

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/T/238/2010

In the matter between:-

FRANCIS TS`OTLEHO MOHLAKOLA

PLAINTIFF

And

SHOPRITE SUPERMAKET (PTY) LTD

DEFENDANT

JUDGEMENT

Coram : Hon. Justice T. E. Monapathi

Date of Hearing : 22nd June, 2016

Date of judgement : 9th September, 2020

SUMMARY

Plaintiff's version of events was overwhelmingly credible including that he could not have been the cause of the squabble that caused an assault on him.

ANNOTATIONS:

CASES: N/A

STATUTES: N/A

BOOKS: N/A

INTRODUCTION:

- 1.1 This is an action for damages wherein Plaintiff claims M95, 000.00 (ninety five thousand Maloti) and costs arising out of the assault of Plaintiff by security personnel working at Defendant`s work place.
- 1.2 Plaintiff alleges that he was assaulted by the said security personnel whilst he was shopping like any other customer of Defendant and in the process his eye glasses were broken.
- 1.3 The action is defended and both sides gave oral evidence. The case is about whether the Plaintiff on balanced probabilities was assaulted as alleged.

MATTERS WHICH ARE COMMON CAUSE:

- 2.1 Parties are agreed that on 6th April 2010 Plaintiff and Defendant`s witness were shopping when the alleged assault took place.
- 2.2 Parties are agreed that DW1 was also at Defendant when a quarrel ensued between her and Plaintiff when they were at the queue to pay for their groceries.
- 2.3 Parties are agreed that security personnel were called in an attempt to intervene. It is those who assaulted the Plaintiff.
- 2.4 Parties are agreed that later the manager of Defendant tried to intervene between the disputants.

MATTERS IN DISPUTE:

- 3.1 Whether or not Plaintiff started the assault on DW1 to prevent her from paying her groceries even as according to her she was in front of Plaintiff in the queue whilst Plaintiff was supposedly behind her.

3.2 Whether Plaintiff was in a belligerent mood to an extent that he started fighting the security personnel with fists and biting a finger of one of them.

PLAINTIFF'S CASE:

4.1 On 14th September 2015 Plaintiff began to testify in court about his ordeal on that fateful day and also adduced documentary evidence consisting of the following:

4.1.1 A police occurrence book reference dated 7th April 2010.

4.1.2 A police medical form filled by a doctor dated 6th April 2010.

4.1.3 M & H Medi-Clinic report filed by Doctor Mohaleroe dated 9th April 2010

4.1.4 Vision Clinic Optometrist for new glasses dated 8th April 2010.

4.1.5 A statement by Vision Clinic Optometrist for new glasses dated 24th April 2010.

4.1.6 M & H Medi-Clinic receipts dated 9th April 2010, 20th April 2010 which also includes a government receipt the latter being dated 6th April 2010.

4.1.7 M & H Medi-Clinic receipt dated 25th June 2010.

4.1.8 M & H Medi-Clinic report dated June 2010 filed by Doctor Mohaleroe.

4.1.9 Photographs of his injuries.

4.2 Plaintiff also demonstrated to the Court that long before the fateful day he already had a disfigurement in one of his legs and as a result he was also injured

in his disfigured leg. Meantime it is not disputed that Plaintiff is a renowned photographer in Lesotho capturing minor and major events in this country hence he is well known by a lot of people in Lesotho.

4.3 He denied in cross-examination that he ever assaulted neither DW1 nor the security personnel. He gave his version of the events which is the matter of record.

DEFENDANT`S CASE:

5.1 It claims that Plaintiff was the aggressor throughout and to this extent they called DW1 and DW2.

5.2 None of the above witnesses produced any medical form for their alleged assault on them by Plaintiff or any documentary evidence from the police.

5.3 In cross-examination counsel conceded that Plaintiff had suffered injuries but they were minor as a result of the assault by the personnel working at Defendant.

PROBABILITIES AND CREDIBILITY:

6.1 It beats the imagination that Plaintiff who according to DW1 in the queue could attempt to stop DW1 who was in front of him for paying her groceries to assault her or attempt to overtake her for no apparent reason. This is highly improbable and the defence could not adduce any evidence of this improbable behaviour on the part of Plaintiff. In a supermarket it is well-known and notorious fact that customers queue in a line to pay for their groceries otherwise anything to the contrary would create chaos in what is an everyday event.

6.2 As concerns credibility of the parties and one of the inquiry when it comes to it is the probability or improbability of a witness. The testimony of DW1 and DW2 concerning the disputed matters is not only improbable but on a balance of probabilities false. Therefore they are not credible witnesses. On the other hand Plaintiff's story is probable and therefore credible. Significantly the assault to plaintiff is alleged to have occurred at a far corner away from the cash outlets. That is when interaction was made on behalf of the plaintiff. His persistence was justified as he says because he looked for his spectacles which felt when he was manhandled.

THE LAW:

7.1 Assault falls under general damages and the Court has discretion to award such damages as it considers fit which I fix at a sum of M35, 000.00.

7.2 Specific damages have to be proved and Plaintiff has discharged that onus. They are made up as follows:

7.2.1 Eye glasses from Vision Clinic (Optometrists Thulo Mokete)

M4, 060.00

7.2.2 Payments to M & H Medi-Clinic (Dr. Mohaleroe) dated as follows:

09/04/2010	M 90.00
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20/04/2010	M 260.00
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25/06/2010	M 250.00
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7.2.3 Government receipt no. B1391732 of 06/04/2010	M 45.00
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Total	M4,705.00
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7.3 In so far as general damages are concerned as said they are in the discretion of the Court but they have to be set out in the pleadings in terms of the rules of Court. They have been set out in the further particulars which are in an integral part of the pleadings.

CONCLUSION:

It is submitted that Plaintiff has discharged the onus on him to prove his case on a balance of probabilities and is entitled to the relief with costs as follows:

General Damages	M35, 000.00
Special Damages	<u>M 4, 705.00</u>
Total	<u>M39, 705.00</u>

T. E. MONAPATHI

JUDGE