

IN THE HIGH COURT OF LESOTHO

In the Application of:

CHIEF LEABUA JONATHAN

Applicant

and

COMMISSIONER OF POLICE  
ATTORNEY GENERAL

1st Respondent  
2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 15th day of September, 1986.

On 4th September, 1986, the Applicant herein filed with the Registrar of this Court an urgent application in which he moved the court for an order framed in the following terms:

- "1. Declaring that orders by Respondent in letter to Applicant dated 20th August, 1986 are invalid, of no force and effect and the Applicant need not to abide by them nor heed the same.
2. Respondents to pay costs of this application in the event of their opposing same.
3. Granting the Applicant further and/or alternative relief."

On 5th September, 1986 the Respondents intimated their intention to oppose this application. Both the founding and the answering affidavits were filed by the applicant and the Respondents, respectively. No Replying affidavit was, however, filed by the Applicant.

It is common cause from the affidavits that on 20th August, 1986, 1st Respondent caused a letter, annexure A, to be served upon the Applicant. It reads as follows, in part:

2/ "Chief Leabua Jonathan,

"Chief Leabua Jonathan,  
Ha Rakolo.

Dear Chief,

Due to your recent political activities which are prejudicial to public safety and public order, you are henceforth and with effect from your being served with this order, expected and ordered to confine your movements within the boundaries of the site of your residence until further notice. Only members of your immediate family are allowed access to you.

In the event that you find yourself compelled to move beyond the area you have been restricted to, you are ordered to notify the nearest Police Station to you.

By order,

(Signed) James Lebitso Dingiswayo  
COMMISSIONER OF POLICE"

In his founding affidavit, the applicant averred, inter alia, that the letter, annexure A, dated 20th August, 1986 purported to be a restriction order against him. Annexure A was, however vague as to the reasons for the purported order, its terms and the authority upon which it was made for he knew of no actions or omissions by him which could, in good faith, be considered prejudicial to public safety or public order. Nor, indeed, did he know of the authority which 1st Respondent had, in law, to make such an order.

Notwithstanding its patent invalidity applicant had however, been advised that it would be unwise or improper for him to simply ignore the purported order. The applicant contended that as the purported order impinged on his liberty and implied a threat that action would be taken against him, should he fail to observe the terms thereof he was prejudiced and it was, therefore, a matter of pressing urgency that clarity should be obtained by a declaratory order of this court. Wherefor, he moved the court for an order as aforesaid.

3/ In his .....

In his answering affidavit, 1st Respondent deposed that he was the Acting Commissioner of Police. As Commissioner of Police he was subject to the general directions of the minister and had command and superintendence over the entire Police Force whose duty was to preserve the peace and take remedial action for the prevention and detection of crime. He had in his possession credible information that applicant was engaged in activities which caused internal dissensions and indulged in subversive activities which if left unchecked would, in his opinion, have undermined public peace, tranquility and national reconciliation within the Kingdom of Lesotho. He was unable, to give any details of such information as it was extremely sensitive and disclosure thereof would prejudice national and public security. However, the interest of Public safety demanded that for the preservation thereof he should take immediate action to restrict the movements of the applicant. Wherefor on 20th August, 1986 he wrote to applicant annexure A which was a restriction order. 1st Respondent further deposed that in terms of Section 24A of the Internal Security (Amendment) Order 1986 which came into force on 1st August, 1986 he was entitled to issue restriction order if, in his opinion, the person to whom it was issued was conducting himself in a manner which was prejudicial to public order and security of Lesotho. On information received he had formed the opinion that the applicant was conducting himself in a manner highly prejudicial to public order and security of Lesotho. On 7th September, 1986 he, therefore, issued against the applicant another order which reinforced the earlier one dated 20th August, 1986.

It is significant to note that no law had been cited as authority for the 1st Respondent to issue a restriction order, such as the one embodied in annexure A, against the applicant or any other person for that matter. In his answering affidavit the 1st Respondent has, however, deposed that as the Commissioner of Police he was subject to the General directions of the minister thus suggesting that he was authorised so to act by the minister's general directions vested in him. It seems to me, what the 1st Respondent had in mind was the Police Order No. 26 of

of 1971 of which section 5(1) provides:

"5(1) The commissioner shall subject to the general directions of the minister, have the command and superintendence of of the Force."

In my view, the general directions of the minister under which the 1st Respondent is authorised to act relate to the government of the Police Force. I am fortified in this view by the provision of the subsequent subsection (2) which clearly reads:

"(2) The commissioner may issue or approve such orders and direction for the government of the Force as he may deem necessary."

