

**THE HIGH COURT OF SWAZILAND
HELD AT MBABANE**

ERIC LANGWENYA
Plaintiff

And

THE SWAZILAND GOVERNMENT
1st Defendant

CONSTABLE LEONARD DUBE
2nd Defendant

CONSTABLE WILLIAM HLOPHE
3rd Defendant

THE ATTORNEY GENERAL
4th Defendant

Civil Case No. 1350/2000

Coram: **S.B.** MAPHALALA - J

For the Plaintiff : MR. S. BHEMBE

For the Defendants: MISS S. MASEKO-Crown Counsel (Attached to Attorney
General's Chambers)

JUDGMENT
(15th September 2006)

[1] The Plaintiff, Eric Langwenya a school teacher at Ndwandwe High School has sued the police as represented by the Attorney General for damages amounting E200, 000-00 as a result of the assault he sustained in the hands of two police officers to *wit*, 2nd and 3rd Defendant who were acting in the course and within their scope of employment as servants of the Swaziland Government when they assaulted and dispossessed him of his motor vehicle.

[2] The Plaintiff has alleged in his Particulars of Claim that on or th about the 11 December 1999, and at Mgazini area in Mankayane, Plaintiff was unlawfully and wrongfully assaulted by the 2nd and 3rd Defendants who were armed with guns and were driving in a police van bearing registration SD 516 PO. They also dispossessed him of his motor vehicle. Further, on or about 22nd December 1999, the 2nd Defendant in the company of Lushikishini Post Commander visited Plaintiff and apologized for Defendants' action of the 11th December 1999. As a result of the assault, Plaintiff sustained injuries on his upper lip and on the chest and received medical treatment for the afore-said injuries. The Plaintiff also seeks interest calculated at the rate of 9% per annum a *tempore morae* and costs of suit.

[3] The Defendants as represented by the 4th Defendant being the Attorney General oppose the action and have filed a plea in this regard. The Defendants in the main deny liability as alleged by the Plaintiff in his Particulars of Claim. The Defendants' version of events is found in paragraph 2 of the plea and reads as follows:

AD PARAGRAPH 6

The Defendants admit that on the date in question they were at Mgazini area in Mankayane.. However the Defendants deny that they unlawfully and wrongfully assaulted the Plaintiff and the Plaintiff is put to strict proof thereof. The Defendants further deny they were armed with guns and they dispossessed the Plaintiff of his motor vehicle and the Plaintiff is further put to strict proof thereof.

The Defendants point out that on the 11th December 1999, were on patrol at about 2030 hours at Mgazini area patrolling the main road to Mankayane. There came Plaintiffs vehicle registered SD 967 BH heading to Mankayane. The Plaintiffs vehicle was without rear lights behind. He was ordered to stop and he complied. He was asked bis particulars so that he could be given a ticket for the defective lights. He refused to give his particulars to the police and he drove his vehicle away. The police blocked him and forced him into the police van. His clothes

got torned while forced to the police van. He was taken to the police station so that he could be properly charged for the defective lights of his vehicle. The Plaintiffs vehicle was also driven to the police station by one of the police officers because he refused to do so himself.

[4] At paragraph 3 of the plea, Defendants deny that they apologized for their action of the 11th December 1999, but that Defendants only • apologized for the torn clothes. Further on, at paragraph 5 of the plea Defendants deny that they assaulted the Plaintiff and dispossessed him of his motor vehicle.

[5] At the commencement of evidence the parties agreed that the first issue to be determined was the liability or otherwise of the Defendants and that the issue of *quantum* be left in abeyance pending the outcome on liability.

[6] The evidence adduced for the Plaintiff was that of the Plaintiff himself and that of a tractor driver, one Dabula Mabuza who came to the scene on the 11th December 1999, and was also subjected to similar assaults by the Defendants. It also emerged in the evidence of this witness that the Defendants have entered into an out-of-court settlement with this witness and that he has thus been paid for his pains. The Defendants on the other hand also led two witnesses being DW1 707 Sergeant Aaron Mavimbela who was the officer-in-charge at the station in Mankayane at the relevant time. The second witness for the Defendants was one DW2 Oscar Dlamini who was in the company of the two officers cited as 2nd and 3rd Defendant in these proceedings. I must also state that during the course of the trial it was reported to the court by Counsel for the Defendants that the two police officers being the 2nd and 3rd Defendant have since died. I must say this unfortunate state of affairs has deprived the court of very important witnesses of what took place on the 11th December 2000. The court only has the evidence of DW2 Oscar Dlamini who claims he was a passenger in the police motor vehicle driven by one of the officers who are now deceased.

