

IN THE HIGH COURT OF LESOTHO

CIV/T/503/2009

In the matter between:-

PETLANE SOLOPMON PETLANE

PLAINTIFF

AND

FIRST NATIONAL BANK

1ST DEFENDANT

RETŠELISITSOE TŠOSANE

2ND DEFENDANT

COMMISSIONER OF POLICE

3RD DEFENDANT

ATTORNEY GENERAL

4TH APPLICANT

JUDGMENT

Coram: Honourable Mahase J.
Date of Hearing: Various Dates
Date of Ruling: 18th April, 2013

SUMMARY

*Civil Procedure – Injuria – false charges – what is damages
– proof of same – by plaintiff.*

ANNOTATIONS

CITED CASES:

- **Wright v. Multilateral Motor Vehicle Accident Fund 1977**
- **Kornark Investments LTD v. Stanbic Bank of Uganda LTD, Civil Suit No. 116 of 2010**
- **Jean Jonan Nepgen N.O. v. Accident Fund case No. 2984/2009**

- **Moaki v. Reckitt & Coleman (Africa) Ltd 1968 (3) S.A 98 A.**
- **Jackson v. S.A. National Institute for Crime Prevention 1976 (3) S.A. 1 (A)**
- **Mohlaba and Others v. Commander of the LDF. C. Of A. (CIV) No 20, 21, 22/1996**
- **Commissioner of Police v. Neo Rantjanyana C of A (CIV) No. 11 of 2010**

STATUTES: **None**

BOOKS: **None**

[1] The brief facts of this case have been summarized in the ruling of this Court dated the 21st November 2011 on absolution from the instance same are incorporated herein.

[2] Suffice it to mention that the plaintiff claims damages from the defendants in the sum of fifteen million maloti (M15,000,000.00). This arise from the alleged injurias conduct and false charges laid against him as a result of the conduct of the second defendant.

[3] The plaintiff was at all material times a customer of the first defendant and operated eight bank accounts with the first defendant. This has not been denied. Plaintiff's girlfriend was an employee of the first defendant. From the evidence adduced before this court, there was once a complaint by the plaintiff's girlfriend against the second defendant. In internal

inquiry was held by the bank to resolve that complaint. Ultimately the second defendant was acquitted from the disciplinary charge.

- [4] Apparently the decision of the disciplinary hearing against the second defendant did not go well with the plaintiff. He is alleged to have then telephoned one of the seniors of the second defendant; DW1 – Dennis Mbingo whereby he voiced his dissatisfaction about the decision of the disciplinary panel. Plaintiff is alleged to have threatened to deal with the second defendant and to sort him out permanently.
- [5] DW1 then had his conversation and the plaintiff reported to the Chief Executive Officer and later to the second defendant thereby impressing upon the second defendant that his life was in danger. DW1 then asked the second defendant to let the bank to provide security for him as well as its staff. The second defendant declined the offer and said that police will take care of any eventuality.
- [6] According to DW1, he considered the words which were uttered by the plaintiff to be a threat not only towards the second defendant but also towards the first defendant and its staff. The words allegedly uttered by the plaintiff have not been expressly told to court, except that plaintiff is alleged to have said he would sort out the second defendant thereby

teaching him a lesson he will never forget. Well, this Court has not been told why DW1 understood the said words to have been threatening to the defendants one, two and its staff.

[7] Be that as it may, having been notified about the said words, it is DW1's further evidence that the second defendant declined an offer by the first defendant management to provide him with security. Instead, so testified DW1, the second defendant preferred to inform the police about this.

[8] It is however not clear whether or not the second defendant did so, and when he did so. What is clear to this court is that the plaintiff has never telephoned the second defendant, nor was the second defendant part of the telephonic conversation between the plaintiff and DW1.

[9] Be that as it may, it is the plaintiff's evidence that on some other day; the 12th August 2009 to be precise, and as a customer of the first defendant, he went to the bank to do his usual banking.

[10] Whilst the plaintiff was in the first defendant's premises some plain clothed police officers went to him at the counter where he was being served. That they then harassed and humiliated him in full view of everybody who was in the bank at that time and for no justifiable reason.

[11] The plaintiff learned for the first time then that the second defendant; on seeing him (plaintiff) in the banking hall of the first defendant; telephone the police at the Maseru Central Charge Office reporting that the plaintiff was obstructing and or had caused a halt of the banking services. This is unchallenged by the defendants.

