

IN THE HIGH COURT OF LESOTHO

In the matter between:-

CHAKA LEHATA

APPLICANT

and

THE COMMISSIONER OF POLICE  
THE MINISTER OF HOME AFFAIRS  
THE ATTORNEY-GENERAL

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT

J U D G M E N T

Delivered by the Hon. Mr. Justice G.N. Mofolo  
on the 20<sup>th</sup> day of September, 2001.

After lengthy argument, Mr. Molapo for the applicant conceded that the application had to do with applicant's first interdiction and that the ultimate dismissal was subject-matter of a different application. He has said that applicant's case is contained in para.4 of the applicant's founding affidavit; further that in the present application there is no challenge of the principle of the *audi rule*.

For the sake of clarity, perhaps it is advisable to advert to the application in full which reads:-

Take Notice that an Application will be made on behalf of Chaka Lehata (hereinafter referred to as Applicant) on the 24<sup>th</sup> day of January, 2001 at 9.30 hrs. or so soon thereafter as counsel for the applicant may be heard for the following relief and an order in the following terms:-

1. Declaring the interdiction from duty on half pay applicant unlawful and of no force and effect.
2. Directing and Ordering the 1<sup>st</sup> and 2<sup>nd</sup> respondents to pay all outstanding arrears on the monthly salary of Applicant and benefits with interest at the rate of 18.5% per month from the date of interdiction to date of dismissal.
3. Directing and Ordering the 1<sup>st</sup> and 2<sup>nd</sup> respondents to pay all outstanding arrears on the monthly salary of Applicant and benefits with interest at the rate of 18.5% per month from date of reinstatement to the time when the respondents may lawfully interfere with applicant's salary.
4. Directing and Ordering the 1<sup>st</sup> and 2<sup>nd</sup> respondents to continue to pay applicant his full salary from the

police service pending the results of the Appeal.

5. That the respondents be ordered to pay costs of this application.
6. Such further and/or alternative relief as may be considered appropriate.

With respect, this is a most confused and extremely inelegant application making it extremely difficult to determine, from the application, exactly what the applicant wants. It was only on this court taking Mr. Molapo to task that he elicited what the application was all about and as I have said above he has said the substantive and material aspect of the application is contained in paragraph 4 of the Founding Affidavit which reads:-

I humbly submit that my interdiction on half pay is unlawful and unconstitutional as at that stage I was merely a suspect and the First Respondent had no powers to interfere with my property i.e. my salary until the disciplinary hearing or criminal proceedings are instituted and finalized against me.

As I understand Mr. Molapo all that is being claimed is full salary from the time of interdiction to the time applicant was convicted or perhaps dismissed from the police service.

On 21 August, 2000 as a result of applicant's conviction on the Internal Security (General) Act, 1994 the Commissioner of Police had dismissed the applicant from the Police Service and on appealing against his conviction the Commissioner of Police had reversed his earlier decision to discharge the applicant from the Police Service (vide letter of 06 September, 2000) so that effectively, until applicant's appeal is heard the applicant can safely be treated as within the Police Service.

Applicant's case, however, is that on being interdicted he should not have been interdicted on half pay but on full pay on the ground(s) that:

- (a) his salary is his right and it cannot be interfered with before there is an adverse finding against him. I have understood such adverse finding as being final against the applicant.
- (b) he says his salary is his constitutional right which may not be interfered with until a final verdict against him.

This court is going to operate from the premise that from the time applicant was interdicted to date and pending the result of the appeal, applicant is on half pay and that, should the applicant have his way, he is to be paid the difference between his half pay and full salary with the effect from

when he was interdicted to the result of his appeal.

From the Commissioner of Police letter of interdiction, applicant was interdicted in terms of sec.25 of the Police Order, 1971.

Now, sec. 25 of the Order reads:-

‘Any member of the Force other than a senior officer may be interdicted from duty at any time by the Commissioner or by any senior officer generally or specially authorised for this purpose by the Commissioner until the determination by the Commissioner of any proceedings against him under this Order but he shall not by reason of such interdiction cease to be a member of the Force.’

