

IN THE HIGH COURT OF LESOTHO

In the Application of:

MICHAEL MOCASI Applicant

v

SOLICITOR GENERAL 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

The applicant Michael Mocasí moved the Court on the 26th March 1982 seeking an order to set aside his compulsory retirement from the public service under Part 6 Rule 6-01 (1)(e) of the Public Service Commission Rules 1970 on the ground that it was "unlawful null and void". He sought an order for reinstatement. The application came before Unterhalter A.J. who gave judgment on the 23rd December 1982 in favour of the applicant directing the respondents to proceed with a disciplinary enquiry within a specified time in terms of Part 5 Rule 5 of the Rules failing compliance with which the applicant to be reinstated. It is not necessary to go into the learned Acting Judge's detailed reasons for judgment suffice it to say that it is clear that he was of opinion that the Public Service Commission should have continued or resumed the enquiry in terms of Rule 5 which it

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commenced and that resort to Rule 6 was no longer, or ceased to be, available. The Minister responsible for the Public Service (represented by the Solicitor General of the Government of Lesotho) appealed to the Court of Appeal which referred the application back to the High Court in order to afford the appellant (the Solicitor General on behalf of the Government of Lesotho) an opportunity to file affidavits, should he be so advised, in order to show that

- (a) the procedure prescribed by Rule 6-01 (of the Public Service Commission Rules 1970) has been followed,
- (b) the documentation in regard to respondent's (i.e. original applicant Mr. Mocasi) car is false in the respects claimed in the letter to him of 19th November 1981.

Leave was granted to the respondent (i.e. original applicant Mr. Mocasi) to file affidavits in reply.

I shall in this judgment refer to the parties as in the original, i.e. as the applicant and respondent respectively.

The respondent filed affidavits from:

- (1) Nehemia Sekhonyana Bereng, the Permanent Secretary Cabinet (Personnel) which was in the nature of an explanatory affidavit to the one he had originally filed,
- (2) Mr. Andrew Tsatsi Ntshoche,

/(3) Mr. J.H.

- (3) Mr. J.H. du P. Meyer,
- (4) Mr. Charles Herman Oehley,
- (5) Mr. F.W.C. Wolmarans,
- (6) Miss Likeleli Qhobela.

The applicant replied to what was averred by every deponent in the new affidavits but there was no affidavit from anyone else.

A number of documents were appended to the original affidavits and to the new affidavits and some documents were filed by order of Unterhalter A.J. There was no objection to the production of copies, but unfortunately the alphabetical letters used for identification of each set of annexures were the same. These documents will be referred to by their dates to avoid confusion and where no confusion is likely by the letters given to them.

I will start this judgment by summarising what is the ratio decidendi of the judgment of the Court of Appeal as I understand it:-

1. The Minister responsible for the Public Service (the Prime Minister) is empowered by s.4 of the Public Service Order 1970 to make Rules and Regulations governing the Public Service. Part 5 Rule 5 and Part 6 Rule 6 of the Public Service Commission Rules 1970 are both intra vires the Minister's powers.
2. Disciplinary proceedings against an officer under Part 5 Rule 5 of the Public Service Commission Rules 1970 is not a condition precedent to the exercise of the power to take other proceedings against an officer under Part 6 Rule 6 of the Rules.

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3. Nothing prevents the abandonment of proceedings commenced against a public officer in terms of Rule 5 and resorting Rule 6 (unless of course it was made in bad faith).
4. The procedural requirements of Rule 6 must be proved to have been substantially observed.
5. The Minister has a discretion to act against a public servant in terms of Rule 6 if the ground upon which the head of department seeks the officer's discipline in the manner recommended is established.
6. The ground is established if it be shown, objectively, that it, i.e. the ground, exists.

It would appear from Annexure A to Mr. Bereng's second affidavit dated the 8th June 1983 (filed in consequence of the decision of the Court of Appeal) that the head of department where the applicant worked had completed a form (G.P. 126) on the 13th October 1981. This form has been devised and designed in terms of Part 7 Rule 7-01 of the Public Service Commission Rules 1970 (or the earlier Rules) which empower the Commission to "prescribe forms for the purpose of these Rules". This is the form used when Part 6 of the Rules is to be invoked. The proposal to retire the applicant was made under "Part 6, Rule 6-01 Sub-Rule (1)". Opposite the printed word "Specify under which paragraph the proposal is made" the head of department had inserted "Public Service Order, 1970 Section 12(9)". The head of department gave the following ground for his recommendation:-

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"He (the officer) has involved himself in illegal act of registering a car in his name which its origin is questionable, thus contravening the provisions of s.44 (B)(1) of the Road and Transport (Amendment) Act 1978. My confidential savingram dated 7-10-81 has the details".

