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## Malebo v Mirror Newspaper and Others (CIY7T/600/03) (NULL) [2005] LSHC 103 (09 May 2005);

**Case name:**

Malebo v Mirror Newspaper and Others (CIY7T/600/03)

**Case number:**

NULL

**Judgment Number:**

103

**Court Name:**

High Court

**Media Neutral Citation:**

[2005] LSHC 103

**Judgment Date:**

09 May 2005

**Judge:**

NULL

CIY7T/600/03

IN THE HIGH COURT OF LESOTHO

In the matter between:

VINCENT MOEKETSI MALEBO - PLAINTIFF

VS

THE MIRROR NEWSPAPER - 1ST DEFENDANT

THE EDITOR MIRROR NEWSPAPER - 2Nd DEFENDANT

TLALI CASWELL - 3rd DEFENDANT

MONTSI NAMANE - 4th DEFENDANT

LEPHOI MOSEME - 5th DEFENDANT

### JUDGMENT

Delivered by Mr Justice W.C.M. Maqutu on the 9th May 2005

On the 21st August 2005 plaintiff instituted an action of defamation against the defendants in which he claimed:-



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On or about the 28th May 2003 at Maseru and in the whole kingdom of Lesotho, an article written by Third Defendant was published by Second Defendant in the Newspaper. First Defendant herein entitled:

IS MALEBO RIGHTFUL OWNER OR THE PEOPLE?

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The said article published in First Defendant herein was to the following effect:

"LEADER OF THE MAREMATLOU FREEDOM PARTY (MFP), VINCENT MALEBO, HAS A LOT TO EXPLAIN TO THE COMMUNITY OF THUATHE, BARUTING, ABOUT THE TRACTOR BELONGING TO THE THUATHE DEVELOPMENT COUNCIL, WHICH IS REGULARLY USE BY HIM, WITHOUT THEIR CONSENT."

Further, First Defendant here in published a report made by Fourth Defendant herein:

"I SAW DOCUMENTS THAT SHOWED THAT BOTH TRACTORS WERE DANATED TO THUATHE COMMUNITY. I WAS ONLY AMAZED WHEN ANOTHER TRACTOR WAS GIVEN TO MALEBO TO USE ON HIS BEHALF, ALTHOUGH IT WAS

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OFFICIALLY SAID IT WOULD HELP LEKOKOANENG COMMUNITY."

Further. First Defendant herein also published a report made by Fifth Defendant herein to the following effect;

"EVEN THOUGH PHORORO WAS ONE OF US, WE SHIED AWAY WHEN WE WERE SUPPOSED TO QUESTION THE MANNER IN WHICH OUR TRACTOR WAS GIVEN TO MALEBO BECAUSE HE AND MALEBO WERE GOVERNMENT MINISTERS."

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First Defendant went further to publish a report made by Fifth Defendant to this effect:

WHEN THE POLICE HAD CONFISCATED TRACTORS, WE, MAMBERS OF THE THUATHE DEELOPMENT COUNCIL, WENT TO THE POLICE STATION TO PROVE TO THE POLICE THAT TRACTORS WERE RIGHTFULLY IN OUR POSSESSION. THE



The said published words in First Defendant made a specific reference to Plaintiff by name. These words are statements of facts made by the Defendants and they constitute a lie.

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The said words in the context of the article are wrongful and defamatory of Plaintiff in that they were intended and were

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understood by readers of the First Defendant that Plaintiff is dishonest, a cheat and corrupt in the following respects:

15.1 He used his position and standing to cheat and obtain a tractor for himself;

15.2 He misappropriated the community's tractor;

15.3 He is a thief; 15.4 He is a criminal.

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The Third, Fourth and Fifth Defendants have contributed in defaming and publishing false, malicious, wrongful and defamatory words of Plaintiff by conspiring and manufacturing evidence that Plaintiff misappropriated the community's tractor,

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The said defamatory words about Plaintiff were fully covered and published in the First Defendant, a newspaper which is widely distributed within the Kingdom of Lesotho and widely read by the general public.

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As a result of the said defamation, Plaintiff has been damaged in his reputation as a member of Parliament, a leader of political party, a well renowned farmer, a businessman, a respected member of the community as well as a family man and has suffered damages in the amount for M700 000.00 for which Plaintiff holds all Defendants liable to pay."

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The Defendants admits all the facts except the following - which appear in their plea;

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AD PARAGRAPH 14 THEREOF



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## ALTERNATIVELY

1. The statement was not a statement of fact but a comment concerning the matter of public interest namely the finances of a public body.
2. The comment was fair in the circumstances.
3. The facts on which the comment was based are true.

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AD PARAGRAPH 15 THEREOF:

Contents are denied and plaintiff is put to proof thereof.

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AD PARAGRAPH 16 THEREOF:

Contents are denied and plaintiff is put to proof thereof.

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AD PARAGRAPH 17 THEREOF:

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Defendants deny that the said contents were defamatory and reiterate contents of paragraph 5 above.

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ADPARAGRAPH 18 THEREOF:

Contents are denied and plaintiff is put to proof thereof.

WHEREFORE defendants pray that this claim be dismissed with, costs.

A pre-trial conference was held on the 10<sup>th</sup> February 2004. There were facts that were not clear in the pleading consequently further particulars from plaintiff had to follow. These are the minutes.

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" ADMISSION OF FACT:

- 1.1. The publication of the statement.



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## 2.1. Whether the statement is false or true

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2.2. Whether the statement is defamatory

2.3. Whether the tractor is lawfully in Plaintiffs custody.

2.4. Whether Plaintiff is a well renowned farmer, businessman and a respected member of the community.

2.5. Quantum.

## RULING

Plaintiff furnish the Defendants with further particulars within 21 days."

Further particulars from plaintiff were the following.

