

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) NO.31/20

(CIV/APN/238/2020)

In the matter between-

COMMISIONER OF POLICE

1ST APPELLANT

HUMAN RESOURCE OFFICE, LMPS

2ND APPELLANT

ATTORNEY GENERAL

3RD APPELLANT

AND

LANCE SERGEANT MOTSEKI

RESPONDENT

CORAM: DR K E MOSITO P

DR P MUSONDA AJA

DR J VAN DER WESTHUIZEN AJA

HEARD: 19 APRIL 2021

DELIVERED: 14 MAY 2021

SUMMARY

Appeal against a judgment and order of the High Court to be postponed, due to the failure of the High Court to furnish reasons.

This situation and practice are unsatisfactory and to be addressed by the Chief Justice.

JUDGMENT

VAN DER WESTHUIZEN AJA:

[1] This is an appeal against an order by Monapathi J, made on 27 August 2020 in the High Court, to review, correct and set aside the decision of the Commissioner of Police (the first respondent before the High Court and the appellant before this Court) to dismiss Lance Sergeant Motseki (the applicant before the High Court and respondent before this Court) from the police service.

[2] The Commissioner dismissed Lance Sergeant Motseki because of remarks she had made at the funeral of a police officer in July 2020. She was the Gender Coordinator of the Lesotho Police Staff Association (LEPOSA) and was argued to have spoken on behalf of the organization.

[3] It is unnecessary to go into the history of the litigation between the parties, also involving the High Court sitting as the Constitutional Court. One of the points argued on appeal is the question whether the Commissioner had approached the Police Authority about the dismissal, as was legally required. According

to argument presented to this Court, the High Court indeed made a finding on this.

[4] The insurmountable problem in the way of a fair hearing and consideration of this appeal is, however, that the High Court has not furnished a reasoned written judgment. The order was made and is in the record, but no judgment is to be found. In this Court both counsel had to rely on personal notes and an attempted reconstruction of what had happened in the High Court. According to counsel, the presiding judge indicated that full reasons would be given. The legal representatives of the Appellant allegedly also requested reasons through the judge's clerk, but to no avail.

[5] As has been stated repeatedly in judgments of this Court and during appeal hearings by judges of this Court, the failure by High Court judges to furnish reasons is utterly unacceptable. This is so for various reasons. One is that a court of appeal is simply unable to consider in any remotely proper manner whether to confirm or overturn a judgment and order of a lower court without the benefit of knowing and understanding how that court arrived at its conclusion, decision and order. The appeal process – often costly for desperate litigants – is thus rendered futile. On an even deeper level, it is often said that the judiciary is the most vulnerable arm of the state. Courts do not have the power of the purse or the sword to enforce compliance with their decisions. The legitimacy of and trust in courts – and indeed the legal system of a land – depends on the logical and legal force of their

judgments. Perhaps the only thing more dangerous than unconvincing reasons, is the absence of reasons.

[6] The continuation of the failure by High Court judges to furnish proper reasons for judgments, sometimes even after being repeatedly requested to do so, could result in the collapse of the rule of law in Lesotho or any other country with a tradition of reasoned court judgments. Thus the Chief Justice of Lesotho is obliged to urgently attend to this problem.

[7] In this case it is not at all clear whether the High Court order was based on a finding regarding the authorization the Commissioner was supposed to seek, or on other grounds. To the extent that the High Court did find that the Commissioner had not followed the required steps, it is unknown on which facts the finding was based. From the papers it would seem that factual disputes exist between the parties in this regard.

[8] The appeal has to be postponed to the next session of this Court, in the hope that reasons will by then be available. As the parties are not to blame for this unfortunate situation, none of them deserves to bear the costs of this postponement.

[9] In the result, the following order is made:

- (a) The appeal is thus postponed to the next session of this Court.
- (b) The costs of the postponement will be costs in the cause.
- (c) The Registrar of this Court must refer this judgment to the Chief Justice of Lesotho for his attention.



DR J VAN DER WESTHUIZEN
ACTING JUSTICE OF APPEAL

I agree



DR K E MOSITO
PRESIDENT OF THE COURT OF APPEAL

I agree



DR P MUSONDA
ACTING JUSTICE OF APPEAL

FOR APPELLANTS: ADV T MOHLOKI

FOR RESPONDENTS: ADV VP MONE with ADV T MOHANOE