

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MOTLATSI MAGAGA

PLAINTIFF

and

**COMMANDER LESOTHO DEFENCE FORCE
MINISTER OF DEFENCE
ATTORNEY GENERAL**

1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT

JUDGMENT

CORAM : HON. MR JUSTICE S.N. PEETE

DATE : 18TH MAY, 2011

Summary

Delict – Damages – Plaintiff’s vehicle shot at and damaged by bullets fired by defendants’ soldiers’ – Assessment of damages based on average unchallenged quotation on repair cost which would effectively restore the vehicle to its status quo ante.

*Where the soldiers of defendant shoot at and damage plaintiff’s car without a just cause, it is the average unchallenged quotation which restores the vehicle to its **status quo ante** which the court must consider in assessment of damages and not the market or book value of the vehicle.*

PEETE J.:

[1] At about 10 pm on the 23rd June 2007, the plaintiff was quietly driving his corolla motor car (*registration No.VWJ 544GP*) along the Maqalika road and was passing the Air Squadron Barracks of the Lesotho Defence Force. His intention was to fetch his children from a cinema in town.

[2] Having passed the gates of the Air Squadron Barracks, he suddenly heard a fusillade of gun shots and that his car was being pierced by the flying bullets. The front and the hind windscreens were shattered, bumper and lights and dashboard were damaged. He suffered no personal bodily injuries in the shooting.

[3] In his summons filed in the office of the Registrar on the 30th August 2007, plaintiff claims M250,225.38 as damages itemized under further particulars as:

- (a) **M100,225.38** - *damage to the car;*
- (b) **M38,000.00** - *sense of shock;*
- (c) **M38,000.00** - *traumatic suffering.*

[4] At the hearing of this matter, **Mr Motsieloa** – counsel for defendants- indicated that he was admitting delictual liability, thus leaving only the *quantum* at issue. In their plea, the defendants had alleged that

“...Plaintiff had refused to stop at check point at 1.00 am on the 24th June 2007 despite attempts to stop him. Rather, plaintiff drove through the checkpoint, destroyed it and drove away ...shooting at plaintiff’s car is admitted but it was only meant to stop him from getting away, which we did.” The stance was, as explained lately abandoned.

Quantum

[5] ***Patrimonial loss – Damage to the car-***

The *onus* was on the plaintiff to establish and justify the amount (*quantum*) of patrimonial loss he had suffered and general damages for mental suffering he endured when his vehicle was fired on by soldiers on the evening of the 23rd June 2007.

[6] **Mr Mabulu** – counsel for plaintiff – presented three quotations:

One quotation by ***E & S Plastic Repairs*** (dated 26.6.07) which totalized repair cost to the vehicle at **M95,628.19**; another from ***Lesotho Nissan*** (dated 26.6.11) which set the repairs cost at **M100,225.38** and another quotation from ***Enbee Motors (Pty) Ltd*** (dated 26/6/07) which set it at **M98,724.74**.

- [7] What is common cause is that
- (a) Plaintiff's Toyota Corolla car was damaged on the night of the 23rd June 2007 by bullets fired by members of the Lesotho Defence Force.
- (b) At the *inspection in loco* on the damaged vehicle which was parked at Enbee garage the following observations were made:

“the rear windscreen was shattered; a bullet hole on the petrol tank; a bullet hole on the left rear tail lamp; several holes on the left rear and front seats; a bullet hole on the left fender panel; shattered left front headlamb; six bullet holes on the front windscreen.”

All these pierced holes were probably made by bullets from high powered rifles.

- [8] A fair average of these quotation is computed thus:

$$\begin{aligned}
 & - \quad E.S Plastic Repairs - \mathbf{M95,628.19} + \\
 & - \quad Enbee Motors (Pty) Ltd - \mathbf{M98,724.24} + \\
 & - \quad Lesotho Nissan - \mathbf{M100,225.38} = \\
 & \qquad \qquad \qquad = \mathbf{M294,645.81} \div 3 = \mathbf{M98,213.81 (average)}
 \end{aligned}$$

- [9] **Mr Motsieloa**, whilst not disputing damage to the vehicle, argued that the cost of repairs far exceeds the amount for which the vehicle was purchased for (somewhere in the region of M90,000.00) and that the

plaintiff having used the vehicle for about five months, M5,000.00 would be a fair award – **Mr Motsieloa** advised!

Assessment of Damages

[10] In shooting at random at the vehicle as they did – possibly without proper or lawful orders –the first defendant’s soldiers took the plaintiff’s car as they found it. And it is an estimated cost of repair of the damaged car and not its book or market value (the car is not being sold) that should assist the court in awarding damages. At no stage did **Mr Motsieloa** question the authenticity of the three quotations nor did he attempt to insinuate that the amounts listed in the quotations as being inflated nor did he question the quotations on any other ground.

[11] To this Court, no good ground has been shown to question the average figure of the three quotations (all dated 26 June 2007) which were based on the then costing of car parts as at June 2007. This average quotation would be the fair amount of the repair cost likely to be borne by plaintiff in order to restore his damaged vehicle to a *status quo ante*. I award him an amount of M98,000.00.

Mental suffering/shock

[12] *Shock and suffering.* No doubt the plaintiff was subjected to an unlawful fusillade which could have shocked and traumatized any reasonable man. It came suddenly as he was quietly driving his vehicle to fetch his children from a cinema – some bullets even shattered the panel and front windscreen in front of him. “...*It was a movie like experience...!*” he noted. He must have suffered extreme shock, fear and trauma for which he must be awarded some damages. I award M25,000.00 as being reasonable and fair.

- Interest at 18.5% from date of judgment.
- Costs of suit.

S.N. PEETE

JUDGE

For Plaintiff : **Mr Mabulu**

For Defendant: **Mr Motsieloa**