[12] According to the plaintiff, it was because of the second defendant's report to the police that the police went to him at the first defendant premises and ill-treated him in the way that is described in his summons. In brief it is plaintiff's case that the second defendant, whilst at his normal duty, upon seeing plaintiff inside the bank, wrongfully, unlawfully, intentionally and recklessly with intent to injure the plaintiff, falsely laid charges against plaintiff by alleging that plaintiff was a dangerous person and that he was obstructing and or had caused a disruption to banking services.

[13] Of course the plaintiff denies all of the above allegations and that he is a dangerous person and avers that, based on and acting on the second defendant's false and injurious allegation; the two police officers arrived at the bank where the plaintiff was doing his usual banking.

[14] That without cautioning him, and in reckless disregard of causing an embarrassing scene, manhandled the plaintiff in

the presence of the first defendant's customers in the banking hall and into the automatic teller machine hall, thereby degrading, humiliating and ignominiously insulting and impairing his dignity. Plaintiff attributes all of this kind of behaviour to the unfounded alarm which was raised by the second defendant to the police against him.

[15] The plaintiff's case is further that, just like the second defendant, the said two officers of the third defendant were acting during and within the scope of their employment. Refer to his declaration.

[16] Accordingly a letter of demand was served upon the defendants in terms of the law but despite the said demand defendants have failed, ignored and or refused to pay plaintiff damages as alluded to above.

[17] In his evidence, the plaintiff denies that he posed any danger to anybody in the bank or around it. He says that apart from the fact that he had gone to that bank as a regular customer; he was not armed with any weapon; he never at all disrupted bank services.

[18] Indeed, the second defendant conceded the above in his testimony and he has also conceded that when the two plain – clothed police officers arrived at the bank, the plaintiff was

actually at the counter where he was already being served by one of the tellers thereat.

[19] The said police officers did not even wait for the teller to finish serving the plaintiff. They went straight to him at that counter after the second defendant had shown them where the plaintiff was in the first defendant's bank. Having been handled by them and forced to go out of the banking hall into the ATM hall, obviously it was the plaintiff who was disrupted and humiliated in full view of the bank teller who was serving him; as well as in full view of other customers who were in that bank at that particular time.

[20] In fact, plaintiff testified that he later got to know the name of one of those policemen by the name of Hlaele who has since retired from the police service. He testified further, that the two police officers informed him while he was being served at the bank counter that they had come to arrest him. This they did in the bank and that the people who were there heard their conversation, and that there were between 30 to 50 bank customers, exclusive of the bank teller.

[21] He told this court that because he had not done anything wrong or unlawful whilst at the first defendant's premises on that day or previously, he at first thought that those two men were joking when they said they had come to arrest and

handcuff him; moreover because they had then not identified themselves nor had they cautioned him, neither had they informed him why they had come to arrest him.

[22] He realized that they were actually serious when they manhandled him and recklessly dragged him from that counter and out of the banking hall into the ATM division of the first defendant. They also had grabbed him by his clothes on the neck as they pulled him out of the banking hall.

[23] Of course, while 1st and 2nd defendants do not deny that some police officers went to the bank and had a conversation with the plaintiff on that day, and at the instance of the second defendant, they deny that the plaintiff was manhandled in the way that he has told this Court in his evidence, and as stated in his declaration to his summons.

[24] The first and second defendants have not controverted the plaintiff's evidence that the two policemen did not first identify themselves to the plaintiff when they found plaintiff at the counter already being served. Neither have they challenged plaintiff's evidence that the said two men had informed the plaintiff; without first having cautioned him that they had come to arrest him for undisclosed reasons. They have also elected not to call the bank teller who was then serving the plaintiff to testify in rebuttal of the plaintiff's case that the said

police officers had informed plaintiff that they were there to arrest him. This evidence of the plaintiff therefore stands and remains unchallenged; and so it is admitted – vide **Plascon – Evans Paints (LTD) v. Van Riebeck Paints (PTY) LTD.**

[25] In rebutting the plaintiff's case to the effect that he was manhandled by the said police officers in the manner described above, the attorney for the first and second defendants presented a video footage of what they say is what actually took place in the banking hall on the morning in question. They argue that clearly, it can be seen that the two policemen shook hands with the plaintiff in the friendly manner etc – refer to paragraph 6 up to 8 of their written submissions.

