

CIV/APN/105/95

IN THE HIGH COURT OF LESOTHO

In the matter between:

JOHN MOLAI RAMOHOLI

APPLICANT

V

PRINCIPAL SECRETARY FOR THE  
MINISTRY OF EDUCATION  
ATTORNEY GENERAL

1ST RESPONDENT  
2ND RESPONDENT

JUDGMENT

Delivered by the Honourable Mr. Justice W.C.M. Maqutu,  
on the 9th day of January, 1995.

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On the 21st October, 1994 Applicant filed of record  
an application as a matter of urgency in which he sought  
an order:

- (a) Declaring the purported interdiction of  
applicant by First Respondent on 13th October,  
1994 null and void;

/...

- (b) Directing Respondents to pay the costs of this application;
- (c) Granting Applicant further and/or alternative relief.

Applicant at all material times held the position of Financial Controller in the Ministry of Education, Headquarters and is on the permanent establishment of the Public Service.

There is no dispute that on the 13th October 1993, Applicant who had been on leave reported for duty. When he got to his office he received information that First Respondent who is the Principal Secretary of the Ministry of Education and Manpower Development wanted to see him. First Respondent was not able to see Applicant. When Applicant returned to his office, Applicant's secretary handed to him a notification of interdiction, interdicting him with immediate effect without pay as from the 13th October, 1994.

The Notification of Interdiction has been annexed to Applicant's application and is marked "JMR". It is a printed form with blank spaces. The Principal Secretary merely fills blank spaces and signs at the bottom.

In the first paragraph (of the Notification of Interdiction form) all the words are already printed before the word pay, First Respondent has filled in one word "NO". That one word deprived Applicant of his monthly pay with effect from the 13th October, 1994. That date is also filled in by First Respondent.

The reason for interdiction in the Notification of Interdiction has been filled in by First Respondent and it is that Applicant is:

"alleged to have attempted to acquire money amounting to about M226,892.81 by fraudulent means thereby bringing the integrity of your office/position into disrepute and thus contravening Section 10(1)(a)(m), and 1(n)(i) of the *Public Service order No.21* of 1970 as amended by *Act No.8* of 1973."

I am puzzled by the reason of interdiction. It seems too light to meet the gravity of the situation. This is hardly a case of "bringing the integrity of the Applicant's office and position into disrepute". The real reason is that Applicant is suspected of being involved in a fraud or attempt to steal from Government the sum of M226,892-81. One would expect this true reason to be clearly spelt out. It is really a matter that calls for a police investigation and indeed the police are already involved. On the face of the papers, this is a criminal offence not just a disciplinary one. Until the Director of Public Prosecutions has declined to prosecute, the Public Service Commission has no jurisdiction in the matter at this stage. It can only suspend or interdict Applicant to await the results of a criminal prosecution.

From the filling of the Notification of Interdiction form, an impression is made that the whole process is a matter of routine. There is no indication that the gravity of the step that is being taken by the First Respondent is evident. The matter is not being treated as if this individual is receiving the attention he deserves. By filing the word "NO" a man's salary for a period of

three months and sometimes more, is taken away all of a sudden. This man who is put to this suffering and inconvenience is only a suspect.

The First Respondent has filled in another blank space of the Notification of Interdiction form the words that further justifies what is being done. The other reason is stated as being that the suspended officer's continued presence constitutes

"a threat to public funds; hence the effective and smooth running of the Accounts Section of the Ministry of Education."

Indeed keeping someone suspected of stealing over a quarter of a million Maloti next to the till would be most unwise and undesirable. As these funds that would be put at risk are public funds, doing nothing to protect the funds would not be in the public interest.

The Notification of Interdiction form concludes with a printed warning based on the *Public Service Commission Rules* to the effect that Applicant:

"(a) should not assume alternate employment pursuant to *Public Service Commission Rule 5-22(6)*.

(b) should notify this office of any change of address."

In his Opposing Affidavit First Respondent at paragraph 8 says,

"It is admitted that applicant was not heard and in the normal course of things ought to have been heard before being interdicted. Applicant could not be heard before being interdicted in the normal course of things."

The averments of First Respondent are in answer to Paragraph 3-7 of Applicant's Founding Affidavit in which Applicant had said:

"First Respondent had not heard my side of the story before he could interdict me as aforesaid. I have to mention that some time ago the office

of Second Respondent had issued a circular from the Deputy Attorney General (one Mr. Tampi) warning Government ministries and parastatals that before interdiction, the officer to be interdicted is to be given a hearing by the interdicting officer as a matter of law."

At the hearing I was supplied with circular LAW.61/C dated 21st August 1992 issued by Mr. K.R.K. Tampi the Deputy Attorney General. Its title is "INTERDICTION OF PUBLIC OFFICERS". It is not disputed that it was sent to all ministries. Furthermore it was accepted by both sides that Applicant is correct when he says this circular was distributed extensively within the Ministry of Education and all heads of departments were directed to follow it by the Principal Secretary when dealing with suspensions.

The Attorney General is the Principal Legal Advisor of Government and State. See *Section 98(2)(a)* of the *Constitution of Lesotho* of 1993. Government departments are expected to follow and act on his advice in matters of law. That being the case this circular can be regarded by all as a guide in the handling of criminal and

disciplinary matters within Government departments. Although it does not enjoy special legal status, it is for those in the public service part of the ground rules under which they are expected to operate.

The doctrine of legitimate expectation has been adopted by our courts and South African courts from English law. Its essence is that a decision maker who exercises drastic powers such as those of dismissal of employees on behalf of the public should act fairly:

"The implication of the doctrine of legitimate expectation is that if a decision maker, either through the application of a regular practice or through express promise, leads those affected legitimately to expect that he or she will decide in a particular way, then that expectation is protected and the decision-maker cannot ignore it when making the decision. The doctrine, it seems, applies to both procedural and substantive expectations." *-A Guide to South African Labour Law* by Raycroft and Jordaan page 111.

It is for this reason that we cannot ignore this circular from the Deputy Attorney General. It does not embody just a promise, it is a directive for all public officers both senior and junior. The other important reason is