

IN THE COURT OF APPEAL OF LESOTHO

C of A (CIV) NO.8/2013

In the matter between:

THE RECTOR –ST. AUGUSTINE’S

MAJOR SEMINARY

1ST APPELLANT

ACADEMIC COUNCIL –

ST. AUGUSTINE’S MAJOR SEMINARY

2ND APPELLANT

ST. AUGUSTINE’S MAJOR SEMINARY

3RD APPELLANT

AND

METHODIUS T. PONYA

1ST RESPONDENT

LEBOHANG MOHASI

2ND RESPONDENT

Coram: Scott JA

Howie JA

Hurt JA

Heard: 12 April 2013

Delivered: 19 April 2013

SUMMARY

Review – decision to refuse first respondent’s application for enrolment vitiated by subsequent decision of this Court – appellants entitled to refuse second respondent’s application on the ground that it was out of time.

JUDGMENT

SCOTT JA

[1] The two respondents were students at St. Augustine’s Major Seminary, the third appellant in this appeal. At the end of the 2012 academic year the first respondent, to whom I shall refer as Ponya, achieved a pass mark of 77 percent and was promoted to the fourth and final year of study for a degree in theology. The second respondent, to whom I shall refer as Mohasi, achieved a pass mark of 67 percent and was promoted to the third year of study for a degree in philosophy.

[2] In terms of the Provisional Statutes of the Lesotho Catholic Bishops Conference for St. Augustine's Seminary the aim of the Seminary is said to be:

“to provide spiritual, intellectual, pastoral and disciplinary formation for future Catholic Priests in view of fulfilling the ministeries of teaching, sanctifying and ruling the people of God.”

The statutes also make provision for the admission of lay students. The relevant provision reads:

“The Seminary may accept some students who are not preparing for the Catholic Priesthood, such as Catholic Religious or Lay Students and Non- Catholic Students, who want to follow lectures at the seminary.”

[3] Ponya and Mohasi were both student members of the congregation of the Oblates of Mary Immaculate. They accordingly fell within the first category of students at the Seminary, namely those who

were training to be catholic priest. As such, their tuition fees were paid for by the Oblates who, in addition, attended to their enrolment and registration as students for each academic year at the Seminary.

[4] Sometime late in December 2012 or early in January 2013 Ponya and Mohasi were precluded from renewing their annual vows of chastity, poverty and obedience, and were “excluded” (not dismissed) from the congregation of the Oblates. As a consequence, they become obliged to apply on their own behalf for enrolment as lay students at the Seminary in the event of their wishing to continue their studies. Both applied but their applications were refused.

[5] On 8 February 2013 they launched an urgent application in the High Court for an order declaring the decision of the appellants “disqualifying and/or expelling” them from the Seminary to be null and void and for an order allowing them to enrol for the 2013 academic year. The application was opposed but after hearing

argument, Monapathi J gave judgment on 28 February 2013 in favour of the respondents; hence the appeal.

[6] It is convenient to consider separately the circumstances in which each respondent was refused enrolment at the Seminary

[7] Following his exclusion from the congregation of the Oblates, Ponya brought an urgent application before the High Court for an order reviewing and setting aside his exclusion on the ground that the decision to exclude him had been taken without first affording him the opportunity to be heard on the various allegations of misconduct levelled against him and on the strength of which he had been excluded. The application was successful. On 23 January 2013 Chaka-Makhooane J granted an order reviewing and setting aside the decision of the Oblates to exclude him. The Oblates appealed to this Court.

[8] In an application for the stay of execution, Rev. Father Sephamola OMI, who was the first respondent in that review application, made an affidavit dated 28 January 2013 in which he indicated that

in the event of the appeal failing, the Oblates would allow Ponya to renew his vows for the year 2013. That appeal has now failed and Ponya will accordingly be permitted to renew his vows as a member of the congregation.

[9] It is clear that the decision to refuse Ponya's application for enrolment at the Seminary was based on the contents of a confidential report prepared by Father Salooe OMI Superior and sent to the Rector of the Seminary. The report states that Ponya's application to renew his vows was refused and sets out the allegations against him on which the decision to refuse his application to do so was based. As indicated above, it is this decision that was reviewed and set aside by Chaka-Makhooane J whose judgment has now been confirmed on appeal.

[10] It follows that the very basis on which the decision was made to refuse Ponya's enrolment has fallen away by reason of this Court's dismissal of the appeal against the judgment of Chaka - Makhooane J.

[11] Adv. Mokoko, who appeared for the appellant, conceded that in the event of that appeal not succeeding an injustice would result if Ponya were then not permitted to enrol for the 2013 academic year. He accordingly conceded that in that event the present appeal in so far as it relates to Ponya should not succeed.

[12] In my view counsel's concession was very properly made and I have little doubt that it meets with the approval of both the Oblates of Mary Immaculate and the Rector and Academic Council of the Seminary. It follows that the appeal against the order of the Court *a quo* directing the Seminary to allow Ponya to enrol for the 2013 academic year must fail.

[13] Mohasi's position is different. No reason is advanced in the founding affidavit, made by Ponya and its contents confirmed in a separate affidavit made by Mohasi, why the latter's application to renew his vows was declined.

[14] According to Father Mosuoe, the Rector of the Seminary, Mohasi's application for enrolment was not considered as the

deadline for such applications was 8 January 2013 and his application was made 10 days late on 18 January 2013. Monapathi J found that this statement by Father Mosuoe “shows clear bad faith”. I cannot agree. There is no basis for such a finding.

- [15] Counsel for Mohasi submitted, however, that having achieved a 67 percent pass mark and having been “promoted” to the third year of study, Mohasi had a legitimate expectation of being enrolled without the need for having to apply for enrolment. That may have been so had Mohasi not been excluded from the congregation. But once he ceased to be a member of the congregation he was no longer a student within the category of those training to be a catholic priest. In order to continue his studies he was obliged to apply for enrolment as a lay student and different considerations would have applied for the admission of such students. In these circumstances, he could not reasonably have expected to be enrolled without the need of a formal application. The appeal

against the order directing the Seminary to allow Mohasi to enrol for the 2013 academic year must accordingly succeed.

[16] There remains the question of costs. The appeal fails in the case of Ponya but succeeds in the case of Mohasi. Counsel on both sides submitted that in the circumstances there should be no order as to costs. This strikes me as eminently fair. I think the same should apply in respect of the costs in the Court *a quo*.

[17] The following order is made;

- (1) The appeal in respect of the first respondent, Methodius Ponya, is dismissed; the appeal in respect of the second respondent, Lebohang Mohasi, is upheld.
- (2) No order is made as to the costs of appeal.
- (3) The order of the Court *a quo* is set aside and the following order submitted in its stead:
 - “(a) The decision of the respondents to refuse to enrol and register the first applicant, Methodius Ponya, as a

student at the third respondent for the 2013 academic year is set aside;

- (b) The respondents are directed to permit the said Methodius Ponya to enrol as a student at the third respondent for the 2013 academic year;
- (c) The application of the second applicant, Lebohang Mohasi is dismissed;
- (d) No order is made as to the costs of the application.”

D G Scott
Justice of Appeal

I concur

C T Howie
Justice of Appeal

I concur

N V Hurt
Justice of Appeal

For the appellant: Adv. T.J. Mokoko
For the respondent: Adv. R.J. Lesenyeho

