CIV/APN/517/01

IN THE HIGH COURT OF LESOTHO

In the matter between:-

PROFESSOR ALLAN FEMI LANA APPLICANT

and

THE VICE-CHANCELLOR OF NUL 1ST RESPONDENT
NATIONAL UNIVERSITY OF LESOTHO 2ND RESPONDENT

JUDGMENT

Delivered by the Honourable Mr Justice S.N. Peete
on the 25th April 2002

On the 6th December 2001, **Mr Mahlakeng**, for applicant, appeared before this court and moved **ex parte** for and was granted an interim order couched in the following terms:

"**IT IS HEREBY ORDERED THAT:**

1. *That a Rule nisi be and is hereby issued returnable on the 17th day of December 2001 calling upon the Respondents to show cause, if any, why:*

(a) *Respondents shall not be interdicted forthwith from interfering with the applicant in any manner whatsoever in the execution of his duties pending the determination of this application.*

(b) *The decision of the Academic Staff Appointments Committee of the 25th October 2001 shall not be set aside and/or declared a nullity.*

(c) *The Respondents shall not be ordered to comply with the peremptory requirements of Ordinance No.11 read together with Statute 21 of the Second Respondent.*

(d) *The Respondent shall not be ordered to pay the costs of this application.*

(e) *Applicant shall not be granted such further and/or alternative relief.*

2. *That Prayer* ***2 (a)*** *operate with immediate effect as an interim Order."*

In his founding affidavit, the applicant avers on oath that he is employee of the second respondent holding the position of "*Director of NUL – Consuls*". He also has annexed the contract of employment between the second respondent (The National University of Lesotho) and himself (it was signed by himself on the 25th February 1998 in Tanzania). It is not dispute however that in terms of this contract the applicant was engaged for a period of four (4) years and that his term of service is due to expire on the 10th May 2002.

He further states that in terms of clause 8 (iii) of the Contract read together with Ordinance 11-2 he is entitled to apply for an extension (or renewal) of his contract.

"8. **Termination of appointment**

(i) Appointments may be terminated by either party on not less than six calendar months' notice, if an appointment is terminated by a member on less than the stipulated period of notice, he may incur liabilities in respect of passages and baggage allowance as indicated in Section 9 (ii) and (iii) below.

(ii) The period of six calendar months' notice shall not include any period of accumulated leave and/or Study Leave.

(iii) Six months before the expiry of the contract of an expatriate member, he may request or be given an extension of his contract by the University."

Ordinance No. 11-2 reads:-

"2.0 **Extension and Renewal of Contracts**:

2.1. The Registrar shall issue a reminder to each employee of the expiry date of his/her contract at least seven months before that date and inform him/her whether the contract is open for renewal. If the employee wishes to extend or renew his/her contract of employment, he/she shall, not later than six months before the expiry date of his/her contract, apply for renewal or extension in writing.

If an offer of renewal/extension is to be made, it shall be made not later than four months before the expiry date of the contract, and the employee shall indicate not later than three months before the expiry of his/her contract whether or not he/she accepts the offer.

2.2. The Registrar shall consult the relevant superiors of the applicant as defined in Statute 24, nr. 19-23 and Statute 28 nr. 6-10, and such other persons as the Appointments Committee shall decide and shall report the result of such consultation as soon as possible to the Appointment Committee which shall decide on the application as under 1.5 above.

2.3. In arriving at their recommendations and/or decisions the applicant's superiors and the Appointments Committee shall take into consideration the performance of the employee during his time of service, existing or expected vacancies and the localization policy of the University.

2.4. The Secretary of the Appointments Committee shall communicate as soon as possible to the employee the decision or recommendation of the Committee, as approved by the Chairman of Council.

He goes on to state that intending to renew his contract of employment with the second respondent, he wrote a *memo* on the 29th October 2001 which read:

"Memo *NUL – CONSULS*

To : Senior Assistant Registrar (Appointment)

From : Director, NUL-CONSULS

Cc

Date : October 29, 2001

Ref. : CONSULS/gen-1
AFM/mfm

Re: PROFESSOR ALLAN FEMI LANA – SERVICE CONTRACT

My current contract service expires on May 10, 2002 – less than seven (7) months from today. Grateful forward the relevant forms to me as soon as possible so that appropriate action can be taken.

Thank you.
Signed:

Professor Allan Femi Lana"

On the 31st October 2001 Mr T. Khomari, the Senior Assistant Registrar (Appointments) addressed the following letter to the applicant.