### AD PARAGRAPH 9 OF THE DECLARATION:

It is false that the tractor in question belongs to the THUATHE DEVELOPMENT COUNCIL. The tractor in question belongs to the LEKOKOANENG AND MORNING SIDE COMMUNITY, The said community has to necessary documents of ownership i.e. BLUECARD. By consent with the LEKOKOANENG AND MORNINGSIDE COMMUNITY the tractor in question is parked at Plaintiffs residence.

When the tractor in question was confiscated by the Police the LEKOKOANENG AND MORNINGSIDE COMMUNITY duly claimed it producing the necessary documents of ownership."

Defendants amended their plea on the 28th February 2005, without any objection from plaintiff in the following manner.

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## AMENDED PLEA

### AD PARAGRAPH 5 THEREOF:

5.2 (a) The defendant has not published recklessly.

(b) The defendants had not been negligent in publishing the article.

(c) The publication was objectively reasonable.

(e) The articles were published without *amimis injuriandi*.



Plaintiff was his first witness. He told the court he was a family man with grandchildren. In the structures of the Lesotho Evangelical Church he had risen to its executive governing body called the Seboka. He had been a grain wheat and maize, farmers for both grain and vegetable farming until he could no more farm because of full time participation in politics. He had started with a second-hand tractor between 1982 and 1985. Later on, around 1986 he bought a new tractor.

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He had begun farming using his relatives arable lands that were not being used. Plaintiff told the court he had ploughed the fields of his relatives that used to work with his grandfather. He began his farming and farming organizational activities at Lekokoaneng and expanded to Mekhethoaneng. Ha Fusi, Ha Maritinsi, Ha Nisuba, along the Teyateyaneng River - ha Saremone right up to Thuathe. These were areas at which his grandfather had been an Evangelist.

The communities plaintiff worked with (according to plaintiff) were organized - plaintiff on set up a nucleus for them at Ha Motsikoane at the Morning Star Shop. There farming implements were kept. These people had once been organized under the Mantsatlala scheme which became defunct - consequently plaintiff only provided the nucleus. For that reason in plaintiffs view their farming operations became successful when he provided them with a nucleus.

Between 1986 and 1990 plaintiff told the court that he became a government minister at the end of his career as a civil servant. As a civil servant he had risen from an interpreter to Principal Secretary in charge of a Ministry. He had been in the diplomatic service as a conseller in London and New York.

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Eventually he became a Resident Ambassador. He had served the Military Regime as a Minister. From the British colonial administration and in Prime Minister Leabua Government, he had commanded respect. Nevertheless in 1990 he was sacked as a government minister by the Military Government because he could not agree with corrupt things.

Plaintiff told the court that his complaint was against an article in the Mirror newspaper issue of 28th May to 3rd June 2003. Plaintiff was handed an issue of the Mirror newspaper. His complaint focused against the headline on page 1 which read "Is Malebo Rightful owner of the people?" This article goes together with another article on page 2 of the same issue whose title is "We want our tractor" Both these articles are in English. In them plaintiff is singled out by name. The article Is Malebo Rightful Owner has plaintiffs



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both articles among which were the following from the article: "We want our tractor."

The Merematlou - Freedom Party (MFP) leader Vincent Malebo. owes an explanation to the community of Thuathe, Baruting, about the tractor belonging to the Thuathe development council, which is regularly used by him without the council's consent.

Namane added: "I saw documents that both tractors were donated to the Thuathe community. I was only amazed when another tractor was given to Malebo to use it for his personal benefit, although it was officially said it would help the community." Namane explained that Phororo did not make it clear to them at a public gathering that both tractors belonged to them. They only heard from Phororo that the second was given to Malebo on condition that it would serve the people of Lekokoaneng.

According to Namane, police, suspecting that the equipment had been illegally in possession of Malebo and Thuathe development council, later confiscated them (tractors).

When the police had confiscated tractors, we, members of the Thuathe development council, went to the police station to prove to them that the tractors were rightfully ours. The Lekokoaneng community was not represented and Malebo was nowhere to be seen," said Moseme."

From the main article "Is Malebo the Rightful owner or the people?" Plaintiff inter alia read into the record several passages that conveyed the same meaning as those already quoted in the article "We want our tractor." Among those worth noting, which plaintiff drew to the attention of the court were the following:

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"The tractor, whose registration number is A 8265 has been used by Malebo since 1987 to date. According to the defunct Thuathe Development Council members, Montsi Namane and Lephoi Moseme. there is written evidence that the tractor is part of their property donated to them by Food Agricultural Organisation (FAO). during military regime.

"Dr Rakoro Phororo. then a member of Thuathe Development Council and a cabinet minister made proposals for agricultural aid and we were given two tractors, each with its planter, plough, furrow and a trailer. We received only one of them and as for the other. Phororo told us at a public gathering that it would be given to Lekokoaneng community," said Lephoi Moseme.





the benefit of Lekokoaneng community.

"Even though Phororo was one of us, we shied away when we were supposed to question the manner in which our tractor was given to Maiebo because he and Maiebo were government ministers," said Lephoi Moseme, adding that they were dissatisfied with the idea of giving out their tractor.

"When the police had confiscated tractors, we, members of the Thuathe Development Council, went to the police station to prove to the police that tractors were rightfully in our possession. The

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Lekokoaneng community was not represented and Malebo was nowhere to be seen."

said Moseme. "The absence of Lekokoaneng community representatives and Malebo is the clear evidence that both tractors belong to us alone, for if they had any legal rights to them they could have come to release their tractor," he continued.

