

IN THE HIGH COURT OF LESOTHO

In the Application of:

PAPALI MALEFANE

Applicant

and

MINISTRY OF LAW AND CONSTITUTIONAL AFFAIRS 1st Respondent

MINISTRY OF PUBLIC SERVICE 2nd Respondent

ATTORNEY GENERAL 3rd Respondent

JUDGMENT

Delivered by Honourable Mr. Justice B.K. Molai on

14th day of August, 2001

The applicant herein filed, with the Registrar of the High Court, a Notice of

Motion in which she moved the court, *ex-parte*, for an order framed in the following terms:

- “1. Rule nisi be issued calling upon respondent to show cause why the following prayers cannot be made absolute.
 - (a) Interdicting the respondents from transferring the applicant to the Ministry of Justice pending finalisation of this application.
 - (b) Granting Applicant access to her office in the 1st Respondent Ministry forthwith pending finalisation of this application.
 - (c) Reviewing and setting aside the decision to transfer applicant from her substantive post.
 - (d) Cost of suit.
 - (e) Further and / or alternative relief.
2. That prayers 1 (a) and (b) should operate with immediate effect.”

It is, perhaps, convenient to mention by way of background that the applicant is a civil servant, in the Government of Lesotho, attached to the Drafting section of the 1st Respondent Ministry as the Principal Assistant Parliamentary Counsel. Her immediate superior is the Parliamentary Counsel, one Ntebaleng Morojele-Maseela, who is the head of the Drafting Section.

On 31st March 2000 the applicant received, from the Parliamentary Counsel, a memo of the same date, in which the latter complained about the former's repeated absenteeism from work, without leave. The memo (annexure P.M.M.4), which was, *inter alia*, copied to the 3rd respondent and the Deputy Attorney General, concluded by inviting the applicant to give reasons, if any, why disciplinary action could not be taken against her. On 15th June 2000, the Parliamentary Counsel addressed, to the 3rd respondent, another memo (annexure P.M.M.5) from which it appeared that the applicant had, on 5th April 2000, written, to the Parliamentary Counsel, a letter which was, however, not annexed to the papers placed in the file before me. I have not, therefore, been favoured with the contents of the applicant's letter of 20th April 2000.

Be that as it may, the gist of annexure P.M.M.5 was that the applicant persisted in her negative attitude e.g. she came in and went out of the office as she pleased and never reported anything to the Parliamentary Counsel in her capacity as the head of the Drafting Section. As a result, it was becoming increasingly difficult for the Parliamentary Counsel to run the Drafting Section of the 1st Respondent Ministry efficiently. Consequently, the Parliamentary Counsel requested that, in the interest of the smooth running of the Drafting Section, the applicant be transferred to some other Section or Department.

It would appear that the 3rd respondent referred annexure P.M.M.5 to the Deputy Attorney-General for necessary action. Wherefore, the Deputy Attorney-General addressed a letter, dated 16th June 2000, to the applicant, requesting the latter to respond to annexure P.M.M.5. By her letter of 6th July 2000 (annexure P.M.M.7), the applicant did comply with the request and denied the accusation that she had a negative attitude towards the Parliamentary Counsel. As proof thereof, she referred the Deputy Attorney-General to her letter of 5th April 2000. As it has already been pointed out, earlier in this judgment, the applicant's letter of 5th April 2000 is not annexed to the papers placed before me, in this case. I have, therefore, no way of knowing its contents. In the contention of the applicant, there was no justification for transferring her from the Drafting section of the 1st respondent Ministry to some other sections or Departments.

On 21st July 2000, the 2nd respondent addressed, to the applicant, a letter (annexure P.M.M.1) in which the latter was advised that it had been decided to transfer her from the Drafting section of the 1st respondent Ministry to the Ministry of Justice and Human Rights, with effect from Monday, 24th July 2000. Annexure P.M.M.1 reads, in part:

“Dear Madam,

I wish to inform you that it has been decided that you be transferred from the Ministry of Law and Constitutional Affairs (Drafting Section) to that of Justice and Human Rights. You will be held against the position of Senior Legal Aid Counsel, Grade G for the time being.

