CIV/T/433/96
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IN THE HIGH COURT OF LESOTHO

In the matter between :-

TUMISANG THAMAE	1ST PLAINTIFF
MASIU MOLEMOHI	2ND PLAINTIFF
CHARLES MASENA	3RD PLAINTIFF

AND

THE COMMISSIONER OF POLICE	1ST DEFENDANT
THE ATTORNEY-GENERAL	2ND DEFENDANT

JUDGMENT

Delivered by the Honourable Mr. Justice M.L. Lehohla on 4th December, 2001

The three actions above were consolidated by order of Court.

Each of the three plaintiffs sues the Commissioner of Police and the Attorney General jointly and severally for unlawful arrest and detention in separate amounts of :

(a) ten thousand maluti (M10 000.00)

(b) thirty nine thousand nine hundred and forty five maluti (M39 945.00) damages for assault, pain, shock and suffering; and for

(c) fifty five maluti (M55.00) being medical expenses

(a) further and/or alternative relief

(b) costs of suit.

In his declaration Tumisang Thamae in keeping with Charles Masena sets out at paragraph 5 that on 13th May 1996 and at Butha Buthe the plaintiff was wrongfully and unlawfully arrested without a warrant by a member of the Royal Lesotho Mounted Police and thereafter detained at various Police Stations until the 17th of May 1996.

In paragraph 6 each of the two plaintiffs mentioned in the previous paragraph above sets out that during the detention and especially at Maputsoe in the Leribe

district members of the Royal Lesotho Mounted Police, acting within the scope and course of their employment with first defendant unlawfully assaulted plaintiff using various methods of assault including suffocation and administration of electric shocks to his body.

As a result of the assault each of the plaintiffs asserts that he had to undergo medical treatment.

In his turn, Masiu Molemohi sets out in paragraph 5 of his declaration that the date of his arrest was 14th May 1996 unlike that of the two other plaintiffs which as shown is 13th May 1996. I may just indicate that the two dates of arrest and that of release from police detention i.e. 17th May 1996 are common cause.

In paragraphs 6 and 7 the declaration of Masiu Molemohi is on all fours with declarations of the other two plaintiffs.

It is also common cause that the plaintiffs received medical attention and treatment in one instance once upon release from the police detention and in all instances immediately upon release from prison where they had been remanded in

Custody. In all instances the plaintiffs fingered the police especially DW 1 the then Warrant Officer Chabalala and his subordinates as the culprits responsible for their injuries suffered and ordeal undergone while in police custody.

EVIDENCE

The first witness for the plaintiffs was Charles Masena who testified that he is self-employed, tills the land and uses his parents' tractor to cart sand when the ploughing season is over.

Charles Masena told the Court that he was born on 28th November 1954. He is married and has Children ranging in age between 17 and 14.

He also said his wife is a Primary School teacher at Qalo.

Coming to the facts of the instant case proper he testified that at around 6 am on 13th May, 1996 his wife was already preparing to go to work when she roused him from bed and told him that police had arrived at the residence and claimed they had come to visit him.

Charles Masena woke up and went to the kitchen to let the police in. He discovered that he knew two of the policemen who entered into the kitchen. These were DW 1 W/O Chabalala now Senior Inspector and one Mr. Moriana.

Chabalala explained to Charles Masena that it would seem a friend of his was in possession of guns elsewhere and it appeared that Charles Masena bore some link with such guns.

The two police accordingly asked PW1 Charles Masena to accompany them when PW1 got outside he found that there were many other police on his premises. Policeman Moriana had disclosed to PW1 that PW3 Tumisang Thamae was the one who linked PW1 with the guns in question. PW1 readily admitted before this Court that PW3 was and still is his friend.

It was PW1's evidence that from his home he was taken to the charge office and that at no stage was there any mention of anybody's death by the police who had asked him to accompany them to the Charge Office. He stressed that on leaving his home he felt that he was under their control even though he was not cuffed. He first got cuffed when he got to Hlotse Charge Office. He had been transported from his

home Phaphama in Butha Buthe and taken first to Butha Buthe Police Station.

