

CIV/T/27/2010

IN THE HIGH COURT OF LESOTHO

In the matter between:

MARE GILBERT TAOLE

Plaintiff

And

NAPO RETHABILE SEHLOHO

1st Defendant

COMMISSIONER OF POLICE

2nd Defendant

ATTORNEY GENERAL

3rd Defendant

JUDGMENT

CORAM: HON. HLAJOANE J

DATE OF HEARING: 9TH AUGUST, 2012.

DATE OF JUDGMENT: 22ND NOVEMBER, 2012.

Summary

Damages for unlawful assaults by police, coupled with unlawful arrest and detention – Defendants admitting liability but contesting quantum – Amount awarded based on previous awards on similar cases with costs.

ANNOTATIONS

Statutes

1. The Lesotho Constitution 1993

Cases

- 1. Neo Masupha v Commissioner of Police and Another CIV/T/149/2005**
- 2. Mohlaba v Commander LDF (1995 – 99) LAC 184**
- 3. Commander LDF v Attorney – General (C of A (CIV) No.28 of 2009 at p9**
- 4. Protea Assurance Co. Ltd v Lamb 1971 (1) S.A 530 at 536 B**
- 5. Road Accident Fund v Morunga 2003 (5) S.A 164 SCA at 172D**
- 6. Manase v Minister of Safety & Security 2003 (1) S.A 567**
- 7. Rudolf and Others v Minister of Safety & Security and Another 2009 (5) S.A 94**

- [1] Plaintiff in this case, a man born on the 22nd December, 1961, has instituted an action against the defendants for damages resulting from the assaults on him by 1st defendant on the 21st July, 2009.
- [2] It is worth noting that the defendants have not denied liability but are challenging quantum. Plaintiff gave evidence and was not cross examined.
- [3] His evidence being that he was an employee of Lesotho Steel here in Maseru during the month of July 2009. It so happened that a laptop went missing at his place of work. He worked at the

department of electrical equipment but the laptop was in his employer's office not where plaintiff worked.

- [4] Plaintiff said as a result of the missing laptop he was on the 21st July, 2009 called by the Human Resource Officer, one Lebone. He was asked about the missing laptop.
- [5] He was later interviewed by the police at Maseru Central Charge Office and he denied knowledge of the laptop and was released. But later on the same day he was visited by another Police Officer, Sehloho, at work who ordered him to once again accompany him to the charge office.
- [6] At the charge office he found three other police officers and Sehloho asked him about the laptop. Plaintiff denied knowledge of same and Sehloho told him that he was dreaming and that he was going to vomit that laptop.
- [7] Plaintiff was locked in a cell only to be taken out at midnight. He was taken to that office where he had been interviewed during the day where Sehloho was with three other police officers.
- [8] The issue was still about the laptop and plaintiff gave the same answer as before. Sehloho still maintained that plaintiff was going to vomit the laptop.

- [9] Plaintiff had been handcuffed and was still handcuffed. He was asked to undress still in that state. He managed to put off his jersey, shirt and T. shirt. He said he was made to remain naked and he felt so much cold as it was in winter.
- [10] Sehloho whom plaintiff said was putting on heavy shoes, stood up and started kicking plaintiff at his ribs. Plaintiff fell down and Sehloho stepped on the handcuff to tighten them. The other police in there also approached plaintiff and hit him with a knee at the back.
- [11] Plaintiff was then instructed to lie on his belly on the cement floor. One of the two men came with a tube. But before that plaintiff was handcuffed to the back. A rope was fastened to the handcuffs and to his feet and the feet pulled up with the rope. (Witness demonstrated to the Court how this was done).
- [12] Plaintiff said because of pain and cold he was beginning to lose his mind. He even vomited blood. But a tube was fastened around his mouth and nose to the back to suffocate him. He said he fainted.
- [13] Plaintiff said when he came to his hands were uncuffed. He was handcuffed once again and the same process of using a tube repeated. Plaintiff then urinated and fainted once again. Plaintiff said the same process was repeated three times and in all those occasions he fainted.

