

IN THE HIGH COURT OF LESOTHO

In the Application of :

LEBOHANG ANDREAS 'MABATHOANA Applicant

and

THE SOLICITOR-GENERAL 1st Respondent
THE ACCOUNTANT-GENERAL 2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 27th day of August, 1986-

This is an application for an order directing the Respondents to pay compulsory savings to the applicant, costs of the application, further and/or alternative relief. The application was filed with the Registrar of this court on 19th December, 1983, on 19th January, 1984, the Respondents entered appearance to defend this application. The founding and the answering affidavits were filed by the Applicant and the Respondents, respectively. No replying affidavit was, however, filed by the Applicant.

The facts disclosed by the affidavits are that on 1st October, 1980, the Applicant was employed by the Lesotho Government and attached to the Ministry of Rural Community Development and Co-operatives as a Senior Technical Officer. As such the applicant became subject to Compulsory Savings Act No. 26 of 1974 (as amended) and deductions were made from his salary at the rate of 10% per month. However, on 22nd September, 1981 the applicant and four (4) others were convicted under CR 137/81, of stealing 605 bags of cement valued at M2,000, the property of the Lesotho Government. Following his criminal conviction, the Applicant was dismissed from the civil service. In August, 1983, the applicant made an application for payment of his Compulsory Savings but was informed, on 29th November, 1983, that his file could not be traced. Applicant submits that he was entitled

2/ to payment

to payment of his compulsory savings at the time of his dismissal. Wherefor he applied for an order as aforesaid.

The Respondents conceded that at the time the Applicant applied for payment of compulsory savings his file could not be traced. However, the file had since been traced and the applicant's compulsory savings calculated to be M381. As the applicant had been convicted of stealing Government property valued at M2,000 the criminal judgment had the effect of a civil judgment on the basis of which the Government was entitled to recover the amount from the applicant. The applicant's compulsory savings was, therefore, withheld to set-off the claim of the Government against him. Consequently the Respondents denied the submission made by the applicant viz. that he was entitled to payment of his compulsory savings at the time of his dismissal.

It is clear from the affidavits that when the applicant joined the civil service in the Government of Lesotho, compulsory savings was deducted from his salary at the rate of 10% per month. That granted, there can be no doubt that his compulsory savings fell to be governed by the provisions of the Compulsory Savings Act No. 26 of 1974 (as amended) of which S.5(1)(b) provides:

"5(1) no withdrawals may be made from any accounts created pursuant to section 3 -

(a)

(b) in the case of a 10% deduction, until a period of 3 years, has elapsed from the date of the first credit or deposit to the account."

In the present case the applicant joined the civil service on 1st October, 1980. In terms of the provisions of the above cited S.5(1)(b) his compulsory savings was not due for payment until a period of 3 years had elapsed i.e. until 1st October, 1983. The applicant was wrong, therefore, in his submission that he was entitled to payment of

3/ his compulsory

his compulsory savings at the time of his dismissal in 1981 unless, of course, it could be said that the Permanent Secretary for Finance had authorised payment in accordance with the provisions of Subsection (2) of section 5 of the Compulsory Savings Act, supra. The subsection reads:


- " (2) The Permanent Secretary for Finance may authorise withdrawal in advance of the date upon which a withdrawal would otherwise have been permissible where the civil servant -
- (i) dies or his estate is sequestrated; or
 - (ii) is a woman and marries; or
 - (iii) proves to the satisfaction of the Permanent Secretary for Finance that owing to continued ill-health or infirmity his financial circumstances justify a withdrawal; or
 - (iv) retires or resigns from the public service."

Although the applicant averred that in August, 1983 he applied for payment of his compulsory savings there was no evidence that the Permanent Secretary for Finance did authorise any such payment. It is to be borne in mind that when on 1st October, 1983 his compulsory savings became due for payment, the applicant had already been convicted for theft of Government property, admittedly valued at M2,000.00. As the Respondents rightly pointed out, the criminal judgment had the effect of a civil judgment on the basis of which the Government was entitled to recover from the applicant and his co-accused the amount of M2,000.00.- See the Criminal Procedure and Evidence Act, 1981 of which S.322(1) reads as follows:

- "322. (1) When any person is convicted by any court of an offence involving damage or loss of Government property, the conviction shall in respect of the loss or damage sustained by Government have the effect of a civil judgment for the payment of money, and shall be enforced in the same manner as any other judgment for payment of money in a civil court."

On the foregoing, there is no doubt in my mind that as from the date of his conviction in 1981, the applicant was indebted to the Government in the amount of M2,000.00. Likewise when the applicant's compulsory savings became due for payment on 1st October, 1983, the Government was indebted to him to the tune of M381.00. It follows, therefore, that when, on 19th December, 1983, the applicant instituted these proceedings against the Respondents, the parties were mutually indebted to each other and both debts were of a liquidated nature and fully due. That being so, it seems to me that the applicant's claim for compulsory savings in the amount of M381 must be regarded as having been extinguished from 1st October, 1983 i.e. the time it existed together with the Respondents's claim of M2,000-00.

In the result, it seems to me that the applicant is not entitled to the reliefs sought in the application which is accordingly dismissed with costs.


B.K. MOLAI
JUDGE

For Applicant : Mr. Nthethe
For Respondent : Miss Bohloa