

IN THE HIGH COURT OF LESOTHO

In the Application of .

TEBOHO CHALANE

Applicant

V

LESOTHO AGRICULTURAL COLLEGE
SOLICITOR GENERAL

1st Respondent
2nd Respondent

J U D G M E N T

Delivered by the Hon. Acting Judge Mr. Justice J L. Kheola
on the 8th day of June, 1984.

On the 29th May, 1984 Mr. Kambule for the Applicant appeared before me in Chambers and moved an Ex parte application for an order in the following terms:

1. That a Rule Nisi be issued returnable on a date to be determined by the above Honourable Court calling upon the Respondents to show cause, if any, why
 - (a) 1st Respondent shall not be ordered to reinstate applicant to the Agricultural College forthwith pending any disciplinary action against him.
2. The 1st Respondent allow applicant to attend classes and practicals and sit for examinations beginning from the 26th June, 1984 pending disciplinary action that may be taken against him by the College.

3. That Respondents pay costs of this application in the event of opposition.
4. That prayer 1 and 2 above operate with immediate effect.
5. That the Rules pertaining to service of notice be dispensed with.
6. Further and/or alternative relief.

Having heard Mr. Kambule I granted the order sought by the applicant but deleted prayer 4. The Rule Nisi was returnable on the 11th June, 1984. In terms of Rule 8(18) of the High Court Rules 1980 the Respondents anticipated the return day and the Applicant's attorneys were properly served with a notice that the matter would be heard on the 8th day of June, 1984. When this matter was called this morning there was no appearance for the Applicant. I allowed Mr. Tampi for the Respondents to address me.

In his founding affidavit the Applicant deposed that he is a final year student at the Lesotho Agricultural College where Mr. Khuele is the principal. He says that on the 27th April, 1984, he received a letter from the principal of the college, purporting to expel him from the College on an allegation of misconduct. The letter reads as follows:

Mr. Teboho S. Chalane,
P.O. Box MS 58,
Maseru - 100.
LESOTHO.

Dear Mr. Chalane,

/re:

re: DISCIPLINARY ACTION.

Following the numerous occasions on which a concern has been raised in regard to your unwelcoming behaviour and conduct, and with particular reference to your suspension from the College for refusing to take instructions from College authority and your recent assault of the Boarding-Master and the College night-watch-men, I regret to inform you that the College can no longer tolerate your presence here. With this note therefore you are to be advised that this College will remain out-of-bounds for you; and your presence in this campus will be regarded as trespassing on Government property.

Yours sincerely,

M.E. KHUELE
ACTING PRINCIPAL

The Applicant further deposed that after receiving the above letter he requested the acting principal to put the matter before the Disciplinary Committee but instead the acting principal asked him to put his plea in writing and present it to him. This he did and his letter dated the 2nd May, 1984 reads as follows:

The Principal,
Lesotho Agric. College,
P/B A4,
MASERU - 100.

Dear Sir,

/fn

In response to your letter dated 25-4-84, "re: Disciplinary action" as taken against me, I regret to inform you that the decision reached does not satisfy me.

Although it may be true that I have assaulted the boarding-master and the night-watch-men as said in the letter, I don't accept the expulsion because I do not think I have trespassed any regulation or law. Again I would appeal to the College to listen for the first time my defence against that report which has been made by that party concerned.

I am very sorry to be informed about my expulsion from the campus whereas I have not been informed of the disciplinary Committee and the decision was made during my absence from College.

I appeal to the College to reconsider the case again in the formal and fair way while I will be continuing my studies.

I promise to explain in front of a disciplinary committee what really took place. Again I cannot find a good or sound reason to reach the conclusion without my consultation but to err is human that's why I beg the College to reconsider the case.

Yours humble student,

T.S. CHALANE.

In his reply to the above letter the acting principal

/reminded

reminded the Applicant that in their conversation on the 1st May, 1984 he had advised the Applicant to put down on paper his plea and also the circumstances and cause why he assaulted the Boarding-Master and the College night-watch-men. He again advised him to do so.

The Applicant says that on receipt of this letter he decided to seek legal advice. He instructed Messrs. T.M. Mda & Co. A long correspondence between the acting principal and Applicant's attorneys followed and culminated in the institution of this application.

The Applicant contends that his purported expulsion has been unprocedural and highly unfair as he was never called upon by the disciplinary committee to state his case. The decision to expel him has been taken arbitrarily by the Principal without consulting the disciplinary committee. On the 14th May, 1984, the Principal caused him to be arrested on the charge of trespassing and he was locked in the Maseru Charge Office and released on the 16th May, 1984 when he was taken before a Magistrate on a charge of assault and his case was remanded to the 15th June, 1984.

