

CIV/APN/465/96

IN THE HIGH COURT OF LESOTHO

In the matter between:

MOJELA KHABO**APPLICANT**

and

**COMMISSIONER OF POLICE
THE ATTORNEY GENERAL****1ST RESPONDENT
2ND RESPONDENT****JUDGEMENT**

Delivered by the Honourable Mrs Justice K.J. Guni
on the 6th Day of September, 2000

The applicant herein filed, on the 12th December 1996 this application, in which he seeks an order:

- (a) Condoning the late filing of this application;
- (b) Declaring as **null and void** his dismissal from the Police Force, from the 6th June 1989 or alternatively directing the respondent to pay the applicant his terminal benefits.

The applicant joined the Police Force in September 1978. He served as a police

officer for some years, attached to the Intelligence Section of the Force. While serving as such in the said INTELLIGENCE SECTION, he absented himself from duty without authority and perhaps without valid cause as well. He alleges that a disciplinary action was instituted against him. He must have been found guilty of indiscipline offence. He further claims that some money was deducted from his salary for those days he was absent from work. Applicant seems to regard the fact that he should not be paid while he was not working, as punishment. He does not give any reason why he should be paid while on French leave. He claims that he is being punished when he was not paid while on french leave. He has never heard of no work no pay.

The applicant does not appear in any way to question the procedure adopted in the disciplinary action instituted against him. He certainly accepted the decision reached in that disciplinary action because despite there being appeal procedures provided for when the convicted person is not satisfied with the decision, he did not avail himself of the same.

The applicant did not only leave The Lesotho Police Force, but he also left the country according to him to try and earn his living in The Republic of South Africa (hereafter referred to RSA).

The applicant does not spell out the exact number of days of his absence from duty without good cause and authority. There is no indication of the period when he was absent. He gives no dates when the disciplinary action was instituted against him. In any case these are not the issues. By Annexure MK1 - a letter from the Director of Royal Lesotho Intelligence Service - dated 7th April 1989, the applicant was required to show cause in writing, why his service with the Police Force should not be terminated. He claims he did show such cause within the specified period and in the prescribed manner. He was nevertheless dismissed on the 6th June 1989. It is from this date that if he did not accept as lawful his dismissal, he should have challenged the same. The prescriptive period must begin to run against him from this date.

The Law in force at the time this applicant was in the Police Force and subsequently dismissed, was The Police ORDER NO. 26 of 1971. In terms of section 22 of the said ORDER, the officer, Board or court, in addition to or in lieu of any of the penalties provided in this ORDER or any regulations made there under, may recommend to the Commissioner of The Police, the dismissal from the Police Force, of the convicted person. **MARABE V. THE Commissioner of Police CIV/APN/11/98** [unreported].

Before the Commissioner acts upon the recommendation of dismissal from the Police Force he should, without first consulting the Public Service, give the member whose dismissal is recommended, an opportunity to make representations. [see MARABE V. The Commissioner of Police [supra]. This procedure is required by section 29 POLICE ORDER No. 26 of 1971. This applicant was written a letter - Annexure MK1, attached to his Founding Affidavit, and invited to make the representation in writing within the specified period and show cause why his services should not be terminated.

Another section, which appears to have been in the mind of this applicant at the time he instituted these proceedings, is 34 which provides thus:

34 For the protection of persons acting in pursuance of this Order or any regulations made thereunder, every civil action against any such person in respect of anything done or omitted to be done in pursuance thereof shall be commenced within six months next after the cause of action arises and notice in writing of any civil action and of the substance thereof shall be given to the defendant at least two months before the commencement of the said action:

Provided that the Court may for good cause shown proof of which shall lie upon the applicant, extend the said Period of six months.

The applicant herein, appears to rely solenly on the extension of the prescriptive

period. This extension is available only when the applicant has shown good cause and to the satisfaction of the court. This applicant was dismissed from the Police Force on the 6th June 1989. He should have in terms of Section 34 (above) applied for his reinstatement into the Police Force or Payment of his Terminal Benefits within six (6) months of his dismissal from the said Police Force.

