IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C of A (CIV) N0.13/13

In the matter between

SENIOR INSPECTOR SEPINARE MASUPHA **APPELLANT**

And

TROOPER NYOLOHELO TAE **RESPONDENT**

CORAM: SCOTT AP
THRING JA
LOUW AJA

HEARD: 3 APRIL 2014

DELIVERED: 17 APRIL 2014

SUMMARY

Assault – award for contumelia and pain and suffering – no basis for interference by Court of Appeal.

JUDGMENT

SCOTT AP

[1] The respondent sued the appellant for damages in the sum of M50 000 arising out of an assault on 25 December 2006. His claim was made up as follows:- M40 000 for *contumelia* and impairment of dignity; M9000 for pain and suffering, and M1000 for hospital expenses. The matter came before **Majara J** who found that the respondent had failed to prove his alleged hospital expenses but awarded him M15 000 for *contumelia* and M2000 for pain and suffering. The appellant appeals against the quantum of the award and contends that the respondent should have been awarded no more than M5000.

[2] The respondent was at the time a trooper in the Lesotho Mounted Police Service attached to the beat patrol at the Maseru Central Charge Office. The appellant was a senior inspector and the respondent's superior. The respondent's evidence, shortly stated, was as follows. On Christmas day, 2006, at about 4.30 pm he was having a meal in the beat patrol office with three other police officers when the appellant arrived and ordered them out of the office and to resume their patrolling duties. In response to the appellant's query, the respondent sought to explain that they were having a meal. The appellant replied that he was accustomed to the respondent arguing with him and ushered the others out of the office. As the respondent reached the door the appellant grabbed him by the shirt, pulled him back into the office and shut the door behind them. He thereupon punched the respondent, knocked him down onto the floor and kicked him all over the body shouting at the top of his voice "*fuck you Tae, fuck you Tae".* He then picked the respondent up and threw him on a table and continued punching him. At this stage the respondent noticed two female police officers at the window observing the assault. One of them, trooper Lehloenya, called on the appellant to desist. Both were called as

witnesses and largely corroborated the respondent's evidence. Although denying the assault in his plea, the appellant closed his case without testifying.

[3] It is a well-established principle that there is no basic formula for the assessment of damages under the *actio iniuriarum* or for determining an amount for pain and suffering. The trial court exercises a discretion and the circumstances in which a Court of Appeal will interfere are limited. In **National University of Lesotho and Another v Thabane LAC (2007-2008)** 476 at para 22 Smalberger JA stated the principle as follows:-

> "The determination of *quantum* requires the exercise of a discretion by the judicial officer concerned. As views may differ on what the correct measure of damages should be in any given case, a court of appeal has limited powers of intervention. An appeal court will generally only interfere with an award by a trial court:
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> (a) Where there has been an irregularity or material misdirection;
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> (b) Where the appeal court is of the opinion that no sound basis exists for the award made by the trial court;

(c) Where there is a substantial variation or a striking disparity between the award made by the trial court and the award which the appeal court considers ought to have been made.

These are the established principles which apply in South Africa and they should be accepted as guiding principles also in Lesotho."

[4] In this Court, Mr Matooane, who appeared for the appellant, placed much emphasis on the respondent's evidence that he suffered no visible cuts or contusions. However, the assault could hardly have caused no pain. The respondent complained that he experienced a lot of pain in his back and subsequently sought treatment at both the Queen Elizabeth II Hospital in Maseru and the hospital in Lady Brand. The respondent admittedly failed to provide receipts in proof of his hospital expenses but that is no reason for disbelieving his evidence that he sought such treatment. I am unpersuaded that there is any justification for interfering with the award of M2000 for pain and suffering.

[5] With regard to the award for *contumelia*, it was contended on behalf of the appellant that the respondent had failed to tell the Court how the words *"fuck you Tae"* made him feel and more particularly whether he felt insulted or humiliated by the use of these words. But the swearing cannot be viewed in isolation. It was part of an assault which must have been a humiliating and degrading experience for the respondent, particularly as it was witnessed by two female police officers. Counsel also argued that the assault was *"short lived"*. The respondent said it was not. But whatever word is used to describe its duration the incident was by no means a trivial one.

[6] A further contention advanced on behalf of the appellant was that the respondent had not adduced sufficient evidence to give the court guidance in assessing damages. In particular, so it was argued, no evidence was adduced as to the respondent's social status. No doubt in certain circumstances the social status of a plaintiff may be relevant. One thinks, for example, of a married woman who complains of comments made by a stranger in public concerning her physiognomy. But in the present case we

know the status of the respondent. He is, or was at the relevant time, a trooper in the Lesotho Mounted Police Service. I do not think that in the circumstances of the present case anything more than that was required.

[7] Finally, it was argued that the assault and humiliation experienced by the plaintiff in the Thabane case, supra, to which the learned judge referred, was far more serious than in the present case. That is undoubtedly so, but the damages awarded were correspondingly greater than those awarded in the present case.

[8] It follows that in my view there is no valid reason to interfere with the award made by the court a quo and the appeal must fail.

[9] The appeal is dismissed with costs.

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D.G. SCOTT

ACTING PRESIDENT

I agree

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W.G. THRING

JUSTICE OF APPEAL

I agree

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W.J. LOUW

ACTING JUSTICE OF APPEAL

For the Appellant: T. Matooane

For the Respondent: T. Letsie