CIV/APN/203/85

IN THE HIGH COURT OF LESOTHO

In the Application of :

KOATSA KOATSA Applicant

v.

N U L Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice J.L. Kheola
on the 16th day of April, 1986

In this application the applicant is seeking an order in the following terms:

"1. Directing the respondent to show cause why the purported dismissal and or termination of applicant's appointment with respondent by the respondent shall not be reviewed and set aside.

2. Directing the respondent to re-instate applicant in his position as Security Guard of respondent with effect from the 9th November, 1983.

3. Directing the respondent to pay applicant arrears of salary with effect from the 9th November, 1983, plus interest at the rate of 22 per cent per annum with effect from the institution of these proceedings; or alternatively.

4. Directing Respondent to pay to applicant damages arising out of the wrongful and unlawful dismissal or termination of the appointment of applicant calculated at the rate of per month with effect from the 9th November, 1983 until the the age of retirement of applicant at the age of sixty-five (65) years;

5. Directing the respondent to pay the costs of this application.

6. Granting applicant such further and/or alternative relief as this Honourable Court may deem meet."

The facts of this case are common cause and may be summarized as follows:-

(a) On the 27th November, 1975 the applicant was appointed by the respondent to the permanent and pensionable establishment as a security guard.

(b) The appointment was subject to completion of a probationary period of one year with effect from the 1st January, 1976. The appointment was confirmed on the 18th July, 1977.

(c) In terms of clause 4 of the contract of service the applicant could resign his appointment and the respondent could terminate such appointment by giving one calendar month's notice, in either case without assigning any reason therefor.

(d) On the 2nd September, 1983 the applicant appeared before the Non-Academic Staff Discipline Committee on a charge of having assaulted a certain Mrs. Motsieloa who was then a registered student of the respondent but who stayed off campus.

(e) Having heard the evidence of both Mrs. Motsieloa and the applicant and read some written reports made by some officials of the respondent, the Non-Academic Staff Discipline Committee found the Applicant guilty as charged. The applicant was given a very strong and last warning as punishment in terms of Ordinance No.11, 4.6 of the respondent.

(f) On the 4th November, 1983 the Council of the respondent terminated applicant's appointment with immediate effect after it had considered the report of the Non-Academic Staff Appointments Committee and its Staff Discipline Committee. The applicant was given one month's pay in lieu of notice and some other terminal benefits.

(g) On the 22nd November, 1983 the applicant noted an appeal against the decision of the Council to dismiss him. The appeal was heard on the 15th June, 1984 and the Council decided to call for full documentation with regard to the case of Mrs. Motsieloa.

(h) On the 12th October, 1984 the respondent's Council again met and received full documentation of Mrs. Motsieloa's case and confirmed applicant's dismissal.

The applicant is now asking the Court to review the decision of the Council and to set it aside as being unlawful, null and void, of no legal force and effect on a number of grounds. The first ground is that once his appointment had been confirmed it was not competent for respondent to terminate such appointment by giving him one month's notice or payment of one month's salary in lieu thereof otherwise than in compliance with the provisions of section 13 (2) (a) of the National University Act No.10 of 1976, read with Statute 28 (13) of the respondent. There is altogether no

substance in this ground. Section 13 (2) (a) gives the council power to dismiss any member of staff who has engaged in any conduct rendering him unfit to hold his appointment. I am of the view that assault of a student of the university by a security guard of the university is conduct envisaged by section 13 (2) (a). Statute 28 (13) is not relevant to these proceedings because it deals with members of Non-Academic Staff who are not citizens of Lesotho. The applicant is a citizen of Lesotho.

The appointment of the applicant was governed by not only the National University Act of 1976, the Statute and the Ordinances but by the Regulations governing the appointment and dismissal of staff which were annexed to applicants letter of first appointment. Under the heading: Duration of Contracts at page 4 (c) (11) the contract is determinable by the employer on not less than one month's notice (see annexure "J.M.P. 2" page 4 (d) and appendix D at page 4 (c) (11).

The second ground is that to the extent that the termination of his employment purported to have been done in accordance with the provisions of the Act, the Statute and the Ordinances such termination was an improper exercise of the discretion reposed in the respondent in that no good and sufficient cause existed for such termination as the Non-Academic Staff Appointment Committee had no power to recommend termination of his appointment for lack of jurisdiction in matters of discipline. The only Committee with such competence, the Non-Academic Staff Discipline Committee had only imposed a punishment of a strong and last warning. Mr. Mphutlane, for the applicant further submitted that the decision of the respondent's Non-Academic staff Discipline Committee was binding on the Council and that the latter had no power to impose another sentence of dismissal of the applicant. The point that I wish to clarify is that the Council is the supreme governing body of the respondent. It meets at regular intervals but some of its members are not residents of the Roma campus. When it meets at Roma

campus it considers a number of matters concerning the university including reports by bodies created by the Act and Statutes as well as the Ordinances. The Non-Academic Staff Appointment Committee is one of such bodies (Statute 25 (1)). The Non-Academic Staff Discipline Committee is appointed by the Non-Academic Staff Appointments Committee (Ordinance 11, 4.1).