We do not have a copy of the confidential savingram of 7-10-81.

Just before the date and signature of the head of department on the form there appears in print "Supply sufficient information to justify the proposal". Also in print the head of department sought directions "concerning= the procedure to be applied" in terms of Rule 6-01 (2). There is a minute by someone on the right top corner of Annexure A as follows "Process urgently (sic. but probably "by") PSC". Mr. Bereng avers that the proposal was submitted to the Public Service Commission who directed that the applicant be given an opportunity to reply (para 5).

Annexure B to Mr. Bereng's affidavit of the 8th June 1983 is a copy of the minutes of a meeting by the Public Service Commission held on the 30th October 1981 to consider the proposal to retire the applicant in terms of s.12 (9) of the Public Service Order 1970. The Public Service Commission had before it:-

- (a) the proposal of the head of department to the "Permanent Secretary Cabinet Office (Personnel Branch) on a form which embodied an outline of the acts complained of and information in support of the proposal presumably something on the lines of his letter to the applicant dated 19th November 1981 - infra),

/(b) an

- (b) an application for directions concerning the procedure to be applied, and
- (c) a referral of the matter to the Public Service Commission itself to deal with it by somebody whose initials are not decipherable probably the Permanent Secretary's.

The Public Service Commission became thus seised of the matter. It considered the proposal based upon the information contained in the letter by the head of department to the Permanent Secretary Cabinet Office (Personnel Branch) dated 7.10.81. The Commission advised at that meeting that the applicant "in terms of Rule 6-01 (2)" be informed in writing by his head of department of the proposal giving him the reasons therefor and inviting him to reply within a reasonable time (Annexure B to Mr. Bereng's affidavit). This was transmitted to the head of department who complied with the advice as per his letter to the applicant dated 19th November 1981 (Annexure A to the founding affidavit) detailing the reasons for the recommendation for his retirement and giving him an opportunity to reply within 7 days. The applicant duly replied by letter dated the 25th November 1981 marked Annexure B to the founding affidavit, to his head of department, with copy to the Public Service Commission. In this letter the applicant said that the head of his department's proposal was not made in terms of "Part 3 of the Public Service Order 1970". The applicant enclosed copies of some of the correspondence

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he had previously addressed to the Public Service Commission (with copy to his head of department) on 7th July 1981 and 17th July 1981 objecting to his initial interdiction (in terms of Rule 5) together with copy of a letter from the Law Office under reference No. LEG.21-118 dated 11th February 1981 addressed to the Traffic Commissioner with copy to the "S.P.S." (Senior Permanent Secretary) advising him on their i.e. the Law Office's, interpretation of s.11 (as amended by Act 26 of 1978) of the Road Traffic and Transport Order 1970.

At a meeting held on the 8th January 1982 the Public Service Commission advised the Minister to retire the applicant (and another person) in the public interest. The minute reads:-

"Arising out of the 1165th Minutes, item 1993/81: the Commission, after careful consideration of the officers' representations against their removal from office advised that their retirement in the public interest was necessary in view of the deleterious effect their continuance would have should they, in the light of the statement contained in the papers submitted regarding the registration and acquisition of motor vehicles allegedly purchased by them from Republic of South Africa, remain in Government service".

The minute is initialled by someone on 28/1/82.

It was followed by a letter from the Permanent Secretary Cabinet (Personnel) to the applicant on the 4th February 1982 retiring him in terms of Public Service Commission Rule 6-01 (1)(e) as per Annexure C of the founding affidavit.

/Mr. Sello

Mr. Sello on behalf of the applicant submitted before me that to succeed the respondent must discharge the onus placed upon him by the Court of Appeal on the two matters in their proper order, i.e. that the procedural aspects of Rule 6 have been complied with and only if this has been proved need the Court go into the consideration of the question of falsity or otherwise of the papers relating to the applicant's vehicle. He submits firstly that the procedure required by Rule 6 has not been complied with and secondly that if the rule had been complied with, falsity of the documentation of the vehicle registered by the applicant has not been proved.