[26] It has on the other hand been argued on behalf of the plaintiff that the said footage does not reflect the true or the correct status of the incident for reasons stated in the plaintiff's written submissions. Refer to paragraphs 7 up to 9.2 of same.

[27] While much has been said by the plaintiff and the first and second defendants about the video footage in question, the problem is that the defendants have not challenged the plaintiff's evidence to the effect that he was already at the bank counter being served when the two plain clothed

policemen actually approached him informing him that they had come to arrest him.

[28] This was said in the presence of the bank teller and other bank customers therein, and no reasons were advanced to the plaintiff for the police to want to arrest the plaintiff. This indeed is an act of harassment especially because nowhere was this Court shown how plaintiff could be said to have disrupted the bank services. In fact, it was plaintiff who was disrupted by the two police officers whilst he was being served at the bank counter.

[29] In fact DW2 is on record in his evidence in chief as having said that when he saw the plaintiff at the bank's premises, he recalled what DW1 had told him yesterday about the plaintiff, and without having actually saw the plaintiff do any harmful action to anybody whilst at the bank premises, he telephoned the police. This he did only because he had seen plaintiff through the glass door of his office. The second defendant does not explain what it is which the plaintiff was doing when he saw plaintiff and that which prompted him to telephone the police. The second defendant does not even say that the plaintiff was trespassing thereat.

[30] The fact that he had his door locked just as he saw plaintiff outside his office, does not tell this Court what it is he saw the

plaintiff doing which prompted him to lock his door and to call the police.

[31] It is noted that even as the police arrived it was the second defendant who showed them or pointed at plaintiff as the plaintiff was being served at the counter in the first defendant. Even then, nowhere does second defendant say that at that time the plaintiff was disrupting bank services nor does he say plaintiff was causing harm or posing any danger to the bank teller(s) who was then serving the plaintiff.

[32] Nowhere does the second defendant say that he had any altercation with the plaintiff or that the alleged threatening words were uttered directly to him by the plaintiff. The second defendant did not know for a fact that the plaintiff had uttered the words he is alleged to have uttered.

[33] The fact that it was the second defendant in his capacity as a branch manager of the first defendant who had telephoned the police and made a report about the plaintiff on the day in question is common cause. The second defendant has conceded that on that day, the plaintiff did nothing that could have harmed anybody at the bank; but he (second defendant) felt frightened when he saw the plaintiff at the bank. This is quite strange, taking into account the fact that the plaintiff was a regular customer who operated a number of bank

accounts with the first defendant and this was confirmed by DW1, Mr. Dennis Mbingo who was then the Deputy Chief Executive Officer with the second defendant at the time this incident allegedly occurred. He (Dw1) told the court that he got to know the plaintiff in the normal cause of business.

[34] The plaintiff has correctly denied any wrong doing on his part on the day that he was allegedly illtreated by the police while he was being served at the counter in the first defendant's bank.

[35] Indeed from the footage which was presented to court, among other observations is that the plaintiff was at the counter when the two plain clothed police officers approached him. He denies that they were friendly to him and says that they informed him that they had come to arrest him. What was clear from the footage is that contrary to what the defendants say, one of the said police officers touched an unsuspecting plaintiff on the shoulder, forcing the plaintiff to look back at them and they then informed him that they had come to arrest him. This has been alluded to above.

[36] The defendants only content themselves with saying that they said something to him (paragraph 6 of their written submissions) but they do not challenge or deny plaintiff's evidence that that something was to the effect that they had

come to arrest him. As has been indicated above, they disrupted the plaintiff who was then been served by the bank teller.

[37] Equally, the defendants to do deny that the two policemen had the plaintiff taken out of the banking hall into the ATM hall not on his own volition, but because the policemen had pulled him there, after having told him that they had come to arrest him. In fact there is no evidence suggesting that the plaintiff had intended or wished to go into the ATM hall of the first defendant but for the actions of the two police officers.

[38] I pause to note that even after their encounter with the plaintiff in the banking hall and in the ATM hall of the first defendant, according to the evidence of DW2, (the second defendant), the police officers once again went back to the office of the second defendant where they reported that the plaintiff was not cooperating with them.

[39] This piece of the second defendant's evidence is in fact contrary in terms as against what has been argued at paragraphs 6 up to 8 of their written submissions to the effect that the said police officers accompanied the plaintiff in the respective areas in a friendly manner.

