

IN THE HIGH COURT OF LESOTHO

In the matter between:

SARAH NAMBOSO

APPELLANT

and

**BOARD OF GOVERNORS MOTSEKUOA
HIGH SCHOOL**

RESPONDENT

J U D G M E N T

**Delivered by the Honourable Chief Justice Mr Justice
J.L. Kheola on the 8th day of May, 1998.**

This is an appeal against the judgment of the learned Chief Magistrate in which he dismissed the appellant's claims in the main and in the alternative with costs.

In this action the appellant claimed from the respondent a sum of M10,000-00 being the remuneration due to her for service she rendered as a teacher at

Motsekuoa High Court between February, 1993 and December, 1994. It is common cause that during the relevant period the appellant was paid an amount of M2,500-00 which the respondent says was an allowance before her contract was formally approved by the Principal Secretary for Education.

It is common cause that the respondent purported to engage the appellant as a teacher at a salary of M1, 233-36 per month. The appellant produced a document she termed a contract of employment to support her claim (Exhibit "A").

Exhibit "A" is a form prescribed by Regulation 5 (5) of The Teaching Regulations, 1983 and appears in the Sixth Schedule to the said Regulations. It reads as follows:

"A teacher's contract shall be prepared substantially in the form prescribed in the Sixth or Seventh Schedule subject to such modifications as may be necessary in particular circumstances, and shall be entered into before assumption of duty by the teacher."

It is not in dispute that Exhibit "A" was not prepared substantially in the form prescribed in the Seventh Schedule because the requirement that both the Educational Secretary and the Principal Secretary for Education did not approve the purported contract of employment by affixing their signatures in the appropriate spaces provided on the prescribed form. The crux of the matter is whether a valid contract did come about without the approval of both the Educational Secretary and the Principal Secretary for Education? In my view no valid contract was created without the said approval.

What is clear from Exhibit "A" is that the parties who were attempting to enter into a contract were the Roman Catholic Church and the appellant. The Roman Catholic Church was represented by Rev. Julius Mahula who is the Manager of the Motsekuoa High School. He undertook to pay the salary of the appellant but this undertaking was conditional because it depended on the approval of the Principal Secretary for Education who was to consider whether the appellant had the prescribed qualifications for the post she was applying for. He would also have to ascertain that the funds to provide for a grant in aid were available. The salaries of Government aided schools are paid by the Government from monies allocated by Parliament for that purpose.

Regulation 5 (5) of The Teaching Service Regulations, 1986 provides that the contract shall be entered into before assumption of duty by the teacher. The contract cannot be regarded as complete before the approval of the Principal Secretary for Education has been obtained because he is the one who is responsible for the payment of the teachers' salaries in all Government aided schools. In the present case the appellant assumed duty before the contract had been properly entered into. It is unfortunate that the appellant worked for such a long time without a salary. The Principal Secretary is not a party to the present appeal and we do not know why he withheld his approval. It may be that there were no funds for such a post or that he formed the opinion that the appellant was not properly qualified. We shall never know the reason because the appellant did not sue him.

In his judgment the learned Chief Magistrate came to the conclusion that Motsekuoa High School was a Government Controlled School. This is not correct. It is a grant aided school and its proprietor is the Roman Catholic Church. This fact is clearly indicated in Exhibit "A". The Roman Catholic Church was represented by its duly authorised agent, Rev. Julius Mahula. There is no doubt that Motsekuoa High School is the property of the Roman Catholic Church and it receives grant in aid.

I agree with the learned Chief Magistrate that there was no valid contract between the appellant and the respondent and that the dismissal of the action based on the alleged contract should be confirmed on appeal.

The next issue is that of unjust enrichment. **Mr Sooknanan**, counsel for the respondent, submitted that if the Court finds enrichment then clearly it is the Government of Lesotho which is the funder of teachers which has been enriched and not the respondent. He submitted that the law is as follows: If a principal is enriched as a result of a purported contract entered into on his behalf by a person professing to have authority to do so and he fails to ratify the unauthorised act, the principal will be liable to the extent he has been enriched. He is not liable on the contract at all, but simply in terms of the ordinary doctrine of unjust enrichment.

