

CIV/T/526/2010

IN THE HIGH COURT OF LESOTHO

In the matter between:

LEBOHANG RANTLETSE

Plaintiff

and

THE COMMISSIONER OF POLICE

1st Defendant

O/C PITSO GROUND POLICE STATION

2nd Defendant

THE ATTORNEY GENERAL

3rd Defendant

MOSHANYANA (other names unknown)

4th Defendant

JUDGMENT

Coram:

Hon. Hlajoane J.

Dates of hearing:

17th November 2011, 24th May 2012

Date of judgment:

14th August, 2012

Summary

Claim for damages for assault by Police - whether can claim constitutional damages where there is adequate means of redress in the form of damages for pain and suffering - No proof of

*impairment of dignity and reputation - 10% collection
commission no longer pursued.*

- [1] Plaintiff in this case has instituted action against the defendants claiming for damages under the following headings:
- a. Two hundred thousand maluti (M200,000.00) for violating of Plaintiff's fundamental right to freedom from inhuman treatment.
 - b. One hundred thousand maluti (M100,000.00) for pain and suffering.
 - c. One hundred thousand maluti (M100,000.00) for impairment of Plaintiff's person, dignity and reputation, and costs.
- [2] Service of the summon was duly effected on the defendants on the 7th September, 2010. The defendants only filed their appearance to defend and took no further step thereafter. They were requested to file their plea and received the notice on the 9th November, 2010.
- [3] The defendants filed no plea and on the 8th March, 2011, Plaintiff filed a notice of set down for default judgment. That notice was never served on the defendants. The hearing was scheduled for 14th March, 2011.

- [4] On the 14th March, 2011 Plaintiff gave evidence to substantiate his claim and default judgment was duly granted as requested on the 16th March, 2011.
- [5] On the 18th March as I was preparing to write judgment in this matter and went through the file I came to realize that in terms of **Rule 27(3)**¹ since judgment was to be granted by default after the defendant had failed to file his plea and was so barred that the notice for default judgment when so filed ought to have given three days notice to the defendants of the intended move to apply for default judgment.
- [6] Realizing that there was no such notice that was given to the defendants of that intended move of applying for default judgment, I had to invoke the provisions of **Rule 45(1)**² and *mero motu* rescinded the judgment that I had already granted by default.
- [7] The matter then proceeded on a fully fletched trial after the pleadings were closed. Plaintiff gave evidence and was duly cross examined. He also called another witness in support of his case.
- [8] Plaintiff's evidence in a nutshell has been that he was on the 31st August 2009 phoned by one Moshanyana asking him to report at Pitso Ground Investigation Department at 2.00p.m.

¹ High Court Rules 1980

² High Court Rules 1980

[9] Plaintiff said he duly complied and reported himself at Pitso Ground Police. When he got there 4th defendant left him with other police officers and was asked to identify himself to the Police and was then told he was suspected of theft of some monitors at his workplace at LOIC. He gave them his explanation.

[10] Plaintiff's evidence went further to show that Police did not believe his story hence why he was handcuffed and subjected to torture, assaults and humiliation.

[11] In explaining how the Police handled him, he said, he was tied to a bench with a rope whilst still in handcuffs. He was made to lye on a bench and his feet tied to that bench, his hands were made to drop underneath the bench. A rod, an iron rod was put between the bench and the handcuffed hands. One of the Police officers in there rode on top of Plaintiff as though riding on a horse. He then stretched his feet to the rod and that process tightened the handcuffs.

[12] Plaintiff said that process of torture lasted for something like 20 minutes. The person riding on him came down and the bench was made to stand on one end and Plaintiff was left hanging there. Plaintiff's cell phone rang and it was put on his ear to answer it.

[13] As Plaintiff replied the phone he was asked not to mention where he was, but he answered and told the person who had called where

he was. They then took away the phone and switched it off. He was left hanging there for something like 20 minutes, and throughout all the encounter he was being asked about the monitors and his reply would always be one, "I know nothing about the stolen monitors."

[14] He said the person who had called him on his cell phone was the Human Resource Person at the Ministry of Labour and Employment. The bench was lowered and he was unfastened. Plaintiff said the time was then after 5.00p.m when he was eventually released and told to come back the next day.

