

IN THE HIGH COURT OF LESOTHO

In the matter between:-

JULIA MONYANE

APPLICANT

AND

**THE MANAGER - MAFETENG L.E.C. PRIMARY SCHOOL
ELIZA SEUTLOALI**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGMENT

Delivered by the Honourable Mrs. Justice K.J. Guni
on the 29th day of March, 2000

In 1976 the applicant in this matter was appointed as an assistant teacher at Mafeteng Lesotho Evangelical Church Primary School, by the 1st respondent who is the manager of the said school. On the 30th March 1981, the applicant and 1st respondent entered into a written contract of employment for a teacher on permanent terms. In terms of the said contract the 1st respondent agreed to employ this applicant who in turn agreed to serve the 1st respondent, in the capacity of a

head Teacher at that same school.

After her elevation to the post of a head teacher, this applicant served in that capacity for a number of years. While serving as a head teacher of that school, the applicant felt a need to enhance her educational qualifications and skills. She applied for and obtained a place at the National University of Lesotho (hereafter referred to as NUL) to study for a B.Ed degrees. This was a one academic year degree course, commencing from 1st August 1986 and ending in May 1987. She also proceeded to apply for and was granted a study leave extending for exactly the same period as the duration of her degree course.

Pursuant to this application for study leave and the granting thereof, the parties did enter into an agreement whereby the 1st respondent agreed, first to employ a temporary substitute at that school instead of this applicant from 1st August 1986 to May 1987. Secondly he agreed to re-employ the applicant at the end of her study leave.

On the 25th June 1997, this applicant filed this application, seeking an order of court in these terms:-

- “1. Declaring the 1st Respondent’s refusal to let Applicant discharge her functions and carry out her duties as Head Teacher of Mafeteng L.E.C. Primary School unlawful;
2. Directing the 1st Respondent to allow Applicant resume her functions and duties as Head Teacher of Mafeteng L.E.C. Primary School in terms of her contract of employment dated 31st March 1981;
3. Directing the 1st Respondent to pay costs hereof.
4. Granting Applicant further and / or alternative relief.”

There is no specific order sought against the 2nd respondent by the applicant. The applicant avers in her Founding Affidavit (paragraph 3) that the 2nd respondent is cited herein as a party who might be affected by the order sought. In her answering affidavit 2nd respondent avers that she is the head teacher of that school and has been the head teacher since 1986. Even although no exact date is alleged by the 2nd respondent, it is not in dispute that she assumed the position of the head teacher on 1st August 1986, which is the date on which this applicant commenced her study leave. It has been argued on behalf of this applicant that she knew before her departure for study leave that the 2nd respondent is that temporary substitute teacher employed in her place while she proceeded on leave.

There appears to be a two pronged attack of the applicant’s case by respondents. Firstly, there seems to be a total denial of the contract to re-employ this applicant

at the end of her study leave. Secondly, if there was such a contract to re-employ this applicant at the end of her study leave, the applicant herself, voluntarily and deliberately stepped down from the post of the head teacher in favour of the 2nd respondent. By her conduct over the years, the argument on behalf of respondents continues, this applicant had accepted the post of the assistant teacher and had served as such without a complaint. By so doing she made everybody concerned believe that she is happy with the status quo. She cannot now be heard to claim that the status quo which obtained uninterrupted should be changed. It is denied that the applicant is being paid the salary as the head teacher. It is argued that the applicant is receiving the salary of an amount equivalent to that of the current head teacher not because she is paid as the head teacher. The scenario is created by the applicant's acquisition of a higher educational qualifications and skills. The salaries are in fact paid by the Lesotho Government not by the 1st respondent. It is therefore denied that this applicant is paid by 1st respondent as the head teacher