[40] This Court has not been told in which regard the plaintiff was reported to have not been cooperative with the said police officers. However, and this is a matter of common cause, the plaintiff has to date not been charged by the police of having committed any criminal offence whilst he was at the first defendant's bank and after the second defendant had made a report about plaintiff and after he also went to the police to make a written statement immediately after the occurrence of this incident between the plaintiff and the said two police officers.

[41] It is the considered view of this court that if indeed, the plaintiff had committed a criminal offence whilst he was at the first defendant's premises, it was the duty of the first defendant management not only to report about that to the police, but they should have had the matter against the plaintiff pursued further especially because both DW1 and Dw2 have told this Court that they were mostly concerned about the safety of the bank; its staff as well as that of their customers.

[42] Very unfortunately, the police officers who were detailed to go to the first defendant's office and who are alleged to have manhandled the plaintiff have not been called to testify, as such the veracity of what they are alleged to have done and not to have done could not be tested under cross examination.

Because of this the plaintiff's evidence that they manhandled him remains unchallenged.

[43] None of the first defendant's employees, other than DW1, DW2, and DW3 have come forward to tell this Court whether or not there was a time when anyone of them felt that their life or safety were ever put in danger on that particular day by the actions of the plaintiff. Even then, none of the employees of the first defendant have said in their evidence that the plaintiff acted in anyway, either by deed or by words, in a way which disrupted the bank's business and or which threatened the life of any people who were at the first defendant's premises on that day. Even the teller who was serving the plaintiff when he was confronted by the said policemen has not testified.

[44] Indeed even in the video footage, whose contents and introduction as evidence the defence has correctly criticized; nowhere does it show the plaintiff behaving in a manner which called for anyone having him reported to the police, nor which called for the police to approach him while he was already at the counter being served by an employee of the first defendant.

[45] To compound matters, to date, the first and second defendants have never pursued that case despite the embarrassment suffered by the plaintiff. The plaintiff has explained in detail in his evidence in chief why and in which way he alleges that

he was injured, harassed, ridiculed and his dignity impaired by the actions of the said officers who had been called to go to him by the employee of the first defendant (Second defendant) who acted in his capacity as a branch manager of the first defendant and during his scope of employment. This important piece of the plaintiff's evidence has not been challenged by the defendants. Equally the evidence that he was so treated whilst in the first defendant premises, and in full view of the other customers of the first defendant remains unchallenged.

[46] Indeed, it is the plaintiff's case that had it not been for the false alarm raised by the employee of the first defendant to the officers of the third defendant, the officers of the third defendant could not have known about his presence in the premises of the first defendant and that none of the injurious behaviour he is complaining about could have occurred. It is untenable for the first and second defendants to argue that the plaintiff could not give any explanation of why the second defendant deemed it necessary to make such a call. It is not for the plaintiff to know why an employee of the first defendant acted as he did. Indeed the second defendant has himself explained in his evidence in chief why he did so.

[47] It is the considered view of this Court that indeed, the second defendant has failed to tell this Court or to point to any action

done by the plaintiff on that day, against the second defendant or against the first defendant and or any of its staff members, or customers which compelled him to make that call to the offices of the third defendant's officers. The question asked by or on behalf of the first and second defendants, whether the phone call made by the second defendant was a reasonable action, should therefore be answered in the negative because no threatening/negative actions were done by the plaintiff on that day whether by deeds or words could be identified by the second defendant nor could such be seen from the video footage which was played in court. The first and second defendants should accordingly be held liable for damages occasioned by the plaintiff as a result of the injurious harmful consequences arising from that phone call made by their employee, the second defendant during the course and scope of his employment with the first defendant.

[48] The third and fourth defendants are also defending this matter. They deny liability and in their written submissions, they argue that they can not be held liable for payment of damages claimed herein by the plaintiff because:

- They acted in good faith in the execution of their duties; upon reasonable reliance on the information furnished to them by the bank official – the second defendant.

- It was the second defendant who had furnished false information in which he had depicted the plaintiff as not only being a dangerous person; but he had falsely reported that the plaintiff had halted and disrupted the banking activities as well as harassing the first defendant's staff and customers.
- Ultimately, all of the above information turned out to be false and to have misled the said police officers who say they had executed their mandate in good faith and without malice. Refer to the written submissions filed on behalf of the third and fourth defendants.

[49] Indeed, the plaintiff ultimately conceded that indeed the third and fourth defendants' officers should be absolved from liability herein for the same reasons outlined by and on behalf of the third and fourth defendants.