On procedure he argues:-

- (a) the proposal by the head of department was not made in writing to the "Senior Permanent Secretary" as required by Rule 6-01 (1) but to someone else, i.e. the Permanent Secretary Cabinet (Personnel Branch),
- (b) the head of department did not specify the paragraph (or paragraphs) in Rule 6-01 (1) of the Public Service Commission Rules which he intended to invoke but specified instead the section of the Public Service Order 1970 that deals with retirement in the public interest,
- (c) the head of department had not reported to the "Senior Permanent Secretary" for reference to the Commission, the result of the application of the procedure directed to be followed in terms of Rule 6-01 (2) but reported to somebody else, i.e. to the Permanent Secretary Cabinet (Personnel Branch).

In the bound volumes of the Laws of Lesotho the words "Senior Permanent Secretary" in Rule 6-01 (1) and Rule 6-01 (2) appear in brackets and are not in fact

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the actual text of the legislation which is only found in the original Legal Notice No. 12 of 1970 published as Supplement No. 2 to Gazette No. 35 of 19th June 1970. Reference to the text in the bound volumes of the Laws of Lesotho as revised by the Commissioner can therefore be misleading. The Court must take judicial notice of the fact that from the year 1966 to the year 1970 inclusive laws were passed first by the elected Parliament of Lesotho and then, after the suspension of the Constitution in January 1970, by the Council of Ministers. Those laws (called "Acts" and "Orders" respectively) were scattered in the official gazettes. The object of the Law Revision Order 1971 was to entrust a Commissioner to prepare annual volumes of those laws, with powers, vide s.3, inter alia, to replace references to the Chief Establishment Officer and to the Permanent Secretary Public Service Department by references to the Senior Permanent Secretary. By s.5 however, the powers conferred on the Commissioner by s.3 shall not be taken to imply any powers in him "to make any alteration or amendment in the matter of substance of a law or part of a law". The Commissioner's task in 1971, if I may say so, was simply to "tidy up", if he could, the laws passed during two distinct periods one under a Constitution and one under an emergency. As a matter of legal history the Lesotho Independence Order 1966 in Chapter XI provided for appointments of Permanent

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Secretaries, Secretary to the Cabinet, and a Public Service Commission (see s.81, 82, 127, 128 and 129). There was no provision for a Senior Permanent Secretary. The Public Service Act 1968 (Act 12 of 1968) "the first Act" did not provide for a Senior Permanent Secretary. It did provide, however, for a Minister to be responsible for the Public Service Department. The Public Service Regulations 1969 (Legal Notice No. 16 of 1969) did not provide for Senior Permanent Secretary. The Public Service Commission Rules 1969 (Legal Notice No. 19 of 1969) "the first Rules" do not provide for a Senior Permanent Secretary.

The Public Service Act 1968 "the first Act" was repealed by the Public Service Order 1970 dated 5th June 1970 (which was deemed to have come into effect with the Lesotho Order 1970) and it is in that latter Order that, as far as I am able to see, the post of Senior Permanent Secretary was created for the first time and his responsibilities defined (s.13).

Rule 6 of Public Service Commission Rules of 1969 "the first Rules" reads:

Rule 6-01 (1)

"A head of department may propose in writing to the commission (i.e. Public Service Commission) the removal of an officer from office or his reduction in rank or salary on one or more of the following grounds" etc....

Rule 6-01 (2) reads:

"The head of department shall supply to the commission (i.e. the Public Service Commission) information in support of his proposal and he shall apply to the commission (i.e. the Public

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Service Commission) for directions concerning the procedure to be applied. He (i.e. the head of department) shall report to the commission (i.e. the Public Service Commission) the result of the application of that procedure."

Rule 6 of the Public Service Commission Rules of 1970 dated 19th June 1970 "the second Rules" passed in terms of the Public Service Order 1970 (dated 5th June) introduced what appears like a change.

Rule 6-01 (1) reads:-

"A head of department may propose in writing to the Permanent Secretary of the Public Service Department, for reference to the commission the removal of an officer from office or his reduction in rank or salary on one or more of the following grounds"

Rule 6-01 (2) reads:-

"The head of department shall supply information in support of his proposal and he shall apply for directions concerning the procedure to be applied. He shall report to the Permanent Secretary of the Public Service Department, for reference to the commission, the result of the application of that procedure".

