

IN THE HIGH COURT OF LESOTHO

In the Application of :

NAPO GABRIEL MOHALE

Applicant

v

NATIONAL UNIVERSITY OF LESOTHO

Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 2nd day of March, 1984

This is a review (in terms of Rule 49 of the High Court Rules) from the decision of the Registrar in his capacity as Taxing Master who disallowed a bill of attorney's costs in a Judgment entered in favour of the National University of Lesotho as respondent, with costs on party to party basis, on an application by one Napo Mohale, a law student who sought a declaration and a direction : that he had satisfied all the requirements for the degree of Bachelor of Laws of the National University of Lesotho and that the University be ordered to confer upon him forthwith that degree.

Mr. Maqutu is employed by the National University of Lesotho as a full time lecturer in Law. In terms of Statute 24 (22) of the University Statutes members of the

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academic staff are not allowed to engage in the conduct of a profession which may adversely affect the normal academic duties unless the Vice Chancellor has given them permission on behalf of Council.

The University first briefed Messrs. De Preez, Liebetrau & Co. a firm of attorneys in Maseru. For some unforeseen reason the firm withdrew or dropped out and the University asked Mr. Maqutu, its full time lecturer, to represent it at the hearing which he did. The Registrar as Taxing Master heard argument from Mr. Sello (for the unsuccessful applicant) and Mr. Gwentshe (for the successful respondent) and disallowed Mr. Maqutu's bill in toto on the grounds that he is an employee of the University and is not entitled to charge fees for appearing for it.

Mr. Maqutu sought a review of this ruling and when the file was placed on my desk I required

- (a) written contentions and
- (b) argument in open Court.

In the meantime (and after costs were disallowed) Mr. Maqutu filed an affidavit from the Registrar of the University that it had agreed to pay Mr. Maqutu, as an attorney, fees for appearing on its behalf to oppose the application. It is common cause that whilst Mr. Maqutu is in fact employed full time he is allowed to engage in private
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practice if there is no conflict between his duties at the University on the one hand and attending to clients' briefs on the other for the latter entail not only preparatory work in chambers but also frequent appearances in Court.

I must say it is not unusual for Universities to allow their law lecturers to practise, if they are part time law lecturers, but I cannot see how, during University term at any rate, a full time law lecturer paid fully for his services, can simultaneously be in practice which includes appearances in Court.

I have been referred to a number of cases by Mr. Sello and Mr. Maqutu. These appear in the written contentions and I need not quote them in this Judgment suffice it to say that none of these cases are on all fours with the situation before me. The crux of Mr. Sello's argument is that the absence of direct authority to the contrary on the point in issue, throws the onus of proof on Mr. Maqutu and the onus has not been discharged by the Registrar agreeing, on behalf of the Vice Chancellor, to pay Mr. Maqutu for a job the University is not liable for, since he is on their full time roll and his client should not be penalised for these costs, i.e. that the National University of Lesotho agreement to remunerate Mr. Maqutu is something for which Mr. Sello's client should not be held responsible. He submitted that some of the

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provisions of the Legal Aid Act support his argument.

In the absence of authority on the position of attorneys employed by an organisation on full time basis appearing on its behalf in a Court of law it seems to me that the answer to the question posed must depend on a variety of circumstances and it is necessary for Mr. Maqutu to produce some evidence that during the time he spent in Court he had no duties at the University to perform, i.e. that he was not using University time for which he is paid. It seems to me that whilst the University Statute quoted by the Registrar gives power to the University Council, or the Vice Chancellor if such power has been delegated to him, to tell a law lecturer employed and paid full time that he could abandon the lectures to his students or stop his research on a particular day or days, if such be the facts, to go to represent it in litigation, but cannot at the same time seek to recover the fees it voluntarily agreed to pay the lecturer from the party who was unsuccessful in that particular litigation.

Applying this principle, the bill of costs submitted by Mr. Maqutu should now be remitted to the Registrar with a direction that he should allow all the disbursements claimed and, in whole or in part, such fees as are obviously not covered time wise by the words "fully employed" in the ordinary sense, viz. the items claimed on 9/9/83, 15/9/83, 16/9/83 (second claim only), 26/9/83

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(first and second claims only), but not, unless some evidence is at hand before the Taxing Master that when Mr. Maqutu appeared in Court on behalf of the University on 16/9/83 (first claim) and when he appeared in Court to seek a postponement on 19/9/83, and when he appeared in Court to argue on the 26/9/83 (fourth claim) and on the 30/9/83 to note the Judgment, that he was not supposed to be lecturing or doing research.

The matter is novel and I cannot say who was successful in this review so I will make no order as to costs.

Tsiu v N.U.L. (CIV/T/219/83) due to be argued on the same day was crowded out and postponed to another date to be fixed after agreement with the Registrar, seems to raise the same issues. I do not think it need to be fixed for argument before the High Court if either attorney wants to take this matter further.

CHIEF JUSTICE
2nd March, 1984

For Applicant : Mr. Sello
For Respondent : Mr. Maqutu