There can be no doubt, therefore, that Section 5 of the Police Order 1971 is no authority that 1st Respondent is empowered to issue orders relating to the applicant who is not a member of the Police Force. From a proper reading of annexure A, it is abundantly clear that the grounds upon which it was decided to act against him was that there was information that applicant engaged in subversive activities likely to endanger public safety and public order. Assuming the correctness of the information that the applicant indulged in subversive activities it seems to me that the relevant law under which lawful steps could be taken against him was the Internal Security (General) Act No.24 of 1984. However, that Act made no provision for the Commissioner of Police to issue restriction orders against persons involved in subversive activities. What section 13(1) of the Internal Security (General) Act, supra, empowers members of the Police Force to do is to arrest any such persons. The section reads:

"13(1) A member of the Police Force may arrest without warrant a person whom he reasonably suspects to be a person involved in subversive activity."

That the Internal Security (General) Act No. 24 of 1984 had no provision authorising members of the Police Force to make prohibition orders against persons involved in subversive activities is evidenced by the fact that on 4th September, 1986 the Legislature had to enact the Internal

Security (Amendment) Order No. 21 of 1986 by which the Principal Act was amended by the insertion, after section 24, of Section 24A which reads, in part:

"24A(1) The Commissioner may, subject to the approval of the minister, issue a restriction order to a person who in his opinion is conducting himself in a manner prejudicial to public order, the Security of Lesotho, the administration of justice or obedience to the law or lawful authority."

If the Internal Security (General) Act No. 24 of 1984 had a provision authorising members of the police Force to make restriction orders there would have been no need for the legislature to amend it by the Internal Security (Amendment) Order No. 21 of 1986. It may also be observed that whilst in terms of section 2 of the Police Order No. 26 of 1971 the definition of the word "Commissioner" includes the Acting Commissioner of Police, the word "Commissioner" under section 3(1) of the Internal Security (General) Act No. 24 of 1984 is simply defined as meaning "the Commissioner of Lesotho Mounted Police" and does not include the Acting Commissioner of Police. It cannot therefore be said that the Acting Commissioner of Police is the Commissioner of Police for purposes of the Internal Security (General) Act No. 24 of 1984.

There is not the slightest doubt in my mind that when on 20th August 1986 the 1st Respondent issued the restriction order against the applicant there was no law authorising him to do so. His action was, therefore, ultra vires and for that reason of no legal force. That is, however, not the end of the story for when on 4th September, 1986 the Internal Security (Amendment) Order No. 21 of 1986 came into being the Legislature enacted that it was deemed to have come into operation on 1st August, 1986. The effect of this was to legalise 1st Respondent's restriction order (annexure A) of 20th August 1986 which was otherwise illegal. There are, however, two problems which seem to bedevil the restriction order (annexure A). Firstly the Internal Security (Amendment) order, 1986 does not amend the definition of the term "commissioner" under the interpretation section 3(1) of the Principal Act. The 1st Respondent as the Acting Commissioner

of Police remains excluded in the definition of the term "commissioner" and, it seems to me cannot be regarded as such for purposes of the Internal Security (General) Act 1984. Granted that as the Acting Commissioner of Police 1st Respondent is not the "Commissioner" within the meaning of the Internal Security (General) Act No. 24 of 1984 it follows that he cannot lawfully issue restriction orders under section 24A of the Internal Security (Amendment) order No. 21 of 1986. Secondly S. 24A (2) of the Internal Security (Amendment) order No. 21 of 1986 provides:

"(2) A restriction order shall be in writing and shall become effective from the date of issue:

Provided that if after 14 days from the date of issue the minister does not approve the order it shall lapse forthwith."

The restriction order (annexure A) was issued against the applicant on 20th August, 1986. The 14 days referred to under the proviso to the above cited subsection (2) expired on 4th September, 1986. There is no suggestion that the minister had approved the restriction order on or before 4th September, 1986. It must, therefore, be accepted that when on 4th September, 1986 the 14 days expired without the minister approving it, the restriction order lapsed and had no legal force. That being so, the applicant cannot, in law be expected to abide by it.

This should be enough to dispose of the matter for the other order dated 7th September, 1986 was non-existent at the time the applicant instituted these proceedings. It cannot, therefore, be the order in respect of which this Court is required to adjudicate.

In the result, it is obvious that the view that I take is that this application ought to succeed and it is accordingly granted in terms of prayers 1 and 2 of the notice of motion.

B.K. MOLAI

JUDGE

15th September, 1986.

For Applicant : Mr. Sapier  
For Respondent : Mr. Mguluma.