Plaintiff also objected to the allegation that he uses a tractor of the Thuathe Development Council for himself he had never had anything to do with that body. Plaintiff added that he had never received a tractor registered as A 8265 from Thuathe Development Council or from any one. That statement is false. Plaintiff emphasized that he objects to the statement that he used this tractor regularly for himself. Plaintiff did not dispute that the tractor might have been a donation obtained by Dr Phororo who was then Minister of Agriculture. What plaintiff disputed was that he personally received a tractor meant for the Thuathe Community when he and Dr Phororo were Ministers in the Military regime.

Plaintiff admitted that the police did seize the tractor in 1990. It had not been in his possession, nor had he illegally acquired it. It was not true that he did not go to the police about this matter. Plaintiff told the court he did go to the police. The Lekokoaneng Community reclaimed the tractor from

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Thuathe is about fifteen kilometers from Lekokoaneng. Plaintiff told the court that it was false to say he was ever given a tractor by Dr Phororo as was alleged in the article. He took exception to the imputation made by Namane the fourth defendant that they were even afraid to ask because that implies they were abusing power as ministers. It is not correct that the Lekokoaneng Community were not entitled to the tractor because the tractor was with them when it was seized by the police. It was returned to them and it is still with them even today.





media has a role to play. The public interest must be served without defaming people. If statements are true there is nothing wrong. The pleadings were drawn on his instructions. Plaintiff

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confirmed that in his evidence in chief he had denied ever being in possession of the tractor. Plaintiff noted that in his further particulars he had said "with the consent of the Lekokoaneng and Morning side community the tractor was parked at plaintiffs residence." The residence was in fact his aunt's not his. Plaintiff conceded that the pre-trial conference minutes state that the tractor was and is still in plaintiffs custody. Bui plaintiff added that it was guarded by farmers. Plaintiff conceded that his explanation conflicts with his pleadings and formal admissions. In answer to questions plaintiff confirmed he was part of the farming operations - but he no more is. The tractor is among his property such a threshing machines for safety.

Dealing with defendants counsels questions, plaintiff admitted that the article states that the tractor belongs to the Thuathe Development Council. Plaintiff also agreed that registration at the Traffic Department is proof of ownership. If the registration certificate states the tractor belongs to the Thuathe Development Council it would be correct. It is a fact that the tractor was in fact registered in the name of the Thuathe Village Development Council - plaintiff said this when he was shown a copy of the Registration certificate. This is a different body form the Lekokoaneng

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Farming Community. Plaintiff said his guess is that the Minister of agriculture as a member of the Thuathe Development Council wanted to keep track of it. Plaintiff said he does not know where the tractor was got from. Plaintiff in answer to questions had to concede that since the Blue Book (registration certificate) showed the tractor belonged to the Thuathe Development Council, they were entitled to ask questions. Plaintiff added he does not know if the Thuathe Development Council could claim the tractor.

Plaintiff in answer to further questions said he never incurred responsibility for the tractor. Plaintiff noted that its Blue Book (registration card) is Number 26861 including the chassis and engine numbers on to. The documents produced in respect of the tractor reflected the address of the Ministry of Information which had been plaintiffs address as Minister. The Plaintiff denied knowledge of them - and what they reflected. These documents purported to show plaintiff taking delivery of the tractor from Maseru the price of the tractor was in US dollars. The initials on the document were similar to those of plaintiff - although they were in a different order. Plaintiff denied knowledge of them. The signature on

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he did not know if the tractor was released by the police to the Ministry of Agriculture - but what he does know is that it ended up with the Lekokoaneng community. Plaintiff said when he was before the police in respect of the tractor, it is possible that it was at time the Thuathe Development Council members were not there. Since their tractor was taken, the Thuathe Development Council was entitled to meet the police. The police suspected that plaintiff and Dr Phororo had stolen the tractors - yet they did not ask him any questions when he was before them.

Plaintiff was asked about the performance of the Marematlou Freedom Party at general elections. Plaintiff who is the leader of that party told the court that in 1965 the party won four seats. While in 1993 and 1998 it won no seats. In 2002 it won only one seat.

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Challenged about ownership of the tractor, plaintiff said if it was true that the tractor belonged to the Thuathe Development Council, then, it is not defamatory to say so. To say he was no before the police at the time the Thuathe Development Council was there is not defamatory. When it is suggested he stole the tractor, it has to be true - otherwise it was defamatory. The publication out of the blue thirteen years after the events later implies he has stolen the tractor, Caswell Tlali - the journalist never looked for him, he know him well. He was in country at the time. It is false that he was not.

The tractor did work his land along with the lands of others as he was part of the Lekokoaneng Community.

The second witness for plaintiff (Pw2) was Christina Mohlakola. She told the court that she resides at Ha Ntsuba Lekokoaneng in the Berea district. They had their own farmers group at Ha Ntsuba. They had a tractor donated to them by government around 1987. As farmers of Lekokoaneng Ha Ntsuba they had accepted that tractor with Selialia of the Ministry of Agriculture at Teyateyaneng. It had come to them already registered. The witness handed over the Blue Book (registration certificate) and it was

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marked Exhibit "B. Its serial number was No 26681. It showed the tractor was registered A 8265 in the name of Thuathe Village Development Council. The year of make of the tractor was 1989. It was first issued in a date that is not clear from the rubber stamp, but the first date of expiry of the certificate was 30 - 09 - 90. It can be assumed that it was first registered on 30 September 1989.

PW2 said the registration certificate related to the tractor of the Lekokoaneng farmers of which she was secretary. She had been paying for it annually since then. IV2 said the tractor was not plaintiffs tractor. At one time it was confiscated by the police and about ten farmers went to the police to claim it back. The



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Thuathe Development Council on the day they were before the police. No journalist from a newspaper ever came to enquire about the tractor.

