

IN THE COURT OF APPEAL OF LESOTHO

C OF A (CIV) No.01/2012

In the matter between:

BOKANG LELIMO

APPELLANT

AND

TEACHING SERVICE DEPARTMENT
TEACHING SERVICE COMMISSION
PRINCIPAL SECRETARY (MINISTRY
OF EDUCATION)
MINISTER OF EDUCATION
ATTORNEY GENERAL

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

5TH RESPONDENT

CORAM: SMALBERGER, JA
SCOTT, JA
FARLAM, JA

HEARD: 20 APRIL 2012
DELIVERED: 27 APRIL 2012

SUMMARY

Appeal against the decision of the High Court upholding a special plea of prescription in terms of section 6 of the Government Proceedings and Contracts Act 1965 – applicability of the Act – decision of the Full Bench of this Court in MAKAMANE v MINISTRY OF COMMUNICATIONS SCIENCE AND TECHNOLOGY dispositive of the appeal- appeal dismissed with costs.

JUDGMENT

SMALBERGER, J A

[1] The appellant (as plaintiff), a former teacher employed by the first respondent, instituted an action for damages against the respondents (as defendants) in the High Court in April 2007. His claim was based on the first respondent's allegedly having wrongfully allowed certain insurance policies taken out by the appellant to lapse in or about 2002. In the declaration, which was signed by the appellant, he specifically alleged that his claim was instituted *“in accordance with Government Contract Act No*

4 of 1965.” The appellant also joined Metropolitan Life and Lesotho National Insurance Group as the sixth and seventh defendants respectively. He subsequently formally withdrew his action against Lesotho National Insurance Group, and appears never to have sought any relief against Metropolitan Life.

[2] The respondents duly filed a special plea of prescription alleging that the appellant’s action had prescribed in terms of the Government Proceedings and Contracts Act 4 of 1965 (the Act) *“in that the cause of action arose as far back as the year 2004, plaintiff’s summons was filed and served in 2007, more than two years since the cause of action first arose.”*

[3] Section 6 of the Act provides:-

“6. Subject to the provisions of sections six, seven, eight, nine, ten, eleven, twelve and thirteen of the Prescription Act no action or other proceedings shall be capable of being brought against Her Majesty in Her Government of Basutoland by virtue of the provisions of section two of this Act after the expiration of the period of two years from the time when the cause of action or other proceedings first accrued.”

It is common cause that the appellant’s cause of action arose more than two years before the institution of his action. It is also common cause that the provisions of section 6, if valid, would apply to an action against the respondents.

[4] The matter came before Mahase J. The learned Judge upheld the special plea and dismissed the appellant’s claim with costs. The present appeal is directed against her order in that regard.

[5] Despite his reference to, and apparent reliance upon, the Act in his declaration, the appellant sought to challenge

the validity of the Act on appeal. The nub of his argument before us, as I understood it, was that the Act was only intended to be of effect for as long as the Overseas Service Proclamation No 1 of 1965 (the Proclamation) and its associated Agreement (the Agreement) were in operation. In terms of sections 1 and 3 of the Proclamation, the Proclamation and the Agreement were deemed to come into operation on 1 April 1961, and were effectively to have terminated (in terms of clause 8 of the agreement) on 31 March 1971. The appellant sought to link the Act with the Proclamation and Agreement and submitted that the operation of the Act was intended to be confined to that limited period.

[6] There is no express or implied provision in the Proclamation or the Agreement, nor in the Act, which links them and makes the duration of the Act co-extensive with

that of the Proclamation and Agreement. Nor is there any provision in the Act which limits, or seeks to limit, the period for which it is to be operative. Moreover, it is common cause that the Act has never been repealed. In the circumstances there is in my view no basis or justification for limiting the application of the Act to the period 1 April 1961 to 31 March 1971.

[7] Furthermore, and more importantly, the recent decision of the Full Bench of this Court in *MOHAU MAKAMANE v MINISTRY OF COMMUNICATIONS SCIENCE AND TECHNOLOGY AND OTHERS, C OF A* (CIV) No. 27/2011, delivered on 21 October 2011, which is binding upon us, is dispositive of the present appeal. The Court in that case was asked to consider whether section 6 of the Act should be struck down as unconstitutional on the basis that it infringed the provisions of section 19 of the

Constitution. After reviewing the relevant provisions, submissions and considerations the Court (per Ramodibedi P) concluded (in paragraph 22) that it was not unconstitutional. It went on to add (in paragraph 24) that *“it is clear that section 6 of the [Act] is a prescription provision not capable of being extended by the exercise of the court’s common law power to extend time limits”*. It follows that section 6 of the Act is valid and applicable, and that the appellant’s damages claim cannot succeed because of his failure to institute action within the prescribed period. His appeal must accordingly be dismissed. Inevitably costs must follow the result.

[8] The outcome is unfortunate for the appellant. Regrettably there is nothing this Court can do to assist him. The appellant must be commended for his industry in

the preparation of his heads of argument and the commitment with which he has pursued his cause.

[9] The following order is made:

The appeal is dismissed, with costs.

J.W. SMALBERGER
JUSTICE OF APPEAL

I concur:

D.G. SCOTT
JUSTICE OF APPEAL

I concur:

I.G. FARLAM
JUSTICE OF APPEAL

For Appellant: In Person

For Respondents: Adv. L. Mokhehle