

IN THE HIGH COURT OF LESOTHO

In the matter between:-

THABO RAMONE

APPLICANT

vs

THE ATTORNEY GENERAL
THE MINISTER OF WORKS

FIRST RESPONDENT
SECOND RESPONDENT

Before the Honourable Chief Justice B.P. Cullinan

For the Applicant : Mr Rakuoane
For the Respondents : Mr T. Molapo, Senior Crown Counsel

JUDGMENT

Cases referred to:-

The applicant in his founding affidavit deposed that he was employed "as a manual labour" in the Ministry of Works in February, 1980 and was stationed at Thaba-Tseka. He observed that "different spheres of government - paid employees, ranging from teachers, agricultural extension officers police and administrative staff "were all paid a 'mountain allowance'. He deposed that he had approached his supervisors "as to why some of us were not paid the mountain allowance". He was informed that "as residents of Thaba-Tseka we were not entitled to mountain allowance."

Ultimately he reached the retiring age and left Government service on 20th March, 1987. Thereafter he approached his Attornies in the matter and filed the present applicant⁴ which seeks an order directing the respondents to pay or cause to be paid to the applicant "his monthly mountain allowance of a married person" for the duration of his service in Government, with interest at the rate of 11% per annum. Ultimately the application was heard. The Court dismissed the application, ordering each party to pay his own costs, reserving it's reasons in the matter, which reasons I now give.

The mountain allowance is payable to public officers under the Public Service Regulations 1969. The Acting Principal Secretary in the Ministry of Works in an opposing affidavit deposed that all manual labourers in the Ministry sign a contract which reads thus:

You are engaged with effect from in the capacity of a *temporary* on daily rates of pay at R..... *per diem*. Your appointment will terminate on but you may be offered further employment *if* circumstances permit. This appointment may be terminated by 24 hours' notice by either party.

Signature of Employee

Date :"

Mr Rakuoane for the applicant submits that as the Public Service Regulations 1969 provide for only three classes of public officers, namely, a "pensionable officer", a "contract officer" and a "temporary officer", that the applicants employment fell into the latter class. Since reserving my reasons for judgment in this case I have had occasion to address *inter alia* much the same issues as in this case in a judgment delivered in the case of Masimong vs Attorney General & Another (1), and for the sake of convenience I wish to repeat what I there said. Suffice it to say that the Public Service Regulations provide, under regulation 1501, for a fourth class of employee, namely an Industrial Class employee that is, a daily paid employee, whose conditions of service are governed by the Employment Act, 1967 and his contract of service, but not by the Public Service Regulations.

For all the reasons stated in Masimong (1) the applicants contract in this case clearly categorised him as a daily paid employee, that is, an employee whose "contract is to pay wages at an hourly or daily rate" and which is then classified under section 13 (1) (d) of the Employment Act, 1967 to be "a contract from day to day ^{*deferrable by*} either party at the close of any day on one days notice". Even though in the case of an employee continuously employed for a year or more, as in the case of the applicant, the period of notice is enlarged to one month, nonetheless where the contract is to pay wages at an hourly or a daily rate, the contract remains "a contract from day to day". The contract into

which the applicant entered was clearly in that category and the Public Service Regulations 1969 (other than regulation 501) have no application to him. Accordingly he was not entitled to receive a mountain allowance.

For those reasons I dismissed the application. Mr Molapo very properly conceded that as a point of law was involved, costs should not follow the event but that each party should bear his own costs, and I so ordered.

Dated This 3rd Day of November, 1995.

B.P. CULLINAN

(B.P. CULLINAN)

CHIEF JUSTICE