Cross-examined Pw2 said she was the secretary of the Lekokoaneng farmers. She was the record keeper. It was the treasurer who paid for the tractor. Some receipts are there while others are not there. The receipts in the Blue card stop in 1996. Asked if she was aware that the tractor was registered in the name of Thuathe Village Development Council her answer was the following:

"So the government has been deceiving us when it had said it belonged to us.<sup>1</sup>

The third witness for plaintiff was Leauoa Malebo who told the court that he was a farmer. He and many others belong to a farmers group of Lekokoaneng. He supervised tractors when they are going to plough. Initially they had two tractors - one belonging to plaintiff while the other one belonged to government. The government had assisted them with this second tractor. When they got it, it already had number plate and its documents. One tractor went to Thuathe when Phororo was leader and the other went to Lekokoaneng. At Lekokoaneng their leader was plaintiff.

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This tractor was seized by the police. The police called them as Lekokoaneng farmers. The tractor was subsequently released to them. That tractor is still in their custody. The second one which belongs to plaintiff is under repairs. No one ever claimed the tractor donated to them by the government. No one from a newspaper (to his knowledge) ever investigated the tractor given to them by government.

Cross-examined Pw3 said the tractor was parked at the home of Jemina - his late sister. Tau the plaintiffs son was given to Jemina. He lives at that place where the tractor is kept.

Plaintiff closed his case and defendant's counsel applied for absolution from the instance. The application was refused.

The first witness of the defence was Lephoi Moseme the fifth defendant (Dwl). He told the court that he was working in the Thuathe Development Committee. He has since been replaced. In 1990 he was still a member. Tractors were purchased on behalf of the Thuathe Development Committee by the minister. One tractor came, the other tractor, they were told by Mr Phororo that plaintiff had asked for it for the Lekokoaneng people through a



the Ministry of Agriculture. Only one tractor was returned. They do not know what happened to the other tractor.

Dwl said he knows plaintiff well Plaintiff was not present at the charge office when they were there. Dwl said he does not know if the Lekokoaneng people were there then they were at the police station. However the police were satisfied. Mr Phororo had promised to send for the drivers to drive tractors back. Only one tractor was returned.

Tlali Caswell a journalist from Mirror newspaper came to him and asked questions. He asked Dwl if he was in the Thuathe Development Committee Dwl told him that they asked for farming equipment. Mr Phororo being a Minister was sent by them to ask for farming equipment. After that a tractor was brought and shown to the people. This tractor was subsequently seized by the police.

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Dwl said the tractor was passed on to Malebo who would use it at Lekokoaneng. Dwl said he does not know if plaintiff worked with the Lekokoaneng Development Committee. They were content to pay taxes for the tractor in their possession as the government was a military one. Dwl said he never read the article that was in the Mirror of 28th to 3rd June 2003. Dwl said he does not know the exact location of the tractor.

Answering questions from plaintiffs counsel, Dwl said plaintiff asked for the tractor on behalf of the Lekokoaneng Community. That tractor belonged to the Thuathe Community. Dr Phororo had looked for the tractors on behalf of the Thuathe Community. Dwl said he would not deny that he was doing this as Minister of Agriculture. The tractor was registered was registered in the name of the Thuathe Development Council - so the minister had no right to pass on the tractor. The Thuathe Development Council never complained about what government had done nor did it bring legal proceedings to claim that tractor

Nevertheless they talked to a newspaper. Dwl said he has never gone to Lekokoaneng since this happened nor did he go to Ha Ntsuba. Dwl said he does not know the lands on which the tractor works. He did not know

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where the tractor was parked after work. Dwl also said he did not know if the plaintiff used the tractor for himself or his purposes. Dwl said he does not know the lands of plaintiff at Lekokoaneng Ha Ntusba.

Answering further questions from plaintiffs counsel Dwl said the tractor that was used by the Thuathe Village Development Council had broken down and it was not functioning. It is presently parked at the



tractors carrying football players with it, and were claiming the tractor that has been with the Lekokoaneng people because it was still functioning - while theirs has broken down.

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The witness that followed as the second defence witness - Dw2 was Caswell Tlali. He said he resides at Lekokoaneng Ha Fusi. Thuathe was on the Berea plateau. Lekokoaneng Ha Fusi is a neighbouring village to Lekokoaneng is Ha Ntsuba. Lekokoaneng is a considerable distance from Thuathe, but he was unable to estimate the distance between the two areas.

Dw2 said he was the third defendant employed by the Mirror newspaper, the first defendant. In May and June 2003 - Dw2 said he was responsible for the article "Is Maleho the Rightful Owner or the People?" He came across this story as he was investigating a quarrel between chiefs. He heard of the story of the tractor. The people said the tractor was being used by plaintiff. Dw2 went to investigate from the old committee. He went to Montsi Namane the fourth Defendant and Moseme Lephoi the defendant who is Dw1.

Dw2 says he found from Montsi Namane that the Thuathe Development Council owned two tractors. One tractor had been used by them while the other tractor was used by plaintiff. They had asked for the two tractors from donors at the time Phororo was minister. Phororo had told them that plaintiff would be given one of the tractors in terms of the agreement with

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the donors. That tractor would serve the Thuathe community and another community. The tractor given to plaintiff was given for the benefit of the Lekokoaneng community. The other tractor would be used, exclusively by the Thuathe community. Phororo chose to give the Lekokoaneng community a tractor through the plaintiff. Dw1 said at one time the tractors were seized by the police.

Dw2 told the court he went to the traffic department to check the ownership of the tractor allegedly given to the Lekokoaneng Community through plaintiff. The traffic Department denied him access to the records without police authorization. The police denied him access. Phororo confirmed what Dw2 had been told. He said he gave plaintiff the other tractor because he had lands at Thuathe plateau and Lekokoaneng. Dw2's investigation led to him to the police dockets when he heard that the police once seized both tractors. The police docket that was opened against plaintiff was RCI 174/8/90 and the police docket opened against Phororo was RCI 175/8/90. The complainant in both dockets was the Principal Secretary for Agriculture.





