

IN THE HIGH COURT OF LESOTHO

In the Application of :

ATTORNEY GENERAL

Applicant

v

MPHO MARUMO

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 25th day of May, 1994

Counsel who readily appreciates the short comings in his case is a credit in his service to the Court.

Counsel for the Crown has conceded that a good number of points raised by Counsel for the respondent in the case for rescission are quite legitimate and I agree with that submission. While indeed an application for rescission cannot just be lightly dismissed in the current case it appears that the two valid points which were raised by respondent's Counsel; namely, that the question complained of; that is to say, the reinstatement of the respondent would be likely to cause breach of or affect the discipline in the force, I don't see how that could really do that. The second point was also valid namely that it doesn't seem that

there is any valid defence in the papers supporting the application for rescission. However because the whole question of payment of the emoluments depends on the discretion of the Commissioner of Police I don't think it would be wrong to interfere with that discretion where it appears, that the other party by virtue of the fact that a judgment was taken by default against it, is aggrieved.

Points have been raised which show that the applicant is in a tight corner. A criminal charge which the respondent faces was prepared long ago in 1991 and the preparatory examination, I am told, has been held and completed yet to date there is no indictment charging him before the High Court. We are in 1994 now, yet the requirements in the Police Force Order are such that the respondent shall not while investigations are being made or are going on before the Commissioner of Police Tribunal - before that is completed - the suspect shall not take any alternative employment. Of course the law is silent about when the matter is pending before the courts of law; and it doesn't seem that the powers of the Commissioner to stop the man from earning an income extend beyond the inquiry that he himself embarks upon in his own tribunal. So even if the court would have been inclined to be sympathetic to the plight of the state it doesn't seem proper that a man in the circumstances of the respondent should be barred from securing anything whatsoever to enable him to keep going in life. See Police Order No. 26 of 1971 (as amended) sections 25 and 27.

From my reading of the above sections it becomes clear to me that the power of the Commissioner to suspend a member of the police force in accordance with the provisions laid down therein does not extend the disadvantage resultant from such suspension beyond the completion of the proceedings determined by the Commissioner against a member of the Force falling under the category to which the respondent belongs. Thus an attempt to enforce such powers beyond such completion would, in my view, be ultra vires. Consequently in respect of a matter now pending before the Courts of law it would not be proper to subject any individual to operation of such powers. If it was the legislature's intention to so subject him then this intention occasioning such disadvantage to an individual should have been spelt out in plain language. Hence, as in the present case, if it seems to the Court that the Commissioner's exercise of discretion may result in undue hardship or even abuse to the individual, the Court should feel at large to curb it.

But because it may seem necessary that these stringent conditions should prevail even beyond the completion of the Commissioner's investigation but before the fate of a trial pending before the Courts, it would be necessary to amend section 25 because it would be untenable and indeed absurd to read into this section as it stands presently, an intention by the legislature to extend the powers of the Commissioner so as to cover even the period when a matter is pending before courts but falls beyond the

point of completion of the Commissioner's investigation.

I am saying this because in the discretion which the Commissioner of Police has a man in the circumstances of the respondent can be interdicted (a) on full salary (b) on half pay or (c) on no salary at all. So, I am not prepared to interfere with the order that I granted earlier except to the extent that the Commissioner of Police is relieved from paying increments and allowances accruing between the time when the respondent was suspended from service in the Police Force and the time of the eventual fate of his criminal trial.

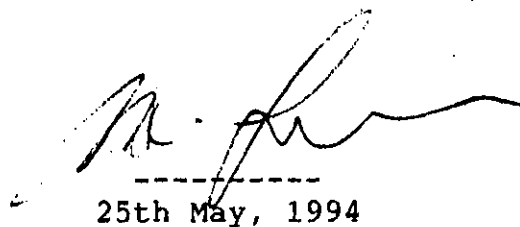
As for his salary, the order that was given by default should remain.

This is all that in my view should meet the fairness required by peculiar circumstances in this case.

Three quarters of the respondent's costs to be paid by the applicant because the state has succeeded to some minor degree to have part of the default judgement altered.

The Commissioner is given an option to accept or decline whatever overtures the respondent makes about his wish to go back

on duty meantime.

A handwritten signature in black ink, appearing to be 'M. Molapo', written over a horizontal dashed line.

25th May, 1994

For Applicant : Mr. Molapo
For Respondent: Mr. Ntlhoki