You are requested to report to the Principal Secretary, Ministry of Justice and Human Rights by Monday 24th July, 2000.

Kindly note that your terms and conditions of service in other respects will however, remain the same.

Yours faithfully

T. Mathealira
for Principal Secretary
Ministry of the Public Service”
(my underling)

The applicant referred annexure P.M.M.1 to a firm of Legal Practitioners who, on 26th July 2000, wrote, to the 2nd respondent, a letter, annexure P.M.M.2, in which they challenged the transfer. The grounds upon which the transfer was challenged were firstly, that as the Principal Assistant Parliamentary Counsel the applicant was on Grade 14 (H). The position of Senior Legal Aid Counsel to which she was being transferred, in the Ministry of Justice and Human Rights, was, however, on Grade 13 (G). In the contention of the Legal Practitioners the applicant’s transfer amounted, therefore, to her demotion which was irregular

inasmuch as she had not been afforded prior opportunity to be heard. Secondly, the author of annexure P.M.M.1, namely Mathealira, had no power to transfer or demote the applicant. That was the prerogative of only the Public Service Commission.

I have underscored the words "I wish to inform you that it has been decided," to indicate my view that T. Mathealira merely passed the information that the decision to transfer the applicant had been taken. The words do not necessarily imply that T. Mathealira is the person who has actually taken the decision to transfer her.

In reply to annexure P.M.M.2, the 2nd respondent addressed, to the applicant's legal representatives, a letter, dated 1st August 2000, in which it was denied that the applicant's transfer amounted to a demotion. In the contention of the 2nd respondent, it was a redeployment, within the Public Service, made by the Minister responsible for the Public Service, in accordance with the provisions of the Public Service Act, 1995.

Consequently, the applicant approached this court with the application for relief, as prayed in the notice of motion. The application was, on 20th November

2000, moved before Ramodibedi J who, however, took the view that there was no urgency shown in the founding affidavit. He, therefore, ordered that the application should proceed in the ordinary way, as being one on notice.

Thereafter, the respondents filed notice of intention to oppose. The answering and the replying affidavits were duly filed by the respondents and the applicant, respectively. In as far as it is relevant, the facts disclosed by the affidavits are not really in dispute that the applicant was transferred/moved by the Minister responsible for the Public Service from the Drafting section of the 1st respondent Ministry to the Legal Aid Department of the Ministry of Justice and Human Rights. However, the applicant averred that the power to appoint/transfer civil servants in the Public Service was vested in the Public Service Commission and not the Minister responsible for the Public Service. In the contention of the applicant, her transfer was actuated by nothing but malice and as a sort of punishment for her alleged absence from work.

Ntebaleng Morojele-Maseela, the head of the Drafting Section of the 1st respondent Ministry deposed to an answering affidavit in which she averred that the reasons for her request that the applicant be transferred from the Drafting Section were clearly set out in the Memorandum she had addressed to the

Attorney-General on 15th June 2000 (annexure P.M.M.5), namely that the relationship between herself and the applicant had become intolerable due to the latter's negative attitude towards her. The deponent further averred that until the end of August 2000 the Drafting section of the 1st respondent Ministry had been operating from the Post office Building, in Maseru. However, early in September 2000 she was instructed to move the office of the Drafting section to the Government complex at Qhobosheane. The move was effected during the period from 6th to 8th September 2000. The applicant, who had neither vacated her office nor handed over her files, despite the fact that she had been transferred to the Ministry of Justice and Human Rights, was not present during the three days when the Drafting section moved from the Post Office Building to the Government Complex, at Qhobosheane. The files and the furniture she had been using were moved, in her absence, and locked in one of the new offices of the Drafting section, at the Government complex. The office was kept under lock and key on the instructions of the Director of Administration, one Mr. Maluke, who wanted the applicant to come and explain to him why she had not taken the transfer to the Ministry of Justice and Human Rights.

In her averment, about four days after the Drafting section had been moved from the Post Office Building to the Government Complex, the deponent received,

from one of the clerical assistants, a leave form completed and signed by the applicant (annexure N.M.I). The leave applied for was for the period from 6th to 8th September 2000. According to her, the deponent could not approve annexure N.M.I because the applicant had long been transferred to the Ministry of Justice and Human Rights, she was, therefore, no longer under her supervision.