The intention of writing the story was to inform the nation. He also thought that through the publication of the story the tractor he could help the Thuathe people to get the tractor which is a property that belonged to them. Dw2 said he had no intention of defaming plaintiff Dw1 told the court that he respects people of the age of plaintiff who are of the approximate age of his parents therefore he bore plaintiff no ill-will. Dw2 also said he would not just defame plaintiff because as a political leader who should have the dignity and respect of the nation. He reported what he found.

Cross-examined Dw2 denied he was sitting in court and that he went to Pw2's husband to find out what she was going to say. No witnesses were brought by plaintiff to substantiate this allegation.

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D\2 told the court in answer to questions that his home was at Lekokoaneng ha Fusi very close to Lekokoaneng Ha Ntsuba. D\2 told the court that he did not investigate allegations at Ha Ntsuba about plaintiffs use of the tractor. He never talked to any one at Ha Ntsuba because there were no allegations against them. Dw2 told the court he does not know plaintiffs home at Ha Ntsuba - but plaintiff has relatives there. He was aware that there was a Malebo plant at ha Mabote or Naledi. He saw that tractor where there is a Malebo Plant at Ha Mabote or Naledi. He saw that tractor where Malebo machinery was kept. Dw2 said he did not know if it was there for only one day. Dw2 said he was not sure if it was plaintiff's plant. He also did not know if the tractor had gone for a service. He does not dispute that the place belongs to Rapuleng Carlye Malebo who is the Director of Malebo Transport and is the Director of Malebo Transport and Hire. He does not deny the place also repairs machinery.

Dw2 in answer to questions said never any documents or agreements from a donor. The words that plaintiff used the tractor for himself came from Namane the fourth defendant as representative of the Thuathe Community. If the words are not true that would be defamatory. He tried to find this out unsuccessfully. An ordinary man would note that this is an allegation that

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plaintiff is a cheat. Dr Phororo did what he did as a minister of government. He could do it without government approval as the tractor belonged to the Thuathe Development Council. In the newspaper article Dw2 said he did not mention that he went to plaintiffs home, but denied that statement is an after thought.

Dw2 asked about what plaintiff was about what plaintiff was alleged to have done in the police docket, replied that he did not get fully what he wanted because it was concealed - but plaintiff was accused of



alleged. In re-examination Dw2 said the word cheat does not appear in the article.

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The third witness of the defendants (DW3) was Montsi Namane - the fourth defendant. He told the court that he resides at the plateau of Thuathe. In the nineties he was a farmer. He was in the Thuathe Village Development Council. He was the secretary of that committee.

Phororo had explained to them that he had found them a tractor. Phororo was a minister and as minister he took their names. When the tractor had come, it was handed to them and it worked for them. The police took that tractor. It was then that Phororo said the tractors were two. He had given plaintiff a tractor to help people who planted vegetables. He said the tractor was supposed serve two villages. That tractor never served their village.

The tractors were not released immediately by the police. It had been alleged that Phororo was using the tractor at his home. The complainant had been the Ministry of Agriculture. When a new minister had been appointed they went to complain to the new minister that they have been deprived of the help they had been given as the police were keeping their tractor. During this period Dw3 had met plaintiff who asked what was going and was told by Dw3.

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Later they were told to go and take their tractor because the tractors were now at the Ministry of Agriculture. They were given the tractor that they had been using all along. Dw3 told the court that they asked no one about the other tractor.

A newspaper man called Caswell came to ask them about their development. Dw3 said he told the newspaper man about the two tractors that were taken by the police. Dw3 told him about the other tractor that had been given by Phororo to plaintiff on the understanding that it would work at Lekokoaneng and Thuathe. Dw3 told the court that at the police station he saw that both tractors were registered in the name of Thuathe Village Development council. An explanation was made to them by Dr Phororo when they heard the other tractor also belongs to them. Dw3 said he does not know where the other tractor is. He never followed up the tractor that was at Lekokoaneng.

Dw3 under cross-examination denied that he ever said to the newspaper man that plaintiff was using the tractor on his own behalf or for himself as was written on page 2 of the newspaper article "Is Malebo the Rightful owner or the people. Dw3 said he told the journalist that tractor was supposed to





Plaintiffs counsel Mr Ntlhoki made the following submission on behalf of plaintiff.

1. The crux or the sting of the defendant's defamation of plaintiff was that the publication stated that the tractor registered A 8265 which was donated for the communities of Thuathe and Lekokoaneng was appropriated by plaintiff. The publication claimed he appropriated it for his own benefit to the exclusion of those two communities.
2. The Mirror is a newspaper which circulates in Lesotho and has readership. This fact defendants do not deny.
3. The status of plaintiff as a party political leader, a former Cabinet minister and a prominent citizen in the country including the Lesotho Evangelical church is also not denied.
4. Two tractors were obtained from FAO for use by farmers by Dr Phororo the Minister of Agriculture. One tractor was given to the Thuathe Community and the other to the Lekokoaneng Community of which plaintiff was leader. At that time plaintiff was also a cabinet minister. This fact is common cause

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5. The tractor registration A<S265 which was given to the Lekokoaneng community of which plaintiff was leader was registered in the name of Thauthe Village Development council.
6. In the issue of 28th to 3rd May 2003 the Mirror published two articles.

Is Malebo rightful owner or the people?"

And

"We want our tractor."

7. Plaintiff noted that the publication that the defendants claim that the publication was justifiable, fair, lawful and in the public interest consequently plaintiff was not entitle to damages for defamation.



surrounding facts and circumstances.

