

IN THE COURT OF APPEAL OF LESOTHO

C of A (CIV) NO.43/2012

In the matter between

THABO NTITSANE & 57 OTHERS

Appellants

AND

NATIONAL UNIVERSITY OF LESOTHO

Respondent

CORAM: SCOTT JA
HOWIE JA
HURT JA

Heard 5 and 15 April 2013

Delivered 19 April 2013

Summary

Interdict sought by the University restraining gatherings of staff members from obstructing access to the administration block, assaulting and intimidating management personnel and various accompanying

orders – order as prayed granted by High Court in face of evidence conflicting in material respects – order not justified.

HOWIE JA

[1] Arising out of events at the National University of Lesotho in September 2012 the University sought, and the High Court granted, the following final relief on motion:-

“IT IS ORDERED AS FOLLOWS:

1. That the 1st to the 59th respondents be and are hereby interdicted and restrained from:
 - 1.1.1 obstructing the free access to applicant’s administration building block at Roma main campus in the district of Maseru.
 - 1.1.2 assaulting, threatening, harassing or intimidating the applicant’s management personnel.
- 1.2 That the 60th and 61st respondents are hereby directed to effect and oversee the implementation of the orders in paragraph 2.1 above to ensure that:-
 - 1.2.1 there is no destruction to property.

1.2.2 there is no disturbance of peace and tranquillity.

1.2.4 there is no unlawful assembly and procession contrary to the provisions section 3 (1) of the Public Meetings and Processions Act 2010.

1.2.3 there is no violence or use of force save that which may be necessary and expedient by the 1st to the 59th respondents to effect and oversee the implementation of paragraph 2.1 above which force may include and is not limited to arresting offenders.

1.3 That it is hereby by declared that the demonstration for demand of resignation of applicant's vice chancellor, Professor Sharon Siverts, that the 1st to the 59th respondents which started on Monday the 17th September 2012 and which is continuing at applicant's administration building block at Roma main campus in the district of Maseru is unlawful.”
(sic)

[2] The parties referred to in paragraph 1.2 of the order (the Commissioner of Police and the Attorney General) have not appealed. Of the fifty-eight appellants three are trade unions and the others are staff members.

- [3] The order appealed against could only have been granted if the court (Monapathi J) had accepted all the material allegations of the fact made on behalf of the University without having any regard at all to the contents of the opposing affidavit in which the current appellants emphatically denied those allegations. Referral to oral evidence was refused.
- [4] All that the court did find was that the individual appellants held “alleged prayer meetings (whether in a civilized manner or not)” on the University premises without authorisation and much to the University’s “discomfort and inconvenience”. Another finding was that they held “their prayer meetings without the necessary authorization and in the place not approved.”
- [5] The findings made were not substantiated by the evidence. On the appellants’ version which, on trite authority, had to prevail, the meetings were in fact prayer meetings; they were legitimate religious assemblies at which those present simply prayed; the assemblies were not obstructive; they were held near the Administration Block in an area where public gatherings of any sort are held, including those organised by management; and the meetings did not require authorisation because they were held

before and after working hours. The appellants' case is that prayer meetings are common when the University experiences troubled times and the prayers, the text of which is annexed to the founding papers, have that tenor. In addition, it could not properly be found on the appellants' facts that the University was occasioned discomfort and inconvenience.

[6] On the evidence on which the matter had to be decided there was no contravention of s 3 (1) of the Public Meetings and Processions Act 2010 because the gatherings concerned were for a “genuine religious purpose,” and there was no justification for any of the relief granted.

[7] The order of this Court is consequently as follows:

1. The appeal is allowed, with costs, including the wasted costs of the postponed hearing of 5 April 2013.
2. The order of the court below is set aside and substituted therefor is the following:
“The application is dismissed, with costs.”

C. T. HOWIE
Justice of Appeal

I agree

D. G. SCOTT
Justice of Appeal

I agree

N.V. HURT
Justice of Appeal

For the Appellants :

Adv. Q. Letsika

For the Respondent:

Adv. M. A. Molise