It was at Butha Buthe police station that he and PW3 Tumisang were made to sit in the CID office. PW3 was already cuffed. PW1 had been conveyed to PW3's place where the latter was found already outside his house in the forecourt and cuffed. They left for Hlotse and when PW1 got to Hlotse charge office he was cuffed and tied with leg-irons. Neither Mofilikoane DW2 nor anybody who came to the Charge Office at Butha Buthe told PW1 or 3 why they were being taken to Hlotse.

It is alleged by the defence witnesses that the Occurrence Book must have been filled to mark the event of these people being taken to their home district charge office at Butha Buthe as a rule. But the strangest thing is that this Occurrence Book which in PW1 discovery affidavit was said to be in his possession was not produced and the excuse is that it got lost.

PW1 was taken to the Maputsoe factory Charge Office while PW3 was left at Hlotse Police Charge Office. It is stressed by DW1 that both the Cell Registers and occurrence books for these respective events were filled but as mentioned in respect of the occurrence book for Butha Buthe none of these items containing the

information regarding the whereabouts of the plaintiffs who by now were clearly suspects were produced. The reason again being that these vital items regarding the whereabouts of suspects were irretrievably lost. This fact alone is enough to raise one's eye brows but taken in conjunction with the fact that there was a simultaneous disappearance of these documents in respect of events relating to the locking up of PW3 at Hlotse and in relation to the locking up of PW2 the following day i.e. 14-05-96 at the Police Charge CID Office at the bridge at Maputsoe these disappearances stop being mere coincidences but instead smack of a well-calculated design to ensure among other things that the relatives of the suspects, who perchance could go to Butha Buthe or Hlotse where one or two of their next-of-kin were known to have last been seen heading to, would just draw a blank in their endeavour to trace where the suspects were kept. Indeed this strong suggestion put to defence witnesses by Mr. Teele for the plaintiffs was not gainsaid.

THE PLAINTIFFS' ORDEAL

Each one of the plaintiffs was taken individually and at separate hours to the police interrogation centre near the factories of Maputsoe. PW1 on arrival at this centre was asked if he knew what he had been brought there for. He replied no. He

was told that he had been brought there in connection with the death of one Mahlatsi. He had been dead some five or so months previously from unnatural causes. In fact even Dw1 admits that some of the Butha Buthe police were implicated in the shooting and killing of Mahlatsi. That is why the investigation team into Mahlatsi's death consisted of Hlotse, Maputsoe and T.Y. policemen.

PW1 had known Mahlatsi as not only a co-villager but a fellow businessman, a friend and someone with whom he shared similar political views and accordingly belonged to the same political party led by the then Prime Minister the late Dr. Mokhehle. They also belonged to the same LEC church.

PW1 was surprised to learn for the first time while there that he had been brought there for he had killed Mahlatsi. He asked whether this was a question or a statement being told to him. They said they were telling him that he had done so. He denied it.

Indeed PW1 found this statement by police most disconcerting for he and others had been active and playing a leading role in ensuring that Mahlatsi was given full political burial. PW1 had been involved in the funeral preparations without

stinting any efforts in that regard.

After PW1's denial of having killed Mahlatsi the police told him that he was going to tell the truth. They ordered him to undress. He thought they meant he should put off his blanket, and because he was unable to do so as he was still handcuffed, the handcuffs were removed from his hands. Thus he put off his blanket whereupon he was ordered to strip naked. He asked why. The answer was in the form of a solid butted blow to his rib-cage with a gun wielded by a young light-complexioned policeman whose name PW1 did not know to-date. However the ones who were present were DW2 Mofilikoane, DW1 Chabalala, one Mofihli and one Moonyane. The others this witness didn't know by name including a policewoman.

PW1 stripped naked at once. His hands were tied to his back. His legs bent backwards as he lay on the floor till they too were fastened to his hands. They took a length of rope and tied his thighs together with it and latched them to his legs. They took a woollen hat pushed it down his face till it reached his neck and covered it with a plastic bag. Thus he couldn't see through the woollen hat. They took a motor car tube, tied it across his face, and one of the men who pinned his knee behind PW1's upper back pulled the tube tight across PW1's face to ensure that no air could reach

his nostrils or leave them in inhaling or exhaling. At the same time they kept administering electric shocks at his buttocks while asking him with what and with whom he had killed Mahlatsi. The same treatment was administered to PW2 and PW3 respectively in their turn.

