LESOTHO

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) 69-B/2018

In the matter between:

LIKOTSI MOKOMA	**APPLICANT**

AND

COMMANDER LESOTHO DEFENCE FORCE	**1ST RESPONDENT**
ATTORNEY GENERAL	**2ND RESPONDENT**

In re:

C OF A (CIV) NO.69/2018

LIKOTSI MOKOMA	**APPELLANT**

AND

COMMANDER OF LESOTHO DEFENCE FORCE	**1ST RESPONDENT**
PRESIDING OFFICER – SUMMARY TRIAL PROCEEDING OF LESOTHO DEFENCE FORCE	**2ND RESPONDENT**
MINISTRY OF DEFENCE	**3RD RESPONDENT**
MINISTRY OF FINANCE	**4TH RESPONDENT**
ATTORNEY GENERAL	**5TH RESPONDENT**

CORAM: MOSITO, P
SAKOANE, CJ
MUSONDA, AJA

HEARD: 9 OCTOBER 2024
DELIVERED: 8 NOVEMBER 2024

SUMMARY

Military Law – Interpretation of Judgment – Sentencing Discretion in Military Discipline – Applicant sought clarification on the Court of Appeal's prior judgment in C of A (CIV) 69 of 2018, regarding the lawful scope of sentencing under section 51 of the Lesotho Defence Force Act. The Court previously remitted the case for re-sentencing after finding that the initial punishment imposed was ultra vires, exceeding the scope permitted under summary trial regulations. The core issue was whether section 51 mandates imprisonment or allows for judicial discretion.
Held: The judgment requires re-sentencing within the statutory limits without mandating a custodial sentence. The application for declaratory relief was dismissed as superfluous, with each party bearing its own costs.

JUDGMENT

MOSITO P

Background

[1] In its previous judgment in *Mokoma v Commander of the Defence Forces and Others*[1], this Court addressed critical statutory provisions and principles relating to the lawful exercise of disciplinary authority within the Lesotho Defence Force. At the heart of the matter was the Defence Force (Discipline) Regulations No. 29 of 1998, which delineate the structure and scope of military discipline. The Court scrutinised Regulation 40(1), authorising the Commander to appoint a "Superior Authority" for conducting summary trials.

[1] C of A (CIV) 69 of 2018.

[2] This regulation empowers the Commander to limit or define the scope of disciplinary measures available to an appointed Superior Authority. Furthermore, Regulation 22(1)(a)(i) and (ii) prescribes a list of permissible punishments that may be applied within a summary trial, depending on the offender's rank and the nature of the offence. Available punishments include fines, reprimands, and extra duties, yet notably exclude the power to demote an officer of the appellant's rank.

[3] The appellant's charge, however, was under section 51(1) of the Defence Force Act No. 4 of 1996, which criminalises the wilful disobedience of lawful commands and prescribes a maximum custodial sentence of two years. The Court found that sentencing under section 51(1) required adherence to its clear statutory mandate for a custodial sentence rather than a reduction in rank. The regulation permitted custodial punishment but did not authorise administrative penalties, such as demotion, reserved for other infractions under the Act.

[4] The Court also examined section 82 of the Defence Force Act, which outlines a graded scale of punishments for officers convicted by military courts. The scale includes reductions in rank but only under strict conditions, typically when the officer has received a direct appointment from cadet status. The Court concluded that the appellant's demotion did not meet these criteria, rendering the punishment invalid. As a result, the Court held that the Superior Authority's decision exceeded the scope of authority conferred by

the Defence Force (Discipline) Regulations and the Defence Force Act, contravening the *ultra vires* principle.

[5] In remedy, the Court determined that it could not substitute its judgment for that of the tribunal by imposing an alternative sentence directly. The law grants the prescribed officer discretion to impose a suitable sentence within the legal confines of section 51(1), not exceeding two years of custodial punishment. Consequently, the Court remitted the matter to the prescribed officer for the imposition of a lawful sentence, emphasising that any disciplinary action must fall squarely within statutory parameters.

