

CIV/APN/314/2001  
IN THE HIGH COURT OF LESOTHO

In the matter between:

MATSOBANE PUTSOA	APPLICANT
and	
THE VICE-CHANCELLOR OF NUL	1st RESPONDENT
THE NATIONAL UNIVERSITY OF LESOTHO	2nd RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs Justice A.M. Hlajoane Acting Judge on 21st Day of November, 2001

The Applicant in this case approached the Court ex parte in an Application couched in the following terms:

- 1) That the Rules of this Honourable Court pertaining to notice and service be dispensed with and the matter be heard as of urgency.
- 2) That a Rule Nisi be issued returnable on the date and time to be determined by this Honourable Court, calling upon the Respondents to show cause, if any why:
  - a) Respondents' contemplated exclusion of the Applicant from his office shall not be stayed pending the determination of proceedings in CIV/APN/305/2001 and, this application.
  - b) Respondent shall not be restrained from excluding the Applicant from office, on the grounds that the intended exclusion is aimed at circumventing and rendering nugatory and of no force and effect the Judgement of this Honourable Court in CIV/APN/248/2000;
  - c) (c) Respondent shall not be ordered to pay the costs of this application;
  - d) (d) Applicants shall not be granted such further and/or alternative relief.
- 3) (3) That prayer 1 and 2(a) operate with immediate effect as interim order.

The Application was moved and was granted on the 27th August, 2001 and return date fixed, which was later extended and further extended till when the matter was eventually argued before me on the 24th September, 2001.

From the very beginning, I must mention that both counsel in this case failed to behave professionally in Court by not listening to each other. They allowed their tempers to get the better of them, they could not contain their tempers, thus showing so much disrespect to the Court. They caused or allowed their interests to prevail over that of their clients. In future I don't think that this kind of behaviour will be tolerated.

The Respondents in filing their answering affidavits raised the following points in limine:

- 1) That this matter is not urgent.
- 2) The certificate of urgency does not comply with legal requirements in that it does not tabulate the reasons for bringing this matter before Court on an urgent basis.
- 3) The certificate of urgency has not been signed as is required by law.
- 4) Local remedies have not been exhausted.

### On Urgency

The Applicant has rightly conceded that whether or not a matter is urgent is a matter for the discretion of the Judge who considers the Application when it is first brought before him/her. Once a judge has granted dispensation it presupposes that the matter is being treated as urgent. I would therefore not at this stage turn around and say the matter in fact is not urgent as that would be tantamount to reversing the decision of my brother Judge who granted the rule nisi:

In *Sikwe vs S.A. Mutual Fire and General Insurance* 1977 (3) S.A 438 at 440,

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it was stated that it is the substance of the affidavit and not the form which will weigh with a Court on urgency.

### Non-Disclosure of Grounds for Urgency

This point is somehow similar to the previous point. Respondents' point on certificate of urgency not satisfying or complying with legal requirement, the Lesotho Court of Appeal in the case of *Molapo Qhobela and Another vs B.C. P. and Another* 1999-2000 LLR & LB 243 clearly indicated that such argument would not hold water where urgency has been canvassed on the affidavits. As was said in *Qhobela's case* [supra], Applicant's founding affidavit at para 8 proclaims the extreme urgency.

8.1. "The subject matter of the Vice Chancellor's letter is pending before this Honourable Court in CIV/APN/305/2001 and to respond to the Vice Chancellor would amount to dealing with matters that are sub judice"

8.2. "I am in charge of the financial affairs and related transactions of the University in my capacity as the Bursar. To exclude me from office when the audit of the University is being carried out would greatly prejudice the proper execution of my duties as the Bursar."

8.3. "I was given this letter (Annexure 'ff) on the 22nd August, 2001, in the afternoon. I am being called

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to make representations on the 24th August. 2001. Surely this does not even give me sufficient time to prepare. The auditors have not even been consulted to ascertain whether or not my presence in office is prejudicial to this exercise."

Incidentally the rule in CIV/APN/305/2001 was confirmed the same day that this Application was argued, the 24th September, 2001.

## Unsigned Certificate of Urgency

Applicant has rightly shown that this submission is clearly misplaced because as a matter of fact the Certificate of Urgency has been signed. This point in limine therefore does not hold water as the Certificate filed of record has been signed.

## Local Remedies not Exhausted

Though I had not been availed of a copy of the N.U.L Order 19 of 1992, somehow I managed to secure a copy from somewhere. Section 6 of the Order establishes the Council of the University and its composition. Section 10 of the Order describes Council as the Supreme governing body of the University. This Section lists the powers of Council, which mainly comprise of the overall management and control of all the affairs, concerns and property of the University.

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On the papers, the Court has been informed that the Applicant is the Bursar at N.U. L, an office established under Section 19 of the Lesotho National University Order No. 19 of 1992. He is appointed by the Council of the University as its Chief Financial Officer, subject to the directions of and responsible to the Vice-Chancellor. The order has no provision for a procedure that has to be followed where there are grievances by officers like the Bursar neither does it oust the jurisdiction of the High Court.

My brother Mofolo J delivered his Judgement on the 10th August, 2001 in CIV/APN/248/2000 where the present Applicant was still the Applicant against the National University of Lesotho, and in his judgement the following passage has been quoted:

"In any event, under a Bursar are several mini bursars accountable to the Bursar engaged in daily transactions. Although he is responsible for overall management, he is not immediately accountable until an audit inquiry has revealed otherwise. I find the exercise by the Respondent (N.U.L.) To have been presumptuous and pre-emptive, something this Court cannot allow."

The judgment of my brother Mofolo J did not only make a pronouncement

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on procedural irregularity on the part of the University in effecting the exclusion, but went further to say that the exercise of exclusion has been "presumptuous" and "pre-emptive". This is more so because according to the letter Exhibit "DD" by the Acting Vice-Chancellor to the Applicant he is saying, "It is my intention to exclude you from office while this process is being completed and pending its finalisation." No mention of any revelations by the audit enquiry which might have influenced his decision. This judgment constituted a bar to future administrative action on the part of the University to a certain extent, "until an audit enquiry has revealed otherwise."

In the result, it is held that the points in limine are without merit and must therefore fail. The application succeeds with costs.

AM. HLAJOANE  
ACTING JUDGE

For the Applicant: Mr Mahlakeng  
For the Respondent: Mr Mosae