PW1 says he denied killing Mahlatsi. Then the police continued subjecting him to electric shocks and suffocating him till his bowels went loose such that he soiled himself with faeces and urine.

After a while they changed the torture tactic and this time made him squad on the ground; tied his hands flanking his knees and bent legs to the front of the knees; tied the ankles of his feet to the thighs and then pushed a stick through the archway created by bent knees on the upper portion thereof and lowered elbows on the lower; with both ends of the stick protruding on either side thus letting the body hang freely between the two tables. Then he was subjected to further electric shocks and suffocation.

Since he could bear it no longer he admitted having killed Mahlatsi. Asked with what he hazzarded a guess and said "with a 765 firearm". This made matters

worse and therefore he said "with a 9 mm". That didn't help either till he mentioned an A.K. 47. Thereupon they said "yah".

Then to the question with whom he had killed Mahlatsi he hazzarded a guess at names of Seamatha Seamatha, Bothata Marake till he got some relief when he mentioned the name of his friend Masiu Molemohi PW2.

PW1 passed out and came to at some later stage still handcuffed and again was tormented with remarks such as that he should go tell people with whom he had buried Mahlatsi that it was not police who had killed him but he and co-plaintiffs. He promised to do so. The police asked him if it was Mokhehle who said they should kill people.

PW2 and PW3 were subjected to similar treatment with the result that because of pain and discomfort they implicated themselves and each other. PW3 said he urinated on himself during his torment. PW2 said he just passed out his body remained numb.

PW2 related a story which sounded very true and devoid of exaggerations that

when he awoke in the dark and was unable to walk he was tossed into the back of a van which drove from Maputsoe in the night and came to an unknown destination where he was kept together with two cell mates who told him that this place was at T.Y. He said that along the way he suspected but couldn't be certain because of numbness that he might have lost one of his loose teeth. Indeed when his senses to his face had sufficiently recovered he realised he had lost his cutting tooth and feared he might have done so when he was tossed into the back of the van. DW1 denies that PW2 was even taken to TY police station. He denies that he was rough-handled such that he lost his tooth. But PW2's credible evidence is that he even showed the prison warder the fresh gap created by that occurrence . In any case one is at a loss to find what it is supposed PW2 gains by lying that he was transported to TY when he was not.

COURT'S EVALUATION AND ASSESSMENT OF EVIDENCE

Medical reports bear out that the 3 plaintiff witnesses bore clear signs of injuries around their wrists and various other parts of their bodies. The important feature is that after remaining in police custody from 13th May to 17th May in respect of PW1 and 3 and 14th May to 17th May in respect of PW2 they were remanded in

custody where they remained till they were freed on bail on 31st May. The following day i.e. 1st June 1996 they went to see Dr. Knight who examined them and made findings of injuries he had observed on these plaintiffs. Given that nowhere could these plaintiffs have received these injuries except when they were in custody, the question is why should they finger the police as liable rather than their immediate custodians the prison warders . This question was put to DW1 who was lost for words to explain it. He was clearly in a cleft stick and resorted to calling it a mystery when his attempt to say that prisons would not accept them into their custody if they were injured was foiled by evidence to the effect that prison warders actually took PW1 for medical attention.

The sordid state of treatment meted out to these plaintiffs is most horrifying indeed. They were denied water and food from the time of their arrest till being remanded in custody on 17th . They got food when their wives and relatives brought them food that day. PW2's hands were not able to hold anything as a result he was being hand-fed by his wife.

It is sad also that despite availability of the **habeas corpus** their relatives or next-of-kin who had seen the state they were in did not think of availing the plaintiffs

of this effective option.

Another blow dealt DW1's hope that the false scheme he had fashioned would carry the day was when he suggested that the plaintiffs had an opportunity to report their ordeals, if any, to the magistrate before whom they came according to him when an application was made by police for extension of their detention in police custody.

In the first place the plaintiffs denied ever being brought before a magistrate for the suggested purpose. One of them even suggested that such documents which the magistrate is said to have signed were fraudulent documents by aid of which governments are made to fall. If the statement by this witness at first blush appeared to be a product of an overwrought mind the truth was not far in coming to the surface because isn't it the case that repeatedly authorities in various disciplines are agreed that the truth fears nothing but concealment ?