[6] In its judgment, the Court concluded that the appellant's appeal was successful. It found that the sentence the prescribed officer initially imposed was beyond the lawful scope allowed under military regulations. Consequently, the Court set aside the decision of the High Court, which had previously upheld the sentence.

[7] The Court then directed that the case be remitted to the prescribed officer, with instructions to impose a sentence in strict accordance with the Defence Force Act. Specifically, it clarified that any punishment must comply with section 51(1), which prescribes a custodial sentence of up to two years for the offence committed. This directive underscored the importance of observing statutory limitations when determining disciplinary penalties.

[8] Finally, the Court held that there would be no order as to costs, leaving each party to bear its own legal expenses for both the appeal and the original application before the High Court. This outcome highlighted the Court's position that adherence to legal boundaries is paramount, even within the unique context of military discipline.

[9] This matter is now before this Court to interpret a prior judgment issued by this Court. During the hearing, an issue arose, necessitating the Court to address this matter to achieve precision and clarity in interpreting and applying the Military Law of Lesotho. The Court noted that insufficient assistance has been offered to the Court in relation to two provisions of the Lesotho Defence Force Act of 1996. Specifically, there is section 51, under which the applicant stands charged with contravention, and section 91, which delineates provisions for Summary Trials. How are these sections related? The Court directed the counsel to produce supplementary submissions.

Factual matrix

[10] The background of this case centres around the disciplinary proceedings and subsequent appeals involving Mr. Likotsi Mokoma, a former Major in the Lesotho Defence Force (LDF). Mr. Mokoma served in the LDF for 35 years, attaining the rank of Major in 2012. His military career ended in 2016 upon reaching the age of retirement. However, an incident occurred shortly before retirement, leading to disciplinary action.

[11] On 19 January 2016, during his official duties at Moshoeshoe I International Airport, Mr Mokoma was directed by his superior, Colonel Nkei, to assist in marshalling an aircraft carrying the then Prime Minister of Lesotho and his entourage. Mr. Mokoma, observing that the aircraft had already stopped in an appropriate location, believed that further marshalling was unnecessary and declined the instruction. His refusal was interpreted as disobedience to a military order, leading to immediate detention and subsequent disciplinary action under section 51 of the LDF Act, which addresses offences of defying lawful orders.

[12] Following a summary trial on 3 February 2016, the Presiding Officer found Mr. Mokoma guilty based on his own plea and sentenced him to a reduction in rank from Major to Captain. This demotion profoundly affected Mr. Mokoma's pension benefits, reducing them significantly after his decades of service. Dissatisfied with the sentence's financial and reputational impact, he sought an internal review under Regulation 29 of the Defence Force (Discipline) Regulations 1998, but his petition was dismissed. This led him to appeal to the High Court, which dismissed his application on 21 November 2018. His grounds of appeal argued that the disciplinary proceedings were unjust and that the sentence exceeded the Presiding Officer's jurisdiction under summary trial provisions.

[13] In response to the adverse decisions, Mr. Mokoma pursued an appeal in the Court of Appeal of Lesotho, which yielded a judgment in his favour, setting aside the High Court's decision and

remitting the matter to the LDF's summary trial authority to impose a sentence consistent with section 91 of the LDF Act and Regulation 22. However, ambiguity regarding the interpretation of the Court of Appeal's order, particularly its impact on Mr. Mokoma's pension, prompted him to seek clarification from this Court, which now hears this application.

Issues for determination

[14] The issue for determination in this case is the interpretation and enforceability of the Court of Appeal's previous judgment in C of A (CIV) 69 of 2018. Specifically, the Court is asked to clarify whether the language in section 51 of the Lesotho Defence Force Act mandates a custodial sentence or merely prescribes an upper limit for penalties. This interpretation is essential to resolve the ambiguity surrounding the nature of the sentence that the prescribed officer may lawfully impose following a conviction for disobeying a lawful order within the Defence Force. The applicant contends that the original judgment should be understood as mandating a sentence consistent with military law, and therefore seeks a declaratory order affirming this interpretation to guide the re-sentencing process. The Court must determine if its original directive was sufficiently clear or if further clarification is needed to ensure adherence to statutory sentencing standards under military law.

