

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/T/307/17

In the matter between

JANKIE NONE

PLAINTIFF

AND

THE COMMISSIONER OF POLICE

1st DEFENDANT

THE ATTORNEY GENERAL

2nd DEFENDANT

JUDGMENT

CORAM: HON. J.T.M. MOILOA

DATE OF HEARING: 4th APRIL 2019

DATE OF JUDGMENT: 8th APRIL 2019

ANNOTATIONS

Cases

1. Hurray vs Cox 1923 A.D 234
2. Mohlaba vs LDF 1995 LLR 647
3. Mathoka vs Commissioner of Police CIV/T/225/14 (unreported)

[1] **INTRODUCTION**

Plaintiff is a Mosotho male adult of Likhoele in the Mafeteng district. He works in the mines at Shaft No.10 Matlatsane, Klerksdorp in South Africa. Like most Basotho migrant worker he was home in Likhoele for Christmas holidays in December 2016. Plaintiff testified that he had only gone up to Standard 3 at school. He was semi-literate.

[2] **POLICE ROAD BLOCK 24th DECEMBER 2016**

On 24 December 2016 Plaintiff was travelling in his car from Likhoele towards Mafeteng town when he met a police road block on the outskirts of town near Bafokeng Funeral Parlour. Plaintiff was in the company of his two relatives. He was waved aside to stop at the Police Road Block. He duly stopped. He was asked to produce his driver's licence which he duly did. He was then asked to open the boot of his car to enable its search. He complied. All this time Plaintiff was dealing with one policeman. But there were a number of other policemen around the road block some of whom had firearms. In the boot of the car, the policeman searching Plaintiff's car came across a number of music CD's of the "*Famo type*". This type of music is particularly popular in the Mafeteng district where it has been brought into great prominence by singers from this district in particular. So it was not unusual or even illegal for Plaintiff to be found in possession of this music. The policeman took offence at Plaintiff being in possession of these CD's. The policeman assaulted the Plaintiff by striking him on the face with his open hand. This took Plaintiff totally by surprise. Plaintiff reacted by running away. While Plaintiff was running away he heard a gunshot report which missed. He fell down out of fright I suppose. Three policemen caught up with him. They kicked him and ordered him to roll on the ground from where he had fallen back to the car. Plaintiff estimated the distance to be about 40 metres. While Plaintiff rolled as

ordered he was being kicked all over his body by the 3 policemen. Scores of people had stopped and were watching and enquiring what he had done. I observe here that the behaviour of police lately is one of total disregard of the law and citizen's rights. In this month alone I have dealt with 3 cases of uncalled for brutality on innocent law abiding citizens.

[3] **PLAINTIFF IS RELEASED FROM POLICE CUSTODY WITHOUT CHARGE**

At the vehicle police released Plaintiff from their custody and told him to drive away his car. Plaintiff was weak from police assaults. He could not drive his car as ordered. Plaintiff could not stand up without support. He supported himself against his vehicle. Police retained his CD's. He could not drive. Fortunately, his neighbour, Mr. Chabeli had arrived also to watch the spectacle and he helped him by driving away Plaintiff's car. Plaintiff testified that he was unable to drive away his car because of the assaults the police had inflicted on him. Chabeli drove Plaintiff to the Mafeteng Police Station at Plaintiff's request to lodge a criminal complaint against the police. At the Police Charge Office he was told to come on 27th December 2016 to report his complaint as the superior of the policemen manning the road block was away. I am at a loss why a criminal complaint being lodged has to await superior officer of delinquent police.

[4] On Tuesday 27 December 2016 Plaintiff returned to Mafeteng Police Station to follow up on his complaint. At the Charge Office he was referred to the Officer Commanding the police who manned the road block. He met him and lodged his complaint. The Officer Commanding informed him that he had received his report from the Charge Office and had enquired from police who manned the road block as to why they assaulted him and had received a response from them that "they just did it". The Officer

Commanding then gave him back his CD's and enquired from Plaintiff as to what he proposed doing. Plaintiff testified that he was puzzled by this questions and did not understand. Plaintiff says he replied "nothing". Plaintiff testified that he did not understand or appreciate what he was being asked. I can understand the dilemma of the Plaintiff at being asked such a question by a superior of the offending policemen when the superior well understood the purpose of Plaintiff in coming to him was to lay a criminal complaint of assault. He was semi-literate member of the public. Police conduct was completely unhelpful to Plaintiff, a member of the public seeking redress from police unlawful treatment at a Police Road block.

