

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

EPHRAIM MATHOKA

Appellant

v

VERONICA CHAPHOLE

Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 22nd day of April, 1980

This is an appeal(pending from 1976) from the Judgment of a Magistrate of the First Class sitting at Mafeteng (M.Lebona, Esq) in which he awarded the plaintiff(now respondent) the sum of M826 against the defendant(now appellant) with interest at 8% from the 29th February 1968.

The issues were simple. The plaintiff, a widow, had received, sometime in 1968, the sum of M1226,56 as compensation for the death of her husband on the mines. She deposited them in a Savings Account at a bank. Her evidence was that on diverse dates between October 1968 and February 1969 she lent the defendant various amounts, drawing on most occasions from her Savings Book, totalling in all to M926, of which he had repaid M100. The defendant denied all the allegations and put the plaintiff to the proof.

It is common cause that the plaintiff did not have any documentary evidence of her loan, nor had she asked the chief to witness her advances as it is customary amongst rural Basotho of the unsophisticated class. But a loan can be proved by other evidence apart from documentary or the presence of a chief. If the chief or his messenger is usually called on such occasions to be a witness there was of course no legal obligation on the plaintiff's part to seek his services.

/The only

The only ground of appeal is that here there was the oath of one person against the oath of another. It was submitted that the plaintiff was unable to discharge the onus which was placed on her.

The learned magistrate accepted her evidence as substantially true but he did not do so arbitrarily. It transpired that the defendant was a minister of religion, and an elder of the plaintiff's own church, and had been on good friendly terms with her and her husband in his lifetime. Not only did the defendant often put up at their home but, when her husband died, he assisted her in the funeral arrangements, paid her fares, and did everything in his power to process to a successful conclusion her claim to compensation. Moreover the loan discussions sometimes took place in the presence of two old "advisers" of the widow, Mongoli Majara and Elisha Mohoase. There ~~was~~ ^{were} some discrepancies in their evidence but this was understandable because (a) the loan was made piecemeal over a period, and (b) a long time had elapsed between the date of the trial and the dates when the several transactions had occurred. Apart from that there was the Savings Book in which most dates of withdrawals coincided with the dates of the loan advances thus adding credence to her story. All these factors weighed strongly in favour of the plaintiff. She had therefore discharged the onus on balance of probabilities (African Eagle Life Assurance Co. Ltd. v. Cainer 1980(2) S.A. 234).

Mr. Ramodibedi submitted that there was evidence of "bad blood" between the plaintiff and defendant. If there was, the "bad blood" arose, in all probability, as a result of the latter reneging on his promise to repay and the plaintiff was understandably bitter. She did not appear to have had any other major source of income. No other sensible reason was advanced as to why this widow should fabricate evidence against a former friend and a church elder.

The defendant brought his chief as a witness to say that during the period when the loans were made he had sold 8 or 9 heads of cattle, the implication being, I suppose, that the defendant was a well off man and did not need the widow's money. This kind of evidence signifies nothing. The defendant appears to have entered the business world because when he borrowed the money, he said he needed it to purchase a tractor to hire it out

/to plough

to plough other people's lands, and when he asked for further loans, he had brought to the widow's home a van which he said he will use to transport goods for profit.

There is one item in these loan transactions on which there was some doubt, viz, the rate of interest that the loans attracted and date of commencement of the repayment. The plaintiff says it was 8% from July 1969. Her witnesses mention 6% on the first loan of M300 (made around October 1968) which was increased to 8% on later amounts. I have no doubt that though the widow was simple, she was perfectly aware that her savings were earning interest at the bank. She had no reason to grant the defendant any dispensation except perhaps on the period when he should start repayment. To be on the safe side I will resolve the question of interest in defendant's favour and alter the magistrate's figures to read:

"Judgment in plaintiff's favour in the sum of
M826 with interest at 6% from 1st July 1969".

The appeal is otherwise dismissed with costs both here and the Court below.

CHIEF JUSTICE
~~25~~th April, 1980

For Appellant : Adv. Ramodibedi

For Respondent : Mr. Mda