In his opposing affidavit Matsau Elton Khuele; acting Principal of the 1st Respondent deposed that on the 5th April, 1984 the Applicant was found outside the women's hostel at about 10.00 p.m. He was confronted by the night-watch-man, Tsoeunyane Lerasa, who told him to leave that area. Lerasa sought the assistance of his colleague Liatla and they together tried to persuade the

/Applicant

Applicant to leave the place as it was against the College Regulations (No.13) to be found in the women's hostel. The Applicant became rude and aggressive and started hurling stones at the watch-men as a result of which Lerasa sustained a fractured arm. The Boarding-Master was called in and the Applicant threw stones at him. On the next day the matter was reported to the police and the Applicant is facing a criminal charge.

The Acting Principal has attached to his opposing affidavit a copy of the Lesotho Agricultural College Regulations and Regulation No.13 provides:

"13. Accommodation:

It must be clearly understood that certain residential accommodation is set aside for students of one sex only. A student of the opposite sex found in this accommodation will be immediately dismissed from the College."

He further says that on a careful review of the facts he found that the Applicant's conduct was outrageous and inconsistent with his status as student of the College. In the interests of maintaining discipline and good order inside the campus premises he dismissed the Applicant from the College. There is nothing in the College Regulations creating a disciplinary committee. It is at best an ad hoc body which the Principal may consult if he found it fit to do so. He says that on the 1st May, 1984 he did give the Applicant a hearing at which he admitted that he had assaulted the Boarding-Master and the night-watch-men

/and

and that the Applicant has no genuine grounds for complaint

Mr. Tampi has submitted that the Applicant is basing his application on the principle of natural justice: audi alteram partem but he contended that this was not a case in which the principle applied. The conduct of the Applicant was so outrageous that if he were given the chance to be heard before the executive head of the College took action this would seriously undermine the authority of the Principal at the College. He referred me to the case of Van Wyk, N.O and another v. Van der Merwe, 1957(1) S.A. 181 at p. 188 where Schreiner, J.A. said:

"The only other reason suggested for non-applicability of audi alteram partem was that there might be cases where it would be wrong to let a pupil stay any time at all in the school. That may be so but as was pointed out in Ngwevela's case, supra, where that is the position it is permissible to depart from the principle. But the circumstances of the present case clearly do not bring it within the class of what may be called emergency cases."

The case of Van Wyk differs from the present case in that a pupil had assaulted another pupil by hitting him on the face and stomach with a fist. The victim had sustained no injuries at all. In the present case the Applicant first breached Regulation No.13 by going to the women's hostel at night. When the two night-watch-men asked him to leave he became aggressive and started hurling stones at them. He hit one of them on the arm and fractured it. The Boarding-Master was called but the Applicant threw

/stones

stones at him. In my view this was a very serious misconduct and open defiance of the authority of the College which necessitated urgent and drastic steps to be taken against the student. I am of the opinion that the present case was a proper case where the Principal had to depart from the principle stated above. The Principal was justified to dismiss him forthwith in the interest of good discipline and order at the College.

The acting Principal subsequently gave him the opportunity to be heard and the Applicant admitted in writing that he assaulted the Boarding-Master and the night-watch-men in his letter (supra).

I have again considered Regulation No.13, supra, and my interpretation of this Regulation is that it expressly exclude the principle audi alteram partem because it provides that a student of the opposite sex found in this accommodation will be immediately dismissed from the College. I think the word "immediately" means that the expulsion must "occur at once" without given the student the opportunity to be heard. A quick glance at Regulation No.13 may give one the impression that it is not only unfair but unreasonable to expel the student before he/she is heard. But on a proper consideration of the Regulation one would find that a student who intends to go to the hostel set aside for students of the opposite sex will almost invariably have the chance to see the boarding-master or any teacher before he can enter such hostel.

I can see no emergency that would compel a male student to go to the women's hostel without first obtaining permission from the boarding-master or any member of the staff. The Applicant has not shown the existence of any emergency on the night of the 5th April, 1984 that compelled him to go to the women's hostel before obtaining permission from the authorities.

For the reasons stated above the rule is discharged with costs to the Respondents.

ACTING JUDGE.

8th June, 1984.

For the Applicant : Mr. Kambule

For the Respondents . Mr. Tamp1.