Indeed the truth divulged itself by indication on the papers signed by the learned Magistrate Mputsoe that nowhere in them is it indicated that authority is granted to further detain the plaintiffs from 15th May 1996 to a specific date as would be not only normal but accord with common sense.

The warrant that was granted is no different from a warrant given to police to go and apprehend a suspect. But should the suspect have already been arrested when this warrant is granted then it would have the effect of detaining the suspect further upon it being served on him.

The learned magistrate must have therefore been duped into thinking that the suspects were yet to be arrested when she signed their warrants. If this is not so, then it would be ridiculous to expect a magistrate to require before her or him a suspect in respect of whom a warrant is sought to have him arrested. A suspect can only be brought before a magistrate if he has already been arrested and what is required of a magistrate is a warrant for further detention. But if the suspect is already in detention and the information is deliberately concealed from the magistrate then the warrant which is for initial arrest would have the effect of being a warrant for further detention without detainees being brought before the magistrate because she or he is labouring under the false belief that the detainees are at large. Common sense dictates this is what happened here otherwise there would be no reason why plaintiffs would adamantly insist that they were not brought before a magistrate if indeed it was for their further detention. I don't think they would risk destroying their otherwise strong cases by indulging in such extravagantly foolish insistence.

Their story has a high ring of truth to it and I believe it. I thus reject the story for the defence which does not tie up with basic common sense let alone the truth. For instance if as DW1 and 2 would have this Court believe that within round about half an hour each suspect had cooperated fully and confessed; why should such suspect be kept beyond 24 hours in police custody. What is more why should details of each of the suspects disappear without trace in the police custody? Further still; why should they all bear signs of torture received during the period spent in police custody.

APPLICATION OF THE LAW ON FACTS & CONCLUSIONS

I regard as irregular that plaintiffs were arrested without warrant and detained, further that they were not informed of the reason for their arrest. This is not only irregular but indeed unlawful. Section 32 (4) of our CP & E Act 7 of 1981 reads :

"Whenever a person effects an arrest without warrant, he shall forthwith inform the arrested person of the cause of the arrest".

In keeping with this important law is the authority of **Botha vs LUES** 1983

(4) SA 496 head note by Appellate Division saying :

> "..................There were no physical signs of his [Appellant] being under the influence of alcohol or drugs, but respondent nonetheless arrested appellant (*without furnishing reasons)* on the grounds of an alleged suspicion of the use of alcohol or drugs so as to compel him to submit to a medical examination against his will. After a quarter of an hour's detention in the police station appellant was formally charged with reckless driving and released without anything having been accomplished because there was allegedly no doctor available. *Held*, on the facts, that appellant had to succeed in his appeal, even assuming that the *onus* had rested on him throughout: there were insufficient grounds for a reasonable person to harbour the suspicion that appellant had committed the offence of driving under the influence of liquor or drugs and therefore to proceed with exercise of his power of arrest".

All that the documents filed by the defence show is that the police applied for a warrant after 48 hours had lapsed following the arrest and detention.

I accept Mr. Teele's submission that the warrant was sought without the necessary reasonable suspicion or evidence under the law. Even the initial arrests were done without reasonable suspicion and were as such *ultra vires* S.25 (b) of our CP&E 1981; purportedly employed by the police. This provides :

> "A peace officer may, without any order or warrant, arrest any person in whose custody anything is found which it is reasonably suspected is stolen property or property dishonestly obtained and who is reasonably suspected of having committed an offence with respect to such thing".

The issue of the warrant by the magistrate could not validate the initial unlawful arrest.

I note with particularity the fact that the statement allegedly relied upon was of one Mikia Matlanyane which was obtained after his arrest. If he was subjected to the same treatment during his arrest as the plaintiffs were it is no surprise that he implicated them for as long as he was under such treatment and when placed before court which adopts no such tactics he indicated that the had implicated them falsely.

The other person whose statements allegedly implicated the plaintiffs is one Pallo Moaki. But he likewise is said by DW1 to have turned against his evidence at P.E. hardly any surprise then that the officer presiding found that the plaintiffs were not implicated and dismissed the case for the crown.

