

IN THE HIGH COURT OF LESOTHO

In the matter between:

<b>'MANTSANE TŠOLOANE-BOLEPO</b>	<b>1<sup>st</sup> Applicant</b>
<b>NTHABISENG MOLISE</b>	<b>2<sup>nd</sup> Applicant</b>
<b>'MASECHABA MORU</b>	<b>3<sup>rd</sup> Applicant</b>
<b>'MAKHABISO RAMPHOMA</b>	<b>4<sup>th</sup> Applicant</b>
<b>LINEO TSEKOA</b>	<b>5<sup>th</sup> Applicant</b>
<b>JOSEPHINE LETEKA</b>	<b>6<sup>th</sup> Applicant</b>
<b>KEABETSOE RAMAEMA</b>	<b>7<sup>th</sup> Applicant</b>
<b>TJOETSO LEHANA</b>	<b>8<sup>th</sup> Applicant</b>
<b>'MATHIBA THAKHISI</b>	<b>9<sup>th</sup> Applicant</b>
<b>TEBOHO LESEI</b>	<b>10<sup>th</sup> Applicant</b>
<b>NTSOAKI RALEJOANA</b>	<b>11<sup>th</sup> Applicant</b>
<b>SEMAKALENG PHAFOLI</b>	<b>12<sup>th</sup> Applicant</b>
<b>'MALIAHELO QHOBELA</b>	<b>13<sup>th</sup> Applicant</b>
<b>MPHO TLABA</b>	<b>14<sup>th</sup> Applicant</b>
<b>LYDIA M. KEKETSI</b>	<b>15<sup>th</sup> Applicant</b>
<b>BROGITTA CHAKELA</b>	<b>16<sup>th</sup> Applicant</b>
<b>REGINA MPEMI</b>	<b>17<sup>th</sup> Applicant</b>
<b>MARGARET MAINE</b>	<b>18<sup>th</sup> Applicant</b>
<b>MOFUTSUOA SELLO</b>	<b>19<sup>th</sup> Applicant</b>
<b>LUCY M. NCHAPI</b>	<b>20<sup>th</sup> Applicant</b>
<b>'MALESENYEHO SEHLOHO</b>	<b>21<sup>st</sup> Applicant</b>
<b>EVELYN M. MAINE</b>	<b>22<sup>nd</sup> Applicant</b>
<b>'MATHEBE M. MOLOI</b>	<b>23<sup>rd</sup> Applicant</b>
<b>AMELIA RANOTŠI</b>	<b>24<sup>th</sup> Applicant</b>
<b>SHARON KATLEHO LELOSA</b>	<b>25<sup>th</sup> Applicant</b>
<b>VICTORIA VUYISWA NTESO</b>	<b>26<sup>th</sup> Applicant</b>
<b>ADELINE KEMANE-CHABELA</b>	<b>27<sup>th</sup> Applicant</b>
<b>FAITH TŠIRELETSO PULUMO</b>	<b>28<sup>th</sup> Applicant</b>
<b>GLORIA M. SEFUTHI</b>	<b>29<sup>th</sup> Applicant</b>
<b>ELIZABETH MATŠELISO YAKO</b>	<b>30<sup>th</sup> Applicant</b>

and

**THE ATTORNEY GENERAL**

**1<sup>st</sup> Respondent**

THE MINISTER OF HEALTH & SOCIAL WELFARE  
THE GOVERNMENT SECRETARY  
THE PUBLIC SERVICE COMMISSION (PSC)  
PRINCIPAL SECRETARY - PUBLIC SERVICE  
CHRISTIAN HEALTH ASSOCIATION OF LESOTHO

2<sup>nd</sup> Respondent  
3<sup>rd</sup> Respondent  
4<sup>th</sup> Respondent  
5<sup>th</sup> Respondent  
6<sup>th</sup> Respondent

For the Applicants : Mr. K. Mosito

For the Respondents : Mr. M. Masoabi

Ruling

Delivered by the Honourable Mr. Justice T. Monapathi  
on the 20<sup>th</sup> day of March 2002

Counsel as before.

Mr. Masoabi was questioned by Court as to why, in view of his concession that in law there was no distinction between nurses and nurse-tutors, he would still insist on applying for *viva voce* evidence. His contention had been that there was a material dispute of fact.

Mr. Masoabi said the *viva voce* evidence in the aid of Respondents' case would be by Mr. Sekatle who would testify for Respondents. It would be to the effect that, even if it was not recorded originally, the nurse-tutors for their job specifications had already been higher due on the establishment list and their grading was also consequently higher.

The Respondent's intention to upgrade on bedside nurses, which had even been prompted by nurses' strike which had occurred, was to have only bed-side nurses upgraded. Mr. Sekatle a Principal Secretary of Public Service would

elucidate that. That meant that there was a dispute of fact remaining namely that the intention was to upgrade bedside nurses only not nurse-tutors or other high grades.

Dr. Mosotho would on the other hand as head of Ministry of Health depose that the intention was to upgrade all nurses along the general spectrum (across the board) although bedside nurse would benefit by the upgrading by raising them by two or more notches. It was certainly not intended to leave aside nurse-tutors.

Following on an agreement already reached Mr. Sekatle had said with respect to nurse-tutors the agreement should be withdrawn because per establishment list the grading was already higher. They were eventually upgraded. But the question was that the commencement date had to be earlier since there was no good reason why it should have been later. That is why Mr. Masoabi moved that the order could read that the upgrading of nurse tutors should be with effect from the 1<sup>st</sup> February 2001 not 1<sup>st</sup> April 1998 as prayed in the notice of motion. That in addition the order should direct that each party should bear its own costs.

I did not see how there was a real/material dispute of fact when it was established that the original agreement had been to upgrade all nurses with emphasis only that the bedside nurses by a fewer notches higher. This is even born out by the fact that this (inclusion of nurse-tutors) was later sought to be withdrawn hence the present dispute.


I thought the concession that the agreement originally encompassed all nurses suggested that there was no dispute that would disable the Court to

reach a decision unaided by *viva voce* evidence. The reason that bed-nurses were worse off originally is in reality a motive for the decision that ended up to mean plainly that all nurses were in the result covered by that decision without making any distinction.

In the circumstances I thought that the later decision to exclude nurse-tutor in the upgrading was discriminatory. Furthermore all things indicated that through the agreement to "upgrade all nurses" nurse-tutors legitimately expected that the decision would themselves benefit as well and that when withdrawal was later made they should have been first given a hearing. Once the matter appeared discriminatory it became unjust.

In the main there had been no distinction between bedside nurses and nurse-tutors.

The application ought to succeed with costs. My full reasons will follow.



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**T. Monapathi**  
**Judge**

20<sup>th</sup> March 2002