

IN THE HIGH COURT OF LESOTHO

In the matter between:-

**THABANG MABURUNG**

**APPLICANT**

and

**COMMISSIONER OF POLICE  
ATTORNEY GENERAL**

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

JUDGMENT

Delivered by the Honourable Mrs Acting Justice A.M. Hlajoane  
on the 22<sup>nd</sup> August 2002

This is an application to declare applicant's dismissal from the Police Service *null and void* and of no legal force or effect and to direct applicant's re-instatement on duty. Applicant was a Police Officer stationed at Mphahlele.

The facts of this case which are common cause are that, Applicant was on the 18<sup>th</sup> June 2001 on night duty together with the late Tpr Mokati who invited Applicant to join him on night patrolling with the LHDA vehicle which was then loaned to Mohale Police. They had embarked on an unauthorized journey from Mohale to Nazareth where the vehicle got a puncture, lost control and got damaged.

It was after this accident that the Applicant shows that he received a letter of representation, requesting him to show reasons, if any, why he may not be dismissed from Police Service in terms of Section 31 (1) (i) of the Police Service Act 1998.

Section 31 (1)

***“Notwithstanding the provisions of Part V, the Commissioner may, at any time, after giving the Police Officer an opportunity to make representations:***

- (i) dismiss an officer who subverts good order, discipline or lawful authority and tends to bring the Police Service into disrepute.***
- (2) where the Police Officer concerned is to be dismissed under paragraph (i) or is a Senior Officer the Commissioner shall consult the Police Authority before exercising his powers under subsection (1).”***

The Applicant after receiving the letter of representation responded to it as appears in the letter of his dismissal, "TM2". He admitted that their tour was unauthorized and also that the use of the LHDA vehicle was unauthorized. He regretted that he found himself having been involved in such unauthorized acts and tendered his apology.

In his letter of dismissal, first Respondent clearly showed that he so acted in terms of the provisions of section 31 (1) (i) of the Police Service Act 1998. I would not agree with him more in as far as representation is concerned as there is such proof of representation, annexure "TM1". But there is something more to this section, that which requires that first Respondent shall (my emphasis) consult the Police Authority before exercising his powers under subsection (1).

Section 31 (1) (i) is therefore not to be read in isolation, but has to be read together with subsection (2). The consultation is mandatory and not negotiable as the word shall has been used. We have seen that the section demands that there has to be representation and the section does not say it has to be in writing. By the same token the section tells that there shall be consultation, which obviously has to be in writing. The hollowed phrase 'justice must not only be done but must be seen to be done' must be our guiding slogan. It is not enough just to allege on paper that the procedure was followed without necessarily showing how it was followed.

As we have seen, by Police Authority we mean the Minister, section 3 (1) (i) of the Act. His Office cannot be expected to know all the Police Officers and their bad doings. It will only come to know about them from their files and what each one of the them has or has not done, bad or good. Like us the courts, we are courts of records, so should the government offices for purposes of good administration. There has to be proof that consultation was in effect done. This ought to have been revealed in the letter of dismissal.

Applicant in his founding affidavit, at para 16, clearly indicated that they were saying that there has been no consultation, thus giving the other side chance to bring all proof, if any, to show that there was consultation. It is not enough just to say that there has been consultation without any proof. It would have been something if the letter of dismissal read, “acting in terms of section 31 (1) (i) read together with subsection (2). There is no *onus* for the Applicant to prove the negative.

Applicant is saying that none of the accusations against him constituted a criminal offence and that even if they did, no charge was ever put to him until he was dismissed. He is further saying that none of the accusations levelled against him constituted or created disciplinary offences against him, and that no disciplinary charge has ever been framed against him. On reading the relevant Act, it is clear that it has not been the intention of the legislature under section 31, in a case of a criminal offence to first put a charge to the Police Officer

concerned or, in the case of discipline to frame a disciplinary offence to a police officer concerned before exercising the powers under that section. The section only speaks of representation and consultations only.

Applicant further submits that in the exercise of his powers under section 31 (1) (i) of the Police Act No.7 of 1998, the first Respondent must not only be guided by the provisions of subsection 2 of the same section, but also section 32 of the Act.

#### Section 32. Saving of Pension rights

***“Unless the Police Authority otherwise directs, nothing in section 31 shall (my emphasis) affect any right a police officer may have to payment of a pension or gratuity.”***

This section clearly shows that if there is nothing on record from the Minister in terms of the section, Applicant’s pension and/or gratuity are not to be affected by his dismissal.

The court therefore comes to the conclusion that there has been compliance with the provisions of section 31 (1) (i) on the question of representation, but in relation to subsection (2) there has been non-compliance with the provisions of the Act as there is no proof of any consultation. In a democratic set up,

transparency has to be the order of the day.

But as was decided in the case of **Matebesi vs The Director of Immigration and Others** 1997-98 LLR & LB 455, where the decision to dismiss was not vitiated by the determination not to accord some form of hearing, even in our case therefore non-compliance with the provisions of subsection 2 on consultation and section 32 on directive by the Police Authority have not vitiated the decision to dismiss as Applicant himself has not denied that he was involved in unauthorized acts by absenting himself from his duty station and using the LHDA vehicle outside lawful authority and damaging it in the process, thus bringing the Police Service into disrepute.

In the result therefore, though Applicant has failed in his Application for reinstatement, he has otherwise been successful under section 32 of the Act as there is no proof that the Police Authority directed otherwise. Since both parties have been successful in part, each party is to bear its own costs.



**A.M. HLAJOANE**  
**ACTING JUDGE**

For Applicant : Mr Fosa

For Respondents: Ms Hlakane