

IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 1158/1992

In the matter between:

Donald Luhlanga                                          Plaintiff

vs

Patrick Fyfe                                                          Defendant

CORAM                                                                  S.W. SAPIRE, ACJ

FOR PLAINTIFF                                                          MR. SHABANGU

FOR DEFENDANT                                                          MR. NTIWANE

JUDGMENT

(01/03/96)

The Defendant is claiming an amount of E10 000.00 which he says is damages suffered by him as a result of an assault committed upon the plaintiff by the defendant. The Plaintiff and his witness a young constable gave evidence and that concluded the Plaintiff's case. At the end of the Plaintiff's case Mr. Ntiwane appearing for the defendant has applied for absolution from the instance. The facts of the matter briefly are that an accident took place on the 10th of November 1991 involving an ambulance and another vehicle. The Plaintiff who was employed in the Ministry of Health came upon the scene of the accident and took the attitude that the ambulance should not be removed from the scene of the accident.

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A number of onlookers who came to the scene including the defendant took up a different attitude and they tried to persuade the driver of the ambulance to take the ambulance with the patient inside to the hospital.

Whatever may have been the differences a fracas broke out in the course of which the plaintiff sustained minor injuries including a swollen lip. He received the injury to his lip clearly from being pushed against a police motor vehicle which had come to resolve the situation. The evidence however does indicate that it was the defendant pushing him which caused Plaintiff this particular injury and there is no evidence that it was the defendant who assaulted the plaintiff by grabbing him by the shoulder and throwing him several times against another person and against the Police vehicle. The evidence is not clear who threw the plaintiff against the Police vehicle.

It is quite clear, a number of other people were involved and there is no evidence to suggest that this group were in fact the servants or associates of the defendant.

The plaintiff in evidence complained that he was slapped but this particular assault is not alleged in the particulars of claim. The plaintiff also relies on evidence which he has quite improperly pleaded that the defendant admitted the wrongfulness of his conduct by paying an admission of guilt fine.

Apparently this is admitted but there is no evidence as to what the defendant admitted in paying the

admission. No evidence was led of the charge which he admitted and no evidence was led as to the particulars of the charge which indicate the relevancy to the present action. Having regard to the complete vagueness of the plaintiff's evidence I cannot find that there is any case for the defendant to meet accordingly there will be absolution for the costs.

S.W SAPIRE

ACTING CHIEF JUSTICE