He further referred to the case of **Reid and others v. Warner** 1907 T.S.961 at pp 974-975 where Innes, C.J. said:

“It seems to me a sound principle that where an agent has, without authority, borrowed money on behalf of a principal, and where that money has been spent for the use and benefit of the principal, the latter is liable to

repay it, unless he refuses to accept the benefit and takes steps to restore matters to their original position.”

There are other cases in which the same principle was stated. In **Knoll v. S.A. Flooring Industries Ltd.** 1951 (1) S.A. 404 (T.P.D.) The headnote reads as follows:

“Sembler: If a person, thinking he was authorised to do so, that he had been engaged by the owner, **bona fide** does work to his house by which he has benefited - been enriched-in a certain amount it would be unjust for the owner to be enriched at the expense of the builder and the latter could in equity claim the amount by which the owner had been enriched. It does not seem essential in such an action to bring in the principles of **negotiorum gestor**.

As the original contractor had failed to complete the building of a house for the defendant, the latter contracted with her husband, to whom she was married

out of community of property and who was a builder, to complete the house, which he did. Defendant's husband had contracted with the plaintiff company to put in certain floors in regard to which it rendered him an account. He failed to pay and the plaintiff sued the defendant, who it discovered was the building owner and owner of the house, claiming, *inter alia*, (9) "that the said work and materials were done and furnished by the plaintiff for the benefit of the defendant as *negotiorum gestor* on the instructions of her husband, in the *bona fide* belief that her said husband was the owner of the said property. (10) The expenses incurred by the plaintiff aforesaid were necessary and/or useful and the said property of the defendant has been enhanced in value and the defendant has been unjustly enriched at the expense of the plaintiff." It appeared that defendant had made provision for the full cost of the building by a loan from a building society and that this had been exhausted by her husband in building the house. A magistrate having found that the principles of

negotiorum gestor applied and having given judgment for the plaintiff, in an appeal,

In order to succeed that plaintiff had to prove that the defendant had been unjustly enriched at its expense.

Further, as she had not been so enriched, that the plaintiff was not entitled to recover from her.”

As far as the law is concerned I entirely agree with **Mr. Sooknanan**. In the present case it is common cause that the appellant rendered her services as a teacher at Motsekuoa High School for the entire relevant period. Her services were accepted by the proprietor of Motsekuoa High School. It seems to me that it was the proprietor of Motsekuoa High School who benefitted from the services of the appellant in the sense that the children who came to its school got tuition free of charge at the expense of the appellant.

I do not agree with the submission that it was the Government of Lesotho which was enriched because education is its responsibility. That is not correct. Motsekuoa High School is a grant-aided school and that means it receives some

financial aid from public funds. Aid is help given to the proprietor of a school in the form of salaries to the teachers at a grant-aided school. That is the reason why the contract must be approved by the Principal Secretary for Education before it can be regarded as valid. It is the Principal Secretary who must see that there are funds available to pay the grant-in-aid. He must check the budget and make sure that no teacher shall assume duty before there is assurance that he/she shall be paid inasmuch as his/her salary is provided for in the budget.

I have already found that it is the respondent which was unjustly enriched. In any case the purported contract Exhibit "A" was entered into by the appellant and the Roman Catholic Church and the Government of Lesotho was not a party to it. Even after the Principal Secretary for Education has approved the contract by affixing his signature to it he does not make the Government of Lesotho a party to such a contract. Be that as it may, the doctrine of unjust enrichment does not depend on the validity or invalidity of the contract.

In the result, the appeal is upheld with costs.


J.L. KHEOLA
CHIEF JUSTICE

8TH MAY, 1998

For Appellant - Mr. Z. Mda
For Respondent - Mr. Sooknanan