[15] On his release he went straight to the person who had called him on the phone and showed her what the Police had done to him. The lady advised him to see his lawyer, and the lady phoned the lawyer to connect them. But Plaintiff did not go to his lawyer that day.

[16] Plaintiff continued to show that he reported back to the Police the next day at around 8.00 a.m. He was questioned together with his co-workers after which they all drove to LOIC with the Police to see where the monitors were kept before they went missing. They then went back to Pitso Ground Police.

[17] When they got there Plaintiff said 4th defendant took him again to that place of torture, this time not asking him anything. The same

process as the previous day was carried out and this time it was 4th defendant who was riding on the plaintiff. He also used a tube to suffocate him and was assisted by one woman. He would be suffocated for 2 minutes and released. The process with the tube in water was repeated five times, when plaintiff showed he nearly lost it.

[18] It was at this juncture that Plaintiff said he begged to be released so that he could go for his appointment at Labour Department. He was released but asked to come back quickly. Plaintiff rushed to the same person at Labour Department and told the lady that he was no longer going back to the Police.

[19] Plaintiff then approached his lawyer that day for a Court order. The Court granted an order on the 3rd day of his release. The order was handed in as part of his evidence. Plaintiff and his lawyer took the order to be served on the 4th defendant and his team.

[20] The order was for interdicting the respondents from assaulting and subjecting plaintiff to inhuman and degrading treatment. That if they wanted to interrogate him, it should be done in the presence of his lawyer.

[21] Plaintiff then said he went to the central charge office for a medical form the next day, but the police did not give him one saying it was the duty of the police to fasten people. Plaintiff said his hands

and ribs were painful and swollen. His neck was sore. He is still not able even today to fully utilize the use of his left hand resulting from the torture of that day.

[22] According to Plaintiff's evidence after service of the Court order that was the last day or the end of him and the Police on the issue of monitors. He has never been charged with the theft of such monitors till today.

[23] Because the police had refused to give him a medical form, Plaintiff had to use his Health Book in consulting the doctor. He handed in in evidence that relevant page from his Health Book as part of his evidence. The contents thereof confirmed the bruises on Plaintiff's hands due to handcuffs. Painful waist and neck. The report dated 4th September, 2009.

[24] The Human Resource Personnel who testified in support of Plaintiff's case, confirmed that he had called Plaintiff on his cell phone that day as she had been waiting for him to submit his application form. That the phone was answered by another person who was very rude. She even had to call again as she thought she had called the wrong number. This time Plaintiff answered to say he was with the police.

[25] P.W.2 confirmed all what had been said about her by the Plaintiff.

- [26] The defendant's evidence confirmed that following the theft of the computers as LOIC, they had asked Plaintiff to report at Pitso Ground, and he did. According to 4th defendant plaintiff had come to report as was requested but that plaintiff asked to be released so that he could go and submit his application forms at the Ministry of Labour.
- [27] According to 4th defendant plaintiff was allowed to go but was asked to come back but he never did. He then said plaintiff was gone for a month or so till when he came with counsel's messenger for service of a Court order. He denied that plaintiff was ever assaulted whilst at Pitso ground.
- [28] 4th defendant was cross examined on the statement that he made in November, 2010 where he had shown that plaintiff reported at Pitso ground on the 31st August, 2008 thus confirming the evidence by the plaintiff. He was also made aware that he was served with a Court order about 4 days later.
- [29] Despite noticing the date of the Court order, the 4th Defendant still said he was served with the Court order a month after the encounter with plaintiff. He said that the charges for theft have yet not been preferred against plaintiff because of the Court order. But looking at the Court order they have not been interdicted from pressing charges against the suspect.

[30] Now looking at the totality of plaintiff's evidence and that of the defendants there has been just a bare denial by the defendants. Plaintiff has documentary proof of what he alleged happened. The Court order that has been handed in. The report of injuries from his Health Book. He even called P.W.2 who confirmed that he told her that he was with the Police and then when he was eventually released he told her what the police did to him and she organized legal representation for him.

[31] It would not be correct for the defendants to say that there have been mutually destructive versions in this case, and that plaintiff's version is the most improbable.