The Law

[15] Courts of law are occasionally called upon to interpret the meaning and effect of their judgments, as is presently required in

this judgment. In undertaking such interpretation, it is essential to bear in mind that the court is neither constituted as an appellate court on the judgment under interpretation nor is it engaged in determining whether that judgment was rightly or wrongly decided or whether the interpreting court would have granted a similar or different order in light of the interpretation application.

[16] Therefore, the question of whether an alternative order might have been issued is immaterial. The court is precluded from supplementing or modifying the previous judgment. The court's role is confined solely to ascertaining what the judgment was intended to express as the court's decision.

[17] The proper approach to interpreting a judgment requires that cognisance be taken of *inter alia* the following: First, court orders are intended to provide effective relief and must be capable of achieving their intended purpose. The initial inquiry is to discern the evident purpose of the order. In construing a judgment or order, the court's intent is to be ascertained principally from the language of the judgment or order itself, in alignment with the established and well-recognised principles governing the interpretation of legal instruments.

[18] As with any formal document, the judgment or order and its reasoning must be examined to determine its intended effect. A judgment must be interpreted in its entirety and in the context in which it was given concerning the 'relevant background facts

which culminated in it being made'.[2] The order granted is merely the executive part of the judgment and should not be interpreted in isolation but in the context of the judgment as a whole. Even if not expressly reiterated or encapsulated in the order issued, findings within a judgment must nonetheless be accorded full effect. One should not stare blindly at the black-on-white words but try to establish the meaning and implication of what is being said. In this process, the context and surrounding circumstances are relevant.[3]

The previous judgment in Mokoma v Lesotho Defence Force and Ors C of A (CIV) 69 2018

[19] In the decision sought to be interpreted, this Court decided that, according to Regulation 22(1) of the Defence Force (Discipline) Regulations, No. 29 of 1998, the authorised sentences under a summary trial were not adhered to, as the appellant's sentence was imposed under section 82, which pertains to military court rulings rather than summary trials, while the correct

[2] HLB International v MWRK Accountants Consultants (Pty) Ltd 2022 (5) SA 373 (SCA) and fn 67 para 28, citing Elan Boulevard (Pty) Ltd v Fnyn Investments (Pty) Ltd and others 2019 (3) SA 441 (SCA) para 16, and Firestone South Africa (Pty) Ltd v Genticuro AG 1977 (4) SA 298 (A) at 409D-H (per Trollip JA). The basic principles applicable to construing documents also apply to constructing a court's judgment or order: the court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual, well-known rules. Thus, as in the case of a document, the judgment or order and the court's reasons for giving it must be read to ascertain its intention. If, on such a reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it. Indeed, it was common cause that in such a case, not even the court that gave the judgment or order could be asked to state what its subjective intention was in giving it. Of course, different considerations apply when, not the construction, but the correction of a judgment or order is sought through an appeal against it or otherwise - see infra. But suppose any uncertainty in meaning does emerge. In that case, the extrinsic circumstances surrounding or leading up to the court's granting the judgment or order may be investigated and regarded to clarify it.

[3] HLB International v MWRK Accountants and Consultants fn 2 para 28, citing a loose translation of the dictum of Olivier JA in Plaaslike Oorgangsraad, Bronkhorstspruit v Senekal 2001 (3) SA 9 (SCA) para 11 at 18J-19A, by Ponnan AJ in Elan Boulevard v Fnyn Investments fn 68 para 16, see also fn 6.

sentencing framework under Regulation 22(1) permits punishments such as reprimands, fines, forfeiture of seniority, and specific reductions in rank, but only within designated limitations. The imposition of a demotion in this manner was thus considered *ultra vires*, a procedural deviation amounting to legal irregularity.

