

**IN THE COURT OF APPEAL OF LESOTHO**

**HELD AT MASERU**

**C OF A (CIV) NO.6/12**

In the matter between:

**MINISTRY OF PUBLIC SERVICE  
THE ATTORNEY GENERAL**

**FIRST APPELLANT  
SECOND APPELLANT**

and

**‘MASEFABATHO LEBONA**

**RESPONDENT**

**CORAM:** RAMODIBEDI, P  
SCOTT, JA  
HURT, JA

**HEARD** : 8 OCTOBER 2012  
**DELIVERED** : 19 OCTOBER 2012

**SUMMARY**

*Respondent a former “Senior Consumer Affairs Officer” in the Ministry of Trade and Industry – Her position title not that of Legal Officer within meaning of Savingram dated 15 June 1992 issued by Ministry of the Public Service – Respondent not entitled to remuneration at Grade 12 level – Appeal upheld with costs.*

## **JUDGMENT**

### **SCOTT JA**

[1] This is an appeal against the decision of Majara J who upheld the respondent's claim for M58 196 plus interest in respect of the underpayment of salary while employed by the Ministry of Trade and Industry during the period 1992 to 1998.

[2] It is common cause that the respondent commenced her employment in 1989 while still studying and in 1990 obtained the degree of LLB. She was then appointed a "*Senior Consumer Affairs Officer*" at a salary entry point of Grade 10. A requirement for this post was a bachelor of laws degree. On 15 June 1992 the Ministry of Public Service issued a Savingram setting forth the revised salaries for civil servants in the legal profession. It is the respondent's case that in terms of this Savingram her salary was revised from grade 10 to grade 12. She continued, however, to be paid at the grade 10 level and on 1 June 1993 wrote to the Principal Secretary of the Ministry of Public Service setting forth her complaint and

requesting “*that the anomaly, if it is, be redressed retroactively*”. The Principal Secretary presumably refused the request and the respondent continued to be remunerated at the grade 10 level until her retirement in June 1998. She issued summons in 2005 claiming M58,196, being the difference between her salary at grade 10 and what it would have been at grade 12. There is no explanation in the evidence for her delay in instituting proceedings.

[3] It is necessary to refer in some detail to the Savinggram of 15 June 1992 which, as observed by Majara J, formed the “*crux*” of the respondent’s case. It was addressed by the Ministry of Public Service to various departments, namely, “*LEGAL, JUSTICE, FINMIN, TRADE, INTERIOR, PLANNOFF, FOREIGN, WORKS, TRANSCOMMS, EMPLOYMENT, TOURISM*”. The heading reads “*PARITY OF POSITIONS IN THE LEGAL PROFESSION*”. Beneath this heading appears the statement: “*Approval is hereby given to effect parity of positions in the legal Profession and its support staff as shown below:-*”. What follows are five columns headed respectively “*Head*”, “*Prog/Ref*”, “*Position titles*”, “*Grade*”, and “*Remarks*”. The column beneath the

heading “*Position Titles*” lists various titles. These include, by way of example, “*Legal Aid Counsel*”, “*Magistrate II/I*”, “*Senior Clerk of Courts*”, “*Principal Assistant Legal Draftman*”, “*Assistant Legal Draftsman*”, “*Crown Counsel*” “*Patent Examiner*”, “*Assistant Registrar General*” and “*Senior Legal Advisor*”. The grade of each position is given in the “*Grade*” column and in the “*Remarks*” column opposite each title appears the word “*Regrading* or sometimes “*Creation*” or “*Redesignation*”. The position of “*Legal Officer*” is listed in the column headed “*Position titles*” no fewer than 9 times. On each occasion the grade is given as 10/12 and in the remarks column appears the word “*Regrading*”, save on one occasion where the remark is “*Redesignation and Regrading*”. On each occasion the “*Head*” column bears a different number, as does the number under the “*Prog/Ref*” column. No evidence, however, was adduced to explain the relevance of these numbers. What is significant for the purpose of the respondent’s case is that each reference to “*Legal Officer*” was marked with an asterisk, as was the title “*Magistrate III*”. At the foot of the document, marked with an asterik, is the comment. “*Entry level to positions of Legal Officer, Grade 10/12 and Magistrate III, Grade 10/12 is Grade 12*”

*for LLB Holders*". It was upon this comment that the respondent largely based her case.

[4] In short, the respondent contended that because she held the degree of LLB and because in terms of her job description one of her various duties was to "*advise the Ministry [on] legislation and other measures required to ensure optimum protection of the interest of consumers*", which she said amounted to giving legal advice, she therefore qualified in terms of the comment quoted above for an entry level of Grade 12.

[5] In upholding the respondent's contention the court a quo concluded that as an LLB graduate the respondent necessarily fell within the category of the "*legal profession*" to which reference was made in the heading of the Savingram, that the Savingram should be accorded a generous interpretation and that because a "*basic commonality*" of the legal officers entitled to a grade 12 rating was the LLB degree, which was the qualification held by the respondent, the Savingram should be construed as having application to the respondent's position as Senior Consumer Affairs Officer for the purpose of regrading.

[6] With respect to the learned judge, I think her interpretation of the Savingram was over generous. The list of “*position titles*” in the Savingram does not include the respondent’s position title of “*Senior Consumer Affairs Officer*”, nor does the fact that she held the degree of LLB and required it for that position justify the conclusion that the position she occupied was that of a “*Legal Officer*” within the meaning of the Savingram. The onus of proving the underpayment was, of course, upon the respondent, yet, as previously mentioned, no evidence was adduced to explain the difference between the 9 categories of “*Legal Officer*” as indicated by the numbers in the columns headed respectively “*Head*” and “*Prog/Ref*” and we are left in the dark as to the reason for these different categories and what they encompassed. Significantly, the respondent herself in her letter to the Principal Secretary of the Ministry of Public Service dated 1 June 1993 conceded that she was “*Not a Legal Officer per se*”.

[7] The court a quo also placed some reliance on a document which was said to be a report by an ombudsman. But the only evidence as to its relevance was the statement by the respondent in her evidence that “*this*

*document is a letter that was prepared by the ombudsman as I had asked his office to intervene and mediate in the matter*". There is in any event nothing in its contents which, in my view, provides any material assistance in the construction of the Savingram.

[8] It follows that in my view the Savingram cannot be construed as including the respondent's position as a Senior Consumer Affairs Officer and she accordingly failed to discharge the onus of establishing the underpayment claimed.

[9] The following order is made:

- (a) The appeal is upheld with costs.
- (b) The judgment of the court a quo is set aside and replaced with the following:-

"The plaintiff's claim is dismissed with costs".

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**D.G. SCOTT  
JUSTICE OF APPEAL**

I agree:

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**M.M. RAMODIBEDI  
PRESIDENT OF THE  
COURT OF APPEAL**

I agree:

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**N.V. HURT  
JUSTICE OF APPEAL**

**For the Appellants** : Adv R. Motsioloa  
**For the Respondent** : Ms. M.G. Tau