CIV/APN/298/95

IN THE HIGH COURT OF LESOTHO

In the matter between :

TSELISO MOHASOA (duly assisted by his father) 1st Applicant
KALI PHAHAMANE (duly assisted by his father) 2nd Applicant

and

THE HEADMASTER - 'MAMATHE HIGH SCHOOL

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 21st day of September 1995

The application was filed on the 31st August 1995. The suspension of the two Applicants by the Respondent had been on the 24th August 1995. It was common cause that the suspension by the Headmaster was done pending a hearing of a criminal case instituted against the Applicants before the magistrate Court. This was presumably on a charge of assault following a fight by the Applicants against certain fellow students. The hearing was scheduled to be on the 4th September 1995.

The Applicants claimed for various reliefs. This included that the decision of the Respondent to suspend the Applicants from

attending school shall be declared null and void and that the Respondent shall be ordered and directed to allow the Applicants to return to school and attend classes and Respondent be ordered to refrain from interfering with the Applicants' attendance except by due process of law. This was opposed.

The Applicants brought into issue the following matters as most briefly encapsulated in paragraph 12 and 13 of the First Applicant's founding affidavit, that "

> " I submit with greatest respect that the Respondent acted wrongly in suspending me and the 2nd Applicant, for the following reasons :
>
> 1. The incident took place after school hours, and did not occur within the school premises.
>
> 2. The Respondent did not give us a fair hearing before he decided to suspend us from classes and school.
>
> 3. The Respondent was prejudging issues in as much as there is a presumption of innocence operating in our favour, and our guilt has to be proved beyond reasonable doubt on the date of hearing.

I further submit that in deciding that I and the 2nd Applicant should come to school after the hearing of the said Criminal case, the Respondent was prejudging our Chances of Covering the syllabus."

I was first asked by Mr. Nathane for the Respondent to strike off certain paragraphs in the supporting affidavit of one LIBUSENG PHOSHOLI. It was contended that the paragraphs (c) (d) (e) (f) introduced new matter to which the Respondent would have no opportunity to reply to. This was correct. Mr. Putsoane did not oppose. I struck off the offending paragraphs. Most unfortunately this was not significant to my judgmet.

I refused to go into the substantive aspects of whether in the circumstances of the alleged fight the Respondent would have been correct to find fault with the Applicants and, whether the Applicants caused the fight or were acting in self-defence. It is because in suspending the students (whenever he does it correctly) he need not look into who was guilty or not guilty. It is because his suspension is a temporary measure. He takes a *prima facie* view of what is reported to him. There is nothing to prevent the Respondent from suspending any student who was involved in the fracas provided this is done in compliance with Regulation 7(1). The regulation reads:

" 7(1) subject to sub-regulation (2) of the school (supervision and management Regulations 1988 legal notice No. 2190/1988, made under section 21 of the Education Order 1971 (the Regulation) the headmaster may suspend a pupil for such period as the Board may determine or in the absence of such determination for a period not exceeding 10 school days."

Section 7(2) reads in part:

" The suspension of a pupil referred to in sub-regulation (1) may be suspended on the following grounds :

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) Conduct injurious to the moral tone of the school or to the physical or mental well-being of others in the school." (my underlining)

Furthermore this Court would not be prepared to go into the exercise of evaluating the weight of the evidence or the source of the evidence on which the Respondent depended in reaching his decision to suspend.

The difficulty of the excercise would be two-fold. Firstly it would require the record of the proceedings in order to review the circumstances and the evidence. The voluminous and contentious affidavits of the parties and other deponents would still be unhelpful. Secondly this would require viva voce evidence in the light of the apparent disputes of fact. As I said nothing really turns on the reasoning of the Respondent on the question of fact finding and fault finding. In addition this is not a matter on which I would have to decide this present dispute. Mr. Putsoane was also wise enough not to insist on finding fault with the Respondent on the question of absence of fair hearing.

There has been much argument by Counsel concerning this matter of whether the Respondent would have jurisdiction to deal with misconduct occurring outside school premises and outside school hours. A caustic example was made of where, just a few metres outside the school premises, students would decide to set up shop for imbibing liquor and smoking all types of substances. If they did that outside school hours in broad day light would the school fold its arms presumably on the reading of section 4 of the school (supervision and management) Regulations 1988? The section read :

"4. Every pupil is responsible to the headmaster of the school he attends for his conduct,

(a) on the school premises;

(b) on out-of-school activities that are part of the school programme; and

(c) while travelling in a school bus owned or hired by the school."

It is not necessary for my judgment to decide this point but I am wondering how else the provisions of section 7(2) (f) of the regulations would be enforced if a literal and restricted interpretation is given to section 4. Perhaps there are more cogent reasons why the section was couched in the way it has been.

It was submitted that one of the effects of an indefinite suspension of the Applicants would be a disguised punishment. This was said for the very reason that the Applicants would be out of school activities for a period exceeding a minimum of 10 days. I agree. Mr. Putsoane also calls it a double jeopardy in the sense that having been interdicted from school activity they still would be punished in terms of the ordinary laws of the land by Court. That may be so in effect. This means thatpending the decision of the Court they would be undergoing the effects of an unpronounced and hidden punishment and the very prejudicial result as shown in paragraphs 12.3 and 13 of the First Applicant's founding affidavit.

My concern is mainly that without authority of the Board the Respondent suspended this Applicants for more than 10 days in contravention of section 7 of the Regulations. This he was not entitled to do. The suspension was therefore unlawful and ought to be set aside.

I made the Order that the application succeeded in terms of prayers (a) and (b) and that costs be awarded to the Applicants except the costs of the 18th September 1995 and the 21st September 1995.

T. MONAPATHI
JUDGE

21st September, 1995

For the Applicants : Mr. Putsoane

For the Respondents : Mr. Nathane