[20] The judgment's operative order revolves around remitting the appellant's case for re-sentencing due to procedural irregularities in the original summary trial. In the judgment, the appellant challenged the legality of his demotion from Major to Captain following a conviction for disobeying a military order. He contended that the sentencing authority overstepped statutory bounds, imposing a penalty not authorised within the summary trial framework. This Court found merit in this contention, particularly as the summary trial tribunal had relied on section 82 of the Defence Force Act rather than Regulation 22(1) of the Defence Force (Discipline) Regulations, No. 29 of 1998. This misapplication of sentencing provisions formed the basis for the Court's operative order, emphasising procedural integrity within the discipline process.

[21] The Court's approach resonates strongly with UK jurisprudence, notably cases like *R v Smith (David)*,[4] where the House of Lords stressed the importance of abiding by statutory limitations in military discipline cases. The Lords highlighted that military tribunals with broad disciplinary powers are not beyond the reach of legality; they are bound to apply only those sanctions

[4] R v Smith (David) [2000] AC 146.

explicitly allowed under statutory authority. Such precedence underlines that even in military settings—characterised by unique disciplinary frameworks—sanctions must be applied within established legal confines to prevent arbitrary or excessive punishment.

[22] The operative order also parallels the Canadian case of *R v Généreux*[5], where the Supreme Court underscored due process and statutory adherence in military justice. In Généreux, the court ruled that a tribunal's failure to follow designated statutory procedures violated fairness and procedural justice principles. Such rulings underscore a universal judicial inclination across Commonwealth jurisdictions towards lawful and proportionate military discipline.

[23] In the Lesotho Defence Force context, Regulation 22(1) of the Defence Force (Discipline) Regulations outlines specific punishments permissible in a summary trial, such as reprimands, fines, or minor reductions in rank, all subject to strict procedural limitations. The operative order's focus on adherence to these regulations mirrors Zimbabwean military jurisprudence, as seen in *Mushore v Commanding Officer, Zimbabwe National Army*[6], where the Supreme Court of Zimbabwe emphasised the importance of clear statutory backing for any disciplinary action within military structures. Failure to observe statutory boundaries, as underscored in Mushore, renders any imposed

[5] R v Généreux [1992] 1 SCR 259.
[6] Mushore v Commanding Officer, Zimbabwe National Army [1993] (1) ZLR 136 (SC).

punishment subject to reversal or modification, given its departure from the authorised scope.

[24] In the present case, the Court, while recognising the appellant's retirement, determined that the re-sentencing could still be conducted under military jurisdiction due to the nature of the appellant's appeal, filed post-retirement. This decision aligns with judicial reasoning in cases like *Wilson v Chief Constable of South Yorkshire Police*[7], where the House of Lords established that retirement does not preclude jurisdiction over disciplinary matters that arose during service, provided the appeal was timely and sought under relevant statutory provisions.

Consideration of the application

[25] This Court is seized of an application in which the applicant seeks clarity and enforcement of the judgment in C of A (CIV) 69 of 2018. The applicant's principal prayer is for a declaratory order that (a) the sentence rendered by the presiding officer of the summary trial be set aside and (b) that the presiding officer be ordered to re-sentence the applicant in strict conformity with the laws governing the Lesotho Defence Force (LDF). Additionally, the applicant seeks costs for this application and any other relief deemed just.

[26] The Court's determination thus focuses on two central issues: (i) whether the 2018 judgment is sufficiently clear in its intent and

[7] Wilson v Chief Constable of South Yorkshire Police [1989] AC 53.

terms and (ii) applying principles of judgment interpretation to discern if any further orders are warranted.

[27] Upon examination of the judgment, it is clear that this Court had adjudicated upon the propriety of the sentence imposed during the applicant's summary trial, specifically assessing whether it conformed to the applicable legal framework within the LDF. The 2018 judgment unequivocally set aside the initial sentence, identifying it as legally erroneous. It then directed that the matter be remitted to the prescribed officer to impose a sentence "in terms of the law." This indicates a clear expectation for the presiding officer to conform strictly to the parameters of the LDF Act, particularly section 51, which prescribes a maximum penalty of two years imprisonment for the offence in question.