[7] The Plaintiff in his evidence gave a lengthy account of his version of events of what took place on the 11th December 1999. Essentially, his evidence is that in the early evening of that day he was driving his motor vehicle at Mgazini

area in a place called Etsheni when he saw another motor vehicle following him and that this motor vehicle flicked its lights for him to stop. He then stopped his motor vehicle. Inside this motor vehicle there were three people. This motor vehicle was a police van. They told him that they were police officers and they asked him whether the park lights in his motor vehicle were working. These people were not in police uniforms. They then demanded some money for his defective lights. He refused to give them the money. They then proceeded to harass him when he was slapped three times on the face. He rushed back to his motor vehicle and got inside. He then drove away. They chased after him and their car was driven by one Oscar Dlamini who according to him was not a police officer.

[8] They blocked his way and came out of their motor vehicle. They slapped him and squeezed his testicles. They insulted him calling him by his mother's private parts. As a result of these assaults he was injured inside his mouth where he suffered a laceration. He asked Oscar Dlamini why they were assaulting him whereupon he replied, "hey malebe kanyoko angisiye Oscar mine" (insulted by his mother's private parts and that he was not Oscar) After the assault he was pushed into the back of the police van and the door was locked. Then the police officers together with Oscar Dlamini drove off with his motor vehicle towards Mgazini. Constable Dube was the one driving the motor vehicle when they drove off. At that time a tractor from the opposite direction came to the scene. Constable Hlophe stopped the tractor and talked to the driver. He further stopped the motor vehicle and parked next to the tractor. He then heard some noise as Hlophe was talking to the tractor driver and thereafter he heard a gunshot. He then heard the driver of the tractor screaming that they had taken his money. Hlophe rushed to the police van. Dube then tried to enter the police van but he was stuck. The driver of the tractor pursued them and they all ran to his van and then they drove away. The police van was then stuck. He was at the back of the police van, crying. It was at that time that the driver of the tractor came to where he was and asked him what had happened. He then related to him what had happened to him at the hands of the police. The driver of the tractor opened the back of the police van and he got out.

[9] The Plaintiff testified further that he then went to a nearby homestead where he was able to hire a motor vehicle to report to the police station in Mankayane what had befallen him together with the tractor driver. The tractor driver remained behind guiding the police van. PW1 reported this incidence at the police station in Mankayane where he found Constable Maseko and related to him what had happened. Then the two police officers Constable Gama and Constable Motsa were dispatched to the scene of these events. He testified that at the scene the police officers found that the police van was stuck. Constable Dube and Hlophe returned to the scene with his motor vehicle. At that time Oscar Dlamini was no longer in their company. They refused to hand back his motor vehicle. They told him to shut up. They then pushed the police van out from where it was stuck. They then drove to Mankayane. Constable Motsa drove his motor vehicle to the police station.

[10] He then proceeded to lay a charge against the police for the assault he had sustained in their hands. The matter was reported to the then Station Commander one William Dlamini. PW1 later reported the matter to Senior Superintendent Khethokwakhe Ndlangamandla because his matter was not being processed at Mankayane Police Station. PW1 went on to relate that at some point the two officers who assaulted him together with Oscar Dlamini were called by the Station Commander and asked about the events of that fateful day where the two officers agreed that they assaulted him. The Station Commander castigated them for this and told them to apologize to him for the assault. They agreed that they will apologize. He told them to go to Ndwandwe where Plaintiff was a teacher to apologize.

[11] The following day in the early morning at 6.00am Post Commander Mavimbela and Dube came to the school where he was a teacher. They told him that they have come to apologize for assaulting him. In the vicinity was another teacher one Muzi Mhlanga who unfortunately did not hear the apology. PW1 went on to relate how he went to the doctor to be examined on the injuries he had sustained at the hands of the police.

[12] PW1 was cross-examined at great length by Counsel for the Defendants where in the main he stuck to what he had said in his evidence in-chief.

[13] The Plaintiff then called PW2 Dabula Mabuza who was the tractor driver. His evidence is similar in all material respects from the time he came to the scene until they both tried ways to report the matter to the police station in Mankayane. The tractor driver also mentioned interestingly, that he has been paid a sum of E20, 000-00 for the claim he had laid against the police on the events of that day. This according to him was an out of court settlement between himself and the Swaziland Government.

[14] PW2 was also cross-examined searchingly by the Respondents where in my view stuck to his story he related in his evidence in-chief.

[15] The Plaintiff then closed his case whereupon the Defendants led two witnesses namely, DW1 707 Sergeant Aaron Mavimbela and DW2 Oscar Dlamini.

