

IN THE HIGH COURT OF LESOTHO

CIV/T/319/2011

In the matter between:

JOEL DIAMOND MAKHABA

PLAINTIFF

And

THE COMMISSIONER OF POLICE

1ST RESPONDENT

THE ATTORNEY GENERAL

2ND RESPONDENT

JUDGMENT

CORAM: T. NOMNGCONGO

DATE OF HEARING: 1st April 2015

DATE OF JUDGMENT: 14 NOVEMBER 2017

[1] On the 31st December 2010, the plaintiff went to a place Candid Total Gas to collect money on behalf of his employer. He was thereafter robbed of same by a gang of

robbers. The matter was reported to the police. No arrests followed until sometime later when the police sent messages for the plaintiff to report to them. This was on the 16th February 2011. He duly reported to the police on the same day but was told that the person he had to report to was not present and he would be told when to come again. Then on the 25th a call came again. Then on the 25th a call came in requesting him to report to the police. He again duly presented himself. The plaintiff's evidence in this regard stands uncontradicted and is common cause in every important respect.

- [2] The plaintiff then testifies that at the charge office he met DW2 P/C Mokobocho who told him to wait outside. He waited for about five minutes and after that he was called inside where he was met by a posse of about nine to ten police officers. One of them then said to him he must produce the money he had taken with the robbers. One of the police then said to a policeman named Lefa that he

should be tied up. That is when he says the assaults started. More about that later.

The plaintiff now sues the defendants for:-

(a) M50,000 for unlawful arrest and detention

(b) M10,000 for pain and suffering.

(c) R15,000 for contumelia

(d) 25% interest thereon

(e) Costs of suit

[3] Plaintiff says the assaults consisted of being whipped. He was first struck by one Mabote. He struck with a knobkerrie at the back, around the kidney area, on the back and on the buttocks. He was kicked, suffocated and a table was placed on his stomach. He was hit so much that he says he because of the pain had to incriminate false one Tseliso a neighbour of his whom he said was one of the robbers. Apparently Tseliso was called in for questioning and after that plaintiff was beaten again and told he was a liar who

had falsely incriminated Tseliso. This invited more beating up with the knobkerrie between the shoulders and on the buttocks until the plaintiff urinated and soiled himself. They stopped at this point and they told him to go out as he was smelling saying that the satan had defecated on himself. They never let him clean himself up. The injuries he sustained that day resuscitated previous injuries he had sustained previously in an accident and the present ones led to him being incontinent. He got a chance to phone his wife and he asked her to bring cotton wool to abate the flow. She did and brought him food. He was locked up in his soiled condition. The following day the station commander nonchalantly announced:

“HEY MAN, KNOW THAT YOU ARE LEAVING NOW.” HE ASKED FOR A MEDICAL REPORT FORM; IT WAS DENIED. HE HAD TO GO TO ANOTHER POLICE STATION TO GET ONE. HE SAW A DOCTOR WHO COMPLETED IT AND JOTTED DOWN

**HIS OBSERVATIONS WHICH REVEALED CERTAIN INJURIES TO
HIS BACK, ARMS AND BUTTOCKS."**

- [4] The police and I must say, as usual from my vast experience of cases of this nature, almost invariably deny assaulting arrestees while admitting detaining them. They do so in *casu*. The plea says they then deny assaulting the plaintiff as alleged or at all. The two policemen who gave evidence on behalf of the defendants testify that when the plaintiff was taken in, he was healthy apart from complaining about a condition in his kidneys incurred during an accident. But the medical report obtained a few days later after his detention present a plaintiff with injuries to his shoulder around the kidney area and the buttocks consistent with the treatment he says he suffered at the hands of the police. These injuries are not denied by the police. The question is how they explain these injuries were inflicted upon him, and then in what I consider a bizarre slip up counsel put it to plaintiff that he was a former policeman

and he said the things he said because he knew that they happened – the implication is unmistakable that he knew that the police beat up people in their detention. I believe that the police in this instance behaved true to form and beat up the plaintiff in the manner that he described, even going to the extent of revealing an embarrassing detail that he soiled himself. It would not have been easy for a man to have said that and he did not strike me as a man given to exaggeration.

- [5] The plaintiff was arrested on the 25th February 2010. The arrest was effective as soon as he presented himself to the police and was instructed to await his turn for a session with the police for an arrest is the assumption of control over a person's movements by the police (**see Dictionary of Legal Llords and Phrases – Claasen – Issue/ Vol.1, 15B**)

WAS THE ARREST LAWFUL?

- [6] Police witness Rankoane Motsoetla says he arrested the plaintiff (a) because during their interview they suspected

he would run away. What gave rise to the suspicion is not told especially because the plaintiff had come to them of his own accord. (b) because he went to fetch money alone when his duty was to drive. There is no evidence of this allegation. Plaintiff's employees are not there to support this assertion which In any case the plaintiff says is not true. He further says he connived with certain unnamed robbers who it does not appear they were ever arrested for their part in robbery. That is very strange on the part of the police. **P/C Mokobocho (DW2)** makes the same untenable point. We are also told that it was because he was present when the robbery took place. Of course he was present – he was the victim of the robbery.

- [7] There were no reasonable grounds for suspecting the plaintiff of any offence that led to his arrest and detention. The arrest and detention were therefore unlawful. During that detention he was seriously assaulted to the extent that he defecated on himself and was not allowed to clean himself. This in itself was serious affront to a man's dignity.

[8] I would in the circumstance grant a combined award of damages for unlawful arrest and detention, assault and contumelia in the sum of M50,000

T. NOMNGCONGO

JUDGE

For Plaintiff: Mr Kumalo

For Respondent : Mr Moshoeshoe