTHERS v LESOTHO COMMISSION OF INQUIRY INTO CO-OPERATIVES 1991 - 1996(1)LLR 343 and section 13(2) of the Public Inquiries Act No.1 of 1994. This would not however make the statements in question (about Plaintiff's indebtedness) intentionally injurious in the context of a Commission of Inquiry without more.

The result was that, as I found as in paragraph 7D(iv) of the agreed statement, this should be the end of the matter. I did however have the question of costs deferred to a date to be arranged by the Registrar or pending agreement between Counsel.



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T MONAPATHI  
JUDGE