[28] During the argument, it was argued that the respondent believed that the applicant should be sentenced to imprisonment. Section 51(1) of the Act reads:

> "51. (1) Any person subject to this Act who, in such a manner as to show defiance of authority, disobeys any lawful command given or sent to him personally commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years."

[29] This Court was also invited to reconcile section 51(1) with section 91 of the Act. Section 91of the Act reads:

> "(1) A prescribed officer may, subject to such conditions and restrictions as may be prescribed in the regulations, try and punish summarily any member, whether within or outside Lesotho, for an offence in terms of this Act.

(2) In this section, the expression “prescribed officer” means superior authority, commanding officer or officer commanding.”

[30] The reason for such an invitation was that the two sections were not clearly defined, and it is not clear when either of the two sections applies. However, a closer examination of the two sections shows that they serve distinct purposes in defining disciplinary measures and authority within the military framework.

[31] Section 51(1) directly addresses the nature of an offence and its potential penalty. It specifies that any person subject to the Act who disobeys a lawful command in a way that shows "defiance of authority" commits an offence. Upon conviction, the offender "shall be liable to imprisonment for a term not exceeding 2 years." This language makes clear the statutory boundaries for punishment, setting a maximum custodial sentence of two years but not mandating imprisonment in all cases. The phrase "shall be liable to" is significant, as it has consistently been interpreted to indicate the availability of imprisonment as a penalty rather than an obligatory sentence, thus granting the sentencing authority discretion to impose a punishment up to but not exceeding two years of imprisonment.

[32] On the other hand, the summary trial provision, section 91(1), establishes the jurisdiction and scope of authority for designated military officers ("prescribed officers") to conduct summary trials and punish offences. This section outlines the conditions under which a prescribed officer may "try and punish summarily" any member of the Defence Force for an offence under the Act,

regardless of whether the trial occurs within or outside Lesotho. The provision emphasises procedural authority rather than specifying the penalties that can be imposed. It implies a range of disciplinary measures that may be applied under the Act, subject to regulations that would guide the conduct of these summary trials and limit the scope of permissible punishment.

[33] Section 91(1) contrasts with section 51(1) by focusing not on sentencing options but on who has the authority to try and punish certain offences. It introduces the concept of a "prescribed officer," which includes roles like "superior authority," "commanding officer," or "officer commanding." These roles are critical in the military hierarchy, as they grant authority to specific individuals to administer disciplinary actions in accordance with the Act. However, this section leaves the actual sentencing framework for offences governed by other specific provisions, such as section 51(1), which delineates the maximum punishment allowed for particular types of misconduct.

[34] In summary, section 51(1) defines the offence and penalty framework, limiting custodial sentences to a maximum of two years for disobedience of authority, while section 91(1) delineates the category and authority of military officers to conduct trials and mete out punishments within the bounds set by the Act and its regulations. While section 51(1) addresses the penalty itself, section 91(1) is procedural, focusing on the scope of who may administer disciplinary action rather than prescribing the penalties themselves. Both sections thus interact to maintain

military discipline by outlining permissible punishments and ensuring that only authorised officers can enforce them within defined parameters. [8]

[35] The critical question, however, is whether the wording of section 51(1) mandates a custodial sentence upon conviction or merely sets an upper limit of imprisonment, leaving room for judicial discretion. The phrase "shall, on conviction, be liable to imprisonment for a term not exceeding 2 years" requires close examination. In statutory interpretation, terms like "shall" often impose an obligation, while "liable to" introduces flexibility. Here, the use of "shall" establishes that a convicted individual must face the possible consequences under section 51. However, "be liable to" signals that imprisonment is one of the possible consequences rather than a compulsory outcome. Thus, "shall" is obligatory in nature. However, here, it operates within a broader construction ("shall be liable to"), which does not demand the imposition of a particular penalty but instead frames a permissible sentencing range. As was stated in Mabea And Another v Magistrate for Butha-Buthe And Another (supra), it has to be borne in mind that only in exceptional circumstances are compulsory sentences enjoined by statute. As a general rule a Court is free to impose a discretionary sentence not exceeding a prescribed maximum. Moreover, unless a law provides for a minimum punishment, a Court may in terms of s297 of the Criminal Procedure Act 51 of 1977 *inter alia* postpone the passing of sentence or discharge the accused with a caution and a reprimand.

