

CIV/T/463/11

IN THE HIGH COURT OF LESOTHO

In the Matter Between:-

MALEFETSANE TSEHLA

PLAINTIFF

V

COMMISSIONER OF POLICE

1ST DEFENDANT

THE ATTORNEY GENERAL

2ND DEFENDANT

JUDGMENT

Coram	:	Hon. Molete AJ.
Date of Hearing	:	31st October 2011
Date of judgment	:	<u>20th February 2012</u>

Summary

Unlawful arrest and detention – quantum of damages – factors to be considered – counsel’s duty to assist and guide the court in arriving at a just decision – Courts to uphold safely and dignity of the individual - Default judgment granted to Plaintiff and reasonable amount considered.

ANNOTATIONS

CITED CASES

Teboho Khosi v Second Lieutenant Babeli 1991 – 1996 LLR 275

Motlalentoa Kopo and Mamoneuoa Kopa v Commander L.D.F. and Attorney General CIV/T/259/2008 (Unreported)

Paul Sebetse Mohlaba & Others v Commander Royal Lesotho Defence Force LAC 1995 – 1999 184

Commissioner of Police and Another v Neo Rantjanyana C of A (CIV) 11/2011

STATUTES

BOOKS

- [1] Plaintiff claims compensation for malicious arrest and detention, unlawful bodily assaults, pain and suffering and contumelia. He claims an amount of M750,000-00 from the defendants, with interest and costs.
- [2] Summons was served on the Commissioner of Police and on the Attorney General in August 2011 and both copies were stamped and signed on behalf of the defendants. Service was thus duly effected.
- [3] There was no appearance to defend entered on behalf of any of the defendants and matter was heard on the 31st October 2011 when plaintiff gave evidence to prove his damages as claimed.

- [4] Plaintiff testified that on the day in question, he received a call from his housekeeper, telling him that there were policemen at his house looking for him. He then proceeded to the police station, but on the way he met the policemen. They pointed their guns at him and told him they needed to search his house.
- [5] The police were apparently investigating a case of theft of gas in cylinders which they alleged he stole to sell at his shop. However plaintiff denied having any shop. He was said to have loaded and taken them away in his van; but he also denied that he owned a van.
- [6] His evidence was that he was taken to the Thetsane Police cells and locked up. He was called later at around 7.00pm and was stripped naked and assaulted until he soiled himself. He says later he was made to eat his own faeces. He was taken outside, tied to a tree and had cold water poured all over his body. The assaults took place until around midnight when he couldn't take it anymore and he fainted.
- [7] At midnight he was taken back to the cell and in the morning he was released. This was because apparently the person who had incriminated him had confessed and told the police he had been mistaken. The plaintiff was then released and he went to the Pitso Ground Police to obtain a medical form. He then proceeded to Queen Elizabeth II Hospital to be examined and had the medical form completed.

[8] On the medical form it is stated that the cause of injury is assault. The doctor treated him as an out patient, and he made the observation that the degree of injury to life and immediate disability was moderate.

[9] At the end of the plaintiff's testimony I asked Mr Makholela for the plaintiff to make submissions and prepare heads of argument to guide the Court on the quantum of damages. The matter was therefore postponed to the 15th November 2011 for that purpose. The Court pointed out to him that the damages claimed were not specified as required by the rules. The claim was set out as follows;

“(a) M500,000-00 (Five hundred thousand maloti) as compensation for unlawful bodily assaults, pain and suffering; malicious arrest and detention;

(b) M250,000-00 (Two hundred and fifty thousand maloti) for contumelia.”

[10] In the Heads of Argument and Submissions before the Court Plaintiffs counsel set out the principles involved in assessment of quantum of damages as well as previous awards. It became abundantly clear that Plaintiff's claim was highly inflated and excessive. He therefore amended his claim and submitted that the Court would have done justice to this case;

“If a total compensation amount of M275,000-00 made up as follows, M225,000-00 for bodily injuries pain and suffering and contumelia and M50,000-00 for unlawful arrest and detention, plus 18.5% interest and costs would be awarded to Plaintiff.”

[11] I must make the remark that many practitioners tend to ignore their duty and obligation to the Court and their clients to make proper and justifiable assessments prior to institution of proceedings. It is improper for Counsel to ignore the principles to be applied and similar previous awards in the hope that the Court will sympathise with his client and grant substantial damages.

[12] The duty of the Court is to dispense justice. It is obliged to take into account all relevant factors and considerations. In doing this the Court has to be assisted by counsel. It is not appropriate in these cases to simply argue that the Court has a wide discretion to award the amounts claimed or any other amount that it considers fair and adequate compensation. It is still the duty of counsel to fairly and reasonably guide the Court to make a proper assessment.

[13] In **Teboho Khosi v Second Lieutenant Babeli**¹ Monapathi J said

“It is difficult to measure contumelia; pain and suffering in terms of money. It is not the purpose of the law to punish but to seek to compensate plaintiff as much as possible with the aid of whatever evidence and information at the Court’s disposal based on broad general considerations.”

¹ LLR 1991 - 1996

[14] The Principles and considerations to be applied were further enunciated in the case of **Motlalentoa Kopo and Mamoneuoa Kopo v Commander L.D.F. and Attorney General**². The learned Judge Peete set out the relevant factors to be considered as amongst others;

- (a) The manner in which arrest and detention were executed
- (b) The degree of impairment of feelings of dignity;
- (c) Length of detention;
- (d) The Court's duty to safeguard the liberty, safety and dignity of the individual;
- (e) The measure of indignity, discomfort, distress and anxiety suffered;
- (f) Absence of reasonable or probable cause;
- (g) The individual's standing in society.

[15] The Plaintiff further relied on the cases of **Paul Sebetle Mohlaba & Others v Commander Royal Lesotho Defence Force**³.

And

Commissioner of Police and Another v Neo Rantjanyana⁴.

² CIV/T/259/2008 (Unreported)

³ LAC 1995 – 1999 184

⁴ C of A CIV 11/2011

The authorities were all considered and proved to be very helpful to this Court. They were however a further indication of the plaintiff's inflated claim.

[16] In the circumstances of this case, I would consider plaintiff's damages to be probably less in comparison to most of the cases quoted. Plaintiff was also prone exaggerate the ill-treatment meted out to him in the absence of any defence by the defendants, Commissioner of Police and Attorney General.

[17] I accordingly grant judgment to plaintiff as follows;

- (a) M75,000-00 for bodily assaults, pain, suffering and contumelia and
- (b) M50,000-00 for unlawful arrest and detention.
- (c) Interest at 18.5% per annum a *tempore morae*.
- (d) Costs of suit.

L.A. MOLETE
ACTING JUDGE

For Plaintiff : Mr Makholela
For Defendants : No appearance