In order to support the allegation, that this applicant freely and voluntarily stepped down from the post of the head teacher in favour of the 2nd respondent, the 2nd respondent alleges further agreement between herself and this applicant. According to 2nd respondent at the beginning of 1985 the field supervisor of the National Teacher Training College visited their school where the offer to enhance her

educational qualifications and skills at the said college was made to this applicant. This was a five years in-service upgrading course for head teachers. Although that invitation was directed to this applicant, she turned it down on the ground that she already has a place at NUL to study for a degree course in one year. This applicant allegedly recommended to the field supervisor that the 2nd respondent is suitable for that five years in-service training course. The applicant further encouraged the 2nd respondent, who on her own appeared uninterested in the furtherance of her education at that stage, to apply. The appropriate application forms for the five years in-service upgrading course for head teachers, having been left with this applicant by the field supervisors were filled in by 2nd respondent. This applicant completed where required the recommendations for 2nd respondent's suitability for the intended in-service training. Both ladies, applicant and 2nd respondent approached the 1st respondent for his approval to be indicated on those forms as the chairman of the school. The co-operation of the chairman was secured on the understanding that it must be apparent on the face of the application form that the 2nd respondent - was a head teacher although she would only function as such after the departure for NUL of this applicant, in August 1986. Because of the veiled conspiracy to misrepresent the 2nd respondent's entry qualification into that five years in-service upgrading course, the applicant does not wish to be associated with that scheme. She denies taking part in it. She denies any knowledge of such

scheme. The respondents seem to claim that it was at that very stage that this applicant voluntarily stepped down from the post of a head teacher in favour of this 2nd respondent.

These are motion proceedings. The averments from which this episode is gleaned raise more questions than answers. There is no proof of the allegations that this applicant acted in the manner that indicated her voluntary abdication from the position of the head teacher. It is argued on behalf of this applicant that the failure by respondents to annex those forms allegedly completed by the applicant in that fashion, as proof, that there was no such act committed by this applicant. The failure, by 2nd respondent to annex the document showing her appointment as a head teacher immediately when this applicant stepped down, it is argued on behalf of this applicant, that it lends further support, to applicant's denials that she never voluntarily and willingly stepped down at any time from the post of the head teacher, which she persists is still held by her, although the duties and functions of the head teacher are performed by 2nd respondent.

The relevancy of the proof of appointment of 2nd respondent in this matter escapes me. As I have pointed out earlier on, there is no court order sought against the 2nd respondent. She does not have to prove anything at all before this court. The

agreement whose terms, this applicant, seeks to enforce was between this applicant and 1st respondent. Therefore the issues which must be resolved by this court in order to determine the rights and obligations of the parties are:-

Firstly, is there an agreement between the parties as alleged by this applicant?

Secondly, what are the terms of such an agreement?

Thirdly, has there been the breach of the terms of such an agreement, and by which one of the parties has the alleged breach been committed?

The applicant, relies on the terms of the agreement between herself and 1st respondent, for the relief she seeks. Therefore the onus of proving the alleged contract and the terms thereof rests upon this applicant. **McWilliams v First Consolidated Holdings (Pty) Ltd 1982 (2) SA 1 (A)**. This applicant has set out the terms of the said contract, in her Founding Affidavit. She has supported those averments by attaching the actual contract document [Annexure 'B'] to the Founding Affidavit. **Vorster v Herselman 1982 (4) SA 857 (0)**.

The 1st respondent does not deny his signature on the contract document. He claims to have signed only to indicate his consent to the granting of study leave.