[8] Mabea And Another v Magistrate for Buthat-Buther And Another 1993-1994 LLR-LB 122 (c) 151.

[36] The phrase, "be liable to imprisonment" is key to understanding the sentencing provision's non-mandatory nature. The phrase "be liable to" does not mandate that imprisonment must be imposed but rather sets a limit on the type of penalty. It indicates that imprisonment is an available sanction but allows judicial discretion in choosing whether or not to impose it. Therefore, section 51(1) provides that the maximum sentence for disobeying a lawful order is two years' imprisonment. However, it does not specify a minimum sentence or make explicit that imprisonment is the only permissible penalty. This suggests that the provision was intended to grant discretion to the presiding officer in determining an appropriate penalty based on the circumstances of each case.

[37] In military discipline contexts, statutory provisions often set broad penalties to allow flexibility in handling a wide range of conduct. A custodial sentence may be appropriate for serious instances of defiance or repeated misconduct, but minor infractions may warrant non-custodial penalties, such as fines, reprimands or extra duties. This flexible approach aligns with the purpose of military discipline, which seeks both to maintain order and to provide fair, context-sensitive responses to infractions.

[38] Looking at broader judicial interpretations of similar military provisions in common law jurisdictions, courts have generally upheld the principle of judicial discretion unless the statutory language is unequivocally mandatory. In military law, even serious

offences often include a range of penalties to ensure that sentences can be proportionate to the offence. For instance, in South African and UK military justice systems, terms such as "shall be liable to" are similarly interpreted as allowing a range of penalties rather than mandating imprisonment.

[39] This Court, in its 2018 judgment, noted that the presiding officer initially imposed a punishment that did not adhere to section 51's statutory framework. The Court found this to be erroneous but did not suggest that imprisonment was the only permissible sentence. Instead, it instructed the prescribed officer to re-sentence in accordance with section 51, recognising that imprisonment was a possibility but not an inevitability. The Court's directive was to impose a "proper sentence in terms of the law," implicitly allowing for discretion as provided under section 51(1).

[40] Judicial interpretation generally leans against finding mandatory minimums in criminal statutes without explicit language, due to the significant impact on judicial discretion and the rights of the accused. Where mandatory minimum sentences are at issue, the courts emphasise that statutory language must be "clear and unambiguous" to remove discretion.

[41] Similarly, UK precedents have underscored that courts retain discretion unless a statute explicitly prescribes a mandatory sentence. The phrase "liable to imprisonment" has consistently been interpreted as setting a ceiling on the penalty, not a floor,

absent an express directive for mandatory imprisonment. The phrase "liable to imprisonment" has generally been treated as providing an upper limit, rather than an absolute requirement for imprisonment. In *R v Cunningham*[9], the English Court of Appeal emphasized that statutory language must clearly mandate a custodial sentence for it to be imposed as a minimum. The court found that where a statute states a person is “liable to imprisonment,” it indicates the maximum sentence permissible, not a required minimum. The court held that, in the absence of explicit language requiring imprisonment, a judge has discretion to impose a non-custodial sentence.

[42] The case of *R v Secretary of State for the Home Department, ex parte Puttick*[10] involved an interpretation of sentencing discretion in statutory language. The Queen’s Bench Division ruled that where a statute uses the term “liable to imprisonment,” this does not mean imprisonment is mandatory. Instead, it merely specifies the maximum penalty that may be imposed. The case highlighted that “liable to” offers discretion and does not restrict sentencing solely to custodial terms unless expressly stated.

[43] In *R v Hamer*[11], the Court of Appeal addressed the interpretation of statutory language similar to "liable to imprisonment." The court underscored that statutory language should be construed strictly, especially in criminal matters. It reiterated that courts retain discretion to impose alternative

[9] R v Cunningham [1993] 1 WLR 561 (CA).
[10] R v Secretary of State for the Home Department, ex parte Puttick [1981] QB 767.
[11] R v Hamer [1969] 1 QB 727 (CA).

sentences unless the statute expressly requires imprisonment. The court's decision rested on the interpretation that statutory references to penalties typically set maximum thresholds, not mandatory sentences.

