

"Mr. T.B. Moeketsi
N.U.L.,
ROMA 180,
Lesotho

Dear Mr. Moeketsi,

YOUR RELEASE TO THE CIVIL SERVICE

Further to my letter to you dated the 8th September, 1986, regarding the above issue, I wish to inform you that at its 157th (special) meeting held on the 5th September, 1986, the Academic Staff Appointments Committee agreed to release you for a period of two years on secondment to the Civil Service with immediate effect.

The Committee noted that you were about to proceed on study leave which had already been approved. Section 12 (ii) of your contract with N.U.L. refers.

Yours faithfully,

REGISTRAR

cc: P.S. Ministry of the Public Service
Bursar, NUL".

The terms of the contract are simple and straightforward. They are that the applicant is seconded to the Public Service for a period of two years. The only reasonable inference to be drawn from the language used by the parties in their contract is that at the end of two years the applicant would resume his duties with the respondent. There is no implied term that at the end of two years, or to be more exact, towards the end of the secondment, the applicant was expected to give notice to the respondent that the secondment would expire on a certain date.

I am of the view that the respondent acted in a somewhat unfair manner towards the applicant. In the letter of the 22nd February, 1993 (Annexure "TM5") the Acting Registrar of the respondent informs the applicant that he was authorised to inform the applicant that the Academic Staff Appointments Committee at its meeting held on the 19th February, 1993 decided that the applicant resumes duties in the Administration of the University with effect from the 1st July, 1993. This was a new term of the secondment that was arbitrarily imposed by the respondent without giving the applicant a chance to be heard because it was a decision which directly affected his interests. The respondent was not entitled to impose in an arbitrary manner such an important term which drastically affected the interests of the applicant. I do not agree with the respondent that the re-absorption of the applicant is a purely administrative matter which entitles it to take a decision without first hearing him. The suspension of an employee from work for a period of about six months without a salary is an administrative act which seriously affects the individual's existing 'rights, liberties or privileges'. (See Baxter: Administrative Law, 1989 Reprint).

In paragraph 3 of the answering affidavit the respondent alleges that it was an implied term of the secondment that the Public Service would give the respondent reasonable notice of termination of the secondment to enable the respondent to make

proper arrangements for the re-absorption of the applicant. Although I have already come to the conclusion that there was no such implied term, the assertion by the respondent clearly shows that it (respondent) believed that the contract of secondment was entered into by the Public Service and the respondent. It seems to me that that is the proper and correct interpretation of the contract. The applicant was told by the respondent (per Annexure "TM1") that "the Academic Staff Appointments Committee agreed to release you to the Civil Service with immediate effect."

The agreement was between the respondent and the Civil Service. The applicant was merely ordered to go on secondment the terms of which were not revealed to him. It seems to me that it was the Public Service that had to give notice to the respondent of termination of the secondment because the contract was between the respondent and the Public Service. However I have already said that such a term of contract cannot be implied.

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. If he wanted to go on leave, he was under an obligation to make arrangements with the respondent.

In the result the Court makes the following order:

- (a) The respondent is ordered to pay forthwith to applicant his monthly salary and housing allowance with effect from the 28th January, 1993 to the 30th June, 1993.
- (b) The respondent must pay costs of the application.


J. U. KHEOLA
CHIEF JUSTICE

10TH FEBRUARY, 1995

For Applicant - Mr. Pheko
For Respondent - Mr. Matsau