October 31, 2001

"Professor Allan Femi Lana
Director, NUL-CONSULS
National University of Lesotho
P.O. Roma 180
Lesotho

Dear Professor Lana,

I am instructed to inform you, as I hereby, do that in the last Meeting of the Academic Staff Appointments Committee held on the 25th October 2001, it was decided that your contract will not be extended. This decision has been taken to accommodate the latest sentiments expressed within the context of the ***Transformation Action Plan 2000 and Beyond****, which envisages a redefined and reconfigured NUL-CONSULS.*

In the same breadth I wish to acknowledge herein receipt of your memo dated 29th October 2001 which refers to your contract and the seven (7) months notice. I hope you will realize that your contract with the University clearly state under Section 8 (i) of the "Terms and Conditions of Service for Academic, Library and Senior Administrative Staff" that notice to either

extend or terminate contract by either party shall be made ***ON NOT LESS THAN SIX CALANDAR MONTHS NOTICE.*** *Unless convinced otherwise, it would appear to me that this notice is given well in good time.*

Subsequent to the above, you are expected to utilize your ninety-two (92) days of accumulated leave by going on terminal leave with effect from 10th December 2001. Up until then, you are kindly requested to wind up outstanding assignments, to submit handing-over notes and reports to the Vice-Chancellor on or before 17th December 2001 when the University shall be breaking for Christmas recess.

Allow me, on behalf of the National University of Lesotho, to express our sincere gratitude for the selfless and diligent service you have rendered to this Institution during your four years of stay here at NUL. Please accept, Sir, our wishes that you see many more years of prosperous life hereafter.

Yours sincerely,

T. KHOMARI (MR)
SENIOR ASSISTANT REGISTRAR (APPOINTMENT)"

The import of this letter was mainly to the effect that the Academic Staff Appointments Committee (ASAC) had decided that his contract of employment would not be renewed.

He goes further to state that he has since appealed to the Council of the University (NUL) against the decision of ASAC. This notwithstanding, the first respondent had subsequently written two letters requesting him to effect the handing over. They read as follows:

"The National University of Lesotho

P.O. Roma 180,
Lesotho

Office of the Vice-Chancellor

4th December, 2001

Ref: ADM/ACP/900
THM/mm

Professor Allan Femi Lana
Director, NUL Consuls
Maseru Campus

Dear Prof. Lana,

EXTENSION OF CONTRACT

I have just received a copy of your letter of 3 December 2001 to Mrs L.C. Kheekhe, Administrative Assistant (Appointments) informing her that you have lodged an appeal against ASAC's decision of 26 November, 2001. This is your prerogative.

I, however, find it totally unacceptable for you to unilaterally suspend the hading-over process to the team that I have appointed to work with you. You are, therefore, directed to proceed with the handing-over process with the team as agreed with you and are warned to desist forthwith from frustrating this process and may be liable to disciplinary action.

I thank you.

DR T.H. MOTHIBE
VICE CHANCELLOR"

The National University of Lesotho

P.O. Roma 180,
Lesotho

Office of the Vice-Chancellor

27th November, 2001

Professor Alan Femi Lana
Director, NUL Consuls
NUL
P.O. Roma 180

Dear Professor Lana,

In the light of ASAC decision of the 25 October, 2001 not to renew your contract, its decision yesterday, 26 November 2001, not to accept your plea for an extension of one year, and, therefore, your imminent departure on terminal leave on 17 December 2001, I have appointed Mr S.G. Hoohlo, Dr M.V. Marake and M. Mofammere and Ms M. Fanana to work with you as you wound up your work. You are requested to cooperate fully with them by briefing them and availing them of all documentation regarding the on-going activities of the NUL CONSULS.

You are further requested to attend a meeting in my office on Wednesday 9.00 am, 28 November 2001 to agree on the work-plan.

I thank you.

Yours Sincerely,

DR T.H. MOTHIBE
VICE CHANCELLOR"

The applicant submits that the ASAC "decision" not to renew the contract was pre-emptive and was calculated to deprive him the opportunity afforded him under the Ordinance 11 and Statute 21, and that the peremptory provisions of the Ordinance 11 had not been followed when the decision not to extend his contract was reached.

In effect, the applicant is asking this court to review the "decision" of ASAC not to renew the contract and set it aside as *ultra vires* the Ordinance 11 and Statute 21.

