

IN THE HIGH COURT OF LESOTHO

In the Application of :

WILLIAM LEMENA	1st Applicant
MESHACK PETLANE	2nd Applicant
SUSAN XOKELELO	3rd Applicant
MAKOU CHERE	4th Applicant
MOTLATSI DUPLISI	5th Applicant
THOLOANA	6th Applicant
ELIZABETH SENGOAI	7th Applicant
COLLIARD MONATHI PALI	8th Applicant
NTHALANE	9th Applicant
TSELISO MOKHETHI	10th Applicant
MATSEKO RAMAOTO	11th Applicant
MATEKANE	12th Applicant

v

I. NURCOMBE	1st Respondent
BOARD OF GOVERNORS OF LESOTHO HIGH SCHOOL	2nd Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice Mr. Justice T.S. Cotran  
on the 10th day of August 1984

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On the 25th July 1984 I dismissed this application with costs and said reasons will be filed later. These now follow:-

The twelve applicants are the fathers or mothers or guardians of twelve pupils, ranging in age between 14 and 21, who were expelled from Lesotho High School. The respondents are the headmaster and the Board of Governors. The expulsion took place by letter dated the 4th May 1984 after an incident on the late afternoon of the 3rd May 1984 (about 5 p.m.) when a number of pupils, their faces covered either with O.K. Bazaar bags or balaclava hats, converged on the residence of the headmaster and - to say the least - tampered with the doors and windows of his house. The

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object of the "raid", according to the headmaster, was to break in and assault him, whilst according to the pupils who admitted taking part, it was no raid at all but a visit to ask the headmaster why the school authorities had "unfairly expelled" a student colleague of theirs and to request his readmission. The headmaster in his opposing affidavit, refutes what the students, or some of them say. The headmaster's affidavit has by far more a ring of truth in it than the combined effect of what the students say, but whatever the real truth, the raid was carried out, quite obviously in my view, with intent to intimidate the headmaster, and though apparently he was not himself intimidated, it did in fact intimidate his wife who "screamed".

Well now the headmaster and his staff dealt with the affair soon after it occurred and by the following day were satisfied that the twelve students, who now apply for an order of readmission, took part in the raid. The apparent ring leader was Amohelang Lemena, aged 17, who had been caught the previous day in compromising circumstances with one of the girl pupils. The headmaster decided that Amohelang should become a day boy and had informed his father Mr. William Lemena to come and collect him from school that same evening, and as luck would have it, Mr. Lemena was driving into the school compound while investigations of the raid were actually in progress. He stopped and witnessed, and indeed took part in interrogating his own son, who admitted taking part in the raid.

Some of the students named admitted taking part some denied but they were all questioned. I really cannot understand what

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attorney for applicants means that no opportunity was given to the students allegedly involved to be heard. They were heard and their denial was not accepted. A court of Law ought not to interfere in school discipline unless there are very good reasons. The position might be somewhat different when a high educational institution, such as a university, takes a measure which an aggrieved party feels was unwarranted or contrary to law and discharges the onus of proving that that was so, but as a matter of policy the Courts should not entertain applications below that level. The case of Van Wyk N.O. & An. v Van der Merwe 1957 1 SA 181 has no application here. The only statute in Lesotho that governs the case is the Education Order 1971 (Vol. XVI Laws of Lesotho 1971 p.121 et seq as amended) and the ineptly called (because it also deals with discipline of students) the Teaching Service Regulations 1974 (L.N. 3 of 74 Vol. XIX Laws of Lesotho p.109) made thereunder. Reg. 13(10) gives the headteacher or headmaster or principal power to expel a student. That person, however, is not a dictator and is subject to control because there is a requirement that the manager or the school committee or the board of governors have to be advised as well as the Permanent Secretary to Education who has the power to order or initiate an inquiry and to direct the readmission of the pupil if he feels that the advice of the headmaster, headteacher or principal, as the case may be, was high-handed, illegal or unjustified.

Here the headmaster was faced with an emergency. It was necessary to take immediate action. Action was taken after due process. Due process here does not mean a charge sheet, counsel for the prosecution and for the defence and the paraphernalia

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associated with a court trial. I am not persuaded that the rules of natural justice have not been complied with. The legislature has provided that the Permanent Secretary to Education is the person responsible for anyone seeking a remedy. I have no evidence whatsoever that that functionary has exercised his discretion in bad faith or maliciously that warrants the interference by the High Court.



CHIEF JUSTICE

10th August 1984

For Applicants : Mr. Tsotsi

For Respondents : Mr. Tampi