

IN THE HIGH COURT OF LESOTHO

In the matter of

'MATHATO KOAE

Plaintiff'

v

LESOTHO NATIONAL INSURANCE  
COMPANY (PTY) LTD.

Defendant

REASONS FOR STRIKING OFF

Filed by the Hon. Chief Justice, Mr. Justice T.S.  
Cotran on the 12th day of May 1980

-----

This case, which was postponed for today, must be struck off the roll for reasons that follow. The plaintiff 'Mathato Koae claimed damages (about M8000) for personal injuries sustained when she was a passenger for reward in a public motor vehicle insured for third party claims by the defendant Lesotho National Insurance Company (Pty)Ltd. It was listed before me on the roll on the 17th March 1980. Mr. O.K. Mofolo appeared for the plaintiff and Mr. Masoabi for the defendant company. The accident in which the plaintiff was allegedly injured apparently involved three vehicles and it was stated in the papers that ten persons died and fourteen were injured in the same accident.

Under s.13(1)(iv) of the Motor Vehicle Insurance Order 1972, as amended by Act 14 of 1974, the defendant company's liability is limited to M12,000 per person and to M60,000 in total damages if several people died or were injured. Mr. Masoabi on behalf of the company admitted liability in the case and offered the plaintiff M.3500 which he said could only be payable after the elapse of the period of prescription provided in s.13(2)(a) of the Order. This offer, it was submitted, could be abated in case more claimants emerged (before the lapse of the period of prescription) whose approved claims exceeded the statutory maximum of the company's liability.

The matter was postponed sine die by consent to enable Mr. Masoabi to put in an application under Rule 8 of the High

/Court

Court Rules. Rule 8 was invoked by the applicants in Re Protea Assurance Co. Ltd 1967-1970 LLR 399, in which Jacobs CJ (acceding to the application) devised a series of orders setting in motion a scheme of distribution which had the effect of satisfying the several claims on behalf of dead or injured person on an equitable basis.

Several weeks elapsed. Mr. Masoabi made no such application. Mr. Mofolo thereupon moved the Court, on notice to the opposite side, to "reinstate" the case for the 5th May 1980, presumably to speed matters up. Mr. Masoabi reiterated his offer of M3500 which Mr. Mofolo was prepared to accept if paid forthwith but the former added that he needs further time to consult his clients whether they wish to invoke Rule 8, supra, or to proceed, by settling or contesting the claims, as they come, individually. He did say, however, that he will strongly advise his clients to agree to a scheme of arrangements as this will ensure that a late bona fide claimant will not find himself receiving nothing if the fund available for disposal (M60,000) has been exhausted by earlier claims. Mr. Mofolo who said he represents other claimants besides the plaintiff also agreed.

On the departure of Mr. Masoabi and Mr. Mofolo I set about the task of drawing a draft order on the lines devised by Jacobs CJ in Protea's case with a view to getting both attorneys' agreement to its terms on 12th May 1980. On going through the pleadings and other supporting documents I found to my dismay that Mr. O.K. Mofolo's papers were completely out of order.

Rule 9(1) of the High Court Rules provides :-

"No summons and no process under Rule 10 shall be issued by the Registrar at the instance of any attorney on behalf of a plaintiff unless there has been filed with the Registrar a power of attorney to sue signed by the plaintiff; nor shall the Registrar at the instance of any attorney cause appearance to be entered on behalf of a defendant unless there has been filed within him a power of attorney to defend signed by the defendant"

There is on the file a power of attorney in favour of Mr. O.K. Mofolo which is date stamped by the Registrar's office on 31st May 1979. All other papers are similarly date stamped so I must assume that this power was filed at the same time. The power was given and purportedly signed by a lady called

/Amelia

Amelia Tseliso Letsie of P.O. Box 212 Maseru who was injured in a motor accident involving motor vehicle Reg. No. AX 2426 on the 31st August 1978. It was not signed by 'Mathato Koea the plaintiff in this action who was supposed to have been injured when travelling in a motor vehicle Reg. No. LC 2198 on the 2nd January 1979. None of the papers filed by Mr. Mofolo (including the declaration) bear the signature of Mrs. Koea. Now it may be that Mr. Mofolo filed the wrong power of attorney. On the other hand it is well known that many unsophisticated persons in our community injured as a result of motor accidents do not quite realise that they have certain rights to compensation. The legal profession in Lesotho and the newly formed Legal Aid Department must play their part in educating our people about their statutory rights but the Courts and the Interim Law Society should be on their guard. There have been instances in the Republic, and elsewhere, of claims made by attorneys on behalf of non-existent persons, or made by attorneys on a champertous basis. One legal practitioner in Lesotho was struck off the roll when he fled the country with a widow's compensation paid by an insurance company on the death of her husband. (The Interim Law Society v Badul, CIV/APN/354/1977). There is no fidelity guarantee at present operated by the Law Society in Lesotho. I would have thought that temptations for abuse are very great. Something ought to be done by way of legislation to make such compensation payable only to the claimant or his estate, subject to a retention of a proportionate amount to cover attorney's fees and other disbursements.

It follows from what I have previously stated that the Registrar (or his assistants) should never have allowed process to issue and what has been done to date is null and void. If Mr. Mofolo wants to proceed he must file fresh papers but he must pay the defendant's costs, to date, personally.

May I ask the Registrar and his staff to be more diligent in their work in the future. In particular they must carefully peruse powers of attorney. In claims for compensation for death or personal injuries they must ensure that the plaintiff's address (apart from any Post Office Box Number he or she may have), should include the name of the village, and the district, where he or she resides as well as the name of the chief to whom he or she is responsible.

For Plaintiff: Mr. O.K. Mofolo  
For Defendant Mr. Masoabi

CHIEF JUSTICE  
12th May, 1980