D. There was absence of negligence on the part of the media before publication of the news items.

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Hitchison in Wille's Principles of South African Law 8th Edition page 685 says this about defamation:-

"Unlike an action for damages under the Aquilian law, where the elements have to be established prima facie, the plaintiff in an action for damages for defamation need establish only wrongful conduct in the form of publication of matter injurious to the plaintiffs reputation (generally termed defamatory matter). Once wrongful conduct has been proved, the other elements of liability are presumed to exist: since proof of the publication of defamatory matter concerning the plaintiff prima facie establishes wrongfulness, wrongfulness is obviously presumed and therefore the plaintiff need not prove any further facts (such as the absence of grounds of justification) in order to secure a conclusion of wrongfulness. Moreover, upon proof of publication of defamatory matter fault (animus iniuriandi) is also presumed, as is causation and injury' to the plaintiffs reputation."

In other words defamation is an actio injuriarum although there are circumstances in which it can have elements of the Aquilian action. People are entitled to have the dignity and reputations respected. This right of an individual can only be invaded if there is justification and that in the public interest. In such circumstances this invasion of the individuals right to a good name and reputation becomes lawful.

In C. Ramainoane & another v M. Sello 1999 - 2000 LLR & Legal Bulletin 411 at page 413 Kumleben JA dealing with defences to an action of defamation approving National media Ltd & Others v Bogoshi 1998 (4) SA 1198 said:

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"(i) That there are no closed number of defences available to such a defendant in a defamation action, (page 1204 D)

(ii) That, with reference to the delictual element of unlawfulness (wrongfulness). It is open to such a defendant to prove that the publication, having regard to all relevant circumstances, was reasonable: or, obversely stated, that it was not recklessly or negligently published, (page 1212 G)

(iii) That the onus in the full sense of the term rests upon a defendant to prove facts justifying the conclusion that the newspaper article was lawfully published. (Page 1215 B-H)

(iv) And that, as regards the requirement of fault in a delictual action, absence of intention (animus iniuriandi), in the sense of a consciousness of wrongdoing, cannot be relied upon, (page 1214 F-I). "



Consequently the newspaper had to show that its publication was not unlawful and was justified by surrounding circumstances and was not unfair. How far the press can publish defamatory matter within the law, even if

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mistaken, depends on the circumstances of each particular case. If the publication has not been recklessly and unfairly made - and it is in the public interest, the press like any individual is protected in a democratic state.

A great deal has happened in our law of defamation under the constitution. Strict liability of the media has been gradually replaced by a rational and balanced approach. Even in the past courts, court emphasized freedom of speech while seeking to protect reputations. Nevertheless their decisions vacillated. In a democracy the importance of the media in the defence of democracy, transparency and free speech has increased. Nevertheless I consider this passage from page 715 in *Botha v Pretoria Printing Works* 1905 TS 710 per Innes CJ important and relevant today as it was when the judgment was given:

"The public acts of public men are, of course matters of public interest, and criticism upon them does a great deal of good provided corrupt motives are not imputed. But the character of a public man is not only a precious possession to himself, but is, in a real sense a public asset. If any person knows anything against the character of a public man which makes him unfit for the position he occupies, such a person is not only justified, but bound, if he occupies a position which casts a duty upon him, to inform the public of the facts, and substantiate them for the public benefit if necessary."

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in other words, if corrupt motives are imputed, they must be backed up by surrounding facts. In modern times the press is easily excused where it has made an investigation and not recklessly published facts, even where there are inaccuracies here and there.

Both parties are in agreement that the publication "Is Malebo rightful Owner or the people?" is about plaintiff. It is also true that the tractor A 8265 is registered in the name of Thuathe Village Council. Consequently there is nothing untruthful and unfair about this aspect of this publication. It is also a fact that plaintiff had organized the Lekokoaneng people and was their leader.

In the Minutes of the pre-trial conference and the further particulars that were made subsequent to the pre-trial conference which were made on behalf of plaintiff, it is admitted that the tractor A 8265 was in plaintiff's possession. I was puzzled by the fact that plaintiff before court denied that the tractor in question



pre-trial minutes and subsequent further particulars, it was fair for the Thuthe people to conclude that the tractor was in plaintiffs possession.

That being the case the fourth and fifth defendants were entitled to be dissatisfied that the tractor A8265 that was registered in their name was not in their possession.

This dissatisfaction was of course unreasonable because they had been content to have their one tractor that had been donated to them. I find therefore, that the fourth and fifth defendant (with the help of the press were entitled publicly to express their discontentment about the other tractor registered in their name but never in their possession. In *Delta Motor Corporation (Pty) Ltd v Van Der Merwe* 2004 (6) SA 185 at page 193 F to 194 A Jones AJA said:

"Once the statement about Delta's product is shown to be *Prima facie* defamatory, the onus is on the respondent to show that publication thereof was not wrongful. The respondent seeks to do so by relying on the exercise of his right to freedom of expression. His defence is that of fair comment there has always been tension between the right to freedom of expression, which is protected by, *inter alia*, the defence of fair comment, and rights to dignity, fama, and an unsullied reputation, which are protected by the remedies for defamation...

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For the defence of fair comment to succeed, the respondent must prove that the statement in question was a comment or opinion and not an allegation of fact: that it was fair; that the allegations of fact commented upon were true and accurately stated; and that the comment was about a matter of public interest..."

The publication was lawful in informing the public and up to this point even its comments were fair.

Consequently it does not follow that the following passages in the circumstances of the case are necessarily unlawful even where they have a flavour of defamation:

'The Leader of the Maramatlou Freedom Party (MFP), Vincent Malebo, has a lot to explain to the community of Thuthe, Baruting, about the Tractor belonging to the Thuthe Development Council, which is regularly used by him, without their consent.'

"Even though Phororo was one of us, we shied away when we were supposed to question the manner in which our tractor was given to Malebo because he and Malebo were government minister."



tractor."