- [14] It was after the third time of torture that plaintiff told his torturers that he was going to show them where the laptop was. He said he was only saying that because of the pain he was suffering. Sehloho came and kicked him once more on his ribs.
- [15] He said the rope was removed but was left still handcuffed. He felt very weak as he wanted to stand up. They took him to his home at T.Y., Ha Mohlaetoa but no laptop was found. He confessed and said he had to lie in order to save his life. He said on his way to and from T.Y he was being hit with a butt of the police officer's gun.
- [16] Plaintiff was taken back to Maseru Central Charge Office. He was being kicked as he entered the charge office and hit with a butt of a gun. The procedure of making him remain naked was repeated. He was handcuffed and pushed with a big gun and he fell.
- [17] Plaintiff said Sehloho once again stepped on his handcuffs and they were tightened causing him so much pain. He was made to lie first on his back and later on his tummy. Sehloho pushed his knee on his back. He again suffocated him with a tube saying plaintiff was going to talk. He even called plaintiff satan. Plaintiff as before fainted and when he came to they were just standing there and looking at him.

- [18] Sehloho kicked plaintiff on his ribs and that caused him to vomit a lot of blood. Plaintiff asked for water to drink but Sehloho said if the satan is given water in that condition he was going to die, so no water was given to him.
- [19] Plaintiff was taken to his all and the next morning they drove him once again to T.Y. This time Sehloho was not with them but one Mathias. At T.Y. they met one Chaka Chaka and Limpho but still the laptop was not found and Mathias showed that he had all the evidence he needed and they drove back to Maseru.
- [20] Plaintiff said Mathias showed that it would seem I knew nothing about the laptop and had only been giving different stories due to pain. Plaintiff was only released by Mathias the next day at noon of the 23rd July 2009.
- [21] In expressing how he felt as he was being tortured plaintiff said he was feeling terrible pains. He also said he felt miserable and depressed. Plaintiff sustained injuries from the assaults by the police and his hands were helpless. As he left the Charge Office he could not even move his fingers. He thereafter was experiencing some cramps days and night. He even had nightmares of the tortures.
- [22] Plaintiff consulted the doctor about his injuries on the 24th July, 2009. The report was handed in as part of his evidence.

- [23] The report showed tenderness on plaintiff's chest and compression discoloration. Both wrists were injured and swollen. The x-ray showed fractured ribs on the left side. The doctor formed an opinion that a blunt object must have been used to cause the injuries. There were also some abrasions on plaintiff's right shoulder, and tenderness on the spinal cord.
- [24] Plaintiff had also taken photos of the injuries as they were still fresh. The injuries are on both hands, his right shoulder, at both his elbows, at the back and on his chest.
- [25] As stated earlier on defendants one only contesting quantum. So that what plaintiff has said in his evidence must be taken as the truth.
- [26] Plaintiff in his summons has claimed M100,000.00 for unlawful arrest and imprisonment, M300.00 for medical expenses, M399,700.00 for shock and suffering, M100,000.00 for contumelia making a total of M500,000.00.
- [27] The medical evidence has confirmed what plaintiff said in his evidence. Plaintiff even said there has been no criminal charge that was preferred against him ever since. The only conclusion to be made would be that the arrest and incarceration of the plaintiff by the police was unlawful.

[28] Now considering the treatment that plaintiff went through in the hands of the police and the reaction of plaintiff to such treatment there is no doubt that plaintiff, as he said, suffered excruciating pain and shock from the torture.

[29] Counsel for the plaintiff relied on the provisions of our Lesotho constitution¹ in highlighting the importance of the fundamental right against torture and inhuman treatment, section 8 (1) thereof which provides:

“No person shall be subjected to torture or inhuman or degrading punishment or other treatment.”

[30] The police service as a Law Enforcement Agency is expected to protect the rights of the people and not to violate such rights. The courts have always expressed their astonishment at the manner in which suspects are tortured by police.

[31] To demonstrate the Court’s concern in matters of this nature judgment of a similar nature has been attached to plaintiff’s papers. The case of **Neo Masupha v Commissioner of Police and the Attorney General**², which cited with approval the remarks of the Court on appeal in **Mohlaba and Others v Commander of the Royal Lesotho Defence Force and Another**³ as follows:

¹ Lesotho Constitution of 1993

² CIV/T/149/2005

³ Mohlaba v Commander LDF & Another (1995 – 99) LAC 184

“When I read this record I was appalled that human beings could be treated in this kingdom in such a barbaric fashion.”

- [32] This Court is also expressing the same sentiments to the barbaric manner at which the plaintiff in this case was tortured by the police. Plaintiff lost consciousness more than three times due to pain in which he was subjected to by the police. They seemed to have enjoyed what they were doing to plaintiff. For a man to have urinated due to pain portrays how bad he was being handled.
- [33] It is thus for the Courts to demonstrate to the perpetrators of these actions by sending out a clear message of their displeasure to such barbaric practices through their judgments. It is only a pity that it is always money coming from government coffers that is going to be paid as compensation.
- [34] It has always been said many times that though there are no scales by which pain and suffering can be arithmetically measured in monetary terms, the trial Court however has a discretion as to the amount of general damages to be awarded.
- [35] It is a well established principle of our Law that each case must be decided according to its own unique circumstances. The Court will in each circumstance make an award on what it considers to be fair and adequate.

