

IN THE HIGH COURT OF LESOTHO

In the Application of:

SLOLEY TELANG NOLUTSHUNGU                      Applicant

and

COMMISSIONER OF POLICE                      1st Respondent

ATTORNEY-GENERAL                              2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 21st day of August, 1990.

On 23rd October, 1987 the applicant herein filed, with the Registrar of the High Court a notice of motion in which he moved the court for an order, against the Respondents, framed in the following terms:

- "1. Directing the Respondents to pay, or cause to be paid to Applicant an amount of R2,999-20 being the total emoluments due to the Applicant for eight months, from March to October, 1987;
2. Directing the Respondents to allow, or cause to allow, the applicant to carry out his duties without interruptions except by due process of a court Order or by lawful and proper direction of the 1st Respondent;

2/ 3. ....

3. Directing the Respondents to pay costs of this application in the event of their opposing same;
4. Granting the Applicant further and/ alternative relief."

The Respondents intimated their intention to oppose the application and affidavits were duly filed by the parties.

Very briefly stated, it is common cause, from the affidavits, that the applicant was, at all material times, a member of the Royal Lesotho Mounted Police attached to the Criminal Investigation Department (C.I.D.) in Maseru and residing at White City Europa, Maseru. On 5th February 1987 he was notified of his transfer from Maseru to Leribe with immediate effect. He was to report for duty at his new station on 9th February, 1987. On the day in question, 9th February, 1987, he was provided with a vehicle which transported him together with his family and personal effects to Leribe police station.

According to the applicant on arrival at Leribe police station he found no accommodation provided for him. In fact the police authorities in Leribe had not been advised of his coming there; they did not require an extra police officer and were surprised by his arrival. He was accommodated for the night in a small room at Leribe police station. On the following day, 10th February, 1987, and by agreement with the police

3/ authorities .....

authorities in Maseru the police authorities in Leribe sent him back to Maseru. On arrival in Maseru he reported to the Head of the C.I.D. Captain Setloboko, who told him to re-occupy the house he had been using at White City Europa and report for duty to the Staff Officer, a certain Mr. Mohapi. He complied and continued with his normal duties in Maseru.

The head of the C.I.D., Setloboko, has deposed to the answering affidavit in which he avers that he is now a Major in the police force. He conceded that on arrival in Leribe the applicant found that there was accommodation problem. According to the deponent, Major Setloboko, arrangements were however made to accommodate the applicant, together with his family and personal effect, temporarily in a house at Peka police station within the district of Leribe. The applicant did not even put up for the night in the house that was temporarily arranged for him at Peka Police Station. He requested to go back to Maseru and leave part of his personal effects which could not all be accommodated in the temporary house provided for at Peka. Since then the Applicant never returned to his new station.

Major Setloboko denied, therefore, the applicant's averments that the authorities in Leribe had not been made aware of his transfer, they did not require an extra police officer; were surprised by the arrival of

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of the applicant and that he (applicant) was accommodated for the night, in a small room at the Leribe police station.

It is significant that none of the police authorities in Leribe or Peka filed any affidavits in these proceedings. What they are alleged to have done by both the applicant and Major Setloboko seems to me hearsay and, therefore, of no evidential value.

In his affidavit Major Setloboko conceded that when, on 10th February, 1987, the applicant returned to Maseru he reported to him. He then referred the applicant to the Staff Officer, Mr. Mohapi. He denied, however, that he authorised the applicant to use the house he had been occupying at White City in Maseru before proceeding to Leribe on transfer. According to him, on 11th February, 1987 Major Setloboko met the applicant and, on the instructions of his superiors, ordered the latter to return to Leribe. He was, however, later informed by the Police authorities in Leribe that the applicant had never reported for duty at his new station as ordered.

I have already pointed out that the alleged police authorities in Leribe have filed no affidavits in these proceedings. What they are alleged to have said or done about the applicant remains, in my opinion, inadmissible hearsay evidence.

Be that as it may, the applicant went on to aver that, following his return from Leribe, he carried out

5/ his normal .....

his normal duties in Maseru until 20th February 1987 when he learned from a certain Mr. Ntoi of the C.I.D. in Maseru that on the instructions from the Police Headquarters he was not to be allocated duties or allowed to enter the office in Maseru. I must say the applicant's averment that Ntoi told him that he was not<sup>to</sup>/be assigned duties in Maseru seems, in a way, to be confirmed by Paul Shokoe who deposed to a supporting affidavit in which he averred, inter alia, that on the day in question, 20th February, 1987, he accompanied the applicant to Maseru police station to obtain a vehicle with which they were to cart coffins for the burial of certain unidentified deceased persons. Whilst at the police station the deponent overheard a Warrant officer discussing with the applicant about something concerning Leribe. The deponent was then told to return to his office leaving the applicant at the police station. Shortly thereafter two police officers came to his office in a vehicle to do the work which the applicant was supposed to do i.e. to assist him to cart coffins for the burial of the unidentified deceased persons.

The applicant further averred that, following the information he had received from Ntoi viz. that he was not to be assigned duties or allowed to enter the office in Maseru he approached the Head of the C.I.D. and other superior officers who denied knowledge of the matter. However, when on 20th March, 1987 the applicant went to collect his monthly emolument cheque from the salary department he found that it had been taken by Mr. Mohapi.

6/ He went .....

He went to Mr. Mohapi who conceded to have seized the cheque which he was, however, not prepared to release to the applicant. No reasons were given for the seizure of the cheque, a fact which is however denied by Major Setloboko. According to the applicant he tried unsuccessfully to see the first Respondent about the matter.

Both Mr. Mohapi and the first Respondent have not deposed to any affidavits in this matter. The head of the C.I.D. Major Setloboko, who deposed to the answering affidavit denies knowledge of what transpired between the applicant and Mr. Mohapi as well as the first Respondent. He contends, however, that since 10th February, 1987 the applicant deserted the Police Force and performed no work for which he could be paid. Indeed, the applicant was, following his desertion from the force, struck off the Royal Lesotho Mounted Police Roll in terms of the Force Order dated 5th March, 1987 annexure "A" to the answering affidavit. He could not, therefore, be entitled to any emolument cheque. If on 20th March, 1987 he did seize and refuse to release the emolument cheque to the applicant, Mr. Mohapi had acted correctly.

The applicant averred that he was not aware of the Force Order, Annexure "A" to the answering affidavit, and nobody had ever brought it to his attention. In any event he had always been carrying out his police work for which he received no pay from March 1987 to date. Hence the institution of these proceedings for an

7/ order as .....

order as prayed in the notice of motion.

In my view if the applicant were telling the truth, as he wishes this court to believe, that he has always been working in the police force and has never deserted he would have been aware of the Police Force Order, Annexure "A" to the answering affidavit. A Force Order is not a secret document. It is a document circulated to all police stations throughout the country for the information of all members of the Police Force. I do not understand how anybody could have brought to the attention of the applicant Annexure "A" to the answering affidavit which was issued in March 1987 after he (applicant) had already deserted and was, therefore, no longer a member of the Force. His suggestion that this document should have been brought to his attention makes no sense.

The onus was on the applicant to prove that he had been on the Royal Lesotho Mounted Police Roll from March 1987 to date and, therefore, entitled to monthly emolument chques. I am not convinced that he has, on a balance of probabilities, satisfactorily discharged the onus that rests on him.

In the result I would dismiss this application with costs.



B.K. MOLAI

JUDGE

21st August, 1990.

For Appellant : Mr. Z. Mda  
For Respondent: Mr. Malebanye.