- [5] Plaintiff testified that he felt severely humiliated by the treatment of the police in making him roll on the ground for several metres for no justifiable reason as he had breached no law. Plaintiff felt severe pain from the kicks. In the process his tooth was loosened as a result of the assault. He had to have it taken out completely subsequently. He discovered that as a result of the assaults he felt pain when trying to urinate. In fact he noticed traces of blood in his urine as a result of being assaulted. The pain when urinating lasted for about a month since the assault. Plaintiff felt humiliated by the treatment of Police at Mafeteng Charge Office when he tried to lodge his complaint against Police. He felt humiliated and intimidated by the attitude of the Officer Commanding roadblock policemen on 27th December 2016. He could not enjoy intimacy with his wife since being assaulted and this humiliated him as well.

[6] **PLAINTIFF SEEKS MEDICAL HELP**

When he left Mafeteng Police, Plaintiff testified that he went to Maseru to consult Dr. Musoke who then examined him. The Dr. referred him for x-

ray examination at Tšepong Hospital. In the meantime, Dr. Musoke also gave him some medication to use. Plaintiff was asked by Dr. Musoke to return for check up on 5th January 2017 as well as to receive the results of her opinion on the x-ray.

[7] **DR. MUSOKE’S REPORT AND OPINION**

On 5th January 17 Plaintiff saw Dr. Musoke as previously arranged. Dr. Musoke told him the x-ray report showed no broken bones. She also prepared a Medical Report of her findings and gave him further medication. On 5th January 2017 Plaintiff also travelled back to his work place at the mines in South Africa. There, Plaintiff testified he could not resume duties for a further week on account of still being unwell from police assaults of 24th December 2016. The pain when urinating lasted for a month following the assault on account of pain in his private parts. Dr. Musoke’s Medical Report, which is not contested by Defendants, states in part:

“On examination the general condition was fair, in pain with moderate difficulty in breathing and chest pains on moving the body. The right upper incisor very loose and painful. The chest X-ray show no abnormality. He is still having incontinence of the urine and loose right upper incisor. We are recommending that he consults the Urologist and the Dentist for specialist attention.”

[8] **LIABILITY**

As to liability I have no difficulty finding on the evidence led before court that the policemen who manned the road block on the Likhoele – Mafeteng Road on 24 December 2016 were servants of Defendant on about their masters duty of operating an official police Road Block on the Likhoele Mafeteng Road. I have no difficulty also finding on the evidence led that they assaulted and humiliated Plaintiff in the presence of many members

of the public in and around that road near Bafokeng Funeral Parlour for no justifiable reason. I find that Plaintiff had committed no offence or provoked or done any wrong that could remotely justify the treatment meted out to him on that day. I accordingly hold Defendants liable individually and severally collectively for unlawful of assault of Plaintiff.

[9] **QUANTUM**

Plaintiff has claimed damages as follows:-

(a) M50,000.00 damages for unlawful assault

(b) M60,000.00 for pain and suffering

(c) M20,000.00 for *contumelia*

In my view the justice of Plaintiff's case will be met by an award as follows:

(a) M50,000.00 damages for assault. In my view it is uncalled for for police to beat up a member of public for no justifiable cause. It makes a mockery of our democracy for law enforcement agencies of the State to ignore the protection of fundamental human rights and freedoms of citizens enshrined in our Constitution. I take a dim view of police behaviour in this case.

(b) M80,000.00 for pain and suffering. Under this head I have taken into account that there has been pain suffered by Plaintiff but no bones broken nor permanent scar left as a result of their unlawful assault. The pain was put under mediation fairly soon after the incident. It does not appear to me to have been too severe even though the urinary pain lingered for a month. In **P. S. Mohlaba & others vs Commander LDF & another 1995 LLR 648@652 Leon JA** in our Court of Appeal has

reminded that “There are no scales by which pain and suffering can be arithmetically measured in money.” I am reminded in this regard of the wise words of **Innes C.J.** in **Hullay vs Cox 1923 A.D 234@ 246** where he said: A comparison with other cases can never be decisive but instructive.” These cases have been followed by our courts including this court in **Mahloko Mathoka vs Commissioner of Police CIV/T/225/14** (unreported). The justice of this case will be met an award of M80,000.00 to Plaintiff.

- (c) M20,000.00 damages for *contumelia* is fully justified. The behaviour of these policemen towards Plaintiff was simply reprehensible. I am appalled by the humiliation and indignity to which police subjected Plaintiff. I hope that the Commissioner of Police after Plaintiff’s damage will take departmental action and surcharge these policemen.
- (d) Costs of suit. Party and party costs are justified in this case
- (e) Interest is awarded at 10% p.a. *tempora morae* on the basis that the Repo Rate as determined by the Central Bank of Lesotho in March 2019 is 6.75.

J. T. M. MOILOA
JUDGE

FOR PLAINTIFF: ADV. S. PHAFANE KC

FOR DEFENDANTS: ADV. ZUMA