[36] But as my brother **Mofolo J** observed in the case of **Commander LDF & Others v Attorney-General**⁴ that, “while it is no doubt true that no two cases are precisely the same, guidance must be sought from past awards.” He was following on the dictum by **Portgieter JA** in the case of **Protea Assurance C. Ltd v Lamb**⁵ where in the absence of awards in cases considered to be comparable, it was decided that regard should at least be had to the “general pattern of previous awards.”

[37] The Court in **Commander LDF** supra relying on the decision in **Road Accident Fund v Morunga**⁶ expressed that it would also be important for the trial Court to provide some seasoned basis for the amount awarded in respect of general damages, however difficult that might be.

[38] In **Manase v Minister of Safety and Security**⁷ an old man of 65 years had been unlawfully and maliciously arrested and detained for 49 days. For the hardship, humiliation and indignity suffered by the old man, he was awarded general damages in the sum of M90,000.00 for malicious arrest and detention.

⁴ C o A (CIV) No.28 of 29 at p9

⁵ 1971 (1) S.A 530 A at 536B

⁶ 2003 (5) S.A 164 SCA at 172D

⁷ 2003 (1) S.A 567

- [39] The Court in **Radolph and Others v Minister of Safety and Security and Another**⁸ where appellants were unlawfully arrested and detained on a Friday at 5 p.m. until approximately midday on the following Tuesday, awarded damages in the sum of M100,000.00 each.
- [40] Also in **Commander LDF and Others v Tlhoriso Letsie** *supra* the appellants were on appeal awarded damages for assault and torture in the amount of M150,000.00 each. In a similar matter the Court in **Neo Masupha v Commissioner of Police and Attorney General** *supra* awarded damages in the amount of M120,000.00. But borrowing from the words of **Scott JA in Commander LDF** above, that an allowance must be made for the differing economic conditions in the two countries, Lesotho and South Africa.
- [41] In *casu*, the arrest and detention were both unlawful and malicious as no charges were preferred against the plaintiff before his arrest and detention, neither during nor after his detention. Not only that, he was also assaulted and inhumanly treated whilst in detention and the medical report showed the fresh scars from the handcuffs, the kicking and being assaulted with the butt of the gun, let alone having been, for more than three times, suffocated with a tube causing him to faint for those many times he was suffocated.

⁸ 2009 (5) S.A 94 (SCA)

- [42] The assaults were a bit severe on the plaintiff, considering that he was also made to strip naked and lie on the floor on his tummy during the cold weather in winter. He lost consciousness several times due to pain and even urinated in the process. That tells us how bad he was being handled. The anguish, fear and pain that plaintiff was made to suffer appeared to have been quite unbearable.
- [43] Counsel for the plaintiff invited the Court to express its dim view on treatment by suspects by Government Security agents. He has more than once expressed the same sentiments to this Court in cases similar to the present as in **Masupha vs Police and Another** *supra*.
- [44] I found this case on all fours with the case of **Commander LDF and Others vs Letsie** *supra*, on method used to suffocate plaintiff and his reaction to the torture he was subjected to, except that the suspect above was subsequently charged before a Military Court.
- [45] The standard of proof in civil cases being on balance of possibilities, I find in this case that plaintiff has succeeded to prove his case for the amount of damages as compensation for unlawful arrest and detention and for assault.
- [46] Having considered the previous awards in similar cases plaintiff's claim succeeds and defendants to pay damages jointly and

severally, the one paying to absolve the other in the following manner:

- (a) Payment of M200,000.00 for assault.
- (b) Payment of M40,000.00 for unlawful arrest and imprisonment since no charge was ever preferred against plaintiff from that time of arrest to the present, but accused had been taken to T.Y. his home, at the hospital in T.Y and at the hotel in T.Y by police causing people who saw him at all those places in the company of police believe he was a criminal.
- © For medical expenses, plaintiff produced no proof of payment for that but since there is a report by Dr Mokete who examined plaintiff I will allow M200.00 as medical fees.
- (d) Costs of suit.

A. M. HLAJOANE
JUDGE

For Plaintiff: Mr Mda

For Defendants: Ms Lebakeng