On the 17th December 2001 the respondents having been duly served with the papers, filed their notice their intention to oppose and their answering affidavits. In her answering affidavit Ms Masefinela Mphuthing, the incumbent Registrar of the second respondent, states that she wishes

"*to even disclose to this Honourable Court that Applicant is a Nigerian and consequently, an expatriate employee of the second respondent. This information is important for the purposes of this application and I see no reason for it to have been omitted*"

In her affidavit paragraph 6 she further states:-

"AD PARA 5.2:

I would not outright deny that Applicant is entitled to apply for an extension of his contract. But I think it can be misleading to this Honourable Court just to state that Applicant has such an entitlement without stating the existence of certain other conditions that may affect the enjoyment of such a

right. The University has a right, for instance, to inform an employee as to whether or not his/her contract is open for renewal. The University also has a right to either extend or not to extend the contract of an expatriate even in the absence of an application for renewal."

She also states that the "decision of the ASAC" not to extend the applicant's contract is not flawed and ought not to be declared a nullity because "2nd respondent has a power by virtue of Ordinance 11 and a right on the strength of Annexure "ZZ (contract of employment) to unilaterally declare extension or non-extension as the case may be, of employees contract."

*"**AD PARA 9.1:***

The action taken by ASAC cannot be said to be pre-emptive or calculated to deprive the Applicant of an opportunity to apply for an extension of his contract. As I have already stated, 2nd Respondent has a power by virtue of Ordinance 11 and a right on the strength of Annexure "ZZ" to unilaterally declare extension or non-extension, as the case may be, of an employee's contract."

More important in her affidavit she raises two preliminary points *in limine*, namely that-

(a) This is a labour matter that falls within the exclusive jurisdiction of the Labour Court.

(b) The Certificate of Urgency does not comply with legal requirements in that it does not tabulate reasons for bringing this matter before court on an urgent basis.

At the beginning of his address on the points *in limine*, **Mr Mosae** for the respondents submitted that the relief sought by the applicant is only justiciable under the exclusive jurisdiction of the Labour Court Code Order no.24 of 1992 as amended by Act of 2000. To the court's preliminary request that the Minutes of the ASAC meeting of the 25th October 2001 regarding its "decision" not to renew or extend the applicant's contract of employment be produced, **Mr Mosae** replied that he objected to such Minutes being produced because the applicant, as he put it, stood or fell on his founding affidavit. Anyway, how in the circumstances of this case, how could the applicant annex to his founding affidavit a copy of Minutes the possession of which he had none? Fortunately for everyone, the issue became inconsequential when **Mr Mosae** formally made an admission to the effect that Mr Khomari's letter dated 31st October 2001 was to the effect that ASAC had decided on the 25th that the applicant's contract of employment with 2nd responded would not be renewed.

Mr Mosae submits that section 25 of the Labour Code (Amendment) Act no.3 of 2000 is applicable. It reads

"**Exclusive Civil jurisdiction**

(1) The jurisdiction of the Labour Court is exclusive and no court shall exercise its civil jurisdiction in respect of any matter provided for under the Code

(a) subject to the Constitution and section 38 A; and

(b) notwithstanding section 6 of the High Court Act (Act No.13 of 1978)

(2) ....."

He further submits that the factual matrix of the relief indicates that it possesses the following characteristics that classify it as a labour matter-

*It is essentially an issue of rights and duties of parties to a contract of employment

Section 61 of the Code reads:-

"(1) Unless otherwise provided by the Code, the provisions of this Part apply to all contracts of employment."

It is an undeniable fact that we are dealing here with a contract of employment between the University and the applicant.

*He also cited Section 24 2 (a) of the Labour Code (as amended by Act no.3 of 2000) which reads-

24. **Jurisdiction and Powers of the Labour Court**

(1) Subject to the Constitution and section 38A, the Labour Court has jurisdiction in respect of all matters that

elsewhere in terms of this Act or in terms of any other labour law are to be determined by the Labour Court.

(2)The Court shall have the power-

(a) to inquire into and decide the relative rights and duties of employees and their respective organizations in relation to any matter referred to the Court under the provisions of the Code and to award appropriate relief in case in of infringement;"

Mr Mosae stressed the point that the Labour Court had exclusive jurisdiction on the basis that in the matter in case there was an employer – employee relationship which involved an inquiry into the relative rights and duties of employee and his organization as envisaged under Section 24 (2) (a) of the Code.