It is not correct that the Non-Academic Staff Appointment's Committee recommended to the Council that the applicant be dismissed. There is no evidence in the papers before me that such a recommendation was made. What appears to be the position is that the Non-Academic Staff Appointments Committee made its report that a member of staff had been found guilty of assault and given a strong and last warning. That report had to be made to the Council and the Staff Appointments Committee is the appropriate body to make such report because it was a matter concerning a member of staff. The Non-Academic Staff Discipline Committee makes its reports to the Staff Appointments Committee by which it is appointed. It does not directly report to the Council. The Non-Academic Staff Appointments Committee was exercising its rights under Statute 25. Even if it made a recommendation that the applicant be dismissed that would not be ultra vires because he who is given power to recommend appointments of staff is presumed to have the power to recommend the dismissal. However, there is no evidence that a recommendation for dismissal was made by the staff Appointments Committee. The Council considered the matter and decided that the applicant had to be dismissed. There is no suggestion that the audi alteram partem rule was not followed. The applicant was given a chance to argue his case before the Council but failed to persuade them that the dismissal was unfounded. The Council even called for full documentation of the case in which the applicant had been involved and confirmed the dismissal.

Although the respondent was not required by the terms of the contract of service between itself and the applicant to give the reason for the

termination of the contract of service, in fairness to the applicant the reason was given. The respondent is therefore bound to show that good a sufficient cause existed for termination of the contract. The job of a security officer is not only to look after the property of the university but also to guard the welfare of the students. A security guard who assaults a student is guilty of a very serious breach of discipline and it may be regarded as a good and sufficient cause for a dismissal. I am of the view that the respondent's Council was justified to dismiss the applicant on the basis that he had been convicted of assault of Mrs. Motsieloa. It was also not the first time that the applicant had been found guilty of assault; in the case of assault on Miss Seqojane the applicant was found guilty by the Staff Discipline Committee and the Staff Appointments Committee sentenced him to a six months' suspension from work. This decision was reversed because the Non-Academic Staff Appointments Committee had no powers to deal with the matter.

The case of assault of Miss Seqojane was dismissed on technical grounds and not on the ground that there had been no assault. The Council was well aware of this when the case of Mrs. Motsieloa came before them. I do not think that the Council had no power to dismiss the applicant simply because a certain committee had imposed a lighter sentence. The power to dismiss a member of the staff of the respondent is reposed in the Council of the respondent. And in exercising this power the Council must show good and sufficient cause. As I have stated earlier in this judgment a conviction of assault of a student by a security guard is a sufficient cause. The assault is alleged to have been of a very indecent nature in which a man dragged a naked woman out of the shower curtain and beat her up. The mere fact that no injuries were found on the body of Mrs. Motsieloa does not necessarily mean that the indecent assault never took place.

The third ground is that the staff Discipline Committee acted on insufficient and hearsay evidence. I shall first deal with the so called

hearsay evidence. The first one is a report by the Dean of Student Affairs to the Chief Security Guard in which she informs the Chief Security that Mrs. Motsieloa has made a report to her that the applicant had assaulted her. She made a suggestion that the applicant be given a chance to say what he knows about the allegation. This report is of no evidential value and cannot be regarded as hearsay evidence. The second one is a memorandum from the security officer to S.A.R.C. (Appts). The Security Officer states that Mrs. Motsieloa made a report to him and he suggested that she must take her complaint to a court of law because at the relevant time the applicant was not on duty but on a sick leave. He refused to make any preliminary investigation of the matter. This memorandum is not evidence that the applicant assaulted the complainant in the case. The fact that the applicant was on leave is neither here nor there because the applicant never raised it at any stage before the Staff Discipline Committee, the Council nor before this Court.

The submission that there was insufficient evidence before the Staff Discipline Committee on which it found the applicant guilty is untenable. It was submitted that the only admissible evidence in the case was the word of the complainant against that of the applicant and that such evidence was not even properly recorded. I must at once emphasise that the Non-Academic Staff Discipline Committee is not a court of record like our courts of law. The members of the Committee hear oral evidence and minutes are recorded. These are the minutes upon which the Council relied. I have read them and found them to be fair notes of what transpired in that meeting.

I agree that the evidence before the Committee was the word of the complainant against that of the applicant. I do not find anything wrong with that. I have had cases before me in which the only evidence for the Crown was that of the complainant as against that of the accused. In some of those cases I convicted the accused because our law provides that a

conviction can be sustained on the evidence of a single, credible and competent witness. The question of credibility and demeanour in general is very decisive in a case based on the evidence of a single and credible witness. The Staff Discipline Committee must have taken into account not only the words of the parties but also the demeanour of the witnesses. I cannot upset their finding on that fact unless they are shown to have acted wrongly.

It was also argued that as the acts complained of are acts or behaviour which are regarded as criminal offence under the laws of Lesotho, they had to be reported to the Registrar and to the Police for action by the courts. (Ordinance 11, 4.3). There is no doubt that assault is a criminal offence under the laws of this country but it can also be regarded as a disorderly conduct (Ordinance 11, 4.2) for which the respondent was entitled to take a disciplinary action. It seems to me that dragging a naked woman out of the shower was not only an indecent conduct but was also a very disorderly conduct. The applicant had no right to enter into the ladys' bathroom when he was well aware that the complainant was having a bath.

For the reasons stated above the application is dismissed with costs to the respondent.

J.L. KHEOLA
J U D G E .

16th April, 1986.

For Applicant - Mr. Mphutlane
For Respondent - Mr. Matsau.