

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) 6/2016

In the matter between

PRINCIPAL SECRETARY –

MINISTRY OF AGRICULTURE AND

FOOD SECURITY

1ST APPELLANT

ATTORNEY GENERAL

2ND APPELLANT

And

MAKOA MAKHETHA

RESPONDENT

CORAM: LOUW, AJA
MUSONDA, AJA
GRIESEL, AJA

HEARD: 18 OCTOBER, 2016

DELIVERED: 28 OCTOBER, 2016

SUMMARY

*Employment – Farm manager-Department of Agricultural research
in Ministry of Agriculture and Food Security-Salary Grade-
promotion*

JUDGMENT

LOUW AJA:

[1] This is an appeal against the judgment delivered and orders made by **Hlajoane, J** on 11 February 2016 in an action instituted by respondent against the first appellant. I shall refer herein to the parties as they were in the court *a quo*.

[2] The plaintiff who had since 1986 been engaged on a contract basis by the Ministry of Agriculture and Food Security (the Ministry of Agriculture), in September 1992, accepted an offer to take up a permanent position, subject to a two year probation period, as farm manager at salary Grade 9, in the Department of Agricultural Research in the Ministry of Agriculture. His appointment was governed by the Public Service Order, 1970, Financial Orders, the Public Service Regulations and other laws, orders, rules and regulations in force from time to time.

[3] On 28 July 1998 the Ministry of Public Service issued a circular announcing the replacement of the then existing numerical salary grading structure with an alphabetical grading structure, with effect from 1 April, 1998. In terms of the

Conversion Rules of the new grading system, Grade 8 merged with Grade 9 (the plaintiff's grade) to form the new Grade E.

[4] On 31 March, 2000 the Ministry of the Public Service announced that degree graduate entry positions which had up to then been on Grade E were being regraded to Grade F and that non degree holders at Grade E would retain their current grade '*until ministries have reviewed their structures*'. It is common cause that the plaintiff does not hold a degree qualification.

[5] On 5 August, 2005 the Ministry of the Public Service issued a further circular with instructions to normalize the position with regard to overlapping and multiple salary grades. In terms of the annexure to the circular, the erstwhile grades 7/8/9 were regraded to Grade E with the instruction: *Holders within 7 of the old grade 7/8/9 will convert to the minimum of Grade E. Those within 8 and 9 of the same grade are to maintain their current points at Grade E.*

[6] The plaintiff instituted an action against the Ministry of Agriculture claiming that he had been underpaid by his employer from 1 April, 1998. The matter proceeded to trial and after hearing evidence, the court *a quo* found for the plaintiff and gave judgment in his favour for the payment of the amount of M 174 372,00 with interest at the rate of 18,5% from date of the filing of the summons to date of payment and cost.

[7] The plaintiff's claim as I understand the contentions on his behalf is that when the alphabetical grading system was introduced in 1998, the plaintiff in effect suffered an unauthorised demotion to Grade E instead of being classified at Grade F.

[8] In evidence the plaintiff relied on two facts to show that he had in fact been placed in Grade F and not Grade E. First, the fact that over his years of service, he had been allowed 21 days leave per year which is the annual leave period to which Grade F employees are entitled as opposed to the 18 days leave per year afforded to Grade E employees. The second fact relied upon by the plaintiff is the letter written to him on 16 December 2004 by his supervisor, the Director of the Department of Agricultural Research. The letter provided the plaintiff with an interim job description (pending the final version) of his position as farm manager. The heading of the job description refers to the grading of his position as Grade F.

[9] Mrs Maneo Motupi who is an assistant human resources officer in the Department of Agricultural Research, testified that the plaintiff's salary grade has remained at Grade E throughout. Her evidence is confirmed by a Schedule which sets out the salary structure within the Department of Agricultural Research in the Ministry of Agriculture, for the periods 2011/2012 and 2012/2013. The schedule shows that there was one position of farm manager within the department and that the position held a

Grade E salary grading. Mrs Motupi's further evidence that migration from one salary grading to the next grading, required a promotion facilitated by the Principle Secretary of the Ministry Agriculture and that such promotion had not occurred in the case of the plaintiff, was not disputed. In fact, the plaintiff conceded as much in his evidence. He agreed that the ultimate decision to upgrade his position to Grade F, lay with the Ministry of the Public Service who would act on the recommendation of the Ministry of Agriculture. He conceded that the Ministry of Agriculture had not recommend that his position be upgraded to Grade F.

[10] In absence of a recommendation by the Ministry of Agriculture and decision by the Ministry of the Public Service to upgrade his position, neither of the two facts relied upon by the plaintiff provides any basis for a finding that the plaintiff is in fact a Grade F employee. It is common cause that the Director of Agricultural Research, who did not testify, had no authority to place the plaintiff in any salary grade. The 21 days leave afforded the plaintiff cannot change the official position reflected in the documents emanating from the Ministry of the Public Service which reflect the plaintiff's position as that of a Grade E employee.

[11] The first defendant's counsel sought to make something of the leave application form filled out by the plaintiff on 22 May 2012, wherein he claimed entitlement to 21 days leave, but nevertheless describes himself as a Grade E employee. The plaintiff was not challenged in cross examination with the statement

attributed to him that he was a Grade E employee. No weight can consequently be given to the statement purportedly made by the plaintiff.

[12] It follows that the plaintiff's claim should not have been successful in the court *a quo*.

[13] Counsel for the Ministry of Agriculture did not ask for costs if the appeal should be successful.

[14] In the result, the appeal must be upheld and the following order is made:

1. The appeal is upheld and the orders made in the court *a quo* is set aside and is replaced with the following order:
 - (a)¶ The action is dismissed, with no order as to costs;
2. No order is made in respect of the cost of the appeal.

W.J. LOUW
ACTING JUSTICE OF APPEAL

I agree:

**DR P. MUSONDA
ACTING JUSTICE OF APPEAL**

I agree:

**B.M. GRIESEL
ACTING JUSTICE OF APPEAL**

FOR APPELLANTS: Adv L. Moshoeshoe

FOR RESPONDENT: Adv L.A. Molati