

IN THE HIGH COURT OF LESOTHO

In the Application of:

LEONIA RANTEEApplicant

and

ATTORNEY-GENERAL Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 13th day of August, 1990.

The applicant herein has filed with the Registrar of the High Court a notice of motion in which she moves the Court for an order, against the Respondent framed in the following terms:

- "(a) Declaring the applicant's dismissal from the public service null and void;
- (b) Re-instating applicant forthwith in his position and rank in the public service;
- (c) Directing Lesotho Government to pay applicant her emoluments with effect from the date of dismissal to date of re-instatement;
- (d) Directing Respondent to pay the costs of this application;
- (e) Granting applicant such further and/or alternative relief as this Honourable court may deem fit."

The Respondent intimated his intention to oppose. Both the founding and the answering affidavits deposed to by the applicant and the Principal Secretary for the Ministry of the Public Service, respectively, have been duly filed. No.

2/ replying

replying affidavit has, however, been filed.

It emerges from the affidavits that on 4th May, 1982 the applicant was engaged in the Ministry of Interior as Immigration Assistant. She became, therefore, a public servant in the Government of Lesotho. In as far as it is relevant the applicant's conditions of employment were set out in annexure A, the letter of her engagement, and included, inter alia, the following :

- " (c) Your appointment will be on a temporary month-to-month terms.
- (d)
- (e) You, or the authority that appointed you, may give one calendar month's notice of termination of appointment, for which no reason need be given;
- (f) In other respects you will be governed by the Public Service Orders, the Public Service Regulations 1969 and other laws, Orders, Rules and Regulations as in force from time to time."

(My underlining).

On 21st August, 1986 annexure "B", a letter emanating from the office of the Principal Secretary for the Ministry of the Public Service was addressed to the Applicant advising her that her appointment as a Civil Servant in the Government of Lesotho was being terminated with effect from 23rd August, 1986 under the provisions of rule 6 - 01 (g) of the Public Service Commission Rules 1970 read with para (e) of Annexure "A" and she would be paid one month's salary in lieu of one calendar month's notice.

It is not disputed that the procedure, for removal proceedings, set out under rule 6 - 01 of the Public Service

Commission Rules 1970 has been followed. What the applicant really contends is that her dismissal without affording her one calendar month's notice in accordance with the provisions of condition (e) in annexure "A"(the letter of her appointment) is a breach of contract and, for that reason, wrongful. She has, consequently, approached this court for relief as aforementioned.

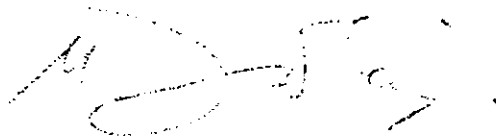
On the other hand the Respondent maintains that in as much as she has been given one month's salary in lieu of notice, the applicant cannot legitimately complain that her dismissal is a breach of contract or conditions of her engagement, in particular condition (e) of annexure "A" and, therefore, wrongful.

I have underscored the word "may" in the above cited annexure "A" to indicate my view that the requirement of one calendar month's notice for termination of applicant's engagement is not mandatory but a matter of discretion which must, however, be always exercised judicially. To hold the contrary is bound to result in untenable situations. For example, if the reasons for which the applicant were temporarily appointed no longer existed or public interest demanded, for one reason or another, immediate termination of her engagement in the civil service it would be untenable to insist that the applicant should nonetheless be retained for a whole month whilst serving notice.

Where in dismissing the applicant under the provisions of rule 6 - 01 (1) (g) of the Public Service Commission Rules 1970 the Respondent exercised the judicial discretion vested

in him by Clause (e) of annexure "A" and paid her one month's salary in lieu of notice, the latter cannot, in my finding, be held to have committed a breach of the contract. That being so, I am unable to grant prayer (a) of the notice of motion viz. the declaration that applicant's dismissal from the Public Service is null and void.

That, in my opinion, is sufficient to dispose of the whole application and it will be purely academic to deal with the other prayers. In the result, I would dismiss this application with costs.



B.K. MOLAI

JUDGE.

13th August, 1990.

For Applicant : Mr. Pheko
For Respondent : Mr. Mohapi.