

IN THE HIGH COURT OF LESOTHO

In the matter between:

'MATHEKISO MOLELENGOANE

Plaintiff

and

K.E. JOOSUB

Defendant

J U D G M E N T

Delivered by the Honourable Chief Justice Mr Justice  
J.L. Kheola on the 3rd day of February, 1995

This is an action in which the plaintiff is claiming the sum of M12,250-00 as damages made up as follows:

For pain and suffering	-	M10,000-00
For disfigurement	-	M 2,000-00
For medical expenses	-	M 250-00

In her declaration the plaintiff alleges that on the 24th March, 1992, at the business premises of a certain Mr. John William Scott, the defendant's dog bit plaintiff on the leg. As a result of the said bite plaintiff suffered injuries which incapacitated her from performing her normal duties and left her

with a horrible scar. The dog acted contrary to the nature of its class and from the inward excitement or vice.

Alternatively; plaintiff alleges that the injuries she suffered were caused by the negligence of the defendant in whose care and control the dog was at the time of the attack or by the negligence of the defendant's servants acting within the scope of their employment and in whose care and control the said dog was at the time of the attack.

She avers that to the knowledge of the defendant and his servants the said dog is of a fierce and vicious nature and has a tendency of attacking people in a public place.

The defendant asked for further particulars which were supplied on the 23rd September, 1992. On the 5th May, 1993 the defendant was served with a Notice to File Plea. the plea was never filed. On the 16th September, 1994 a Notice of Set Down was served upon the defendant's attorneys. On the 15th November, 1994 when the matter was heard there was no appearance for the defendant.

Plaintiff testified that on the 24th March, 1992 she was walking in a public place on her way to the clinic when the defendant's dog came out of its owner's yard and bit her on the

leg. She fell down when it bit her and was unable to stand up after she was bitten. The employees of the defendant came to her assistance and expelled the dog. As a result of the bite she sustained two lacerations on the left lower leg.

She was taken to the hospital and treated as an out-patient. In his report (Exhibit "A") the doctor who examined the plaintiff described her injuries as serious but not dangerous to life. The injuries were two lacerations on the left lower leg (9c.m. + 10c.m.) due to dogbite.

Another medical report (Exhibit "B") was made by another doctor on the 27th April, 1992. The doctor saw the two wounds on the left lower leg which had become septic and were causing great pain. He was of the opinion that if not treated within the next few days they would cause a serious septicaemia.

The plaintiff is claiming M10,000-00 for pain and suffering. There is no doubt that the plaintiff suffered a lot of pain for a long time because about a month after she was bitten by the dog the wounds had become very septic and were still painful. However I am of the view that the amount of M10,000-00 is rather too much for this kind of injury. Assessment of the damages of this nature is always very difficult especially where the Court has not been referred to similar decided cases for comparison.

In *Mpinda v. Minister of Police* p.263 *The Quantum of Damages in Bodily and Fatal Injury Cases Vol. II* by Corbett and Buchanan, the plaintiff was bitten by a dog on the knee and thigh. Sepsis set in and the muscle was affected and walking was painful for three to four weeks. He was off work for the whole of that period and thereafter when he resumed work he was limping. He was awarded M300-00 for pain and suffering and temporary disability. This is a 1972 case and taking into account the depreciation of money over the last twenty years an award of M7,000-00 in the present case would be sufficient damages.

Regarding the disfigurement I am of the opinion that the figure of M2,000-00 is somewhat too high. I had the chance to examine the scars on the leg of the plaintiff when she was giving her evidence. They are not so unsightly that people can stare at her leg whenever she passes near them. I would award M700-00 damages for disfigurement.

In the result judgment is entered for plaintiff in the sum of M7,000-00 for pain and suffering and M700-00 for disfigurement with costs.

J.L. KHEOLA  
CHIEF JUSTICE

3rd February, 1995.

For Plaintiff - Mr. Klaas  
For Defendant - No Appearance.