[16] DW1 707 Sergeant Mavimbela testified on the events of the 11th December 1999, where he had detailed the 2nd and 3rd Defendants to patrol an area called Mgazini. These officers came back at about 11.30pm. They reported to him that whilst conducting the patrol they encountered problems when they arrested two men who had contravened the Road Traffic laws and were aggressive. The following day before he could report this incident further he was called by the Station Commander at Mankayane. When he got there the Station Commander told him that a certain teacher was badly handled by those two officers he had detailed on 11th December 1999. He then went to the teacher (PW1) to establish the extent of the torn clothes. He was shown the items. DW2 said PW1 said it is normal during the course of duty and that he did not have any grudge against the police officers. The witness testified that he had not gone to the Plaintiff to apologize for what had been done by the two police officers.

[17] DW1 was cross-examined briefly by the Plaintiff where in the main

nothing of significance was revealed.

[18] The second witness for the Defendants as I have stated in paragraph [15] *supra* was one DW2 Oscar Dlamini who testified in the main that on the 11 December 1999, he got a lift from the police at Lushikishini. He testified how the Plaintiff was arrested by 2nd and 3rd Defendants for not having lights at the back of his motor vehicle. They tried to arrest him but he drove off for about a kilometre where he was finally apprehended. There was a struggle as Plaintiff was trying to evade arrest by fighting back. During that struggle the police finally subdued him and then placed him at the back of the police van. This witness also testified on what the tractor driver did when he came into the scene. He testified that the tractor driver Mabuza pelted the police with stones when they tried to arrest him for having defective lights on his tractor. The officers later left him at Cana Station and he saw them again the following day. This witness further testified that the two police officers never assaulted the Plaintiff in any way.

[19] This witness was cross-examined at some length by Plaintiffs Counsel where in the main he maintained what he had testified in-chief.

[20] The legal arguments for the Plaintiff were that he has proved on a balance of probabilities that he was assaulted by the police on the 11th December 1999, in the manner he had described in his evidence in-chief and also being supported by the evidence of PW2 the tractor driver who came to the scene a few minutes after the actual assault.

[21] On the other hand, it was contended for the Defendants that the Plaintiff was never assaulted by the police officers as described. The police used minimum force in trying to arrest the Plaintiff who was trying to escape from police custody. The Defendants took the position that the case of the tractor driver Mabuza was dealt with separately from the Plaintiffs case. The Defendants finally argued that the evidence of Plaintiff boggles the mind and there is no logic in it at all.

[22] In my assessment of all the evidence it would appear to me that the probabilities favour the Plaintiffs version. The evidence of the Plaintiff is corroborated in all material respects by what has been stated by PW2 Dabula Mabuza the tractor driver who although did not witness the assaults on the Plaintiff as he came to the scene a few minutes later he was also subjected to similar attacks by the police. It emerged further that this witness has been compensated by Government in an out-of-court settlement regarding the same attack by the police on him. It also emerged in evidence that Post Commander Mavimbela who was introduced as the first witness for the Defendants that he in the company of one Dube came to the school where the Plaintiff was a teacher at about 6.00am the following day of the incident and apologized for assaulting the Plaintiff. The officer also stated that on the 12th December 1999, before he could report this incident further, he was called by the Station Commander at Mankayane. When he got there the Station Commander told him that a certain teacher was badly handled by two officers he had detailed on the 11th December 1999. The officer though stated in cross-examination that he did not apologise to the Plaintiff but had gone to the school to meet the Plaintiff to establish the extent of the torn clothes. The said T-shirt worn by the Plaintiff was exhibited in court and was indeed dirty and torn lending more support to the Plaintiffs case that he was handled roughly by the police on the night in question.

[23] The only witness for the defence who saw what happened on the 11th December 1999, stated that Plaintiff was not assaulted by the police as alleged in that when 2nd and 3rd Defendant arrested Plaintiff for not having lights at the back of his motor vehicle. They tried to arrest him but he drove off for about a kilometre where he was finally apprehended. There was a struggle as Plaintiff was trying to evade arrest as he was fighting back. During that struggle the police finally subdued him and then placed him at the back of the police van. This witness also testified on what the tractor driver did when he came to the scene. He testified that the tractor driver Mabuza pelted the police with a stone when they tried to arrest him for having defective lights on his tractor. In my assessment of this witness testimony I am inclined to agree with what Plaintiff

and PW2 said that this witness was not merely a passenger in the police van driven by 2nd and 3rd Defendant but participated in the assaults on the Plaintiff and the tractor driver who has already been paid by the Government in respect of the same assault.

[24] In the result, for the afore-going reasons I have come to the considered view that on the 11th December 1999, the Plaintiff was assaulted by the 2nd and 3rd Defendants and as a result thereto sustained injuries on his upper lip and on the chest and received medical treatment for the afore-said injuries. On the issue of the actual *quantum* of damages I order that this be quantified on a future date to be arranged by the parties with the Registrar of this court. The question of costs also to be left in abeyance until that stage of the proceedings.

S.B. MAPHALALA

JUDGE