

IN THE HIGH COURT OF LESOTHO

In the matter between:

TSOLO LELALA

PLAINTIFF

AND

THE HONOURABLE MINISTER OF DEFENCE
AND INTERNAL SECURITY
THE ATTORNEY GENERAL

1ST RESPONDENT

2ND RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs. Justice K.J. Guni
on the 12th day of February 1996

This judgement is in respect of three cases. The three Plaintiffs instructed one attorney. Their cause of action accrued out of one event. In CIV/T/129/93 and CIV/T/130/93 the Plaintiffs are claiming damages arising from alleged abduction assault and attempted murder. In CIV/T/124/93 the Plaintiff is claiming damages arising from the murder of their parents. The Plaintiffs are suing the Government of Lesotho represented by the Minister of Defence and the Attorney General in their official capacities. The Plaintiffs are seeking to hold the Government liable because the alleged abduction, attempted murders and murders were carried out by

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the members of the Lesotho Royal Defence Force. These soldiers were allegedly acting in their official capacities and within the scope of their authority as soldiers of His Majesty's Government. In CIV/T/129/93 and CIV/T/130/93. In the declaration of the Plaintiffs it is alleged that on or about 16th November 1986 the soldiers abducted the Plaintiffs from their home. They were driven to KHALONG LA BAROA where they were shot and left for dead. But the Plaintiff miraculously survived. In CIV/T/124/93 the children of the deceased are suing the Government for damages arising from the death of their parents who were murdered allegedly by the member of the Lesotho Royal Defence Force on 16th November 1986, at KHALONG LA BAROA. During that year there was in Lesotho a Military Government.

The Defendant filed a Special Plea to the effect that the Plaintiffs' action had prescribed in terms of Section 6 of the Government Proceedings and Contracts Act No.4 of 1965. Section 6 of the said Act deals specifically with limitation of actions. The relevant portions of the said Act read as follows:

" Subject to the provisions of sections six, seven, eight, nine, ten, eleven, twelve and thirteen of the Prescription Act(1) no action or other proceedings shall be capable of being brought against Her Majesty in Her Government of Basutoland by virtue of the provisions of section two of this Act after the expiration of the

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period of two years from the time when the cause of action or other proceedings first accrued."

In all these three cases the cause of action first accrued on 16th November 1986. It is common cause that the Summons were indeed issued more than two years after the cause of action first accrued. In replication to Defendant's special plea the Plaintiffs alleged that they could not institute an action before the expiration of two years from the time when the cause of action first accrued, because they did not know the identity of the wrongdoer hence the correct person to sue. The prescriptive period should not be allowed to run against them. From the 16th November 1986 when those unlawful actions were committed by the alleged member of the Lesotho Royal Defence Force upon these Plaintiffs, they had a right to sue for damages those responsible for those unlawful actions. Their contention that the prescriptive period should not be allowed to run against them until they established the identity of the person or persons responsible for those unlawful actions against them seemed to cause problems of honest belief.

The burden of providing the date of inception of the period of prescription rest upon the Defendants. GERICKE V SACK 1978 (1) SA 851 (a). In terms of Section 6 of Government Proceedings and Contract Act the prescription commenced to run as soon as these Plaintiffs became aware that they have been

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wronged and that the wrongdoer should be held liable to make reparations. It appears to be in the common cause that the cause of action arose on 16th November 1986. Except for the identity of the person responsible for the actions complained of, the Plaintiff should have instituted these actions forthwith.

The impossibility which had prevented the Plaintiffs from instituting these actions within the period of two years stipulated in Government Proceedings and Contracts Act 4 of 1965 was set aside according to the Plaintiffs' replication, on 15/3/90. On this date the culprits were convicted by the High Court for attempted murders and murders committed in respect of the Plaintiffs on 16/11/86. From the 15/3/90 the Plaintiff acquired special knowledge of the identity of the person or persons who committed those unlawful acts against them. From 15/3/90 the way was open for the Plaintiffs to sue because the matter according to them was no longer under investigations.

Even if this court considered that the prescription should have not commenced to run from 16th November 1986 but start to run from 15/3/90 as the Plaintiff claimed it was only then that they had acquired the knowledge of the identity of the person to sue, the Summons issued on 17/3/93 were still hopelessly out of time.

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Accordingly the special Plea must succeed. Plaintiff to pay Defendant's costs.



K. J. GUNI
JUDGE

For Plaintiff : Mr. Phoofolo

For Respondents : Mr. Thetsane