A few days later, but still in September 2000, the applicant came to the deponent's new office and demanded the keys to her new office at the Government Complex. The deponent told her that she should first go and see the Director of Administration under whose instructions she (deponent) had locked the office. The applicant then left, saying she was going to the Director of Administration. That was the last time the deponent saw the applicant who had since neither came to her office nor reported for work at the Drafting section of the 1st respondent Ministry.

The deponent averred that she did not know if the applicant had any personal documents in the office in which the files and furniture she had been using were locked e.g passport and cheque book. The deponent would, however, have no objection to accompany the applicant into the office in which the files and the furniture she had been using were locked, for the sole purpose of collecting her

personal belongings, but certainly not to use the office or remove any Government property.

In my view, it is clear from prayer 1(b) and the facts disclosed by the affidavits that what the applicant wants is not only to remove her personal belongings from the office in which the files and the furniture she had been using are locked at the Government Complex. She wants access to that office so that she can use it pending finalisation of this application. That is what the deponent is objecting to because, in her contention, the applicant has been transferred to the Ministry of Justice and Human Rights where her office is waiting for her. After she had been transferred to the Ministry of Justice and Human Rights, the applicant simply has no office to use at the Drafting section of the 1st respondent Ministry. In the light of all what she had averred in her answering affidavit, the deponent denied, therefore, the applicant's averment that her transfer was actuated by nothing but malice.

The deposition of Ntebaleng Morojele-Maseela that the applicant had a negative attitude towards her and her transfer was not, therefore, motivated by malice, was corroborated by Semano Henry Sekatle who also deposed to an answering affidavit in which he averred that he was the Principal Secretary for the

2nd respondent Ministry. The responsibilities of his Ministry included, *inter alia*, the promotion of efficient, stable and disciplined Public Service, in the Government of Lesotho. The deponent further averred that, over a period of time, he came to know of the conflict between the applicant and Ntebaleng Morojele-Maseela with the resultant inefficiency in the Drafting section of the 1st respondent Ministry. In order to resolve the problem, he was eventually requested to recommend to the Minister responsible for the Public Service to have the applicant transferred from the Drafting section of the 1st respondent Ministry to the Legal Aid Department of the Ministry of Justice and Human Rights. In that regard, he was furnished with annexures P.M.M.5 and P.M.M.7. A reading of the annexures left no doubt in his mind that there existed, between the applicant and Ntebaleng Morojele-Maseela, a conflict with the resultant inefficiency in the Drafting section. Consequently, he did recommend to the Minister responsible for the Public Service that the applicant be redeployed from the Drafting section of the 1st respondent Ministry to the Legal Aid Department of the Ministry of Justice and Human Rights.

The Minister responsible for the Public Service, Pakalitha Bethuel Mosisili, also deposed to an answering affidavit in which he confirmed that he had been approached by Semano Henry Sekatle with a request to consider the redeployment

of the applicant from the 1st respondent Ministry to the Ministry of Justice and Human Rights. After considering the circumstances outlined in the affidavit of Semano Henry Sekatle and the recommendation made therein, the deponent decided, in the interest of efficiency, to transfer the applicant as recommended. He informed Semano Henry Sekatle of the decision and directed him to implement it. The deponent denied, therefore, the applicant's averment that her transfer had been actuated by malice and as a sort of punishment.

The 3rd respondent deposed to an answering affidavit in which he averred that he too was opposing the application on the grounds set out in the affidavits filed, on behalf of the 1st and the 2nd respondents. He further averred that he had appointed the firm of Webber Newdigate to represent all the respondents in this case.

It is clear from the facts, disclosed by affidavits, that the contention of the applicant is that she did not have a negative attitude towards Ntebaleng Morojele-Maseela, the head of the Drafting section in the 1st respondent Ministry. She had, therefore, a cordial working relationship with her. This is, however, denied by Ntebaleng Morojele-Maseela.