In this case, the applicant's contract of employment is for a fixed duration and renewal thereof is provided under the contract itself and under the specific provisions of the Statute 21 and Ordinance 11 of the second Respondent. Under these provisions the applicant and second respondent had certain rights and duties; one may add, these are peremptory provisions regarding renewal process.

***Mr Mosae** also referred to Section 226 of the Labour Code order which states:

226. Disputes of right

(1) The Labour Court has exclusive jurisdiction to resolve the following disputes:

(a) Subject to subsection (2), the application or interpretation of any provisions of the Labour Code or any other labour law;

(b) An unfair labour practice;

(c) An unfair dismissal if the reason for the dismissal is
(i) for participation in a strike;
(ii) as a consequence of a lockout; or
(iii) related to the operational requirements of the employer.

Apparent from Mr Khomari's letter of 31 October 2001 is the fact that the contract of employment of the applicant was not being renewed due to operational requirements of the second respondent namely-

"to accommodate the latest sentiment expressed within the context of the ***Transformation Action Plan 2000 and Beyond*** *which envisages a redefined and reconfigured NUL-CONSULS"*

Section 66 of the Code reads:-

"*66.* ***Unfair Dismissal***

(1) An employee shall not be dismissed, whether adequate notice is given or not, unless there is a valid reason for termination of employment, which reason is

(a)... ... ...

(b)... ... ...

(c)based on the operational requirements of the undertaking, establishment or service."

Section 68 reads:

"***Definition of Dismissal***"

"For the purposes of section 66 "dismissal" shall include-

(a) *termination of employment on the initiative of the employer;*

(b) *the ending of any contract for a period of fixed duration or for the performance of a specific task or journey without such contract being renewed, but only in cases where the contract provided for the possibility of renewal;*

(c) ... ... "

Section 68 (b) may seem relevant in this inquiry because the contract of employment provided for the possibility of renewal; this **Mr Mosae** submits, is another indicator that renders the relief a "labour matter" justiciable exclusively by Labour Court under section 226.

Mr Mosae has however conceded and rightly so in my view that ASAC in coming to its decision as it purported to do on the 25th October 2001 did not follow the peremptory provisions of Ordinance11 and Statute 21 of the Second Respondent. The reviewability of this decision, so it seems to me, can competently be inquired into by the High Court under common law

orunder Rule 5 of the High Court Rules. Whilst the now repealed section 25 of Labour Code Order. The new section 24 dealing with the jurisdiction and powers of the Labour Court does not give the Court powers of review nor can this power be implied under any provisions of the Code. sufficiently vested the Labour Court the power to "interpret the terms of contract of employment" section 24 (2) (a) as amended merely empowers the Labour Court

"to inquire into and decide the relative rights and duties of employees and their respective organizations in relation to any matter referred to the Court under the provisions of the Code."

As will be seen later, **Mr Mahlakeng** for the applicant contends that this section 24 (2) (a) has no relevance in this enquiry because the section applies to situation between the employee and his trade union (see section 3 of the Labour Code Order in defining "employees' organization)". It has no relevance he submits between employee – employer scenario. There is much argument in this contention. It seems to me the Legislature saw it fit to remove from the ambit of the Labour Court's jurisdiction the power *"to interpret the terms of contract of employment, wage orders and collective agreements:"*

In all fairness to the draftsman of this amendment I should observe that the new section 24 of the Code does not seem to vest in the Labour Court power to review decisions made by other organs not contemplated under the Code. ASAC as well as the University Council are Statutory organs created by their founding legislation (National University Act No.10 of 1976 – section

8) and it seems to me that the propriety or lawfulness of their actions may fall more in the realms of administrative law rather than labour law.

In reviewing the decision of ASAC in this application it is important to decide whether ASAC had the right to decide not to renew the contract of employment and whether the Council of the Second Respondent was the rightful repository. The question would be was the Council approached to deliberate upon the recommendation of ASAC as mandated under Statute 21? Had the Council delegated that power to ASAC? If it did, was the Council entitled to delegate such authority? It would be wholly inaccurate that ASAC acted on behalf of the Council.

It seems that where a contract of fixed duration with a possibility of renewal is not renewed certain mandatory steps must be taken by the Registrar namely

2.1 The Registrar shall issue a reminder to each employee of the expiry date of his/her contract at least seven months before that date and inform him/her whether the contract is open for renewal. If the employee wishes to extend or renew his/her contract of employment, he/she shall, not later than six months before the expiry date of his/her contract, apply for renewal or extension in writing.