[50] The fact that the plaintiff was at the counter being served by a teller i.e. one of the first defendant's employee when he was approached by the officers of the third and fourth defendants has not been challenged at all by the said first defendant.

[51] In fact this is a matter of common cause that what actually transpired is that it was these officers who disrupted not only

the plaintiff but also the bank teller who was then still serving or attending to the plaintiff.

- The said first and second defendants have joined issue on the fact that these officers then walked with the plaintiff from the said counter in the main banking hall into the ATM hall. Contrary to what counsel for the first and second defendants say in their written submissions, the said officers touched or patted the plaintiff on the shoulders; in friendly manner, but they left the plaintiff no option as they forced him out of the main banking hall into the ATM hall.
- Why and how they describe that as having been a friendly gesture is not clear. The first and second defendants have not challenged evidence adduced by the plaintiff that it was at that very moment when he turned around that these plain-clothed men who had not identified themselves to the plaintiff, then told him, to his dismay that they had come to arrest him.
- There is no denying the fact that by patting him on his shoulder, these two men did indeed touch the plaintiff. Whether or not this is considered or described as a friendly manner is immaterial. How could plaintiff, or anybody tell from what we saw on that video footage whether the gesture was friendly or not; by which yard stick can this be

measured and what is the basis for saying that he was patted in a friendly manner?

- Nothing is said by and or on behalf of the first and second defendants that the plaintiff was distracted by that so called friendly pat on his shoulder by the said officers who then took plaintiff away to another hall for reasons for which the plaintiff had not gone to the first defendant.
- The fact that the plaintiff was being peacefully served at the counter by the employee of the first defendant, and without any disruption has been conceded to by and on behalf of the first and second defendants. Refer to paragraph 7 of their written submissions where they say that having been taken to the ATM hall by the two policemen, the plaintiff went back to continue his business at the counter. (my emphasis). This is clearly an admission that the plaintiff had not finished his business at that counter when he was forced by the two policemen to go into the ATM hall. Clearly plaintiff had no business to do in the ATM hall, that is why he went into the first defendant's main banking hall.
- The first and second defendants do not deny that the said two plain clothed policemen had actually informed the plaintiff while at the counter that they had come to arrest him. This they did in full view of other customers of the

bank. The plaintiff's evidence in this regard remains unchallenged.

- Reliance by the first and second defendants upon the expert evidence does not advance their case any further because in it, they do not deny nor refute the allegation that the bank raised a false alarm against the plaintiff and which alarm hurt the plaintiff.
- Further on this evidence, it has since been confirmed that, aside from the fact that a suspicion has been reasonably created that because he is an employee of the first defendant, the expert witness, (DW 2) has to protect the interest of his employer DW 2 has ultimately conceded that the recording machine which captured the video footage which was played in court was faulty in the respects which have been spelt out in the statement of the said expert witness. These have also been dealt with and articulated by and or on behalf of the plaintiff in the written submission of and under cross examination upon him. Refer to plaintiff's written submissions at paragraph 7 up to 9.
- Indeed, there is more than ample evidence showing that there was nothing untoward which plaintiff did to the second defendant nor to any member of the first defendant neither to its customers which could have compelled the second defendant to have made that false report about the

plaintiff thereby resulting in raising the false alarm that plaintiff had caused a disruption or the halting of the banking services while that was never so.

[52] This brings me to deal with the issue of an award of damages herein claimed by the plaintiff against the defendants. One must bear in mind, while dealing with this issue that in fact, it is a matter of common cause that the plaintiff was at all material times prior to this incident a regular customer of the first defendant, who did not go there for the first time on the day in question. I am also mindful of the fact that there is nowhere where the first two defendants have explained and or described the said dangerous and threatening conduct towards the second defendant nor towards either other bank employers or its customer, displayed by the plaintiff.

[53] This Court has carefully analyzed all the evidence relied upon by the first and second defendants justifying the making of the phone call which ultimately let the police officers to go to the plaintiff in the way which has been described throughout this trial. I must indicate that even the alleged lingering of plaintiff around the reception area of the second defendant's office does not explain nor justify the raising of a false alarm by the second defendant because there is no evidence of any wrong doing by the plaintiff as this is a reception areas open to all

customers of the first defendant. It is not their case that the plaintiff had specifically been barred from being in that area.