Paragraph 2 of the agreement, deals only with the obligations undertaken by the 1st respondent. The very first sentence expresses his consent to employ a temporary substitute at the school instead of this applicant from 1st August 1986 to May 1987. There is no ambiguity or hidden meaning. He continued under the very same breath to agree to re-employ this applicant at that same school at the end of her study leave. This is stated in very clear and simple terms. The 1st respondent does not claim that he misread or misunderstood the terms of the provision. He seems, though vaguely, to be claiming that there is yet another contract whose terms superceded the terms of the contract he signed. This averment would necessarily shift the burden of proof on to the respondents to prove the terms of that subsequent contract. 1st respondent associates himself with the story by 2nd respondent of how and why she enrolled to undergo that in-service upgrading (5) five years course. This applicant denies ever entering in any sort of agreement with respondents as they allege. Their failure to prove the allegation of the existence of a new and subsequent contract which superceded the one this applicant relies on, leaves me in no doubt that there was no such subsequent agreement. The special conditions, which 1st respondent claim, they are the factor which induced him to sign Annexure 'B' seem to have existed in the minds of the respondents only. As Mr .Nchulu succinctly puts it. "No provision is made in the form for the special conditions explained in 2nd respondent's answering affidavit upon which the

applicant's study leave was granted by me." This is a circuitous way of admitting that they have no proof of their allegations.

The only agreement which must be examined in order to determine the rights and obligations of the parties in this matter, is contained in the Annexure 'B' to the Founding Affidavit. I am satisfied, that, that is the only agreement which this court must consider as forming the basis of the relationship between the parties.

The applicant avers that, she returned to the school, at the end of her study leave to resume, as per their agreement, her duties and functions as the head teacher at the school. The 1st respondent did not however allow her to resume her duties and functions as the head teacher. This is denied by respondents. In terms of their agreement this applicant should have resumed her duties in May 1987. From May 1987, this applicant reported to and was answerable to the 2nd respondent who performed the duties and functions of the head teacher. Weeks, months and years went by. Nobody at the school was ever given any impression by this applicant that she is the head teacher. It is the applicant's averments that in effect the terms of her employment were now changed. She was employed as an assistant teacher, not a head teacher - contrary to the terms of the contract entered into by her and 1st respondent on the 30th March 1981. - [Annexure 'A' to the Founding Affidavit].

The curious situation has therefore been created in this school. There are two head teachers in the post of one. One is performing the duties and functions of the head teacher and accordingly remunerated as such. The other is performing the duties and functions of an assistant teacher but in terms of the contract of her appointment she is the head teacher. This situation has obtained for a period of twelve years. This applicant alleges that she requested rectification and to be put in charge of the school first on her return from study leave, which is in May 1987. 1st respondent refused. The applicant accepted the status quo. In 1989 - two years later, she again asked the 1st respondent to rectify the situation. She received no response from the school management. All these allegations are denied. The applicant has not proved that she took any action to enforce her rights, in terms of the said contract. She changed the terms of her employment herself by not then and there, challenging the action of the 1st respondent if he did refuse to let her resume her duties.

According to the 1st respondent, this applicant never demanded to be re-employed as the head teacher on her return from study leave. This was so, because applicant had stepped down from that post voluntary before she proceeded on her study leave. This applicant has not been able to prove that such a demand to be allowed to resume her duties as a head teacher was made at all on her return from study leave. In her affidavits although there is a claim that a demand was made there is

no proof of the alleged demand for re-instatement to a position of a head teacher. Again in her paper this applicant shows that for a period of at least two years she accepted the position of an assistant teacher without a question. The applicant had undertaken to resume her post at that school at the end of her study leave. She returned from her leave in May 1987. She did not resume her post. Who is in breach of the terms of the agreement? If she was not allowed to resume her post on her return why wait for this long to take action if she is not in agreement with the changed status? By her conduct the applicant accepted the position of an assistant teacher.

Her query or challenge so belatedly is clearly a change of mind on her part. The applicant can change her mind as often and after any length of period as she pleases, as long as her change of mind does not need the cooperation and consent of others. Once she accepted to be re-employed as an assistant teacher, be it for two years or less [if I accept that she started to question the status quo in 1989, which is denied by 1st respondent] she must remain an assistant teacher until another agreement is reached between her and those concerned. She has, by her conduct, made them acquire certain rights which must now be respected.

This application must fail . It is dismissed with costs.



K. J. GUNI
JUDGE

29th March, 2000

For Applicant : Mr. Mahao

For Respondent : Mr. Sello