

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/T/40/2012

In the matter between:-

MOSEHLE MOLISE

PLAINTIFF

AND

OFFICER COMMANDING THABA-TSEKA POLICE POST

1ST DEFENDANT

COMMISSIONER OF POLICE

2ND DEFENDANT

ATTORNEY GENERAL

3RD DEFENDANT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : Various dates
Date of Judgment :

Summary

Civil Procedure – Trial action – Arrest by police – Lawfulness or not of plaintiff's detention – brutal assault upon plaintiff while in police custody on suspicion of having committed crime of stock theft – Damages claimed following such arrest and brutal assault.

ANNOTATIONS

CITED CASES

- **Limpho Matete v. Monyane and Others CIV/T/579/2006**
- **Mohlaba and Others v. Commander of Lesotho Defence Force and Others – LLR 1991 – 1996 Vol. 1 page 648**
- **National University of Lesotho v. Thabane L.A.C (2007 – 2008) p 476 @ 488**

- **Keketso Liphoto v. The Commander of Lesotho Defence Force and Another CIV/T/488/2007**
- **Commissioner of Police and Another v. Neo Rantjanyana C. of A. (CIV) No. 11 of 2010**
- **Pitt v. Economic Insurance Co. LTD 1957 (3) S.A 284 (D) at 287 E – F**
- **Seria v. Minister of Safety and Security and Others 2005 (5) S.A. 130.**

STATUTES

- **Constitution of Lesotho - 1993**

BOOKS:

- **Neethling, Potgieter and Visser, law of delict, 5th Edition, page 225**

- [1] The plaintiff, was arrested detained and subsequently assaulted by the Thaba-Tseka police whilst he was in detention. He had been so arrested and detained on the suspicion that he had stolen cattle belonging to one Moqomisa. Both the plaintiff and the said Moqomisa reside Ha Tumahole, Mathokoane in Leribe and Thaba-Tseka. Respectively.
- [2] The plaintiff testified that while having been arrested and detained at the Thaba-Tseka police post, certain members of the police had him assaulted at various parts of his body. As a result he sustained bodily injuries. He handed in, a medical report; exhibit “A” as proof of the injuries he had sustained as a result of the said injuries inflicted upon him by the said police.
- [3] It was his unchallenged evidence that he was so brutally assaulted by some three police officers, whose names he disclosed to court. That in particular,

he was so assaulted on the 8th may, 2011, which is the day that he was arrested. The said assault lasted for about one hour.

[4] As a result of such assault and the injuries he sustained in the hands of the police, the plaintiff was subsequently taken to a medical doctor for examination and treatment. On arrival at the hospital, it was one of the said police officers who filled in and signed hospital documents on his behalf. After being so examined he was admitted into hospital for three days from the 6th June to the 9th June 2011. He had, among others, sustained a wound on the thigh and on the right thigh and a wound on the posterior face. He testified that he was in great pain having endured such an assault for over one hour before he was ordered to go back to the police cell.

[5] When he was ultimately taken to hospital for treatment, the wound on his right thigh had become septic. The medical report indicates that injuries on the plaintiff were caused by sharp trauma. Refer to exhibit “A”.

[6] After being discharge from hospital, the plaintiff had a photograph of himself taken, in particular, he had photographed the open wound he had sustained on his right thigh. Refer to exhibit “B”.

[7] In fact the plaintiff had first been hospitalized at Paray hospital at Mantsonyane following his assault by the said Thaba-Tseka police on the Saturday that he had been arrested. Later on, on Monday he was taken to above-named hospital. However, having been informed by the said police officers that the cattle he had been suspected of having stolen had been

found, the police had him transferred to Motebang hospital at Hlotse in Leribe, which is nearer to his home. He spend a further two weeks in the hospital. He has since been discharged from hospital although he was receiving further treatment and medical check-ups from then Ha Mositi Clinic.

