



IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 1585/94

In the matter between:

ELLEN VELEPHI DLAMINI

Plaintiff

and

THE ATTORNEY GENERAL

1st Defendant

THE MINISTRY OF EDUCATION

2nd Defendant

CORAM:

Hull, C.J.

FOR THE PLAINTIFF

Mr. Mngomezulu

FOR THE DEFENDANTS

No appearance

Judgment

(6/2/95)

By an action instituted on 12th September 1994 the plaintiff, who is a married woman assisted by her husband, sues the Government of Swaziland for compensation of E5000.

Her complaint is that while she was employed at Enjabulweni Private School, Manzini, on 5th April 1994, one Aaron Ginindza unlawfully and wrongly assaulted her. She says that at the time, he was employed in the Ministry of Education as a Senior Inspector of Primary Schools and was in the course of his employment as such, by which I understand her to mean that he was on duty.

The Government on 20th September sought to have the summons set aside as an irregular proceeding for non-compliance with section 2(1) of the

Limitation of Legal Proceedings against Government Act 1972 (No 21 of 1972). This objection was withdrawn on 3rd October 1994. By reason of section 5 of that Act, it was for the Government to raise and pursue that objection if it thought fit to do so.

On 17th November 1994, the plaintiff sought judgment by default in the absence of any notice of intention to defend and on 18th November I granted her leave to lead evidence of damages by affidavit.

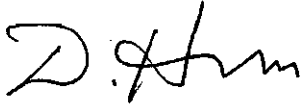
She has since done so. In her affidavit, she has stated an oath that she was assaulted at the school in an office in full view of other persons and that it caused her a good deal of pain.

A person is entitled to be compensated for unlawful interference with her dignity and for physical injury. Her claim, in my judgment, is restrained. In the absence of opposition, I see no need to refer to comparative award. E5000 is in my view an amount that is patently reasonable.

There will be judgment accordingly in favour of the plaintiff against the defendant in the sum of E5000 general damages and costs.

Although I accept of course that it is the business of the Government, I would make one observation. In more than one case recently, individuals have sued the Government in respect of misconduct by its servants and, in the event, their claims have not been opposed at all. In such circumstances, while it may well be that the Government or its legal advisers see a need to obtain a formal order of a court of law before paying public money to a claimant in compensation, it does seem to me that time, inconvenience and expense - both to the claimant and to public funds - could be saved and avoided if the Crown's legal advisers were to come to reasonable terms with litigants before trials. Every civil action involves an element of risk or uncertainty for the litigants. It is well known that private disputes are settled out of court frequently, through the initiative and constructive approach of the parties' legal advisers, to take into account those

considerations. It is an example that the Crown's advisers could obviously follow to the advantage of the public, where no defence at all is offered.

A handwritten signature in dark ink, appearing to read 'D. Hull', with a stylized flourish at the end.

DAVID HULL
CHIEF JUSTICE