Indeed the plaintiffs told me that if they were involved in the killing of Mahlatsi and knew of colleagues who were involved and whom they wished to shield from prosecution they would at the very initial stage of receiving electric shocks and being suffocated have come out with the truth. But lo! PW3 related a sad story of feeling water being applied at the spot immediately above the parting of his buttocks and an electric nail being introduced into this water. The Court takes judicial notice of the fact that application of water to live electrical current potentiates its effect. PW3 testified that water was liberally applied on all areas in his body where the electrically charged metal would immediately be run on his body. He and PW1 had seen a battery and electrical cords leading from its terminals to this nail-like metallic point which was applied to their bodies. DW1 and 2 denied presence of any such thing. In fact they made a great meal of the absence of a second table in the interrogation room.

In **Mthimkulu & anor vs Minister of Law and Order** 1993 (3) SA 432 is illustrated the serious view taken by Courts of law of the attitude adopted by police making light of arrests without warrants and unlawful detentions resulting from their abuse of power.

At page 433-C it is said that plaintiffs "were detained in the police cells at Grahamstown from 8 March until 11 March, on which latter date the magistrate issued an order ....authorising their further detention for purposes of trial. The plaintiffs were thereafter detained at the Grahamstown prison from 11 March 1991, their cases being remanded from time to time until 30th July 1991, when each was prosecuted .... for attempted theft of a motor vehicle and acquitted...........

The plaintiffs thereupon instituted separate actions (later consolidated) for damages against the defendant for (a) wrongful arrest and detention, in the amount of R70 000 under this head; (b) malicious prosecution, in respect whereof each plaintiff claimed R20 000.00 and (c) assault, the second plaintiff, only claiming R2500.00 in this regard. The defendant denied liability in respect of all claims made against him".

The Court set out factors taken into account in respect of quantum.

The defendants in the instant case bore the *onus* of proving that the arrest and detention were lawful but it is my considered view that they have failed to discharge this *onus*.

I have no doubt that the plaintiffs were assaulted as reflected in the evidence heard before this Court. The manner of their assault was most cruel. No wonder in going over the details of their ordeal in this Court PW2 and 3 could not contain themselves and uncontrollably wept such that in respect of the elderly gentleman Masiu Molemohi born in 1931,the Court had to adjourn till he had regained his composure. Such things don't just happen. Men are known to resist giving way to emotion expressed in weeping which is regarded as a sign of weakness. The Court was also on the alert lest the plaintiffs be resorting to some form of stage play by adopting these tactics. But there was no such thing in the manner in which the plaintiffs comported themselves in this court. Theirs were sincere tears not anyhow linked to some performance calculated to play up on the court's sympathy.

In fact as a sign that PW1 in particular was not out to settle scores in this Court

with anyone, he didn't try to withhold the tribute he felt the light complexioned young policeman who had been cruel to him by butting him on the rib-cage when he was hesitant to comply with the order to strip naked, and later pushed him to the ground when PW1 showed signs of inability to perform certain tasks as his hands were tied. The tribute he paid him was that the said policeman later came to him and said "it seems you are not such a bad man after all". They shook hands on this and the policeman kept the statement given by PW1 which was consistent with the truth as PW1 knew it.

PW2 the most elderly of the plaintiffs like his colleagues suffered the indignity of being made to strip naked before men who were in age equal to his sons and grand children. Not only so, he discovered that there was a young policewoman who must have seen his nudity. The same goes for PW1.

PW2 even lost his tooth. Again because of his lack of inclination to exaggerate he indicated that the tooth had gone loose for some time previously but only must have got lost in the ordeal he suffered.

All the plaintiffs suffered pain and humiliation. There couldn't have been any

reasonable suspicion that PW2 had hidden a gun in his yard as the spot he pointed out in the ground showed no sign of disturbance dating from the period when Mahlatsi was shot dead.

As befits an officer of this Court Mr. Masoabi for the defendants has filed his heads of arguments which are largely consonant with what this Court has found to be credible and therefore acceptable evidence in this Court. To that extent on the facts there is a lot of common ground except in head 6 where Mr. Teele has sought to cross swords with Mr. Masoabi where the latter sets out as follows:

"........................looking at the evidence as a whole the balance of convenience favours the plaintiffs with the exception of arrest. The arrest was not unlawful since Warrant Officer Chabalala effected the arrest. See Sect 24 (b) CPE Act1981".

