

IN THE HIGH COURT OF LESOTHO

In the Application of :

GERARD MOFO MOTSELEBANE	1st Applicant
ABIEL MAHLELEBE NTSASA	2nd Applicant
FRANCIS KABELI NKUOATSANA	3rd Applicant

V

THE ADJUDICATOR (PSC)	
MR. MOPELI QHOBELA	1st Respondent
THE SOLICITOR-GENERAL	2nd Respondent
THE MINISTER RESPONSIBLE FOR THE PUBLIC SERVICE	3rd Respondent
THE MINISTRY OF AGRICULTURE	4th 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.

The applicants herein have moved the Court for an order framed in the following terms :

- "1. Commanding the first Respondent, Public Service Commission to deliver the record of disciplinary proceedings and his finding in a case No. 28/83;
2. Calling upon the second, third and fourth Respondents to show cause why these proceedings and the finding of the first Respondent should not be set aside;
3. Calling upon the second, third and fourth Respondents to show cause why the decision of the Minister responsible for Public Service dated the 8th September, 1983 dismissing the applicants from the employment of the Lesotho Government should not be set aside;
4. Calling upon the second, third and fourth Respondents to show cause why the applicants should not be re-instated in the Ministry of Agriculture forthwith;

5. Calling upon the second, third and fourth Respondents to show cause why they should not pay the costs of this application.
6. Further and/or alternative relief.

The Respondents intimated their intention to oppose this application and the founding, answering and replying affidavits were duly filed by the parties. Although he opposed this matter the first Respondent did deliver the record of the disciplinary proceedings in compliance with prayer one (1) of the notice of motion.

It appears from the record of the disciplinary proceedings that on 17th June, 1983 the applicants were charged before the first Respondent, the adjudicator, with two counts of breach of discipline, viz, contraventions of S. 10(1) (m) and S. 10(1) (c) of the Public Service Order No. 21 of 1970 (as amended), it being alleged :

Count 1: In that on or about 7th day of April, 1983 at or near Mokhotlong district the said public officers did improperly use certain property or stores, to wit Government vehicle Y. 6472 that was for the time being in their official custody and control by taking an unauthorised trip or journey from Mokhotlong to Himeville or did fail to account for or to take reasonable care of such property and as a result the said vehicle was seized from them by an unknown person or persons, resulting in the loss of the said vehicle and damage to Government in the sum of M12,190."

Count 11: In that upon or about the 5th day of April, 1983 and at or near Research Station in the district of Maseru, the said officers did wrongfully and unlawfully fail, disobey, disregard or make wilful or negligent default in carrying out an order or instructions, to wit, by taking a journey or trip from Maseru to Hemiville without a written approval by Director of Research."

When on 21st June, 1983 the charges were put to them

/the applicants

the applicants pleaded guilty. Miss 'Mamohlakala Molapo who represented the Crown in the disciplinary case accepted the plea of guilty tendered by the applicants and called the Director of Research to outline the facts of the evidence the Crown would have adduced had the applicants pleaded not guilty.

The facts, and these were admitted as correct by the applicants, outlined by Mr. Ntsekhe, the Director of Research in the Ministry of Agriculture, were very brief and I can do no better than to quote :

"The three officers went out to Mokhotlong on duty to look at pastural areas. While on duty they decided to go to Hemiville in Republic of South Africa still in connection with pastures. They had not obtained permission to go there. They left Sani Top for Heméville and just after crossing Lesotho/RSA border 9 km. into Republic of South Africa, they were interrupted by unknown people who seized the vehicle in which they were travelling. They left them bound up hand and feet and were threatened with firearms. After sometime they managed to free themselves and reported to RSA. police and also Lesotho Police. By doing these the three officers have contravened Public Service Order 10(1) (i) and (10)(1) (m). Public Service Order 21/70 as amended by Act 8/73. The officers were detained by Police and on release they admitted contravening the Order as charged and pleaded for forgiveness. A loss report in respect of the vehicle has been prepared and I am still awaiting reply from the Ministry of Finance. I have no power to forgive the officers and hence I charged them. They are still at work now are showing good sign of repentence. The value of the vehicle lost is M1291.00 and vehicle was brand new. The three officers charged each and all accepted the summary by Department Prosecutor. "

It was on this evidence that the Adjudicator found that the breaches of discipline charged against the applicants had been proved. He made two recommendations viz. that the applicants should be removed from office by way of dismissal and strong efforts be made to recover

/from them,

from them, jointly and severally, the sum of M12190 being the value of the vehicle that had been lost. It is common cause that the applicants were accordingly dismissed from the civil service by the third Respondent.

The case made by the applicants in their affidavits is that they were, at all material time, under the supervision of one Lebohang Manoto, who had in fact instructed them to take the trip to Hemeville, the Republic of South Africa. They cannot therefore be penalised for having taken the trip in obedience to the instructions of their supervisor officer, Lebohang Manoto. More particularly so because on previous missions to Mokhotlong they had taken trips to Hemeville on the instructions of another superior officer who was then a white person.

As regards their plea of guilty the applicants averred that the Director of Research had, to their great prejudice, presurised them into admitting the charges by making them promises of leniency. In support of that averment the applicants referred the court to annexures "L" and "M".

In his affidavit the Director of Research under whose immediate supervision the applicants worked denied that Lebohang Manoto was senior to them. He averred that Lebohang Manoto was in fact a daily paid officer undergoing an on the job training and, therefore, the most junior officer in the mission that he had sent to Mokhotlong on 5th April, 1983. Precisely because he was not yet employed on permanent or pensionable establishment. Lebohang Manoto could not be charged under the same

/regulations.

regulations as those governing the applicants. He had to be charged separately under the regulations or the law pertaining to his terms of employment.

In their affidavits the applicants did not dispute that before they were charged with breaches of discipline they were requested to submit reports about their trip to Hemeville and they complied (annexures "D", "F" and "H"). It is significant to note that nowhere in those reports did any of the applicants disclose that the trip to Hemeville was taken in obedience to the instructions of Lebohang Manoto. On the contrary it is clear from the reports (annexures D, F and H) that the trip was taken pursuant to the decision of the group as a whole. There can be no doubt, therefore, that the applicants' suggestion that Lebohang Manoto had instructed them to take the trip to Hemeville was an after-thought which the adjudicator rightly rejected in my view.

The Director of the Research denied knowledge of previous visits to Hemeville allegedly taken by the applicants under the instructions of their white senior officer. If such visits were, indeed, taken it was without his authorisation and they were, for that reason, unlawful. In my view, applicants' suggestion that because on previous occasions unauthorised trips were taken to Hemeville they were, therefore, justified to go there without the approval of the Director of Research makes no sense for the simple reason that two wrongs never make a right.

The Director of Research denied having presurised

/the applicants

the applicants to plead guilty to the charges by making false promises of leniency to them. I have read through annexures "M" and "L" dated 11th July 1983 and 2nd August 1983, respectively. In the first place the annexures were written after the applicants had already pleaded to the charges and could not, therefore, have influenced them in their plea of guilty. Secondly a careful reading of these annexures leaves no doubt that they were the Director of Research's plea in mitigation on behalf of the applicants themselves, and not an attempt to persuade them to make a plea of guilty which they had long tendered before the adjudicator.

In the premises, I am unable to find that there was either a real likelihood or reasonable suspicion of bias in these proceedings. The application is, therefore, dismissed with costs.

J U D G E.

27th August, 1986.

For Applicant : Mr. Mphutlane
For Respondent : Mr. Mafisa