- [8] When, on the 7th May 2013 the case was first prosecuted, both counsel informed Court that through a court mediation process, they have each agreed to make concessions. These are that defendant conceded to the issue of liability, but that they dispute the quantum of damages which they consider to be inflated and or unreasonably too high.
- [9] Counsel for the plaintiff also conceded that the plaintiff's arrest and detention were not unlawful because of the reasonable suspicion which the police had against his client that he had stolen cattle. They therefore abandoned their claims in this regard. So the claim of the plaintiff against the defendants now stands at the sum of four hundred and sixty thousand maluti (460,000.00) in respect of items C up to F of paragraph 8 of his declaration. Refer to parties' deed of settlement dated the 16th May 2012.
- [10] The only issue for determination by this Court is the quantum of damages claimed on behalf of the plaintiff against the defendants in the sum of money, referred to above. The plaintiff's evidence has not been challenged as he was not cross examined by the defendant's counsel, as such the above issue as to quantum, must be resolved on the basis of the acceptance of the unchallenged evidence of the plaintiff.

[11] Of course the defendants argue that the amount of damages herein claimed in the sum of four hundred and sixty thousand is excessive or inflated and have suggested, without categorizing the items claimed as the plaintiff has done, that a general amount of sixty thousand maloti (60,000.00) is a fair amount in the light of the fact that the defendants have admitted liability from the onset and did not waste the court's time. No effort has been made on behalf of the defendants by way of justifying its argument that, that sum of money will or is a fair amount to which the plaintiff is entitled. This court has not been informed about the basis relied upon by the defendants to have suggested this sum of money.

[12] While it is trite that in a case such as the instant one, the trial Court has a discretion as to the amount of general damages it should award to the plaintiff; it should have regard to a number of relevant factors which have a bearing on the matter.

[13] There is a plethora of decided cases in which such relevant factors have been suggested. Above all, a court should not lose sight of the fact that an assault in whatever form is delict which affects a person's bodily integrity. Further on, and of particular importance, the provision of section 9(1) prohibits in mandatory terms, torture or inhuman or degrading punishment or other such treatment by anybody upon a human being. In short, inhuman treatment upon any person is prohibited by our Constitution.

[14] While in the instant case, the plaintiff has not disclosed to Court his status, his position in society nor his reputation, one cannot deny that at the end of the day, the plaintiff is a human being whose rights to be treated humanly and

with dignity are protected under the Constitutional provisions referred to above.

[15] His evidence that he was subjected to torture, inhuman and degrading treatment for one hour by police officers whose duty is among others to uphold the rule of law and to protect him has not been gainsaid. What is most disturbing is the fact that, at the end of it all, the cattle in question were ultimately not found in his possession. That explains why the police did not ultimately prefer any charges against him but had him released from custody. The basis upon which the police had suspected the plaintiff to have committed the crime of stock theft was never established.

[16] The unjustified brutal torture and assault to which the plaintiff has been subjected by the very law enforcement officers who should also have protected him are clearly criminal offences. This is shocking and deplorable to say the least; particularly because the plaintiff is or has not been reported to have attempted to escape from lawful custody. Why do police officers subject to torture a person who is already in their custody? Were they, may be, trying to force the plaintiff to confess to a crime he had not committed?

[17] As has been alluded to above, the cattle in question have since been found but not in the possession of the plaintiff, even though the police had already subjected plaintiff to intensive, prolonged brutal assault and torture on a suspicion that it was the plaintiff who had stolen same. They have further not denied that as a direct result of such torture which they meted out upon the plaintiff, his health has deteriorated post the incident to an extent that is now limping he still attends regular medical check-ups at a nearby clinic.

This entails that he still incurs transport costs as well as the said medical treatment costs.

[18] In the premises, it is the considered view of this Court that the plaintiff is entitled to payment of damages for bodily injuries and disfigurement he has alluded to, as well as for assault, pain and suffering. There is however, no evidence suggesting that the disability is or will be permanent. For foregoing reasons, the plaintiff is awarded damages in the following manner:

- Assault	-	50,000.00
- Pain and suffering	-	3,000.00
- Disfigurement	-	12,000.00
Total	-	<u>M65,000.00</u>

Payable by the defendants with interest at the rate of 18.5% per annum and costs of suit. In fact the defendants have also not challenged the rate of the interest herein demanded on behalf of the plaintiff.

M. Mahase

Judge

For plaintiff: Adv. R.A. Sepiriti

For Defendants: Adv. M. Mkorosi