The exception recognised by Mr.Masoabi as clothing with legality the unwholesome act of the perpetrator Chabalala misconstrues the authorities I have cited above which are a foundation for the proposition that once a suspect has been arrested without a warrant by a Warrant Officer then such officer owes a duty to the suspect to inform him why he is being arrested. In the instant case the plaintiffs said

it was not explained to them why they were to accompany Chabalala and his colleagues to various charge offices. Chabalala himself testified that the suspects were not under arrest. The suspects however felt that their movements were subject to Chabalala's rule and sway. Chabalala's testimony in this respect is at variance with Mofilikoane's who wishes to inform the Court that Chabalala is wrong to say he didn't inform the suspects of the reason why they were being removed from their respective homes at the crack of dawn in the cold month of May in 1996.

To his credit Mr. Masoabi deftly betook himself from this baseless position and abandoned the worthless stance it represented.

PW3 complains of constant headaches suffered since his ordeal in the police cells. In fact all of the plaintiffs continue consulting doctors for chronic ailments precipitated by these assaults. It is important to indicate that each one of them while undergoing this ordeal preferred death. In fact PW2 when taken home to go and point at the gun supposedly buried in his yard said this was his ploy based on his hope that he would obtain rat poison where he knew he kept it. To his disappointment the house was locked when he and the posse of police arrived in his wife's absence. Thereupon he took a spade and made to dig at the spot that betrayed no sign of

anything having been dug under it for previous decades on end. He later said the gun would be found at Butha Buthe Cooperatives. Again he was hopeful that he would get the rats bane in a spot in the office where he would seize the bottle and empty its contents into his stomach at a gulp. But again the rats bane had been removed from its usual and familiar place. The purpose for swallowing rats bane was to ensure that he is kept out of his misery championed and brought about by Chabalala and his group of sadistic men.

With a view to assisting the Court in making a proper determination of damages in this case Mr. Masoabi very dutifully has attached to his heads an important decision of the Court of Appeal delivered by the honourable Leon J.A. in C of A CIV No 22, 20& 21/96 **PAUL SETSETE MOHLABA** & 2 ors vs **COMMANDER** OF THE ROYAL LESOTHO DEFENCE FORCE & ANOR (unreported).

The same case is reported in **PAUL SEBETE MOHLABA & 2ors vs COMMANDER RLDF & ANOR** 1995-96 LLR & LB page 235.

At page 239 referring to the torture carried out in the "torture Chamber" as

aptly referred to by the Court below the honourable Leon JA says Mohlaba, (in a manner that is not dissimilar from the ordeal suffered by plaintiffs in the instant case) *"was asked about stealing the government money which he denied. A rubber tube was twisted around his neck which suffocated him. If he wanted to talk he was ordered to stamp his feet which he did in order to get some air. But he refused to confess. They held his feet and he fell to the ground hitting the cement floor with his forehead. They suffocated him with the tube again and he felt that he was dying. He tried to hit the floor but he did so with his snails as he was lying down. He lost a toe-nail. One of his tormentors suggested the use of electricity. The plaintiff became so frightened that he urinated all over himself. He was then made to kneel on crushed stones. Both his nose and the place where his toe-nail had been, began to bleed. His testicles were twisted. Because of the pain he was carried back to his cell"*.

It is amazing to realise that the above acts were committed on 2nd May 1990 while those in the instant case were effected on 13th and 14th May 1996. There appears to have been a pattern of long standing in terms of which police delighted in tormenting and torturing helpless suspects committed to their custody under guise of performing legitimate interrogation permitted by the law. In fact this sordid pattern dated far back into the 1980's and beyond. **See Solicitor General vs Mapetla** LAC

1985-1989 in which a respectable Chief of Masianokeng and the father of the first Mosotho Chief Justice who had survived his son successfully sued the then Lesotho Government for damages for unlawful detention and assault. The losing party appealed against the verdict and the award of M11 000.00. Though the award was reduced to M8 000.00 by the Court of Appeal the appellant was ordered to pay 80% of the respondent's costs on appeal plus its own costs.