[54] The plaintiff is claiming an amount of fifteen million Maloti as damages occasioned by him as a direct result of the false alarm that was raised against him by an employee of the first defendant. We should however be mindful of the fact that the awarding of any amount of damages claimed by one party against the other, will ultimately be decided upon by the court with appropriate jurisdiction and in its discretion after having considered all the relevant facts and surrounding circumstances of each case.

[55] It is trite that in cases based upon injuria, it is imperative that the plaintiff must proof the intention by the defendant to injure him/her (plaintiff). The test is an objective one in that the plaintiff must proof facts which objectively are sufficient to lead to a reasonable inference of wrongfulness.

[56] Both counsel herein have ably and extensively dealt with this issue and as such I need not dwell on it too much. Suffice it to mention that the court subscribes to the principles of the law therein discussed and relied up by each one of them for and against their clients' cases.

[57] The first and second defendants deny liability even though they admit that had it not been for the telephone call made by the second defendant raising a false alarm as against the plaintiff, the third and fourth defendants' officers could not have gone to the first defendant's bank and allegedly manhandled the plaintiff.

[58] The said two defendants are speculative and none committal on the issue whether or not the conduct of the said police officers which was a result of the false alarm raised by the second defendant against the plaintiff was in fact injurious to the plaintiff. Refer to the paragraph 9 of their written submissions.

[59] It has however, been indicated above that there is no evidence whatsoever, orally or from the video footage presented before this court on behalf of the defendants which shows that the plaintiff did ever, threaten, by words or deed the second defendant, its customers and its other employees. Other than saying that the plaintiff was seen lingering in or at the reception area near the office of the second defendant; there is no evidence substantiating the allegation that plaintiff is a dangerous person who committed some unlawful actions whilst there which could be interpreted as having threatened the life of anyone around and or in the premises of the first

defendant either on that particular day and or on some days prior to the occurrence of this incident.

[60] In fact the plaintiff is nowhere seen speaking to any one; not even to the second defendant from the time when he arrived at the first defendant's premises until when he went to the counter where he was served by a bank teller. Even then, there is nothing seen on the video footage, which could be interpreted to indicate that he posed any threat or danger to anybody therein in that bank at that time.

[61] It should be recalled that, DW3, the second defendant had had a report made to the police about the plaintiff on the day that DW1 had allegedly had a conversation with the plaintiff. This was not on the day that the plaintiff went to the bank, but it was prior to that day. The "first report" to the police by the second was indeed made prior to the 12th August 2009; the actual day when the plaintiff was at the said bank premises.

[62] Even on that day, the second defendant could not deny that plaintiff had gone there to seek services as a regular customer of the first defendant, nor could he deny that the plaintiff did not engage or do anything to anybody which could be calculated or interpreted to have posed any danger of any kind to the second defendant or to any person in that bank at that time.

- [63] Also the second defendant is on record as having told this Court in his evidence in chief that when he saw Solomon Petlane thereat, he decided to call the police. The second defendant, refrains from disclosing to court what it is he saw the plaintiff doing which prompted him to telephone the police and made the alleged misleading, false report about the plaintiff at that time, on that day.
- [64] He went on to say, it was him who showed the plain clothed policemen where the plaintiff was at one of the counters in the bank: still he does not say what it was the plaintiff was doing on that counter that had probably, according to him had disrupted, halted bank services or that which had posed a danger to himself, the customers and the bank employees.
- [65] Further on, DW3 testified that customers were not disturbed as everything was normal, but immediately after the police went back to his office, he nonetheless agreed to go to the police charge office to formally make a written report about the plaintiff.
- [66] The reasons why he did the above after having testified that there was no disruption as everything was normal in the bank even as the police went to plaintiff at the counter where plaintiff was being quietly served are still not clear to this Court. Very sadly, it is a matter of common cause that to date

no formal charge was ever preferred against the plaintiff after his being so unjustly confronted by the said police officers in the presence of other bank users or customers of the first defendant. It is not the defendant's case that such a report made against the plaintiff by the second defendant who so acted in his capacity as a branch bank manager and during the scope of his employment and in carrying out his duties as such, has been withdrawn. All we know up to now is that that report still stands much to the detriment of the plaintiff.

