

C. of A. (CIV) NO.6 OF 1995

IN THE LESOTHO COURT OF APPEAL

In the matter between:

NATIONAL UNIVERSITY OF LESOTHO

APPELLANT

AND

THABO MOEKETSI

RESPONDENT

HELD AT
MASERU

CORAM:

KOTZE', J.A.
BROWDE, J.A.
LEON, J.A.

JUDGMENT

KOTZE', J.A.

In motion proceedings in the court *a quo*, KHEOLA C.J. ordered the appellant to pay to the respondent his monthly salary and housing allowance with effect from the 28th January 1993 to 30th June, 1993 with costs. This is an appeal against that order.

The undermentioned facts are common cause:-

- (a) On 5th September 1986 the respondent was released with immediate effect from his

position as senior assistant registrar of appellant for a period of two years on secondment to the public service of Lesotho.

- (b) The secondment was renewed from time to time until 31st December 1992 as appears from a letter in the terms following addressed to the respondent by the government secretary dated 9th December 1992.

"Your present contract of engagement expired on 30th September, 1992. It was thereafter extended for a period of 3 months from 1st October to 31st December, 1992.

I have been instructed to inform you that Government has decided to direct you to proceed on leave with effect from the close of official business on 9th December, 1992, until the expiration of your extended contract i.e. 31st December, 1992.

You will be paid the emoluments due to you until 31st December, 1992. The gratuity will be paid in respect of your service for a total period of 27 months and earned leave. Your normal leave entitlement will remain unaffected by your leave during the period ending 31st December, 1992."

- (c) Respondent on 28th January, 1993 notified the appellant's registrar by letter of the

termination of his secondment and intimated that he was "still available to serve... the University although I have to request an appointment with you to ascertain what you may have available for me."

- (d) The appellant's registrar on 5th February replied to the letter referred to in (c) above as follows:

"I have noted that you are available to serve the National University of Lesotho. Please be informed that the matter is receiving attention. The decision will be communicated after consultations have been completed."

- (e) On 22nd February 1993 appellant's registrar wrote to respondent and advised him that he could resume duties in the administration of the appellant "with effect from 1st July, 1993."

The dispute between the parties arose out of the abovementioned facts. Crisply stated the issue is as follows. Respondent's contention is that he tendered his services to the appellant after the government terminated the secondment and that his salary and housing allowance became due forthwith whereas the appellant contends that it is an implied term of the secondment

agreement that the government would give the respondent reasonable notice of the termination of the secondment agreement to arrange for respondent's return to appellant's employment.

The learned Chief Justice appreciated and dealt with the crucial issue (referred to by him as "the bone of contention") in a perfectly correct manner. He dealt with appropriate authorities and concluded correctly, in my view, that there does not arise from the language of the "simple and straightforward" contract, and the circumstances under which it was entered into, an inference that the parties must have intended the importation of the implied term contended for by the appellant. The language of the contractual term is in no way ambiguous. It provides for respondent's release from his position on secondment to the public service. The word secondment means transference of a person from one post of employment to another or to render available the services of a person from one department to another. Implicit in a contract of secondment is that when it terminates the contract of employment between the seconder and the person seconded resumes.

It follows from the foregoing that the respondent became obliged with effect from 1st January 1993 to resume his duties with the appellant. The appellant in turn would ordinarily become obliged to make payment to the respondent of salary and housing allowance with effect from 1st January 1993.

The learned Chief Justice made the following pertinent

comment:

"I am concerned about the failure of the applicant to report himself for his duties with the respondent between the 1st January, 1993 and the 27th January, 1993. The secondment was ended on the 31st December, 1992 and for almost the whole of January, 1993 he has not told the Court where he was and what he was doing. He was bound by the terms of his contract with the respondent to report for duty immediately the secondment was terminated."

Nothing turns on this comment in these proceedings since no point has been made thereof by either party. Instead of ordering the appellant to make payment of salary and housing allowance from 1st January 1993 he did so, as a matter of equity in favour of appellant from 28th January 1993.

The appeal is dismissed with costs.

I agree

I agree

G.P.C. Kotze

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G.P.C. KOTZE
JUDGE OF APPEAL

J. Browde
.....
J. BROWDE
JUDGE OF APPEAL

R. Leon
.....
R. LEON
JUDGE OF APPEAL

Delivered at Maseru on 28th day of July, 1995.