

IN THE LESOTHO COURT OF APPEAL

In the matter between :

COMMISSIONER OF POLICE
DEFENCE COMMISSION
MINISTER OF HOME AFFAIRS
ATTORNEY GENERAL

1ST APPELLANT
2ND APPELLANT
3RD APPELLANT
4TH APPELLANT

and

CAPTAIN TSEKA LEHLOHONOLO

RESPONDENT

HELD AT : MASERU

CORAM :

STEYN JA
BROWDE JA
LEON JA

JUDGMENT

BROWDE J.A.

During June 1995 the Respondent herein brought an application before the High Court in which he claimed, *inter alia*, an order that:

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- (a) His retirement from the Police Force be reviewed, set aside and declared null and void.
- (b) He be reinstated in his former position.

The matter came before Mofolo A.J. who granted the application with costs. It is against that order that the Appellants now appeal to this Court mainly on the basis that the evidence before the Court *a quo* should have led to a finding that the retirement of the Respondent came about as a result of his own volition i.e. that he voluntarily tendered his resignation which was accepted. The relevant facts are briefly as follows :-

- (i) On or about 17 March 1994 the Respondent applied for retirement. No reasons were given and before the matter was considered by the authorities the application was withdrawn.
- (ii) On 28 November 1994 on the order of the 1st Appellant the Respondent was informed in writing that he was being transferred from Maseru to Thaba-Tseka.
- (iii) Apparently the Respondent did not accept the transfer nor did he obey the instruction to proceed to Thaba-Tseka despite a repetition of the order in December 1994.
- (iv) On 24 March 1995 the Deputy of the 1st Appellant by letter inquired of the Respondent "whether there are any valid reasons why you think you cannot be retired under public interest as you have already shown that you are no longer interested in serving the public."

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- (v) On 27 March 1995 the Respondent wrote as follows to the 1st Appellant:-

"Dear Sir,

re APPLICATION FOR RETIREMENT

I wish to proceed on Leave Pending Retirement and I also request that Government Dispense with the Requirement to serve six months Notice Of Retirement.

I hope to get Co-operation Particularly in view of the fact that My Good Office of the Commissioner of Police Officers have suggested, I proceed on such retirement with some References. I am 51 years of age. I thank The Police Force for the Service I have served.

YOURS OBEDIENT SERVANT

CAPTAIN TSEKA LEHLOHONOLO"

- (vi) On the 24 May 1995 the reply to "application for retirement" was replied to by the office of the 1st Appellant in writing which read, *inter alia*

"Please be informed that your application for retirement has been approved by the Defence Commission.

You will therefore serve one month notice with effect from 1 June 1995 to 31st June 1995 which will be your last day of service."

It seems to me that the Respondent's application for retirement having been accepted, it was not possible for Respondent to rescind this decision unilaterally. It would require agreement to such a course of activity by 1st

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Appellant. No such agreement was forthcoming. On the 13 June 1995, however, a letter was written by the Respondent to the 3rd Appellant in which after setting out his version of his unhappy last years in the Police Force he ends by saying "It is difficult for me to accept retirement at this stage. I will only accept departmental transfer, as applied prior not this High jacking letter and Bias ones" (sic).

The question to be decided therefore is whether this letter, written as it was after the application for retirement had been accepted, could have the effect of nullifying the retirement. I think not. The retirement and the process following it i.e. the giving of notice was a complete agreement and, as I have said could only be reversed or rescinded by further agreement of the parties. The learned judge *a quo* directed some serious criticism at the office of the 1st Appellant and also expressed surprise that the 1st Appellant himself should have refused to grant an interview to the Respondent. I express no opinion on these matters save to say that the Respondent's vacillating attitude to retirement coupled with his apparent refusal to carry out the orders in regard to his transfer would appear to have contributed in considerable measure to the somewhat

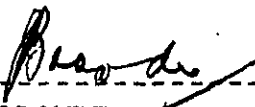
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unsympathetic treatment he received from the department.

In my judgment the learned judge erred in granting the Respondent the relief he sought.

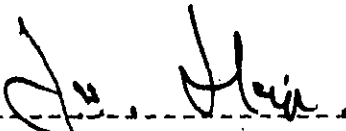
The appeal is upheld and the order of the court *a quo* is altered to read "The application is dismissed with costs."

Delivered at Maseru this 19th day of January, 1996



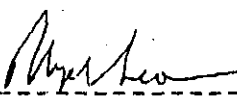
J. BROWDE
JUDGE OF APPEAL

I agree



J. H. STEYN
JUDGE OF APPEAL

I agree



E. N. LEON
JUDGE OF APPEAL