It can be immediately discerned that in 1970 the legislature in terms of Rule 6-01 (1) intended to interpose, between the head of department proposing the removal of an officer subordinate to him from office or his reduction in rank on the one hand and the Public Service Commission on the other, a public officer called the Permanent Secretary to the Public Service Department, a conduit pipe, who was supposed to keep the Minister in the picture of what was going on, but who became as other Permanent Secretaries, subordinate to the Senior

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Permanent Secretary (who was also Secretary to the Cabinet) when that post was established. The head of department in this case made his complaint not to the Senior Permanent Secretary personally, nor for that matter to the Permanent Secretary of the Public Service Department personally, but to the "Permanent Secretary Cabinet (Personnel Branch). In the previous sub-rule (6-01)(2)) the directions "concerning the procedure to be applied" were to be given by the Commission. Van Winsen J.A., who quoted the original text of the 1970 Rules, (not from the Law Revision Commissioner's bound volume) and the other Justices of Appeal who sat with him, thought that the "Secretary" - the Court did not say who of the two (the Senior Permanent Secretary or the Permanent Secretary) - was the person who should give directions "concerning the procedure to be applied". If the Court of Appeal thought it was the "Permanent Secretary" (now called Permanent Secretary Cabinet (Personnel Branch) there is no evidence that the holder of this post failed to refer the written complaint (of the head of department) to the Senior Permanent Secretary as a matter of routine nor is there evidence that the Senior Permanent Secretary failed (through his subordinate the Permanent Secretary) to give directions "concerning the procedure to be applied" also as a matter of routine if he was the person to give the directions, quite the reverse, firstly there was

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before the Senior Permanent Secretary personally a copy of a document addressed to him directly embodying the advice of the Law Office on the interpretation of s.11 (as amended) of the Road Traffic and Transport Order 1970 already referred to, and secondly there was a handwritten minute to throw the decision making process (on the applicant's position in the public service) into the lap of the Public Service Commission, an independent body, both under the Constitution and since (save for the imposition between it and the head of department of a senior public officer to keep the Minister responsible for the public service in the picture) and that surely is a direction on procedure. It may be the Commission thought that the new law was not intended to make a change and that the Commission itself was to give directions on procedure. The Commission gave the applicant an opportunity to make representations, which he did. Perhaps there was no "literal" compliance in the sense of exchange of letters after the written proposal of the head of department. It should be noted that whilst Rule 6-01 (1) provides that the proposal to remove the officer should be in writing (which it was) Rule 6-01 (2) does not provide for written information in support of the proposal nor for a written application for directions concerning the procedure to be applied (though the form has been designed to have all these items in writing) nor for written directions on
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procedure to be made. Oral directions are not precluded by this Rule.

The reference, in the form signed by the head of department, to the "Public Service 1970 section 12(9) instead of to paragraph "e" of Rule 6-01 (1) is certainly not fatal because at the top appears the word "Retirement" and both pieces of legislation speak of the public interest and the applicant was so informed by the head of department in his letter of the 19th November 1981. No one was under a misapprehension. In my view there was "substantial" compliance with the procedural requirements of Rule 6-01 (1) and Rule 6-01 (2). Mr. Sello's submission must accordingly fail.

I now proceed to examine if the Commission had before it adequate grounds upon which it could make an advice to the Minister bearing in mind that the Court's function is not to substitute itself for either the Commission or the Minister but to ensure that sound grounds existed for the advice tendered, and as a corollary, that the exercise of the powers of the Commission (and the Minister) were not based on flimsy suspicions and were not capricious or whimsical or perverted or biased or in any way tainted with prejudice against the applicant by reason of religious faith, race, political beliefs, on anything extraneous to the matter at hand.

The case against the applicant was that he was appointed as the acting Traffic Commissioner for a short

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period during November 1980. That is a most senior position as the Road Traffic and Transport Order 1970 shows. On the 19th of that month the applicant gave a subordinate, Miss Qhobela, four documents relating to a vehicle, and instructed her to register it in his name. She averred that those documents (attached to her affidavit) were:-

1. Registration Certificate and Motor Vehicle Licence form showing that one S. Mooki of 3421 Bochabela Bloemfontein in the Orange Free State was the owner of a vehicle purchased on or about 18.5.1979 (Annexure C).
2. A change of ownership form in respect of the vehicle from S. Mooki the owner to the applicant as buyer. The date of the transaction (the form having been signed by both the owner and the applicant) was given as 21.10.1980 (Annexure B).
3. A police "clearance certificate" emanating from John Voster Square Johannesburg, purportedly signed by P.P. Van Goosen (with his force number and rank) bearing the stamp of District Commandant (Dist 39) Johannesburg wherein S. Mooki is stated to have produced the vehicle for inspection to the police there on 27.8.1980 which the police certified as "not listed as stolen" in their records (Annexure A).
4. A Lesotho Customs Clearance Certificate showing that the vehicle was cleared at Maseru "Station" on 11.11.1980 (Annexure D).

