

**CIV/T/547/2010**

**IN THE HIGH COURT OF LESOTHO**

In the matter between:

**LERATO NTABE**

**Plaintiff**

**And**

**COMMISSIONER OF POLICE**

**1<sup>st</sup> Defendant**

**ATTORNEY – GENERAL**

**2<sup>nd</sup> Defendant**

**Coram: Hon. Hlajoane J**  
**Date of Hearing: 14<sup>th</sup> February, 2012.**  
**Date of Judgment: 14<sup>th</sup> February, 2012.**

**Summary**

*Claim for damages – Police acting within the scope of their employment, shooting at plaintiff's vehicle – Plea denying shooting, seizure and detention of vehicle – Plea later changed to admitting liability but challenging quantum – Plaintiff leading evidence resulting in giving judgment as prayed for in the summons.*

## **JUDGMENT**

- [1] Plaintiff has claimed damages against the defendants for officers of the 1<sup>st</sup> defendant having shot at his vehicle unlawfully and damaging the said vehicle in the process.
- [2] Pleadings were closed and a pre-trial conference held. The issues that were referred to trial were the following:
- (a) Whether or not the shooting, seizure and detention were unlawful.
  - (b) Question of liability and quantum.
- [3] On the date allocated for the hearing of this matter, counsel informed Court that they were negotiating a settlement as the shooting, seizure and detention were not denied.
- [4] The matter was thereafter postponed three times whilst allowing counsel to negotiate a settlement.
- [5] On the fourth occasion the matter had to proceed to trial as negotiations were not coming to an end.

- [6] Plaintiff took the witness stand and testified in support of his case.
- [7] Plaintiff proceeded to give evidence and showed he was the owner of a Toyota Hi Ace A7944. He said he used the vehicle as a taxi for reward. The taxi is licensed to cover areas as Semphetenyane, Ha Tsolo, Railway Station via Hoohlo to Maseru Bus Stop.
- [8] Plaintiff produced documents to show that the vehicle was his and was registered in his names. He also handed in his C permit and short term permit.
- [9] It was at around 8.00 a.m. on the 16<sup>th</sup> June 2010 when plaintiff received a call from one of the taxi drivers about his taxi being involved in an accident and the driver and conductor being assaulted.
- [10] Plaintiff rushed to the scene where he only found one man who described himself as a police officer. The taxi was there in a ditch. He observed that the taxi had lots of bullet holes all over and the windows were all down. The right hand side of the vehicle from the front to the back was also damaged. The vehicle had fallen on its side, the right hand side with wheels and rims also down.

- [11] The evidence further showed that even the front part was also damaged and also the underneath part. On enquiring from the police officer, the officer only told him that he had only been asked to look after that vehicle.
- [12] As he was looking around, plaintiff came around the uncle of the driver of the damaged vehicle. The name of the driver being one Lipallo Masoatsa.
- [13] Since the accident happened at Ha Tsolo, where the uncle resided, the uncle informed plaintiff that he had heard gun reports at around 4.00 a.m. on that day.
- [14] The uncle showed that as he was at the chief's place at around 7.00 a.m. that same day they noticed a man in the chief's toilet and when asked why he was there had said he had run away from people who wanted to rob him.
- [15] Before they could question him further there came a taxi and the man got out of the toilet and rushed to the taxi. As that man stopped the taxi he was seen pointing a gun at the driver. The taxi was taking Maseru direction.

- [16] The uncle had shown that when the man was at the chief's place he was seen taking out his gun and the people around him ran away.
- [17] Police were called and they came in their vehicle. They were shown that man who was in the toilet but had by then boarded a taxi. The police followed the taxi and started shooting at it. The shooting caused the taxi to overturn.
- [18] When plaintiff got to the scene all had been taken away. He later found the driver at the mortuary and the conductor at Queen II hospital. The person who was being chased had also passed away. The conductor had a bullet in his stomach and his mother took him away to Gauteng where she stayed.
- [19] Plaintiff showed that the police removed the vehicle from the scene to Mabote Police Station. They showed that they were keeping the vehicle there for proceeding with investigations.
- [20] Plaintiff said the police had asked him to go out and get a quotation for the repair of his vehicle and he did supply them with three quotations which he handed in as part of his evidence.

[21] Thereafter plaintiff kept on going to the police station about his vehicle without getting any assistance. He even suggested to them to allow him to take the vehicle for repairs but they refused.

[22] Plaintiff was forced to approach the Court for the release of his vehicle and such application was granted by the Court on the 9<sup>th</sup> August, 2010. Plaintiff then repaired the vehicle at his expenses.

[23] He has thus claimed for costs of the repair of his vehicle. He has also claimed for loss of business as the vehicle was a taxi conveying passengers for reward and had lost business for three months which included also the time that the vehicle was parked at the police station and when it was being repaired.

[24] To calculate how much he had lost in business, plaintiff had to check from his previous records, using the month of May to see how much he was collecting in a day. He then multiplied that by days in a month and then the number of months that the vehicle was out of business.

[25] The records that plaintiff used to make his calculations were also handed in in evidence.

[26] Plaintiff concluded by showing that when the police shot at his vehicle, they were acting within the scope of their employment as has been admitted in their plea at paragraph 4 thereof.

[27] Plaintiff has also prayed for interest at the rate of 18.5% per annum *a tempore morae*.

[28] The defendants' counsel did not find it necessary to cross examine the witness safe to pray that since they have thrown the towel there should be no order as to costs.

[29] Judgment was thus granted for the plaintiff as appears in the summons as follows:-

- (i) Payment of the sum of eighty three thousand one hundred and eighty-four maluti sixty six lisente (M83,184.66) for costs of repairs.
- (ii) Payment of twenty two thousand three hundred and forty seven maluti fifty six lisente (M22,347.56) for loss of business.

And there will no order as to costs.

**A. M. HLAJOANE**  
**JUDGE**

**For Plaintiff: Mr Shale**

**For Defendants: Ms Mabea**