

IN THE HIGH COURT OF LESOTHO

In the matter of:

TANKISO THOSO

Plaintiff

and

ATTORNEY GENERAL

Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 17th day of February, 1997.

In an action wherein plaintiff claims, against defendant, for an order declaring his dismissal wrongful and unlawful, alternatively payment of his terminal benefits, costs of suit, further and/or alternative relief, the latter has raised a special plea of prescription, in terms of section 6 of the **Government Proceedings and Contracts Act, 1965**.

The facts disclosed by the pleadings are briefly that, in or about June 1980, plaintiff was employed, by the Lesotho Government, as a clerk on monthly basis. On or about July 1988, he was verbally and summarily dismissed by the Minister

of Health and Social Welfare without payment of any terminal benefit. Inasmuch as the Minister had no power to dismiss him, the dismissal was, in the contention of the plaintiff, wrongful and unlawful.

In his plea, defendant alleged that after he had been employed in 1981, and not 1980, plaintiff deserted. Defendant denied, therefore, plaintiff's allegations that he was employed in 1980 and subsequently dismissed by the minister.

Be that as it may, plaintiff went on to allege that, in his opinion, this matter could be resolved administratively. For that reason, he attempted, over the years, to resolve it administratively but all in vain, a fact, however, denied by the defendant, in his plea. Plaintiff gave defendant due notice in terms of law and filed, with the Registrar of the High Court, summons commencing this action for relief as aforesaid on 25th March, 1991 and 18th December, 1991, respectively.

According to defendant, on the basis of his desertion, plaintiff was not entitled to the relief sought for in the summons.. Consequently, defendant prayed that plaintiff's action be dismissed with costs.

It is significant to observe that section 6 of **Government Proceedings and Contracts Act, 1965**, upon which the defendant relies for his special plea, provides:


- “6. Subject to the provisions of sections six, seven, eight, nine, ten eleven, twelve and thirteen of the Prescription Act (1861) no action or other proceedings shall be capable of being brought against Her Majesty in Her Government of Basutoland by virtue of the provisions of section two of this Act after the expiration of the period of two years from the time when the cause of action or other proceedings first accrued.” (my underlining)

I have underscored the word “shall” in the above cited section 6 of **Government Proceedings and Contracts Act, supra**, to indicate my view that the provisions thereof are mandatory. Assuming, for the sake of argument, that plaintiff was correct in his allegation that he had been dismissed from his employment on or about July 1988, it is to be borne in mind that he admittedly did not institute the present proceedings until 18th December 1991 i.e. some 17 months after the period of two years, from the time when the cause of action first accrued had lapsed. That being so, it must be accepted that when on 18th December, 1991 he brought it plaintiff's action was, on the authority of the provisions of the above cited section 6 of **Government Proceedings and Contracts Act, 1965**, time barred.

It was, however, argued, on behalf of the plaintiff, that the **Prescription Act, 1861** was subject to liquid claims. In the instant case, the remedy sought by plaintiff was for declaratory order which was subject to the discretion of the court and, therefore, not covered by the Act.

In my view, the special plea on which defendant relies is clearly based on the provisions of **Government Proceedings and Contracts Act, 1965** and not the **Prescription Act, 1861**. The argument based on the **Prescription Act, supra** is, therefore, irrelevant.

In the result, I come to the conclusion that the special plea, raised by the defendant, ought to succeed and it is accordingly ordered.



BK MOLAI

JUDGE

17th February, 1997.

For Plaintiff: Mr. Nathane

For Defendant: Mr. Putsoane