[67] In fact, the first two defendants are blowing hot and cold over the issue as to whether or not; plaintiff was cooperative with the police. In one breath, DW3 testified that the said police had reported to him that plaintiff was not cooperative with them, hence why he went to make yet another written report about plaintiff. We do not up to now know the contents of same; but no formal charges have to date been preferred against the plaintiff based on that report. Why if indeed the plaintiff had not cooperated with the police, have the first and second defendants not pursued their case against the plaintiff based on what they describe as a threatening conduct towards the second defendant? Mindful of the description of the plaintiff by the second defendant as being a "dangerous person", it boggles one's mind to explain why the said defendants have to date; some three years and some months since the 12th August 2009, not pursued the case against the

plaintiff. It is noted that this Court has not been told in which regard the plaintiff was said to have refused to cooperate with the said police officers; nor is it clear why the said police officers did not there and then arrest and remove the uncooperative, disruptive and dangerous person from the bank premises.

[68] I have already alluded to the contradictory evidence of the first two defendants with regard to whether or not any of the said two police officers touched the plaintiff. Refer to their written submissions. Suffice it to only observe that there is no way in which one person can pat the other on the shoulder without actually touching such a person. Of course, they did not pat the plaintiff on his shoulder to greet him whilst the plaintiff was being served.

[69] The sole purposed for that gesture was so as they let plaintiff knew that they had come there to arrest him on information they had received from the second defendant, and which conduct the plaintiff complains about. The evidence that they had said they had come to arrest him has not been denied, nor has evidence that but for the false, misleading information given to police by the second defendant against the plaintiff; the police would never have known about the presence of the plaintiff in that bank on that day; been unchallenged.

[70] On the contrary they admit the above but say that, even then they are not at all liable to pay plaintiff the sum of money as damages as herein claimed. They say that the second defendant was justified to have telephoned the police and made a report about the plaintiff for the reason that the plaintiff was seen by the second defendant hovering outside the office of the second defendant on the morning in question. Refer to sub paragraph 6.2 of their plea. As has already been indicated above, there is no specific act which plaintiff is said to have done which threatened the second defendant.

[71] The said two defendants deny all or any liability to compensate the plaintiff because they argue that the presence of the plaintiff at the reception area is a true fact and they argue that, that fact on itself makes the phone call of the second defendant a reasonable step in the circumstances.

[72] As has been indicated earlier, there is nowhere where the said defendants had indicated in anyway that the reception area thereat was not to be used by any of their customers; nor had the plaintiff been specifically so informed to not go to that area.

[73] In other words, the circumstances and or the grounds upon which the second defendant raised that false alarm about the plaintiff on that particular day are not justified.

[74] The plaintiff has outlined reasons in his evidence in chief in support of payment of the amount of damages he has claimed against the defendants. He says he is a businessman engaged or doing business in construction, hardware, pest clearing and landscaping. That he is also a former police officer and a member of high social standing in his community and in his church, and most importantly, a customer of the first defendant operating various business accounts. All of these have not been challenged, so also is the plaintiff's evidence that as he had a conversation with those police officers, they had wanted to handcuff him but that he refused to be handcuffed, to which one of them uttered insulting derogatory words towards him.

[75] The above facts are hardly in dispute, so also is the fact that he was never charged as a result of his alleged behaviour on the day in question while he was at the first defendant.

[76] The above explains why the plaintiff considers the sum of fifteen million maloti (M15,000,000.00) as an appropriate compensation for the injuria and damages he has suffered and or experienced as a direct result of the defendants said actions.

[77] A number of cases in support of the granting of this award of damages to plaintiff in the sum claimed, have been cited to this court. Refer to plaintiff's written submissions.

[78] While indeed, this Court is of a considered view that there were no justifiable grounds or justifiable reasons for the second defendant to have not only raised the false alarm referred to and to have described the plaintiff as a dangerous person, this Court is of the view that it was reckless of the second defendant to have lied to police about the disruption by plaintiff and the halting of services in that bank while he conceded in his evidence in chief and under cross examination that, that had never been the case. In fact no such disruption of bank services nor any actions which could be calculated to have brought to a halt the bank services therein in the first defendant could be seen on the video footage. In other words evidence on the video footage does not support what the second defendant said had occurred as a result of the presence of the plaintiff in that bank on that particular day.

[79] Mindful also of the unchallenged evidence referred to above, coupled with the fact that the plaintiff, being a customer of the first defendant had never, on any previous occasions when he went to the first defendant, caused any troubled, then the actions of the second defendant and his description of the plaintiff as a dangerous person were indeed meant and

intentionally calculated to injure the plaintiff as he alleges in his summons and declaration.