Referring to chief Mapetla Wentzel JA said at page 128:

"The respondent is an elderly man (nearly 78 years of age at the relevant time). He is a man of standing in the Kingdom and prominent in the life of the Kingdom. He is a Chief. His family is a distinguished one. Indeed, one of his sons was the Chief Justice. He himself contributed to the intellectual life of the people of Lesotho".

Yet one would wryly but correctly feel justified in concluding that it is precisely for those qualities and the fact that his son had been Chief Justice that Lesotho Police found it fit to torment and humiliate him. I say so because even the present Chief Justice around the same period that Masena Molemohi and Thamae

were being thus tormented was commandeered by police troopers in the night and against his will moved from pillar to post yet nothing was done about that nauseating act.

This reaction is provoked in me by the honourable Leon's remarks made no doubt through desperation at page 242 where in referring to the suffering endured by **plaintiff Phiri** who even passed out in the process says:

"When I read this record I was appalled that human beings could be treated in this Kingdom in such a barbaric fashion. The conduct of the offenders warrants the strictest censure for it is reminiscent of some of the KGB, the Gestapo as well as treatment meted out to the late Steve Biko".

While I share the sentiments of the learned judge so aptly and eloquently expressed I would hesitate to say my Court has had its fair share of judicial notice taken of the steve Biko's and the like in the shape of Motuba and his companions, the late Deputy Prime Minister Baholo and many others whose peril remained obscure to the learned appeal court judge hence his surprise and disbelief that "human beings could be treated in this Kingdom in such a barbaric fashion".

It serves as a breath of some fresh air that the same learned judge has had the onerous honour of heading the Commission of Inquiry into Public Disturbances of 1998 at page 131 of which his Commission makes the following recommendations regarding the Army and Police

(1) The procedure of recruitment should be reviewed with the particular object of recruiting persons who are suitable, without reference to their political affiliations

(II) There should be a gradual phasing out of persons who are unsuitable, particularly having regard to the need for a professional and a political Army and Police Force

(III) There should be devised a comprehensive re-training programme for Police and Army personnel in order to achieve what is referred to in (II) above

(IV) Promotion criteria should be laid down based solely and exclusively on qualifications and merit.

I would on my part wish to point out that the remarks made during so-called interrogation of the plaintiffs in the instant case leaves me in no doubt that the so-called team of investigation into the death of Mahlatsi and its leader were motivated by nothing else but political fervour geared against the brand of politics to which the plaintiffs subscribed. Hence reference to their leader who then was the Country's Prime Minister in most derogatory terms unbefitting a public servant in the shape of any policeman in any country who is required to uphold the law administered by the government of the day headed by such Prime Minister.

That the culprits have been promoted is a sign that the system has failed not only the plaintiffs in the instant case but all those who believe in the rule of law.

I would therefore strongly recommend to the Attorney-General working in conjunction with the Director of Public Prosecutions to set in motion the machinery of investigation into possible attempted murder of the three plaintiffs before this court or assault with intent to do them grievous bodily harm. The object of that investigation would best be focussed on the so-called investigation team and their leader. If need be investigation into Mohlatsi's death should be revisited and given proper direction.

I have found as established the fact that the plaintiffs have been subjected to untold pain. They have been humiliated and made to suffer indignity and unwholesome anguish and anxiety regarding their safety and well-being. They were kept in the cells without food or water. Nothing was said about whether they could wash or enjoy change of clothing. Where would they have had change of clothing when their next -of-kin were deliberately kept from acquiring any knowledge of the plaintiffs' whereabouts.

Taking all these things into account I would firmly say that the plaintiffs have made a very strong case each against the defendants.

In the result Judgment is entered for Plaintiffs in the sum of

(a) M10 000.00 in respect of unlawful arrest and detention each;

(b) M39 945.00 damages for assault, pain, shock and suffering each;

(c) M55.00 being in respect of medical expenses each and

(d) Costs of suit each.

M.L. LEHOHLA

JUDGE

4th DECEMBER, 2001

FOR PLAINTIFF : MR. M.E. TEELE

FOR DEFENDANTS : MR. MASOABI