

CIV/T/230/2010

IN THE HIGH COURT OF LESOTHO

In the matter between:

LETŠELA MOROBI

Plaintiff

and

COMMISSIONER OF POLICE

1st Defendant

ATTORNEY-GENERAL

2nd Defendant

Coram:

Hon. Hlajoane J

Date Hearing:

9th November, 2011.

Date of Judgment:

9th February, 2012.

Summary

*Claim for damages for unlawful assault by members of Police Service –
Liability admitted but quantum contested – consideration in awarding
such damages – Trial court left to exercise its judicial discretion –
Judgment for plaintiff with costs.*

JUDGMENT

- [1] Plaintiff is claiming for damages against the 1st defendant for having been unlawfully assaulted by the members of the Lesotho Mounted Police Service acting in the course and within the scope of their employment with the 1st defendant.

- [2] Plaintiff took the witness stand and testified. He told the Court that it was around the 13th December 2009 when he was arrested by people in police uniform with a crown. He also realized that the men who arrested him were armed with big rifles and sticks and were travelling in a white Land Cruiser bearing government registration numbers Y 3167, with a blue lamp on top.

- [3] Plaintiff was arrested whilst he was taking his lessons as a learner driver. His instructor Mr Lehlohonolo Mofo was sitting next to him.

- [4] Plaintiff had noticed that vehicle following him from his car mirrors. They asked him to stop near the robots near pick-n-pay from Thetsane. He stopped. He was asked to produce his driver's licence and he produced his learner's licence.

- [5] Plaintiff said he did not go out of his vehicle but only lowered his window. The said police took offence of that and said he was disrespectful to government officials.
- [6] He said the police took their turns in approaching him and asking the same question about his driver's licence. He was explaining to each one of them the procedure he followed in applying for a learner's licence.
- [7] The police spotted the incorrect entry of the expiry date which plaintiff had not been aware of. Plaintiff promised to go to the Traffic Department to rectify the incorrect entry on expiry date.
- [8] Plaintiff said the police started assaulting him and also used a spray to his eyes and ears. He was assaulted with police sticks and said he was feeling terrible pains as he was being assaulted and he even cried.
- [9] The said police even demanded some money from the plaintiff which he did not have. They left plaintiff and his instructor there with the instruction of waiting there till they came back. But plaintiff said they waited there for quite some time but those police never showed up.

[10] Plaintiff went home and was feeling terrible pains all over his body. The next day he went to report the incident at Maseru Central Charge Office where he was given a medical form. The doctor at Queen II hospital examined him and filled up a medical form. He was also taken for x-ray.

[11] The witness handed in as part of his evidence his learner's driver's licence, medical form, x-ray form and receipts for payments at Queen II Hospital.

[12] The medical report confirmed the assaults on the plaintiff's ribs with a blunt instrument. Degree of force used said to be severe, injury to life - moderate, degree of immediate disability – moderate degree of long term disability – partial.

[13] The plaintiff said the spray into his eyes had caused him so much pain that even of late his eyes can still not stand the sight of a bright sunlight. He also lost his hearing in one ear which he only regained after a month.

[14] Plaintiff further said being a pastor he felt humiliated and lowered in his dignity as he was assaulted near the main road and in the

vicinity of members of the public. His congregation lately started looking at him differently after those attacks by police.

[15] Plaintiff used to work at a place where he had to carry heavy bags for seeds but he had to be left out at work as he can no longer carry heavy loads due to the assaults.

[16] Plaintiff has thus claimed an amount of M230, 000.00 for pain and suffering, M15,000.00 for contumelia and M5000.00 for future and past medical expenses and costs.

[17] Though the defendant's plea denied liability, such was however admitted in cross examination but contesting the question of quantum so that the question of liability is no longer in issue.

[18] Defendants closed their case without leading any evidence.

[19] Plaintiff's counsel has pointed out that the general principle is that damages for pain and suffering, contumelia and medical expenses are general damages and the Court has discretion to determine the amounts to be awarded, though for medical expenses there may be receipts as proof of payment.

[20] But there are some factors that should influence the Court's discretion as the nature and seriousness of the assault, the fear created in plaintiff, the extent of humiliation, the motive of the attacker, the status of the plaintiff, an apology on the part of the defendant, previous awards in comparable cases but still giving allowance for inflation; **Mohlaba and Others vs Commander of the Royal Lesotho Defence Force and Another.**¹ See also the book by **Visser and Porgieter's Law of Damages.**²

[21] There can be no precision in comparing awards in similar cases but such are only to be taken as a guide as each case will have to be treated on the basis of its peculiar circumstances; **Protea Assurance Co. Ltd v Lamb.**³ The discretion always remains with the trial Court.

[22] I am in agreement with what has been suggested by the defendant's counsel, that general damages are not a penalty but compensation. That the award is designed to compensate the victim and not to punish the wrongdoer.

[23] Also that the awards must reflect the state of economic development and current economic conditions of the country.

¹ 1995 – 1999 LAC 191

² 2nd Edition at 476

³ 1971 (1) S.A 530 at 535 - 536

[24] Also that reference to awards made in other jurisdictions would be an inappropriate guide since conditions in those jurisdictions may both politically and economically be different.

[25] But for my part I have a very serious concern regarding similar cases before this Court, where members of the Police Service would opt for assaulting people just like that without any justifiable cause instead of arresting them and bringing them before the Courts of Law.

[26] In *casu*, the plaintiff was not resisting arrest. The police concerned just felt like treating him in that inhuman fashion and ended up not arresting him but leaving him there under the pretext that they were going to come back to collect their money, what money they did not even explain what it was for. They did not find anything with plaintiff otherwise they could have arrested him and given him a charge.

[27] Defendants have admitted liability but contested quantum. Plaintiff as a pastor has shown that he was humiliated in public. People were watching as he was being assaulted by police. He

even cried as he felt pains and for a man to cry is such a shameful and humiliating spectacle.

[28] The medical report and x-ray report have confirmed that indeed the plaintiff had sustained injuries on his chest – the ribs. The report further showed that severe force must have been used to cause such injuries. The report also showed that the injuries had had an impact on plaintiff's life, though moderate.

[29] In the circumstances of this case, judgment is granted against the defendants in the following manner:-

- (a) M70,000.00 (Seventy thousand) for pain and suffering.
- (b) M30,000.00 for contumelia (thirty thousand maluti)
- © M300.00 (three hundred maluti) for past and future medical expenses.
- (d) With costs of suit.

A. M. HLAJOANE
JUDGE

For Plaintiff: Mr Mohapi

For Defendants: Mr Sekati