I have had the occasion to read through annexures P.M.M.4, P.M.M.5 and P.M.M.7 which leave me with no other impression but that the two ladies did not work happily together. In this regard, I find support in the answering affidavits of Semano Henry Sekatle and the Minister responsible for the Public Service who both averred that they too had read through the Annexures and got the same impression, *Viz.* that the working relationship between the applicant and Ntebaleng Morojele-Maseela was not harmonious, at all. Hence, the recommendation and the decision by Semano Henry Sekatle and the Minister responsible for the Public Service, respectively, to have the applicant transferred from the Drafting Section of the 1st respondent Ministry to the Legal Aid Department of the Ministry of Justice and Human Rights.

There was, in my finding, nothing wrong in separating, in the interest of the efficient running of the Drafting section of the 1st respondent Ministry, the applicant and Ntebaleng Morojele-Maseela by transferring the former from the Drafting Section of the 1st respondent Ministry. Assuming the correctness of my finding, the salient question that immediately arises for the determination of the court is whether or not the Minister responsible for the Public Service was empowered to redeploy/transfer as he did, the applicant. It was argued, on behalf of the applicant, that her redeployment or transfer from the position of Principal

Assistant Parliamentary Counsel (Grade H) she held in the 1st respondent Ministry to that of the Senior Legal Aid Counsel (Grade G) in the Legal Aid Department of the Ministry of Justice and Human Rights amounted to a removal from office or demotion. However, that was the prerogative of the Public Service Commission and ***NOT*** the Minister responsible for the Public Service. In this regard the court was referred to S. 137 (1) of the **Constitution of Lesotho, 1993**. The section reads:

“137 (1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in office in the Public Service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.”

(My underlings)

I have underscored the words “to remove.....from office” in the above cited S. 137 (1) of the Constitution to indicate my view that in the context in which it is used the word “remove” means to dismiss from office and not just to change from one office to another. In this view, I find support in the Concise Oxford Dictionary (9th ed.) which defines the verb “remove” as meaning, *inter alia*, to get rid of; to eliminate; to cause to be no longer present or available. On the other

hand the word transfer is defined as meaning to change to another group, club, department, etc.

The facts disclosed by the affidavits leave no doubt, in my mind, that the decision of the Minister responsible for the Public Service was not that the applicant should be removed/dismissed from office. That was admittedly the function of the Public Service Commission and not the Minister. What the Minister did decide was that the applicant should be transferred/redeployed from the Drafting Section of the 1st respondent Ministry, where she had been doing the work of Principal Assistant Parliamentary Counsel, on salary scale Grade H (14), to the Legal Aid Department in the Ministry of Justice and Human Rights, where she would be doing the work of Senior Legal Aid Counsel which position was on salary scale Grade G (13). Annexure P.M.M.1, the instrument by which the applicant was transferred, made it quite clear that, apart from the fact of her transfer, the, applicant's other terms and conditions of employment remained the same. Thus, for example, she would be working as Senior Legal Aid Counsel which position was on salary scale - Grade G (13), but still be paid on salary scale - grade H (14) which was the salary she earned while working as Principal Assistant Parliamentary Counsel.

In deciding to transfer/redeploy the applicant, as he did, the Minister responsible for the Public Service did not, in my finding demote her. He merely exercised the powers vested in him by the **Public Service Act, 1995** of which subsection (2) (viii) of section 9 clearly provides, in part:

- “(2) Without limiting the generality of subsection (1), the Minister may make provision for all or any of the following matters:
- (i)
 - (ii)
 - (iii)
 - (iv)
 - (v)
 - (vi)
 - (vii)
 - (viii) redeployment of public officers within the public service;

Assuming the correctness of my finding, it follows that the question I have, earlier in this judgment, posted *viz.* whether or not the Minister responsible for the public service was empowered to transfer the applicant, as he did, must be answered in the affirmative. That granted, I am of the view that prayer (c) of the notice of motion cannot succeed. In my judgment, that is sufficient to dispose of the whole application and it will be merely academic to proceed to deal with the other prayers in the notice of motion.

In the result, this application ought to be dismissed with costs. It is accordingly ordered.



B.K. MOLAI

JUDGE

For Applicant : Mr. Matooane

For Respondent : Mr. Molyneaux