[44] The Court of Appeal in *R v Williams*[12] considered the use of "liable to imprisonment" within the context of sentencing for drug offences. The court ruled that “liable to imprisonment” does not impose a mandatory custodial sentence but rather indicates the upper boundary of permissible sentencing options. This judgment supported the principle that courts should retain discretion in sentencing unless a statute explicitly removes it.

[45] Although more recent, *R v M*[13] affirms this discretionary approach. The Court of Appeal found that unless a statute directs the imposition of imprisonment, a sentencing court has the latitude to consider other penalties within the statutory framework. This case reinforced that statutory provisions phrased as “liable to imprisonment” allow the judiciary to determine the most appropriate sentence up to the maximum limit.

[46] In *R v Poulton*[14], the English Court of Appeal reiterated that statutory phrases like "liable to imprisonment" should not be read as mandatory minimum sentences. The court held that such wording confers a discretionary ceiling on sentencing and does not compel imprisonment, emphasising judicial flexibility to issue

[12] R v Williams [1978] 1 WLR 348 (CA).
[13] R v M [2003] EWCA Crim 365.
[14] R v Poulton [1992] Crim LR 168.

non-custodial sentences when appropriate. The clarity of the judgment, in this context, is unassailable. It specifies both the error—the imposition of a sentence outside the statutory bounds—and the required corrective action: a lawful re-sentencing by the presiding officer within the confines of LDF regulations and the Defence Force Act. This Court finds no ambiguity or uncertainty in the language or intent of its judgment; it is a straightforward directive to substitute the illegal sentence with one permissible under Section 51 (1) of the Act.

[47] A purposive approach reinforces that the judgment sought to correct the specific legal error in sentencing while preserving the summary trial's outcome regarding the conviction. The Court's primary objective was to restore legal order by remitting the case solely for lawful sentencing. Contextually, this means that while the conviction stood unchallenged, the presiding officer was directed to adhere strictly to the statutory sentencing framework without overreach.

[48] Finality is a core tenet of judicial determinations, particularly in appellate rulings, where the objective is to resolve issues conclusively. The 2018 judgment decisively addressed the matter, setting aside the unlawful sentence and directing a compliant re-sentencing process. This Court finds no basis to reinterpret or modify this directive, as it has already achieved the intended legal clarity and finality.

[49] In cases such as *Firestone SA (Pty) Ltd v Genticuro AG*[15], courts have held that judgments must be interpreted within the bounds of their operative parts—those portions that define the order's effect. Here, the operative part of the 2018 judgment remits the matter for lawful sentencing. Applying this principle underscores that the Court's decision was both legally sound and sufficiently specific to be implemented without further elaboration or reinterpretation.

Disposal

[50] Given the clarity and completeness of the 2018 judgment, it is the opinion of this Court that no further orders are warranted. The presiding officer at the summary trial level is bound by the Court's explicit directive to re-sentence the applicant according to the statutory limits under Section 51 (1) of the Lesotho Defence Force Act. The applicant's request for a declaratory order regarding the judgment's interpretation is thus superfluous; the judgment already specifies the requisite actions. Accordingly, the application is dismissed, as the 2018 judgment is clear and enforceable without additional judicial input.

Order

[51] In the result,

(a) The application is dismissed.

(b) Each party shall bear its own costs.

[15] Firestone South Africa (Pty) Ltd v Gentiruco AG 1977 (4) SA 298 (A).

K E MOSITO

PRESIDENT OF THE COURT OF APPEAL

I agree

S P SAKOANE

CHIEF JUSTICE

I agree

P MUSONDA

ACTING JUSTICE OF APPEAL

FOR APPELLANT: ADV L.A. MOLATI

FOR RESPONDENTS: ADV P.T.B.N. THAKALEKOALA