[32] Plaintiff has shown that he had been severely assaulted on the 31st August, 2009 and that has been confirmed by P.W2 who even helped in contacting a lawyer same time after the report. He did not seek medical attention on that day despite experiencing an excruciating pain but went to his lawyer the next day for a Court order. He seemed to have wanted to be a law abiding citizen as he had been told to report to police the next day which he did.

[33] P.W.2 was made aware that plaintiff had been assaulted but it had not been established as to whether or not she in fact saw the injuries. What we know is that she immediately connected plaintiff to counsel same time.

- [34] There has been no other evidence to controvert what was said by the plaintiff that he was assaulted by police. It would not be enough to just say he must have got his injuries somewhere else.
- [35] The Court therefore is of the feeling that based on the evidence presented before it by the plaintiff, the officers of the 1st Defendant are liable for the injuries that were caused whilst plaintiff was in detention for those two days with an interval of being released to report the next day.
- [36] What remains an issue is whether or not plaintiff besides the claim for pain and suffering has managed on a balance of probabilities to establish his claim in respect of the other two claims, being constitutional damages and impairment of his dignity and reputation.
- [37] Defendants' counsel agreed that in the event that the Court finds that plaintiff was assaulted in the manner he has described to this Court, and found to have proved such assaults, there would be no need for constitutional damages. Such remedy could only be resorted to where there is no adequate means of redress.
- [38] What defendants are saying is that it would not be proper to award damages under separate heads for assault resulting in pain and suffering on one hand and constitutional damages on the other.

[39] The defendants found support in the case of **Fose v The Minister of safety and Security**³ where **Ackerman J** had this to say in a similar case to the present;

“In the present case there can, in my view be no place for further constitutional damages in order to vindicate the rights in question. Should the plaintiff succeed in providing the allegations pleaded he will no doubt, in addition to a judgment finding that he was indeed assaulted by members of the police force in the manner alleged, be awarded substantial damages. This, in itself, will be a powerful vindication of the constitutional rights in question requiring no further vindication by way of an additional award of constitutional damages”

[40] The decision was made despite the provision of the South African Interim constitution⁴ which provided as follows:

“When an infringement of or threat to any right entrenched in this chapter is alleged, any person referred to in paragraph (b) shall be entitled to apply to a competent Court of law for appropriate relief, which may include a declaration of rights.”

[41] As rightly pointed out by defendants’ counsel there has been no authority on the issue of constitutional damages in this jurisdiction that this Court is aware of.

³ CCT/14/96 Constitutional Case of South Africa 1997 para 67 reported in 1996(2) BCLR 232 (W)

⁴ Section 7 (4) (a) of the Constitution of South Africa Act 200 of 1993

- [42] It follows therefore that since assault is a delictual claim, there cannot be any punitive damages in the form of constitutional damages over and above the delictual claim.
- [43] Concerning the claim under the third leg for impairment of dignity and reputation, plaintiff has not tendered any evidence to show how his dignity was impaired. He has only based his claim on the assaults that were meted out to him without telling us how his dignity and reputation were impaired.
- [44] We have been told in evidence by both P.W.1 and P.W.2 that when all these happened it was during the time that plaintiff was working at LOIC. He had applied for a post by being an instructor with the Ministry of Labour and Employment. Despite his arrest, detention and assault he still managed to secure that position of an Instructor.
- [45] For the reasons shown above, the Court finds that plaintiff has managed to prove his case in respect of prayer (b) only for pain and suffering. What remains will be the question of quantum.
- [46] The guiding principles in the issue of award of damages are found in **commissioner of Police and another v Rantjanyana**⁵ and **Pitt v Economic Insurance co Ltd**⁶. That relevant factors which have

⁵ C of A (CIV) No.11 of 2010

⁶ 1957 (3) S.A. 284

a bearing on the matter such as plaintiff's status, position in society and his reputation have to be taken into account.

Also that such compensation given

“must be just to the plaintiff but not prove out largesse from the horn of plenty at the defendant's expense.”

[47] Such considerations have been taken into account in awarding damages in this case.

Plaintiff's claim thus succeeds in terms of prayer for pain and suffering in the amount of M40,000.00 (forty thousand maluti) with costs.

A. M. HLAJOANE
JUDGE

For Plaintiff : Mr. Rafoneke

For Defendants : Mr. Molokoane