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It will be observed that it is not true that plaintiff and the Lekokoaneng people did not go to the police to claim the tractor- it is excusable for Dwl and D\5 to say they did not, because they did not see them. The evidence that D\2 the journalist employed by the Mirror and the publication itself show clearly that Dw2 made an effort to ascertain the fact that the tractor was in fact registered in the name of Thuathe Village Development Council. His investigations were thwarted by the Traffic Department, but he put himself in a position that he considered it adequate and safe to publish the story even though he had failed to meet plaintiff.

It is clear the Thuathe people were justified to complain about the tractor which was registered in their name but which never got into their possession. However these words read with other passages can give other words within the context of the article as a whole another meaning. Consequently Mr Ntlhoki counsel for the Plaintiff focused on the following words allegedly from Namane (fourth defendant) in the article "Is Malebo the rightful owner."

"I saw documents that showed that both tractors were donated to Thuathe Community. I was only amazed when another Tractor was given to Malebo to use on his behalf, although it was officially said it would help Lekokoaneng Community."

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These words were backed the following words also allegedly from fourth defendant (Namane), from the article "We want our tractor."

"I was only amazed when another tractor was gi\en to Malebo to use it for his personal benefit, although it was officially said it would help the community?"

In the plaintiffs Declaration, the following is said about these words:

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The said words in the context of the article are wrongful and defamatory of Plaintiff in that they were intended and were understood by readers of the First Defendant that Plaintiff is dishonest, a cheat and corrupt in the following respects:

15.1 He used his position and standing to cheat and obtain a tractor for himself;



said his reputation is hard earned. Consequently he claims damages of M700 000.00. Once people read that he robs communities of a tractor under the cloak of being a politician his reputation was damaged.

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Dw2, the third defendant (in cross-examination) conceded that the ordinary member of the public would understand the above words to mean plaintiff is a cheat if they were not true.

It is these words that plaintiffs counsel argues mean that plaintiff stole the tractor or committed theft by false pretences. In argument the counsel for plaintiff has concentrated on the allegation that plaintiff had used the tractor for himself although the tractor had come into his possession so that it could be used by the Lekokoaneng Community of which he has admitted to have been part of, at the time.

The problem I have is that Dr Phororo the Minister of Agriculture of the day was not called by either side. Plaintiff says he never talked to Dr Phororo who was his cabinet colleague. That might be possible because what is done by the Public servants is deemed to have been done by the minister. The minister may say what was done on his behalf was done by him. In any event it is not disputed by plaintiff that the tractor was supposed to be used for the benefit of the people of Lekokoaneng. What plaintiff disputes is that

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he ever discussed anything with Dr Phororo when the tractor was handed over.

Dw1 who was fourth defendant says two tractors were obtained for the Thuathe Community but Dr Phororo told them plaintiff asked him to give the other tractor to the Lekokoaneng community. Dw1 does not clarify-when he came to know of this fact. However, Dw3 the fourth defendant says the Thuathe Village Development Council did not know of the existence of the tractor that was given to plaintiff and the Lekokoaneng Community. Dr Phororo only told them of it at the time the police had seized both tractors. Before that they knew of only one tractor that they had asked for and was provided by Dr Phororo who was member of the Thuathe Village Development Council. They had been satisfied to have their one tractor back from the police - even after they had come to know that the other tractor was registered in their name.

In comparing the evidence of Dw1 and Dw3 I came to the conclusion that on this point Dw1 was making vague generalizations. Dw3 however was specific and clear that they had no knowledge of the other tractor that was in the hands of the Lekokoaneng community and plaintiff until Dr Phororo told

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published the article. I have come to the conclusion that third defendant (Dw2) the journalist, fourth defendant (Dw3) and fifth defendant (Dw4) are not telling me the truth. Dw4 and Dw3 told the journalist about the tractor because they have learned it was in running order. The fact that they are not truthful on this point does not lead me to the conclusion that Dw2 the journalist reported what Dw3 said accurately.

The issue is left with the journalist, the editor of the newspaper called the Mirror, and the Mirror itself, the first, second and third defendants. It is necessary to deal with the law in respect of the press and the news media generally.

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The case of *Parkendorf & Another x De Flamingh* 1982 (3) SA 146 AD has put the liability of the media too high when it said the media has strict liability in case of defamation and the attendant unlawful publication. Perhaps Rumpff CJ was influenced by the immense and extensive publicity that results from publication in the media. Lesotho's constitution does not refer to the press as having a special freedom as the South African constitution does. Even so, the South African courts have so far treated press freedom as freedom of expression - as the Lesotho Constitution does in its Section 14. Consequently the press does not have a greater liability than an individual. The press in its publications merely exercises the freedom of expression that an individual has.

A defendant who publishes defamatory matter is not entitled to barely assert that what he publishes is justifiable, fair and in the public interest without showing how. Consequently Hefer JA said in the case of *National Media Ltd & Others v Bogoshi* 1998 (4) SA 1196 at page 1202 GA:

"The plaintiff is required to allege the defendant acted unlawfully and *damnum iniuriandi* and it is for the defendant either to admit or deny the allegations, bare denial is not enough: the defendant is required to justify his denial of unlawfulness or *damnum iniuriandi* as the case may be."

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The first, second and third defendant all of whom are responsible for the article in question do not seem doubt any more that they are mistaken when they said plaintiff used the tractor for his sole benefit and not the Lekokoaneng people as was expected when the tractor was given. Even if they are mistaken they have to escape liability if they can show that from the surrounding facts that they had not recklessly made the allegation. If they can show that the surrounding facts support the conclusion they reached even if they were mistaken, that might make the publication reasonable and fair- consequently not unlawful.