If an offer of renewal/extension is to be made, it shall be made not later than four months before the expiry date of the contract, and the employee shall indicate not later than three months before the expiry of his/her contract whether or not he/she accepts the offer.

2.2 The Registrar shall consult the relevant superiors of the applicant as defined in Statute 24, nr. 19-23 and Statute 28 nr.6-10, and such other persons as the Appointments Committee shall decide and shall report the

result of such consultation as soon as possible to the Appointment Committee which shall decide on the application as under 1.5 above.

2.3In arriving at their recommendations and/or decisions the applicant's superiors and the Appointments Committee shall take into consideration the performance of the employee during his time of service, existing or expected vacancies and the localization policy of the University.

2.4The Secretary of the Appointments Committee shall communicate as soon as possible to the employee the decision of the Committee, as approved by the Chairman of Council".

Ex facie the papers before the court, it does not appear that this intricate procedure was followed by the Registrar. In her affidavit, the Registrar of NUL Ms Masefinela Mphuthing states-

"The University also has a right to either extend or not to extend the contract of an expatriate even in the absence of an application for renewal."

Ordinance No.11 however gives the employee the right to be informed at least seven months before the expiry date whether the contract is open for renewal and it also gives the employee the right to apply for renewal or extension in writing; and more importantly the employer under section 69 of the Labour Code is under a duty to provide a written statement why the contract is not being renewed.

In my view, it is purely a question of fact whether ASAC in coming to its decision on the 25th October 2001 had complied with the provisions of the Statute 21 and Ordinance no.11 and is a question which can competently be

determined by the High Court without usurping, so to speaks, powers of the Labour Court.

The point *in limine* relates principally to the issue whether the High Court has jurisdiction to entertain a review application over the decision of the ASAC to decide not to renew the applicant's contract of employment. This is not a labour matter at all.

Mr Mahlakeng, for the applicant, submits in the main that the High Court of Lesotho enjoys unlimited jurisdiction under the 1993 Constitution. Section 119 thereof reads:-

> *"119 (1) There shall be a High Court which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings and the power to review the decisions or proceedings of any subordinate or inferior court, court-martial, tribunal board or officer exercising judicial, quasi judicial or public administrative functions under any law and such jurisdiction and powers as may be conferred on it by this Constitution or by under any other law."*

Section 2 of the High Court Act No.5 of 1978 also provides that

> *2(1) The High Court for Lesotho shall ..... be a superior court of record and shall have*
>
> *(a) unlimited jurisdiction to hear and determine any civil or criminal proceeding under any law in force in Lesotho"*
> *(b)* ... ...

As it has been stated in South Africa the onus to show that jurisdiction of the High Court has been outsted is a very heavy one – **Mondi Paper vs Paper, Printing Wood and Allied Workers Union & others** – (1997) 18 ILJ 84. The ouster clauses must be clear and unambiguous and are usually strictly construed – **Mathope vs Soweto Council** – 1983 (4) SA 287.

Mr Mahlakeng submits that the applicant has not been dismissed nor is he claiming that the dismissal or non renewal is unfair; all that he claims is that the High Court should review the decision of ASAC not to renew his contract of employment and set it aside as *ultra vires* in that it was made in violation of the provisions of the Statute 21 and Ordinance 11.2 of the National University of Lesotho. He quotes the case of **Solomon Masiu vs Lesotho Agricultural Dev. Bank** – CIV/APN/361/94 where Maqutu J. states

> *"The High Court has jurisdiction where a tribunal has acted irregularly or illegally by not exercising a jurisdiction it has or exceeding its jurisdiction"*
>
> *.... Among the powers of judicial review that this Court has, is to see that all people, administrators and tribunals observe the principles of natural justice".*

As I see it, the provisions in the Labour Code dealing with the exclusive jurisdiction (e.g. Section 24 and section 226) are rather widely expressed and indeed there is need for more express provisions excluding certain matters from the jurisdiction of the High Court – **A.G. vs Lesotho Teachers Trade Union** – C of A (civ) No.29/95 **Makhutla vs Lesotho Agricultural Bank** – C of A (civ) No.1 of 1995.