Provided that the powers, privileges and benefits enjoyed by him as a member of the Force shall, during his interdiction, be in abeyance but he shall continue to be subject to the same responsibilities, discipline and penalties and to the same authority as if he had not been interdicted.

Provided further that the Commissioner in his discretion may order payment to such member of an allowance during the period of his interdiction; and if the said proceedings terminate in his favour such member shall be entitled to payment in full of his emoluments for the whole period of his interdiction

while he was a member of the Force less any allowance already drawn.'

The section allows the Commissioner of Police to interdict a member of the force like the applicant pending any proceedings against the member and this is what the Commissioner of Police has done. The first proviso is that powers, privileges and benefits enjoyed by the member will be freezed notwithstanding that for all intends and purposes he will be treated as a policeman. The second proviso gives the Commissioner of Police a discretion as to payment during the period of interdiction. In his discretion the Commissioner of Police placed the applicant on half pay and it is this that this court must decide namely, whether the Commissioner of Police used his discretion properly.

Mr. Molapo for the respondent has referred to sec. 17(1) of the Constitution which reads:-

'No property, movable or immovable, shall be taken possession of compulsorily, and no interest in or right over any such property shall be compulsorily acquired, \_\_\_\_.'

and I wish, in addition, to refer to sub-section 2 thereof which reads:-

Any person having an interest in or right over property which is compulsorily taken possession of or

whose interest in or right over any property is compulsorily acquired shall have a right to direct access to the High Court \_\_\_\_.'

As it is, sub-section 2 allows any party aggrieved to approach the High Court to have his grievances addressed and it may be said it was in the light of this sub-section that *B.M. Mepola v. Commissioner of Police (CIV/APN/24/98)* was decided for the section clearly gives the High Court the right to review any administrative decisions taken relating to individual property.

*In determining the law applicable, the first proviso to sec.25 above cannot be ignored for, according to the proviso, although an interdicted policeman's powers, privileges and benefits enjoyed by him are placed in abeyance during the period of interdiction, he continues 'to be subject to the same responsibilities discipline and penalties and to the same authority as if he had not been interdicted' meaning, though interdicted, he operates for all intends and purposes as if he had not been interdicted; according to the second proviso, though operating as if he had not been interdicted the Commissioner of Police is given a discretion to determine what allowance such an interdicted person may be paid. In effect what this means is that though the subject operates like any policeman and is subject to the same strains and stresses of police duty, simply because there are proceedings*

against him the result of which is unknown he has to be put on an allowance which is invariably not his full salary. What's worse, though during the period of his interdiction he has been performing maximum duties like any fully paid policeman, should he, in the end, lose his case, he loses even that which he has worked for.

I cannot think of a more unfair dispensation. A man working at maximum capacity is entitled to be paid at maximum capacity and applicant's maximum capacity is his full salary. Administrative discretion has to do with rules of natural justice and fair play. I am of the view that applying his discretion, the Commissioner of Police did not apply it fairly and reasonably but disproportionately having regard to the implications of sec.25 above.

Mr. Motanyane has submitted since the applicant has not replied to the Answering Affidavit, that in the circumstances the first respondent's assertions are to be preferred. There is nothing in the respondent's Answering Affidavit for all it says is that the 1<sup>st</sup> respondent has merely applied the law. I have already said that in applying the law the 1<sup>st</sup> respondent did so unreasonably. What's more, the conduct of affairs complained of was subject matter of the Police Order, 1971 and not the Police



Service Act, 1998.

Accordingly, this court grants the application with costs to the extend that the applicant be paid his full salary with effect from the date of his interdiction to the determination of his appeal.



**G.N. MOFOLO**

**JUDGE**

**18<sup>th</sup> September, 2001.**

For the Applicant:      Mr. Molapo  
For the Respondents:    Mr. Motanyane