Miss Qhobela did not find the documents in order because:

- (1) the vehicle (according to the transfer form) was acquired at Bloemfontein but the "police clearance" certificate was

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from John Vorster Square in Johannesburg and this contravened s.11 (2)(d)(iii) of the Road Traffic and Transport (Amendment) Act 1978 and

- (2) there was no "clearance" from Lesotho Police authorities.

Miss Qhobela took the papers back to the applicant who told her "it was alright" to register the vehicle. She treated this as "an order" (from a superior and acting head of the department) and registered it.

Police investigations were commenced early in 1981 and the applicant was interdicted on 26.6.1981 in terms of Part 5 of the Public Service Commission Rules 1970. From the applicant's letter to the Public Service Commission dated 7th July 1981 the complaint from him was that he contravened s.44 B(1) of the Road Traffic and Transport Order 1970 as amended (by Act 26 of 1978). The applicant wrote to the Public Service Commission that the papers were in order. In that letter (attached to the founding affidavit) he says he complied with the requirements of the 1978 amending legislation "(d)(i) and (d)(iii)" and that an interpretation favourable to him was given by the Law Office on "paragraph (e)(1)". The applicant was obviously referring to s.11 of the Road Traffic and Transport Order 1970 as amended by Act 26 of 1978. The applicant also implies in this letter that he acquired the vehicle - directly - from the previous owner - S. Mooki.

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The applicant received a letter from the Public Service Commission on the 15th July 1981. We do not know the contents of this letter but we know what the applicant replied. This is found in his letter of the 17th July 1981 in which he again protested against his interdiction saying that he complied with the law. It is different from his first letter in that we hear from him that he did not purchase the vehicle from S. Mooki but from one J. Ramakatane "who disposed of it on behalf of the previous owner and obtained the following documents from the seller etc.... ". This statement is new and is contrary to the information given in writing by the applicant himself on the transfer of ownership form (Annexure B of Miss Qhobela's affidavit) which shows the transaction as having taken place between him and S. Mooki on the same day, namely, the 20th October 1980. The Lesotho Customs Clearance Certificate (Annexure D) shows that the person who declared the vehicle (the declarant) at the "Station" was inserted as the applicant. The signature was not his because the word "f" appears before it. The letter "f" often means "for" and the signature does not resemble the applicant's which can be seen on some half a dozen documents in the record of proceedings and annexures so the vehicle was cleared by customs not by the applicant but by someone on his behalf on the 11th November 1980 when he was already the owner (on 20th October 1980) according to the

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transfer form. There is nothing wrong with an agent clearing goods on behalf of someone else but a "certificate from the Lesotho Customs Office to the effect that the vehicle was lawfully imported into Lesotho" "shall not be read as implying that the motor vehicle was lawfully acquired" (s.11 (2)(e)(ii) so the applicant's continuous reference to this section to prove legitimacy is nonsense.

In his letter of 19th November 1981 the head of department stated: "a police clearance from the police authorities of the place where the vehicle is purchased is needed. However, in this case the police clearance comes from John Voster Square in Johannesburg when we expect it to come from Bloemfontein where the car was registered". The head of department detailed the history of the vehicle as known to him and invited the applicant to reply to the charge that "it transpires from the above that the documentation of this car is false", i.e. contrary to s.44 B(1) of the Order as amended.

The head of department had referred to s.11 (2) (e) - which has two sub-paragraphs - but the text of his letter (of the 19th November 1981) clearly shows that he had meant s.11 (2)(d)(iii). The words "the place where the motor vehicle is acquired" in that section does not mean from "any place in the territory" where the vehicle is acquired. The ordinary meaning of

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the words is that the clearance must have come from the Bloemfontein police where the vehicle was bought by the applicant from Mooki on 20th October 1980 not from some other police station in the sub-continent about two months before the transaction. The head of department added further that he has got information, inter alia, that

- (a) that address given by S. Mooki (on first registration and on the transfer) was fictitious and that that person may never have existed,
- (b) the clearance certificate from John Vorster Square in Johannesburg bearing No. 419 is forged,
- (c) that a gentleman called Serutle of Maseru bought, or was interested in buying, the same vehicle but abandoned the deal because of "registration" problems,
- (d) implied that the vehicle (the transfer papers of which as I said show a direct transfer on the same date between the applicant and Mooki in Bloemfontein - ostensibly a direct deal) was purchased by the applicant from Ramakatane apparently in Maseru through finance obtained by the applicant from Auto-Care of Maseru.

