



CIV/APN/420/01

IN THE HIGH COURT OF LESOTHO

In the matter between:

MOKHETHI HLABI

Applicant

And

THE COMMISSIONER OF POLICE
THE ATTORNEY GENERAL

1st Respondent
2nd Respondent

For Applicant : Mr Ntlhoki
For Respondent : Ms Jaase

JUDGMENT

Delivered by the Honourable Mr Acting Justice T. Nomngongo
On the 3rd day of April, 2003

This is an application wherein relief is sought in the following terms:

- (a) declaring the purported dismissal of applicant herein as unlawful and therefore invalid.
- (b) directing the first respondent herein to re-instate applicant and maintain the *status quo* concerning applicant's rank and salary and pay such salary from the date of purported dismissal pending finalization of criminal proceedings against applicant.
- (c) directing the respondents to pay costs hereof, in the event of opposing this matter.
- (d) granting applicant such further and/or alternative relief.

It is common cause that applicant was a policeman until he was dismissed by the Commissioner of Police by a letter dated 13th July 2001. It is also common cause that this follows an apparent incident of theft at Mokhotlong Police Station for which the applicant is facing criminal charges in the Subordinate Court for that district. It is a sequel of these circumstances that the applicant was dismissed from duty.

At par. 6 of his founding affidavit applicant alleges that on the 5th of June 2001, he received a so called letter of representation dated 30th May of the same year requiring him to show cause why he may not be placed on interdiction from duty on half pay. He says he responded to this letter, in reaction to which the Commissioner of Police wrote a letter dismissing him as aforesaid. He received such a letter "*sometime in August*" when he went to Mokhotlong for remands. Strangely in answer to this, the Commissioner of Police, JONAS MALEWA says at paragraph 5 of his affidavit:

"Contents are admitted. (sic) Save (sic) to deny that the said letter of representation called the applicant to show cause why he would not be interdicted on half pay."

Yet, this is precisely what the letter of the 30th May 2001 says and I quote it at paragraph three thereof:

“Therefore it should not come as a surprise that the Commissioner of Police has directed me to write you this letter in response of which you have to show reasons if any, why you may not be interdicted from duty on half pay in terms of section 53 of Police Service Act. 1998. Your written response is expected to reach this office on or before 07th June, 2001.

Regards.

SUPT. T.L. MOSEME
PERSONNEL OFFICER”

Exactly what the Commissioner of Police was admitting in the circumstances is quite puzzling. Without addressing the matter of this letter he goes on to refer to another of the so called letters of representation dated 13th June 2001. Now this one was calling upon the applicant to show cause, not later than the 20th June, why he should not be dismissed from the Police service in terms of section 31 (1) (i). By this, is the Police Commissioner saying that he was unaware of the first letter of the 30th of May? If so, why doesn't he say so in the light of the clear assertion by the applicant of the existence of such a letter, which he says, and in fact is annexed allegedly marked “MH1.” (I must say, although it is in the court file, it is not so marked). I may point out in this regard that both letters of representation are

supposed to have been written by Supt. T.L. Moseme. The phraseology employed in both letters is so uncunningly similar, that I have little doubt that they proceeded from the same author. The Commissioner of Police does not seem to dispute the authority of Supt. T.L. Moseme to write such letters on his behalf. I conclude in the circumstances that Supt. T.L. Moseme did in fact write both such letters, in the one requiring the applicant to show cause why he may not be interdicted and in the other why he should not be dismissed on identical grounds. Both letters were written for and on behalf of the Commissioner and may thus be imputed to him. In my view, this the Commissioner could not do. Having chosen the path of interdiction he was precluded from adopting an interily and drastically different option of dismissal from duty, on identical, alleged misconduct.

That is not the end of the matter. The second letter of representation, were it proper to make it also leaves a great deal to be desired. It was written on the 13th June requiring the applicant to show cause, by not later than the 20th of June. Yet the very following day the 14th of June the Commissioner of Police, purportedly in order to satisfy the requirements of Section 31 (1) (i) wrote to the Principal Secretary Home affairs in these terms:-

“.....the Commissioner of Police anticipates to dissociate the LMPS from their [applicant and two others] criminal acts by dismissing them from the Police Service in terms of Section 31 (1) (i) of the Police Service Act 1998.

Their hand in the commission of the crime was established beyond reasonable doubt when they started pointing out their shares of the money in question as shown in the letters of representation whose copies are attached for ease of reference.”

The applicant says in his reply that he never received the letter of the 13th June which preceded the latter. In the view that I take I consider it unnecessary to consider whether or not he had actually received. The tone and timing of the latter letter to the P.S. make it clear that whatever response the applicant made the commissioner of Police had made up his mind to dismiss the applicant. This is borne out by the fact that so to speak before the ink was dry on the paper asking him to show cause why he may not be dismissed he had already purported to set in motion the process required of him in order to dismiss a policeman. What use would applicant's response on exactly the 20th June as indicated in the letter of the 13th June, if the P.S. Home Affairs had written back on the 15th to say that he approved of the dismissal?

The conduct of the Commissioner of Police was in the circumstances clearly in breach of the *audi alteram partem* rule for, as was held by Coljain J. in

Heatherdale Forms PTY LTD. v Deputy Minister of Agriculture 1980 (3)

SA 47U6 (T).

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“It is clear on the authorities that a person who is entitled to the benefit of the *audi alteram* rule need not be afforded all the facilities which are allowed a litigant in a judicial trial..... But on the others hand (and for this no authority is needed) a mere pretence of giving the person concerned a hearing would clearly not be in compliance with the Rule.what wouldfollow is firstly, that the person concerned must be given a reasonable time in which to assemble the relevant information and to prepare and put forward his representations; secondly he must be put in possession of such information as will render his right to make a representation a real, and not an illusory one.”

Lastly the purported dismissal of the applicant falls to be struck down for another more powerful and in fact fatal flaw, namely, non compliance with Section 31(1) (1) read with Section 32 and 3 (1) of the Police Act 1998.

These sections read respectively.

Powers of Commissioner to remove police officers:

31. (1) Notwithstanding the provisions of Part V, the Commissioner may, at any time, after giving the police officer concerned an opportunity to make representations:

.....

- (i) dismiss an officer who subverts good, discipline or lawful authority and tends to bring the Police Service into disrepute.

(32) Where the Police Officer concerned is to be dismissed under paragraph (i) or is a Senior Officer the Commissioner shall consult with the Police Authority before exercising his powers under subsection.

3(1) There shall be a Police Authority for Lesotho which shall be the Minister.

In purporting to comply with these section the Commissioner of Police then wrote the letter of the 13th June addressed to the "P.S. Home Affairs" who in turn wrote back to the Commissioner of Police, styled in the Savingram COMPOL, in this fashion:

"Reference is made to your Savingram CP/S/HQ/8 dated 14 June 2001 and authority is hereby granted for the dismissal of Troopers:

N0. 8951 Ranks
N0. 9324 Mohapi
N0. 9327 Hlabi"

P.S. Home Affairs is not the Minister. Minister is defined in Section 2, as Minister of Home Affairs. P.S. Home Affairs in the above letter does not even purport to act on behalf of the Minister. Even if he did purport so to do his actions would be invalid as such powers are conferred only on the Minister as there is no provision either express or implied for him to delegate such power. This is in stark contrast with the Commissioner of

Police himself who by section 12 of the Police Service Act is expressly authorized to delegate his own powers.

I have already indicated to-day that the application succeeds in terms of the notice of motion, with costs. The above are my reasons which I indicated would follow.


T. NOMNGONGO
ACTING JUDGE