

IN THE HIGH COURT OF LESOTHO

Held at Maseru

CIV/T/ 806/2022

In the matter between

RAMOTŠABI ‘MOLOTSI

APPLICANT

And

LEKUNUTU LIKOETLA

1ST RESPONDENT

LESOTHO ELECTRICITY COMPANY

2ND RESPONDENT

JUDGMENT

Neutral citation: Ramotšabi ‘Molotsi vs Lekunutu Likoetla & Another LSHC
302 CIV (24th November 2022)

CORAM: T.J. MOKOKO J

HEARD: 26TH SEPTEMBER 2022

DELIVERED: 24TH NOVEMBER 2022

SUMMARY

Action for damages- Motor vehicle Collision - Vicarious liability of the employer - Claim of delictual damages- past loss of earnings and future loss of earnings - Plaintiff failing to prove claim.

ANNOTATIONS

Cases

1. *Tsoeu Thulo Mahlakeng v Base (PTY) Ltd. C of A (CIV) 72/2019*

Statutes

1. *High Court Rules 1980*

Introduction

[1] Plaintiff instituted an action against the defendants in which plaintiff claimed judgment against them as follows:

- (a) Payment of one hundred thousand Maloti (M100, 000.00) for past loss of earnings,
- (b) Payment of one hundred thousand Maloti (M100, 000.00) for future loss of earnings.
- (c) Payment of one hundred thousand Maloti (M100, 000.00) for general damages.
- (d) Interest at the rate of 18.5% per annum
- (e) Costs of suit.
- (f) Further and or alternative relief.

Background

[2] The background facts of this case are common cause. The summons were served on the two defendants, and were in default of entry of appearance to defend the matter. The matter was therefore set down for the default judgment on the 26th September 2022. The plaintiff then led viva voce evidence to prove his claim.

[3] The facts are briefly that, on or around the 28th December 2017, at or along Mamathe or Mapoteng public road, plaintiff was driving his vehicle, bearing registration NO. DH769, while the first defendant was driving the second defendant's vehicle bearing registration NO. M4183, heading to the same direction.

[4] The first defendant through his recklessness and negligence caused the accident, hitting the plaintiff's vehicle by overtaking while it was not safe to do so. As a result of which the plaintiff sustained bodily injuries.

[5] Plaintiff gave evidence to the effect that on the 28th December 2017, he was travelling in his vehicle along Mamathe or Mapoteng public road, when the collision occurred between his vehicle and that of the second respondent, being driven by the first defendant. That as result of the said accident he sustained certain injuries. To prove the nature and the extent of his injuries, plaintiff tendered in a medical booklet. Plaintiff testified that by profession, he is a traditional doctor or healer. That as a traditional healer he earns a living by offering his services to members of public, either who come to him or who call him to go to their various places. He testified that he would even go beyond the Lesotho borders, as far as Botswana, where he would make quite a substantial amount of money, for his services.

[6] Plaintiff testified further that before the accident, he would go to his clients' places alone, without the assistance of his driver. However, since the accident, he had to employ a driver, as he could not manage to drive the vehicle anymore. He said that the presence of his driver made most of his clients uncomfortable, as the majority of his clients were nuns and pastors. Plaintiff gave further evidence to the effect, that he had a brick making business, from which he made a descent profit. However, due to his current health conditions this business collapsed. Lastly, plaintiff prayed that he be granted the prayers as set out in the summons.

[7] It is worth mentioning that the plaintiff tendered documentary evidence in the form of three documents; namely, the medical booklet, the traditional practising certificate issued by the traditional health practitioners council, and the LMPS Motor Vehicle Accident Report.

The Law

[8] Applications for default judgment are governed by *Rule 27 (3) and (5) of the High Court Rules, 1980*. *Rule 27(3)* provides as follows:

“Whenever the defendant is in default of entry of appearance or is barred from delivery of a plea, the plaintiff may set the action down for application for judgment. When the defendant is in default of entry of appearance no notice to him of the application for judgment shall be necessary but when he is barred from delivery of a plea not less than three days’ notice shall be given to him of the date of hearing of the application for judgment.”

Rule 27 (5) provides as follows:

“Whenever the plaintiff applies for judgment against a defendant in terms of sub-rule (3) herein, the court may grant judgment without hearing evidence where the claim is for a liquidated debt or a liquidated demand. In the case of any other claim, the court shall hear evidence before granting judgment or make such order, as it seems fit”.

[9] It is trite that in order to establish liability in an action for recovery of patrimonial loss sustained, the plaintiff must prove the following:

- (a) A wrongful act on the part of the defendant.
- (b) Pecuniary loss suffered as a result of the act.
- (c) Fault on the part of the defendant.

Discussion

[10] The court in dealing with the application for the default judgment found that there was evidence adduced by the plaintiff, to prove that there was a wrongful act on the part of the defendants and the fault on the part of the defendants.

[11] The question that remains for determination is whether the plaintiff proved pecuniary loss suffered because of the defendants' act. Put differently, the issue is whether the plaintiff proved the quantum of the damages he claimed.

[12] When examining the relief sought by the plaintiff, it has to be borne in mind that once liability is established against the defendant, a burden of proof is imposed on the plaintiff to prove his or her quantum of damages, as provided by *Rule 27(5) of the High Court Rules*.

[13] It should be placed on record that after the plaintiff had tendered the *viva voce* evidence, the court proposed to the plaintiff's counsel to bring any documentary evidence such as the income tax returns of the past three years or the bank statements of his practice, to establish how much income the plaintiff was earning from his traditional practise and brick manufacturing business. Plaintiff informed the court that the relevant income tax returns for the suggested years were available and undertook to hand them in as part of his evidence. The court then directed the plaintiff's counsel to inform the court as soon as the documents were available, so that the matter could be allocated a date on which to proceed. Towards the end of October 2022, the court directed the Judge's Clerk to inquire from the plaintiff's counsel about the status of the documents. This inquiry was necessary because, the plaintiff's counsel had not said anything to the court, for about a month since the matter had been postponed sine die. The court was informed that there were no such documents. It was then that the court proceeded to deliver the judgment in the matter.

[14] This court is of the considered view, that there was proof of a wrongful act on the part of the first defendant. There was further proof that the first defendant was at fault. What remained therefore was for the plaintiff to prove the quantum of the damages claimed.

[15] The plaintiff tried to prove the quantum by stating that every time, when he went to Botswana to offer his services, he would make an amount in the tune of M250, 000.00. Nevertheless, he failed to prove that indeed he made such an amount or any amount in his practise. This he would have proved by the past years' tax returns, which would indicate his income. Plaintiff further stated that he hired a driver to convey him to various places, while performing his functions. Plaintiff did not even attempt to inform the court the period when the driver was hired, and how much the driver was earning. Briefly, he failed to prove how much income he lost since the occurrence of the accident, and how much expenses he incurred towards the driver's salaries. Plaintiff failed to prove how much income he earned from his traditional practise and brick making business, before the accident. (See *Tsoeu Thulo Mahlakeng v Base (PTY) Ltd.*¹).

The court makes the following Order.

(a) Application for default judgment is dismissed.

T.J. MOKOKO
JUDGE

APPEARANCE:

PLAINTIFF'S COUNSEL: ADV. MATHEKA

¹ C of A (CIV) 72/2019