

IN THE HIGH COURT OF LESOTHO

In the Application of .

PAULUS LETS'ELA

Applicant

V

THE SOLICITOR GENERAL
COMMISSIONER OF POLICE

Respondents

J U D G M E N T

Delivered by the Hon. the Chief Justice Mr. Justice
T.S. Cotran on the 9th day of May, 1984

The petitioner, a Lesotho citizen, says he is the husband of one Limakatso Selina. Limakatso is not a citizen of Lesotho. She was born in the Republic of South Africa and held a South African passport. The petitioner and the said Limakatso were apparently married by custom, but we do not know where, (may be either Teyateyaneng or Johannesburg) in 1980. The evidence, not denied, was that her mother and paternal uncle, both of 6502 Sharpeville, P.O. Sharpeville 1933, gave her in marriage. She lived with the petitioner until she was expelled by order of the Minister of the Interior on or about the 16th November 1983 under powers conferred upon him by s.5(3) and s 25 of the Aliens Control Act No.16 of 1966 (Vol.XI Laws of Lesotho p.54). That order was carried into effect and Limakatso is now back in the Republic of South Africa and wants to come back into Lesotho.

This is an application by the petitioner husband in which he

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seeks an order

- "(a) Suspending forthwith the order referred to in paragraph 6 above, pending the bringing of an action to prove LIMAKATSO SELINA LETS'ELA bona fides within Lesotho,
- (b) Upon the Lesotho Mounted Police restraining them from barring LIMAKATSO SELINA LETS'ELA's immediate return to Lesotho "

The respondents oppose the application.

There is nothing on the papers to show that when Limakatso entered Lesotho on her South African passport she had complied with the provisions of s 5 or that she was entitled to an exemption under any of the provisions of the Act. There is no evidence that she or the petitioner had tried to regularise her stay except to the extent that after her purported marriage the petitioner set in motion an application for the acquisition of Lesotho citizenship under the Lesotho Citizenship Order 1971 (Vol.XVI Laws of Lesotho p.43). Citizenship may be granted by naturalisation in terms of s 12 or by registration if the applicant is a woman married to a citizen (after October 1966) under ss.7 and 13 (using Form E) of the Order.

There is evidence that there was an application pending when the Minister acted under the Aliens Control Act 1966. Limakatso was not given a hearing by the Minister before she was expelled. He probably acted on information that she had been convicted of possession of a firearm, which is admitted, and that she had some connection with a South African police officer to monitor and report upon the movements and activities of South African refugees in the Berea district in Lesotho which is not admitted.

/There is

There is authority for the proposition that the Control of Aliens Act 1966 impliedly indicates exclusion of the right of hearing to aliens whose permit to reside in the country is withdrawn or about to be withdrawn "because the function of the Minister in considering whether to cancel a permit is purely an administrative one and not in any way quasi judicial". (Smith v Minister of Interior 1974-1975 LLR 358 at 363 F and 364 A). There is no appeal against the decision of the Minister under s.40 of the Act although there is probably a right of review if it can be established that the Minister had acted in bad faith.

The petitioner in his founding affidavit did not allege bad faith on the part of the Minister, but his attorney submits that it must have existed because of the nature of the opposing affidavit of one Victor Jasone a Lesotho police officer who had investigated her activities. This matter, however, is not covered by the application which only seeks to suspend the expulsion in order to enable Limakatso to return nor is the application or petition one for a declaration that she is entitled to citizenship by registration under s 7 of the Citizenship Order 1971. This question only arose in argument, it being submitted that the words used "shall be entitled" to citizenship upon proof of marriage confers no discretion on the Minister to refuse. The Minister however has said nothing about the application yet. If his decision to expel means that he had in fact refused her application for registration, there is a conflict, if the petitioner's submission is correct, between the words "shall be entitled" in s.7, and s 26 of the Order which provides that a decision by the Minister "shall not be subject to appeal or

/review in any

review in any Court" words stronger than those used in s.40 of the Aliens Control Act 1966 more especially because the Minister has also power to revoke citizenship already given (if by naturalisation or registration) under the provisions of s 23

The difficulties in the Citizenship Order 1971 cannot however be resolved on the present petition which is based on "suspension" of an expulsion order under the Aliens Control Act.

The matter of entitlement of the petitioner's wife to citizenship as of right could conceivably be made on other papers though, on my present reading of the Order, the odds do not favour the petitioner's wife case although I will leave the question whether an executive act, that has the result of separating husband from his wife, if such is proved to be the case, an infringement of the Human Rights Act 1983, (No 24 of 1983) which is yet to come into force, open until its commencement.

I would remind the petitioner that the Minister does have power under s.35 of the Aliens Control Act to revoke, vary, suspend, or reinstate any order given and he might find it profitable to make representation in that direction before embarking on further litigation.

The application is dismissed with costs

CHIEF JUSTICE
9th May 1984

For Applicant Adv Ramodibedi

For Respondents Mr. Mpopo