

CIV\APN\358\91

IN THE HIGH COURT OF LESOTHO

In matter between:-

STUDENTS UNION OF THE
NATIONAL HEALTH TRAINING CENTRE Applicant

and

GOVERNING BOARD OF THE NATIONAL
HEALTH TRAINING CENTRE 1st Respondent

DIRECTOR OF NATIONAL HEALTH
TRAINING CENTRE 2nd Respondent

ATTORNEY GENERAL 3rd Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 9th day of December, 1991.

This is an application for an order in the following terms:

- (a) Dispensing with the periods of notice required by the rules of court on the account of urgency hereof;
- (b) Directing Second Respondent herein to desist forthwith from directing students of National Health Training Centre to pay the boarding and lodging fee until such fee is provided for in the rules and regulations of National Health Training Centre;
- (c) Directing Respondents to pay the costs hereof;
- (d) Granting Applicant such further and/or alternative relief.

The applicant was the Students Union of the National Health Training Centre. However, after the respondents successfully challenged their locus standi, the name of one Mpho Mohasi was substituted

for that of the initial applicant and the application proceeded on the same papers. Mpho Mohasi is the President of the Students Union of the National Health Training Centre (NHTC).

In his founding affidavit the applicant avers that the NHTC is a school duly established by the Ministry of Health and is governed by rules and regulations (See Annexure "A" to the founding affidavit). He avers that in terms of clause 10.11 of the Rules and Regulations of the NHTC all students are to receive a loan bursary and are subject to the Loan Bursary Regulations. All students are obliged in terms of clause 11 which deals with accommodation of the students and makes no reference to payment of any fee for boarding and lodging as that could be covered by the loan bursary under clause 10. He avers that over the years students were compelled by the second respondent to pay the boarding and lodging fee. The students paid this fee unaware that there is no provision covering the same in the rules and regulations. The students took up this matter with both the second and first respondents but the matter was never resolved. The students who live

within the campus pay a sum of R150-00 per month as a boarding and lodging fee. Students who live outside the campus pay R100-00 per month.

In her opposing affidavit the second respondent avers that the Rules and Regulations of NHTC are subject to the Public Service Regulations in terms of Regulation 2.20.05. Consequently the Centre is the arm of the Ministry of Health as it is not established by any statute. Even the budget of the Centre has to be presented to the Ministry of Health for approval. She avers that these rules and regulations have no force of law as they have not been published in a gazette and are still subject to extensive modification.

In paragraph 7.2 of her opposing affidavit the second respondent alleges that the entire education of the students including subsistence is paid for by the Government of Lesotho; the only fees that students pay from their pockets are the registration and examination fees. It is on this basis that Regulation 10.11 states that students must comply with the loan bursary regulations. So far students have not applied for a loan bursary

from the department of Manpower. The Ministry of Health budgets for and pays for their training and their stipends. Regulation 10.16 which obliges students to apply for a loan bursary has not been enforced.

It seems to me that the issue here concerns the interpretation of some of the NHTC Rules and Regulations.

Regulation 10.11 reads as follows:-

"All students at NHTC are in receipt of highly subsidised education and as such must comply with the Loan Bursary regulation."

Regulation 10.16 reads:

"Students who accept an offer of a place on any NHTC course are obliged to apply for the Loan Bursary Agreement Form. These application forms will be enclosed with the letter of offer from NHTC."

There is no doubt in my mind that in terms of Regulation 10.11 all students at NHTC must apply for a loan bursary. Regulation 10.16 makes it quite clear that the students who apply for a place

at NHTC must apply for the loan bursary agreement form and the same application form will be enclosed with the letter of offer from NHTC. So that even if the student had not applied for a loan bursary before he is offered a place at NHTC when he is offered a place an application form for a loan bursary is enclosed with the letter of offer from NHTC. In other words the Centre makes sure that every student who is offered a place at the Centre must apply for a loan bursary.

In her opposing affidavit the second respondent avers that the policy of NHTC has not been to force the students to comply with Regulations 10.11 and 10.16 and that students have in fact not applied for the loan bursary. I do not think that she is right as regards the present applicant. He has annexed his Loan Bursary Agreement entered into between himself and the Government of Lesotho. I do not know about other students but as far as the applicant is concerned he was granted a loan bursary of M4 050-00 on the 1st February, 1991 (See Annexure "SU" to the applicant's replying affidavit). In terms of clause 2 (b) of The Loan Bursary Agreement the

Government undertakes:-

- (b) to pay the living allowance and residential expenses of the Borrower, provided such costs do not exceed the normal student rate applicable to the specific educational institution."

It was common cause at the hearing of this application that "the living allowance and residential expenses" referred to in clause 2 (b) of The Loan Bursary Agreement mean the same thing as "the boarding and lodging fee" referred to in prayer (b) of the Notice of Motion in the present case. It seems quite clear that the applicant is being made to pay twice for the same facility. The Government pays directly to the first respondent all the expenses and allowances for living and residential facility; at the same time the applicant pays cash of R150-00 per month for the same facility. It is not clear what the respondents have done with the loan bursary of the applicant paid to them by the Government of Lesotho.

I am convinced that in terms of the Rules and

Regulations of the NHTC the students who have applied for a loan bursary and obtained it like the present applicant should not pay the living allowance and residential expenses because those allowances and expenses are paid by the Government. If the second respondent is not aware of the payments made to the Ministry of Health by the department of Manpower, she must contact her Principal Secretary as the Chief Accounting Officer of the Ministry of Health to find out about the loan bursaries paid to his Ministry. The second respondent alleges that the NHTC is the arm of the Ministry of Health (MOH) and that its budget must be approved by the MOH. I have no objection to that, but I do not think that the MOH has a right to deal with a student's loan bursary anyhow it likes to the extent that it ends up forcing a student paying double for the same facility.

The second respondent's fear that the facility may have to be closed if this application is granted is altogether unfounded. What is she going to do with the amount of money set aside specifically for this purpose or facility by the loan bursary agreement between the Government and

the student?

The point, therefore, that I had to decide has to be decided in favour of the applicant. The application is accordingly granted as prayed in terms of prayers (b) and (c).

J.L. KHEOLA

JUDGE

9th December, 1991.

For Applicant - Mr. Pheko

For Respondents - Mr Putsoane.