

C. OF A. (CIV) NO 32/2000**IN THE LESOTHO COURT OF APPEAL****In the Appeal of :****SAMUEL THABO MOKAEEANE****Appellant****vs****MINISTER OF NATURAL RESOURCES
COMMISSIONER OF MINES & GEOLOGY
ATTORNEY GENERAL****1st Respondent
2nd Respondent
3rd Respondent****HELD AT MASERU****CORAM :****STEYN, P
KUMLEBEN, JA
PLEWMAN, JA****JUDGMENT****PLEWMAN, JA**

Appellant is a civil servant whose years of service were extended beyond his normal retirement upon his attaining the age of fifty-five(55) on 26 October 1990. On 15 October 1996 appellant by notice of motion commenced proceedings against the Respondents being the Minister of Natural Resources, The Commissioner of

Mines and Geology and the Attorney General as the representative of Government. In his founding affidavit he annexed and incorporated the record in an earlier application which he had instituted against the same respondents. This too related to his employment as a civil servant. This resulted in a great deal of confusion as to the precise relief sought - confusion which has only been resolved by counsel in this Court. What in the final analysis is an issue is simply the question of whether appellant was entitled to service benefits in respect of services he rendered after 26 October 1995 - he having been remunerated for work done after that date but without the addition of pension and service benefits. The Court *a quo* dismissed appellant's application with costs.


The matter is easily resolved. The Court *a quo*, relied on Public Service Order No. 21 of 1970. In terms of this order a civil servant retires upon attaining the age of fifty-five years but could have his period of service extended for a period which "would not exceed in aggregate five years". On this basis the court held against appellant. The legislation in force is in fact the Public Service Act 1995. The provisions of S.30(1) and (7) of the 1955 Act are however, in substantially the same terms as the earlier Order.

The current Act S.30(1) establishes the retiring age as fifty-five. S. 30(7) reads

“(7) If on the opinion of the Minister it is in the public interest to retain a public officer in office beyond retiring age, the officer may if willing, be retained from time to time by the Commission for further periods that shall not exceed in aggregate five years”.

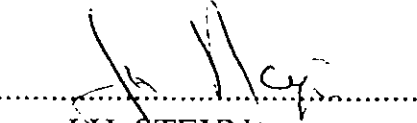
It follows that appellant could not be and was not retained as a public officer after the five years of his extended service and was not, after that time, entitled to pension and service benefits in terms of the Act.

The appeal is dismissed with costs.




 C. PLEWMAN
 Judge of Appeal

I concur



 J.H. STEYN
 President

I concur



 J. KUMLEBEN
 Judge of Appeal

Dated this Day of April 2001 at MASERU

For the Appellant :
 For the Respondent :