[80] Also mindful further to the fact that the said two policemen did not ever, thereafter follow up on the “second” report made by the second defendant to them about the plaintiff; even though they (police) had taken the cell phone numbers of plaintiff, is a clear indication of the falsity of the alarm raised by second defendant as against the plaintiff.

[81] As has been alluded to above, all the defendants deny liability to pay plaintiff. The issue whether or not the quantum of damages so claimed is excessive or not has at all not been argued.

[82] The third and fourth defendants argue, and correctly so in the view of this Court, that their officers acted in good faith in execution of their duties, based on the request of the first and second defendants; but that they discovered later that this was a false report raised by the second defendant. Refer to their written submissions.

[83] It has already been indicated above that indeed the second defendant had no justifiable reasons to have raised or made a false report or alarm to the effect that a dangerous person in the form of plaintiff was at the bank having caused a

disruption and or the halting of bank services and putting in danger life and security of the staff and customers of the bank in question.

[84] All of the above actions have not at all been supported by any evidence including that captured on the video footage; which footage was presented to court by and or on behalf of the first two defendants. There is also no evidence whatsoever, suggesting that the alleged lingering of the plaintiff in the reception area near to the office of the second defendant caused any injury to the said defendant, customers and staff of the first defendant. In fact the second defendant had had time to refrain or to stop a disruption by the police of the services being offered to plaintiff as the plaintiff was already at the counter being served by a bank employee when he showed these police officers where the plaintiff was at the counter.

[85] He however, did not do so, even though he conceded in his evidence in chief and under cross examination that the plaintiff was at that time being served at one of the counters in the bank. He also conceded, under cross examination, that apart from his having felt frighten when he saw the plaintiff at the bank, the plaintiff had not done anything which could harm anybody in the bank premises.

[86] The fact that the second defendant continued and persisted to give a false impression that the plaintiff was a dangerous person who had committed the actions which he knew were false is a matter of concern to this Court and the only reasonable inference to be drawn from all the facts and surrounding circumstances of this case is that the second defendant acted intentionally, maliciously, recklessly, negligently and in an injurious manner which humiliated the plaintiff. This he did in his capacity as the branch manager and in or during the scope of his employ with the first defendant. They are therefore both found liable for the damages for conduct against or which the plaintiff complains about.

[87] The assessment of damages is a duty and an exercise which a court of law has to make in its discretion in a judicial manner. In the circumstances of this case, the plaintiff has however not been assaulted or arrested. The only issue is that he was indeed, humiliated, ridiculed and his dignity impaired on the basis of a false alarm raised by the second defendant.

[88] There are a number of relevant factors which should have a bearing on this matter. These could be the status, position in society, the reputation of the plaintiff as well as the nature of damages etc. In the instant case, there are no assaults i.e. physical injurious assaults. Neither was plaintiff actually and

or physically arrested. All that we know and that which remains unchallenged is that, the two police officers disrupted and halted the services offered to plaintiff and that they had uttered insults against him when they found him being served at the counter of the first defendant. Also, they had him taken away, not on his own volition out of the banking hall into the ATM hall in a manner which aroused interest amongst the other bank customers who were then in the bank thereby causing injury to the plaintiff in the way it has been described at paragraph 9 of the plaintiff's written submissions.

[89] They did the above in total disregard of the presence of other customers, also in total disregard of the plaintiff's social standing not only in his own community but they also totally disregarded the fact that, the plaintiff is a businessman and a regular customer of the first defendant and that their actions towards plaintiff could tarnish his good image with this bank.

[90] While there is no scale by which general damages may be assessed, one does not need to be a scientific professor to make an informed, balanced award of damages having regard to previous comparable awards made in this jurisdiction.

[91] A number of cases or authorities have been cited in support of the award of damages claimed herein on behalf of the plaintiff. However, having considered same as well as those from this

jurisdiction; it is the considered view of this Court that the appropriate amount of damages to be awarded to the plaintiff is the sum of M65,000.00 (sixty five thousand maloti).

[92] The sum of M65,000.00 is awarded as damages payable to the plaintiff by the first and second defendants jointly and severally the one paying others to be absolved.

[93] They are to pay same with interest at the rate of 18.5% a tempo morae. Costs of suit are also awarded to the plaintiff but in the ordinary scale.

M. Mahase

Judge

For Plaintiff - Adv. Molati
For Defendant - Mr. Loubser