In the South African case of **Kilpert vs Buitendach & another** – (1997) 18 ILJ 1297 **Sutherland A.J.** held that the jurisdiction of the High Court was not ousted in a cause of action based on allegation of a reviewable irregularity in regard to the termination of a contract of employment. It is the factual matrix rather than the cause of action which determines the jurisdictional divide between the Labour Court and the High Court. See also **Natal Trust Farms (pty) Ltd vs Nzukulu** – 1998 (4) SA 1026.

Although the University is a statutory body, it was like any other employer subject to the Labour Code Order 1992, it is a question for review whether its organ or committee has acted regularly or otherwise. In the latter inquiry the statutes and ordinances of the University and not the Labour Code Order have to be looked into. If however the enquiry is based on the allegation that the applicant was unfairly dismissed, the Labour Code Order comes into play and the jurisdiction of the High Court is ousted. We should always look at the facts giving rise to the cause of action in determining the jurisdictional divide.

I have been – I must confess – unable to find any provision in the Labour Code Order expressly giving the Labour Court the power to review and possibly set aside, a decision made by a statutory body like the University or for that matter, any parastatal. If applicants were to approach the Labour Court for the same relief as before this court, the first question would be in terms of what powers would the Labour Court be expected to act. (**Nzukulu** supra at p.1028)

In the important case of **Moleah vs University of Transkei & another** – 1998 (2) SA 522, the High Court, **(Van Zyl J.)** set aside the suspension of the University Principal where the Council of the University had no express power to suspend the Principal but merely to report to the Minister. It was held the Council in suspending the Principal acted *ultra vires* the Statute of the University. The court held the view that the principle **ex consequentibus** *(quando lex aliquid alicui concedit, conceditur et sine quo res ipso eses non potest)* did not apply. This principle generally means that an administrative organ empowered to do a certain act is authorized to do that which is reasonably necessary to achieve the main aim. As **Van Zyl J**. put it -

"It is, in my view, clear from the aforegoing that unless an implied power is logical consequence or is logically necessary for the exercise of the power conferred upon an administrative body, such implied power must be reasonably necessary or incidental and must not extend beyond the requirement of the occasion nor should it interfere with the rights of third parties more than is required by the circumstances of each particular case" (539J – 540A).

In this application the applicant is seeking in essence a review of the decision of the ASAC. It seems to me that the contract of employment is between the Applicant and the Second Respondent which can act only through its supreme organ – the University Council – in terminating, repudiating or cancelling such contract thereby affecting the rights and privileges of other parties to the contract.

The Statute 21 therefore states that the ASAC may only "recommend the extension or non-renewal of contracts of members of the Academic Staff". It seems to me only Council of the University is the repository of the power to decide whether renew or terminate the contract of employment. I am unable to find that the ASAC had implied power to decide not to renew the said contract as it did; the maxim **ex consequentibus** does not apply.

The letter dated October 31, 2001 written to applicant by Mr T. Khomari possesses the following flaws:-

(a) In it ASAC purports to have decided that the applicant's contract of employment will not be renewed – whereas it could only recommend.

(b) Mandatory steps under Ordinance 11-2.0 seem not to have been followed to the letter.

(c) The letter is not signed by the Registrar – as Secretary of ASAC – but by the Senior Assistant Registrar (Vide Statute 22)

(d) It lacks the approval of Chairman of Council.

The total effect of these flaws is to invalidate the purported "decision" of ASAC not to renew the applicant's contract of employment. It was a non-event and clearly *ultra vires* and stands to be declared *null and void.* The Academic Staff are members of the University whether on contract or on permanent tenure, whether local or expatriate. If a contract of employment is not to be renewed, the procedures under the Ordinance No.11-2 must be

strictly followed. ASAC is an important organ of the University consisting of

(a) The Vice-Chancellor – chairman
(b) The chairman of the Council
(c) The Pro-Vice Chancellor
(d) The Deans of the Faculties
(e) One member of Council who is a full time member of staff of the University, appointed by the Senate.

And this judgment in no way belittles that important status.

Indeed the **Transformation Action Plan 2000 and Beyond** is a dynamic project necessary for the betterment and advancement of the University. This Plan may justify rational localization of certain offices. This process must however be brought about within the parameters of the Statutes and Ordinances of the University. I am not going to say that the non-renewal was prompted by xenophobic or other improper motives. Localization necessarily involves preference of local over non-nationals.

The order of the Court is as follows:

(a) The Rule is confirmed under Prayers 2 (b) and (c).

(b) The respondents to pay the costs of the application.

S.N. PEETE

JUDGE

For Applicant : Mr Mahlakeng

For Respondents : Mr Mosae