

CIV/APN/380/2000
IN THE HIGH COURT OF LESOTHO

In the matter between:-

THABO LEKHOOA	APPLICANT
and	
THE COMMANDER LDF	1st RESPONDENT
THE ATTORNEY GENERAL	2nd RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs Justice Hlajoane Acting Judge on 31st Day of August, 2001

This was an application seeking a relief for condonation of late filing of application after the lapse of two (2) years prescriptive period and also declaring the dismissal of Applicant from the Lesotho Defence Force to be unlawful and of no legal force or effect, together with an order for costs in the event of opposition.

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The Application was opposed and the Respondents had farther filed a notice to raise a point of law in limine to the effect that, in terms of the Government Proceeding and Contract Act 4 of 1965, Section 6, thereof or indeed any other law, the High Court had no power to condone the late filing of proceedings after the expiration of two (2) years. Section 6 of that Act.

Section 6: "Subject to the Provisions of Sections 6,7,8,9 10,11,12, and 13 of the Prescription Act (1861) no action or other proceedings shall be capable of being brought against Her Majesty in Her Government of Basutoland by virtue of the provisions of Section 2 of this Act after the expiration the period of two years from the time when the cause of action or other proceeding first accrued."

Respondents Counsel contended that the provisions of the Section were mandatory and peremptory as the word "shall" has been used. He make mention of the Police Act 1998, for purposes of emphasis, in which the prescription period runs for only six months. But the same provision has a proviso where extension could be granted by the Court on good cause shown. The Government Proceedings Act has no such a proviso conferring extension by the Court of the period, the Court is considered barred from going beyond that period.

Counsel for the Applicant, Mr Putsoane, argued that in fact there are exceptions to Section 6 referred to above. The main enquiry he showed, would

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be whether the Applicant qualifies under the stipulated Sections of the Prescription Act of 1861. He relied solely on Section 6 of the Prescription Act 1861, which reads:

Section 6. "It at the time when such cause of action as is in Sections 3, 4, and 5 of this Act mentioned first accrued the person to whom the same accrued was a miner, or under coverture , or of unsound mind, or absent from Basutoland,

then such person claiming through this may notwithstanding that the period of prescription herein before limited in regard to such cause of Action has expired, bring a suit or action upon such cause of action at any time within 8 years or 3 years (as the case may be) next after the time at which the person to whom such cause of action first accrued ceases to be under any such disability as aforesaid or has died, whichever of these two events has first happened".

He contended therefore that Prescription Act did not apply to him as 8 years had not expired. He considered his imprisonment to be this period " under coverture".

In argument counsel for the Applicant went further to show that the Applicant fell ill and has also been imprisoned, and when he was so released he found that he had been dismissed. In his Founding Affidavit, he had shown that he was employed by the first Respondent in June, 1986 until when he was dismissed through the Force Order on the 1st August 1998.

According to the bail bond attached to the papers, the Applicant appeared

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to have been granted bail on the 7th September, 1998 and only managed to pay on the 13th October, 1998. The papers unfortunately do not show as to when he had been arrested and kept in custody, because for disciplinary hearing he had been fined seven (7) days of his salary.

Respondents showed that if it was indeed the Applicant's point that the claim fell within the exceptions, there would have been no point in applying for condonation, they could have just filed their application directly and only alleged in their prayers, reliance on the Act.

Respondents went further to argue that the Applicant did not say in regard to which period he was in prison, in relation to time when Prescription period started running. It was incumbent upon the Applicant in motion proceedings to disclose all relevant facts to be relied on, on his affidavit.

It is trite law that in Application proceedings, a party must stand or fall by his founding papers and facts alleged therein, see *Pountas' Trustee vs Lehanas* 1924 WLD 67. Applicant sought to request the Court to consider the reasoning of Mr Ntlhoki in *CIV/T/142/93 Khathatso Thetsane & 19 Ors vs Attorney*

General, where the correct interpretation was given of a person considered bein

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under coverture. In that case the Court showed that it was not enough just to say a person was in prison, without further alleging that they were also prohibited from seeking legal assistance. Being in prison alone cannot be considered as a disability.

This Court made it clear that a person serving a term of imprisonment cannot claim to have been under coverture. The Court showed that, only a married woman who is still under her husband's marital powers at the relevant time can claim such disability.

On the authority of *Thetsane and Others vs Attorney General* above, I feel obliged to agree with the reasoning that a person in Prison is not to be considered as a person under coverture. It has not been the Applicant's case that whilst in Prison he was not allowed access to visitors, being friends and relatives. Let alone the fact that the Applicant as already stated has not shown the period that he was in prison safe from what could be deduced from the bail bond that he was granted bail on the 7th September 1998 and released on bail on 13th October, 1998. Applicant has not stated the offence he had been granted bail for, also whether he was in fact convicted and sentenced for that undisclosed offence.

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In the result, the Respondents' special plea succeeds and the Applicant's claim is dismissed with costs.

A.M. HLAJOANE
ACTING JUDGE

For Applicant: Mr Putsoane
For Respondents: Mr Mapetla

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