

**IN THE HIGH COURT OF LESOTHO**

In the matter between:

**MOKOROSI CHOBOKOANE**

**APPLICANT**

and

**THE JUDICIAL SERVICE COMMISSION  
THE ATTORNEY-GENERAL**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

**J U D G M E N T**

Delivered by the Hon. Mr. Justice G.N. Mofolo  
on the 26<sup>th</sup> day of March, 2001.

The applicant has approached this court seeking an order in the following terms:-

1. That a Rule Nisi issue returnable on the date and time to be determined by this Honourable Court calling upon the Respondents to show cause (if any) why:

- (1) The Rules of Court as to form, notice and service shall not be dispensed with on account of urgency;
  - (2) The purported suspension of Applicant by first respondent on the 5<sup>th</sup> September, 2000 shall not be declared unlawful, null and void and of no legal force or effect;
  - (3) The purported suspension of Applicant's salary shall not be declared unlawful, null and void and of no legal force and effect;
  - (4) The respondents shall not be ordered to pay costs hereof;
  - (5) The applicant shall not be granted further and/or alternative relief;
2. That prayer 1 (a) operate with immediate effect as an Interim Order.

Having heard counsel for the applicant and 1<sup>st</sup> respondent I had granted the application indicating my reasons would follow. Here are now reasons for judgment:

From the record of proceedings it would appear as a result of injuries the applicant has inflicted on his wife he had been found guilty of Assault with Intent to do grievous bodily harm. Consequent on the conviction and by letter of 5<sup>th</sup> September, 2000 the applicant had been interdicted without

pay. The letter is reproduced in full and reads:

THE JUDICIAL SERVICE COMMISSION

Secretary: Registrar of the High Court  
Telephone: (266) 322311  
Telefax: (266) 310365

Registrar Chambers  
High Court,  
P.O. Box 90,  
Maseru.  
Lesotho.

JUD/JSC/4

5<sup>th</sup> September, 2000.

Mr. Chobokoane,  
Magistrate's Court,  
MASERU.

Sir,

re: Interdiction - Mr. A.M. Chobokoane

You have been charged of attempted murder and convicted of assault with intent to do grievous bodily harm and sentenced to twelve months' imprisonment or in lieu of imprisonment a fine of M2,000-00.

The Judicial Service Commission has resolved that you be interdicted without pay from performing the functions of your office as a Judicial Officer with immediate effect, pending the decision or result of any appeal you may lodge. This is in terms of sec. 18 (2) of the Judicial Service Commission Rules 1994.

Yours sincerely,

(Sgd.) A.M. Hlajoane (Mrs.)

SECRETARY - JUDICIAL SERVICE COMMISSION

Now section 18 of the Judicial Service Commission Rules, 1994 reads:-

sub-section 2

'If an officer has been convicted of a criminal offence and the head of the department recommends or intends to recommend to the Commission that he be removed from office in consequence of that conviction, the head of department shall interdict the officer pending the decision of the Commission or the result of any appeal that the officer may have lodged in a superior court.'

Two things emerge from the above section namely:

- (1) The head of department must either recommend or intend to recommend to the commission that the officer be removed from office in consequence of the conviction;
- (2) The head of department shall interdict the officer pending the decision of the Commission or result of any appeal the officer may have lodged;
- (3) There is no suggestion in the legislation that the officer may be suspended without pay.

With regard to sec. 18 (2) above, this court has gone through the file and finds no evidence that the head of department has recommended to the

Commission that applicant be removed from office in consequence of his conviction. According to the section, only when the head of the department has so recommended can 'the head of department interdict the officer pending the decision of the Commission or result of any appeal that the officer may have lodged in a superior court.'

I have already referred to letter of interdiction above by Secretary of the Judicial Service Commission purporting to interdict the applicant and must add as I have said above it would seem if it was desired to remove applicant from office his head of department should have made such recommendation to the Judicial Service Commission and it is upon this recommendation that the head of department can move to interdict the applicant.

The applicant, according to papers before me, is a Judicial Officer and to be precise is a magistrate in the subordinate court. Judicial ranking in the subordinate court according to Subordinate Courts Order, 1988 is as follows:-

- (a) Chief Magistrate
- (b) Senior Resident Magistrate
- (c) Resident Magistrate
- (d) First Class Magistrate


- (e) Second Class Magistrate and
- (f) Third Class Magistrate

Nothing in the Order gives administrative powers to the magistracy except performance of judicial functions.

As to interdiction of a judicial officer pending proceedings against him or after conviction, it would appear judicial service commission rules have given power to the head of department to interdict the officer concerned. The interpretation to Part 1 (Preliminary) of the Judicial Service Commission Rules, 1994 defines 'Head of the Department' as the 'Principal Secretary for Justice or any person duly appointed to act in that capacity.' Secretary is defined as 'the person performing the duties of secretary to the Commission in terms of section 132 (11) of the Constitution.'

As for Rule 18(1) of the Act, it becomes patently clear that the duty is exercised by the Principal Secretary for Justice or any other person appointed to act in that capacity. Equally, the duty under Rule 18 (2) can only be exercised by the Principal Secretary Justice or any other person appointed to act in that capacity. Section 132 (11) of the Constitution is only to the effect that 'The Secretary to the Commission shall be the Registrar of the High Court' and nowhere does it describe the Secretary as

head of department. Clearly, then, if it was intended to interdict the applicant pending his appeal (if any) or any other proceedings, the person empowered by law to interdict the applicant is the Principal Secretary for Justice and by the same token it is the Principal Secretary for Justice who should (had he the intention) have recommended to the Commission of the intended removal of the applicant from office in consequence of the conviction. The Principal Secretary for Justice has made no such recommendation and has not, as he should in law have done, interdicted the applicant Abiel Mkorosi Chobokoane. It cannot therefore be said that the applicant was lawfully interdicted or as said, lawfully suspended.



**G.N. MOFOLO**  
Judge  
23<sup>rd</sup> March, 2001.

**For the Applicant: Mr. Phafane**  
**For the Respondent: Ms. Matshikiza**