On behalf of the respondent no ANSWERING AFFIDAVIT was filed but, in terms of Rule 8 (10) (c) the point of Law was raised and Notice given to the applicant accordingly. The legal question raised is that:

Firstly, that this applicant should have instituted these proceedings within six (6) months of his dismissal from the Police Force in terms of Section 34 Police ORDER No. 26 of 1971.

Secondly, prior to the institution of these proceedings, applicant should have given Notice to the respondent, at least two months before instituting these proceedings.

Further and/alternatively, these proceedings are time barred in terms of Section 6 of the GOVERNMENT PROCEEDINGS AND CONTRACTS ACT No. 4 of 1965. In terms of this section, the proceedings against the government should have been instituted within two (2) years from the time when the cause of action accrued.

KOANYA MAKHELE AND OTHERS AND THE HONOURABLE MINISTER OF DEFENCE and INTERNAL SECURITY and ATTORNEY GENERAL C of A (Civ) No.6 of 1996.

By applying for condonation for late filing of this application applicant had conceded and properly so, that he is very late to approach the court for reinstatement into the Police Force or Payment of his Terminal Benefits. The letter of dismissal from the Police Force has directly dealt with the question of terminal benefits. The applicant knew, then, on the 6th June 1989 that his services are terminated without benefits. The prescriptive period for him to institute an action in which he claims such benefits started to run from the date of receipt by him, of that letter.. Koanya and Others V. The Honourable Minister of Defence [Supra].

The period of prescription may be extended only if there is a good cause. The applicant claims that he failed to act within the period prescribed by the law because he left the country. Why did he leave the country? He went to RSA to try to earn his living. This is a question of deliberate choice. This applicant does not claim compulsion. He could have instituted these proceedings immediately after his dismissal. Even though he claims he went to RSA to try to earn his living; he never earned any living there. He alleges that he returned to Lesotho in July

1991. There is no allegation that he worked in RSA. There is no satisfactory reason given by the applicant for his neglect of his right to sue within the six months of his dismissal. What prevented him from dealing with the question of his dismissal to a finality before departing from Lesotho? He should have sorted out the question of his terminal benefits then. The applicant gives no reason, let alone the satisfactory one, for approaching the court, hopelessly out of time.

The applicant is suing the Commissioner of Police and the Attorney General in their official capacity as organs of HIS MAJESTY'S GOVERNMENT. This brings us to the question of limitations of actions against Government. The prescriptive period in terms of GOVERNMENT PROCEEDINGS AND CONTRACT ACT 1965 runs for period of two years.


Applicant claims that he returned to Lesotho from RSA in July 1991. The cause of his action arose in June 1989. It is exactly two years since his dismissal. When did applicant give Notice to the respondents as required by the law, that he intends suing for reinstatement or payment of his terminal benefits? There was no such notice given to the respondents. On this ground alone this application must fail. This application must comply with this requirement first.

There is a further allegation that it is the respondent's fault that the applicant failed to bring this application to court on time. Applicant claims he visited respondents' offices, on the dates which he does not disclose, but after his return from RSA. Already two years had elapsed. There he met the respondents' subordinates whose names nor particulars this applicant does not disclose. Applicant does not even name, describe or in anyway give any indication of the particular office or official he visited. Can it be true that he spoke to nameless official who promised to attend to the matter? The onus of proving to the satisfaction of the court the reason for failing to take action within the prescribed period rests upon the applicant. There is no proof that he visited respondents' offices. That bare allegation that he regularly visited the respondents' offices is not enough. Why did he not deal with this question of his dismissal and reinstatement in writing? This applicant was a police officer. He cannot be heard to claim that he did not know which office he visited. He cannot claim not to know the capacity of the police officers who deal with him. These nameless, indescribable officials do not exist. The applicant has therefore failed to show good cause for extension of the prescriptive period.

TŠOLO LELALA and THE HONOURABLE MINISTER OF DEFENCE AND INTERNAL SECURITY AND THE ATTORNEY GENERAL in CIV/T/129/93 and CIV/T/130/93. [unreported].

His failure to institute this claim within the period prescribed by the law was a deliberate act on his part. He cannot be heard now to reappear, six to seven years out of time to claim reinstatement or payment of his terminal benefits.

This application must fail and it is dismissed with costs.



K.J. GUNI
JUDGE

For Applicant: Mr Nathane

For Respondents: Mr Mapetla