"He said the Food and agricultural Organization gave him the tractors on condition, that the other tractor should be used in agricultural projects of at least two communities rather than be used by Thuathe alone. "I decided to involve Malebo because

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he had agricultural sites at Thuathe and I thought he would use the tractor I would give him in both the Lekokoaneng and Thuathe communities... It is true that both tractors belonged to Thuathe community but as for the other one it was partly theirs, because donors had emphasized that it should at least help two communities."

Dw2 had been denied access to files that proved that the tractor in question was registered in the name of Thuathe Village Development Council, He had only established from that Dr Phororo that the other tractor that ended up in plaintiffs possession only partially belonged to the Thuathe Community. The tractor (from what Dw2 had reported) had been donated for joint use with the Lekokoaneng community - from what Dr Phororo the Minister of Agriculture of the day had said. It is puzzling that Dw2 did not find it necessary or important to find out from the Lekokoaneng community whether plaintiff had fulfilled the alleged expectation of Dr Phororo to use the tractor for the benefit of the Lekokoaneng community. Dw2 had already made the demand of the Thuathe community for the tractor known in another article. In focusing on the plaintiffs possession of the tractor the logical factor to investigate was whether he had done what was expected of him by asking the people of Lekokoaneng what was going on with the tractor.

The above concerns arise because plaintiff accuses Dw3 of recklessly and

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negligently publishing defamatory and false matter about him. The reasonableness of Dw2's conduct is being called into question to counter the assertion that the publication was not reasonable and lawfully made. Dw2 had in his possession an allegation that plaintiff and Dr Phororo had been accused by the Principal Secretary for Agriculture of fraud in respect of the two tractors before the police. As a result of that allegation the police had opened two dockets against them and seized the tractors. The two tractors were later separately released to the Thuathe Community and the Lekokoaneng community. The complaint of fourth and fifth defendant was that they got their tractor but plaintiff and the Lekokoaneng Community had the other tractor released to them although they had not been to the police. Since plaintiff had been accused of fraud before the police, it was necessary to investigate from the Lekokoaneng people whether he had continued the fraud of getting a tractor from the Ministry of Agriculture by claiming back the tractor promising he would use it for the Lekokoaneng Community when he was not going to do so. This information could only be obtained from the Lekokoaneng people. Dw2 could only approach plaintiff



Ha Fusi Ntsuba where plaintiff and the farming group he leads live. It becomes very difficult to understand why Dw2 did not go and find out what was going on in the neighbouring village before he published the article. It is also a mystery that when preparing for trial he did not investigate whether plaintiff was using the tractor for his own benefit or "on his own behalf at Lekokoaneng Ha Fusi contrary to what government expected through Dr Phororo, when it gave him the tractor for use by the Lekokoaneng community of which plaintiff was leader. Dw2 (under cross-examination) conceded that the words complained of give the impression that plaintiff has been acting fraudulently by obtaining a tractor and using it for his own benefit or on "his personal behalf."

Mthiyane JA in Mthembi - Mahanyele v Mail & Guardian and Another (supra) at page 365 F-H, dealing the balance that must be maintained between freedom of expression and the protection of the individual's reputation and dignity said:

"In my view, ministers of state, as everybody else, are not above criticism in relation to the execution of their duties as members of government - and such criticism is indeed a good thing for purposes of public debate and discussion in a democratic society... But unchecked, unjustifiable imputations of dishonesty detract from a proper use of freedom of

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expression and disrupt the balance referred to in paragraph (98) above. I consider fair reporting and the retention by a cabinet Minister of the right to sue, not to be strange bedfellow. They can easily subsist side by side, without the right to freedom of expression being compromised."

I have underlined the word "unchecked" above because I consider first-second and third defendant to have unnecessarily published an unchecked defamatory matter without attempting to verify it. In their case they negligently neglected to check what they could easily have checked because the journalist who is third defendant could easily have checked the facts as he lived in a neighbouring village from where the focus of the publication was.

"It was evidently designed for entertainment rather than instruction. It sought to be irreverent rather informative." Vide Ponnar AJA's remarks at page 362 DE in Mthembi -Mahanyele v Mail & Guardian & Another.

Unfortunately in the process, plaintiffs character was in this case disparaged.

DW2, the third defendant in his evidence said plaintiffs redress was to publish a refutation in the Mirror not to institute legal proceeding straight away. Kumleben JA in Ramainoane v Sello (supra) at page 413 dealing with a similar issue said:



On the evidence before me I find plaintiff was unlawfully defamed when the Mirror published an untrue story that plaintiff was using the tractor for his own benefit or on his own behalf when he was expected to use it for the Lekokoaneng community. The first, second and third defendants were grossly negligent in not checking the veracity of the story - even though third defendant lives in the neighbouring village. The fourth and fifth defendant are found not liable because they claim what they said was distorted by the mirror.

The first, second and third respondents are found jointly and severally liable for unlawfully defaming plaintiff.

As Nel J has said in *Young v Shaik* 2004 (3) SA 46 at page 57 J "having regard to the often expressed reluctance of our courts to award huge amounts as damages for defamatory statements" I will be as moderate as I can. Even so, I must say the press on this occasion fell well below accepted standards. I note plaintiff denied possession of the tractor when he had admitted in his

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plea that he does keep that tractor for the people of Lekokoaneng. Evidence in fact showed that the tractor was kept at the home of Tau who is plaintiffs son - at a centre plaintiff established for the Lekokoaneng people. The defendants have succeeded on the issue of plaintiffs possession of the tractor that in law should belong to them albeit assigned to the Lekokoaneng community. This factor and others I take into account.

In the result first, second and third defendants jointly and severally are ordered to pay plaintiff.

- A. Damages in the amount of M60 000.00 ( sixty thousand Maluti)
- B. There will be no order as to costs - at plaintiffs request.

W.C.M. MAQUTU  
JUDGE

For Plaintiff: Mr Ntlhoki  
For Defendants: Miss Thabane

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