

**IN THE HIGH COURT OF LESOTHO**  
**(Commercial Division)**

In the matter between:

**'MANEO PITSO**

**PLAINTIFF**

**AND**

**TOPOLLO MOCHOCHOKO MOSIUOA**

**1<sup>ST</sup> DEFENDANT**

**MONYANE MOOROSI**

**2<sup>ND</sup> DEFENDANT**

**MOHLAHLOE RAMMIKA**

**3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

**Coram : L.A. Molete J**  
**Date of Hearing : 19<sup>th</sup> March, 2013**  
**Date of Judgment: 04<sup>th</sup> November, 2013**

**SUMMARY**

*Damages – Plaintiff assaulted by the defendants – Defendants alleging that she was a witch – 1<sup>st</sup> defendant confessing to Commission of the crime – Plaintiff entitled to damages – Claim excessive and reduced accordingly.*

## **ANNOTATIONS**

## **CITED CASES**

**Mohlaba and Others vs Commander of Royal Lesotho Defence Force and Another – LAC (1995-1999) Page 184**

## **STATUTES**

## **BOOKS**

**R.G. Mckerron – The Law of Delict (7<sup>th</sup> ed) 1971**

- [1] The plaintiff sues defendants for an amount of M2,546,086-46 damages resulting from an unlawful assault that the three defendants inflicted upon her.
- [2] All the defendants were served; but none entered appearance to defend. The judgment sought was therefore by default.
- [3] The plaintiffs evidence was that on the day of the assault around twelve midnight she heard a knock on her window. The person who was unknown to her said he was Teboho a shepherd from Rankelepe who was asking for a phone as he had some problem with his flock.
- [4] The plaintiff could not help him because her phone was out of order. She did not open the door or window, but spoke to the shepherd from inside the house still on her bed. He then left.

- [5] Later on she heard a window break and someone climb on the window. She noticed a small light glow which looked like a cellphone; and she stood by the wall. The intruder started shooting from the window. She tried to run to the door but was shot in the chest. She testified that she was shot at seven times.
- [6] The next thing she woke up in hospital. She was attended at Thetsane Hospital, later transferred to Queen II Hospital and finally to Motebang Hospital. She was hospitalised for a period of three months and left with a disability in that her left arm was incapacitated.
- [7] Plaintiff testified further that she did not see the people who shot her, but later came to know after they were arrested that it was Topollo her nephew; Monyane her cousins son and Molahloe who is also her close relative. Their reason for doing this was that 1<sup>st</sup> defendant believed he was bewitching him as will appear hereunder. He then sent the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to assassinate her.
- [8] As a result of the injuries inflicted on her she said she incurred substantial medical expenses, including hiring a security guard to look after her at the Queen II Hospital as the hospital had advised her to do so. She also had to go for regular check-ups but could not use the public transport and had to pay for a special taxi to and from Queen II hospital.
- [9] Her incapacity meant that she had to hire a domestic servant and people to plough her fields and harvest them. She also testified that her husband had to resign from his job at the mines to look after her.

- [10] The next witness for the plaintiff was the doctor who examine and treated her, one DR C Nyambui. He testified that he is a general practitioner who practices mostly as an orthopaedic surgeon. He confirmed that he attended the plaintiff and that she had a gun-shot wound and had a bullet lodged in her chest. She had three bullet wounds on her upper arm, forearm and one lodged in the chest.
- [11] The doctor handed in the patients bukana (hospital booklet) containing the full report of injuries and treatment given. It contained the details of the times she attended hospital even after her discharge. The doctor treated the compound fracture by open reduction and fixation with plates and screws. He concluded that there would be 20% permanent disability.
- [12] The last witness called after some delays occasioned by her being on maternity leave, was her worship the Magistrate Mrs Litlhare Mashaphe. She had taken the confession of the 1<sup>st</sup> Defendant Topollo Mochochoko Mosiuoa. She testified that she took all the steps required to ensure that the confession was freely and voluntarily made. She explained to the accused his rights, and she reduced it to writing in the Sesotho language. The first defendant signed it.
- [13] The first defendant made the confession a day after he was arrested. The translation was later done by Mr J.P. Sehlabaka sworn Court Interpreter. The confession of the 1<sup>st</sup> defendant was that he had hired the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to go and shoot the plaintiff and to kill her because he believed she was a witch, who had killed one boy at an initiation school, and she was intending to kill him as well. He decided to hire the two accused to assassinate her but she survived with the injuries set out above and lived to tell the story.

[14] The matter was not opposed and Mr Mokaloba in his submissions urged the Court to discharge its duty, guided by the authorities and previous awards in similar cases. He submitted that it was an unwarranted attack by the agents of the 1<sup>st</sup> defendant on a defenceless woman who offered no resistance to her male attackers. It was, so he submitted, a cruel and savage attack on the innocent plaintiff.

[15] The task of the Court was not an easy one because there is no correlation between money and pain. **R.G. McKerron** in his book on delictual liability puts it as follows;

“There are no scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty.”<sup>1</sup>

[16] The Courts therefore have to carefully assess the circumstances of each case and do the best it can to be fair in the circumstances. The learned author goes on to say that;

“the usual method adopted is to take all the circumstances into consideration and award substantially an arbitrary sum, however it is desirable that there be some uniformity of awards, some regard should be had to amounts awarded in previous cases, but as it has been pointed out, unless caution is exercised in comparing awards, there is a risk that the trial courts discretion may be unduly fettered”<sup>2</sup>.

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<sup>1</sup> The Law of Delict (7<sup>th</sup> Ed) Page 117

<sup>2</sup> R.G. McKerron, Supra, Page 118

[17] A relevant and authoritative Lesotho case in this regard is **Mohlaba and Others vs Commander of Royal Lesotho Defence Force and Another**<sup>3</sup>.

[18] In all the circumstances of this case I would consider the claim to be a bit excessive, regard being had to the economic and social conditions in Lesotho. While the Court is prepared to grant the special damages, it should in the award for general damages be cautious. In so far as the claim by defendant's husband for loss of earnings to look after his wife, this claim should not be an award to the plaintiff but to the husband himself.

[19] In the result the award to the plaintiff is as follows;

(a) Hospital and medical expenses	- 1,299-00
(b) Employment of a permanent domestic worker	- 57,600-00
(c) Employment of labourers to harvest fields	- 50,400-00
(d) Beans harvest for the year	- 30,000-00
(e) Future medical expenses (20 years) @M2000 per year	- 40,000-00
(f) Assault, pain and suffering	- 75,000-00
(g) Contumelia and harassment, being referred to as a witch	- <u>50,000-00</u>
	<b><u>304,299-00</u></b>

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<sup>3</sup> LAC (1995-1999) Page 184

**[20]** Judgment is accordingly entered in favour of the plaintiff in the amount of M304,299-00 with costs.

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**L.A. MOLETE**

**JUDGE**

**For the Plaintiff : Mr V.M. Mokaloba**

**For the Defendants : No appearance**