The applicant replied on the 25th November 1980 but this reply was evasive. It did not answer specifically any of the complaints. The applicant boldly asserted that he "fails to see or understand what connection I should have with acquiring documentation that has however been approved legitimate by the Law Office". The Law Office did not of course make any pronouncement on that.

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This Court is not bound by that opinion in any event. The Law Office's "advice", in the abstract, if I understand it correctly, is that if the ownership of a second hand motor vehicle is acquired in any of the prescribed territories, there is no need upon its importation into Lesotho (but before its registration) to have a clearance certificate from the Lesotho Police. The allegations of the head of department said nothing about the necessity of his having needed this document although if the vehicle was in fact acquired in Maseru (the head of department implied that it could have (by the applicant through Ramakatane)) Lesotho Police clearance was essential. The applicant did not in fact have it or ever attempt to get it.

When the Public Service Commission became finally seised of the applicant's fate, it was confronted with the situation of a man aged 43 with sufficient years of service (18 years) to entitle him to a pension, who reached such seniority as to be next in line for promotion to an important post, who, at the time in question was actually acting head of department dealing with the registration of motor vehicles, ordering a junior officer to do something in connection with a vehicle contrary to the law as she understood it to be. If the information given by the head of department to the applicant was correct, or substantially correct, not only does a prima facie case of falsity arise but also

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the whole question of his suitability to remain in office. The applicant answered these allegations by evasion because he was in difficulty. If Mooki had acquired the vehicle lawfully in the first place there was no need for him (Mooki) to give a none existent address. If the applicant bought the vehicle directly from Mooki in Bloemfontein as the transfer form says he did the clearance certificate must be from the Bloemfontein police and contemporaneous as the circumstances permit with the date of such acquisition. If the applicant acquired it from Ramakatane (as agent of Mooki) in Maseru, the police clearance certificate must be from the Lesotho Police. If he acquired it from Ramakatane (as agent of Mooki) in Bloemfontein it is unlikely that the transfer form will bear the same date and the clearance certificate will still have to come from the Bloemfontein Police.

After the application was remitted to the High Court by the Court of Appeal, a police officer at John Vorster Square Johannesburg (Mr. Wolmarans) swore an affidavit to say that the stencilled clearance form (produced by the applicant) is not one issued by that Police Station nor is the rubber stamp affixed thereon used by the John Vorster Square Police Station either. The applicant replies to this by stating that the deponent has not proved that the form he was shown was in fact Annexure A of Miss Qhobela's affidavit and that Police Stations in the Republic do not use the same stencilled form everywhere nor the same rubber stamp. The fact of the
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matter, however, is that Mr. Wolmarans must have been shown a form and that that form was Annexure A to Miss Qhobela's affidavit because he annexed to his own affidavit a specimen of the stencilled form, as well as the rubber stamp, used by John Vorster Square Police in Johannesburg. Mr. Sello argues that even if Mr. Wolmarans' averments are true falsity has not been established beyond reasonable doubt because the respondents could have and should have gone further, and provided information about the existence or otherwise of the police officer who purportedly appended his signature to the clearance form from John Vorster Square produced by the applicant, and if that police officer's existence is established whether the signature was in fact his. I do not think that that was necessary either when the matter came for consideration by the Public Service Commission or here, although it might have been necessary in criminal proceedings against the applicant if he had been prosecuted for an offence contrary to s.44 (B)(1) of the Order.

In my opinion the respondent has discharged the onus of proving that, objectively, the Public Service Commission had before it grounds justifying the decision it has taken against the applicant and that the Minister had not improperly accepted that advice. The documentation produced by the applicant was more than "questionable" and on more than just a balance of probability, it was also false. The matter was not so trivial to justify

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that no action be taken. If an officer destined for promotion bullies a clerk to do something against what she rightly perceives to be the law, a reduction in salary or rank might give the officer a chance he did not deserve spelling possible disaster to the public service. Dismissal would have been drastic and harsh as it could have implied that the officer had committed a criminal offence and only a Court of law can pronounce on that.

This is not a case where interference in the exercise of the Minister's discretion can be justified and the application must accordingly be dismissed with costs.

CHIEF JUSTICE
2nd March, 1984

For Applicant : Mr. Sello
For Respondent : Mr. Tampi