

IN THE HIGH COURT OF LESOTHO

In the Application of :

RAYMOND QHOBELA

Applicant

V

MOTSEKI NKIANE	1st Respondent
COMMISSIONER OF POLICE	2nd Respondent
THE ATTORNEY GENERAL	3rd Respondent

R U L I N G

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 17th day of August, 1989.

The view I take of the matter is based, in the nutshell, on the fact that the law requires the applicant if he intends suing the respondents to do so within six months of the arising of the cause of action.

Furthermore in terms of the Police Order 1971 section 60 respondents are entitled to six months' period of notice before summons can be sued out against any member of the police force. Whereas against the government only one month's period of such notice is required.

The applicant was in unlawful detention according to his uncontroverted averments since August 1988 till January 1989. Of course the crown has taken a point of law against his application for condonation of his delay in instituting proceedings and prayer for the consequential enlargement of time to enable him to institute the proceedings against the respondents.

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It would thus seem at the time of his release in January 1989 the applicant had been in detention for five months. In such a situation he was left with only one month within which to give notice to the police whereas the law required that he should give two months' notice.

If he were to give two months' notice to the Police authorities in such a situation before issuing summons then the six months' period within which the law requires him to have instituted proceedings would have been exceeded by a month.

Section 60 has a proviso that for good cause shown the Court may extend the period of six months referred to above.

Mr. Mohapi for the respondents laid much store by the requirement in that proviso that proof of good cause rests on the applicant. Indeed the applicant seems to me to be defeatingly silent in his averments as to specific reasons which caused him to fail to institute the action in time.

But such reasons are, if I may say so, obvious through sheer calculation of the periods in apprehension of which he has resorted to making this application. On all accounts it seems to me that apprehension of the predicament in which he finds himself occasioned not by an act or omission on his part, is genuine.

In exercise of my discretion based on the wording of the proviso to section 60 I dismiss the point raised in limine on behalf of the respondents with costs and order that the period within which the purported suit is to be instituted is extended by six months effective from 17th September, 1989.

Having decided this application on this basis it

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would seem that the other points raised whatever their merits or their demerits fall away.



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J U D G E.

17th August, 1989,

For Applicant : Mr. Mohau

For Respondents: Ms. Mhosi