

CIV/T/487/91

IN THE HIGH COURT OF LESOTHO

In the matter between:

MPHO QHOBELA

Plaintiff

and

PERMANENT SECRETARY (AGRIC)
ATTORNEY GENERAL

1st Respondent
2nd Respondent

RULING

Delivered by the Honourable Mr. Justice T. Monapathi
on the 17th day of August, 1994

Mr. Mohapi came before me on the 16th August, 1994. I had called him at about 11.30 am for the reason that while I stood wanting to hear Counsel since 9.50 am. Nothing had happened in that direction. I was informed that Mr. Hlaoli is attending to a matter of a Commission of Inquiry in which he is a member. Mr. Mohapi advised that it is by consent of the parties' Counsels that the matter be postponed sine die. This I refused.

These are my reasons:

I have looked into the pleadings in this matter. The matter

is an old matter. But what struck me most were the following:

- (1) The plaintiff has been on interdiction or her salary has been withheld since about 1984. This may turn out to be untrue, partly true or true but length of the dispute is a cause for alarm.
- (2) The plaintiff seems to have been out of work since about that time of 1984. The probability is that some monies are being paid to her by government as a public servant who has since 1984 not been at work and active. Isn't this abnormal?
- (3) The plaintiff has moved an application in this Court (CIV/APN/229/85) which ordered for her re-instatement. If this be true there must be a cogent explanation why she has in fact not gone back to work. She says she is willing to go back and work. (See paragraph seven of plaintiff's declaration and paragraph seven of the defendant's plea.)

(4) Mr. Mohapi has agreed, in response to my concern, that he will give me a memorandum indicating things that are common cause. Having said so he speaks of a pending case in the Magistrate Court about alleged theft, which charge may have been struck off the roll, but which is pending. To the extent that this is not reflected in the defendant's plea it may be quite insignificant. But it has caused me concern. What is now happening to the charge?

(5) A substantial amount of money is being claimed as damages from the government. There must just be a good reason why government will be made to pay such an amount of money. At the time of judgment (should the plaintiff succeed) the government will be liable to pay even more money. To the extent that this shall have been caused by stagnation and lack of finality, this is a concern of this Court.

(6) I have found the minutes of the pre-trial

Having refused the postponement (sine die) as sought by the Counsels for the parties I have also made the following request:

- (a) That on the 20th September 1994 the plaintiff and a representative of the 1st Defendant be called in my chambers to explain a few things in connection with why it is difficult for the matter to be settled or otherwise brought to finality. What I am after is the perceptions from two people and their counsels. I do not intend to pre-judge anything. But should anything have made a distinct impression to me, after the inquiry, I will inform Counsels and if need be the matter can be placed before another judge.

Justice delayed is justice denied. Judges of this Court cannot be doing their duty, if they sit back while, by all appearances, a delay in litigation inclines towards bringing an unfair and unjust state of affairs.

I have further advised that if Mr. Hlaoli be unavailable on the 20th September 1994 at 9.00 he had better instruct another Counsel to appear on his behalf for that purpose only and to

negotiate a convenient date of hearing, or still, if more convenient the matter is proceeded with.

I have reminded Mr. Mohapi to prepare that memorandum of facts that are common cause. The matter was adjourned to 9.30 a.m. on the 20th September 1994.

T. V. MONAPATHI
JUDGE

17th August, 1994

For the Defendants : Mr. Mohapi