

CIV\APN\437\96

IN THE HIGH COURT OF LESOTHO

In the Application of :

JUBILEE TSELISO KHOABANE

Applicant

vs

**S.P. NTSOAOLE
MINISTER OF EDUCATION
ATTORNEY-GENERAL**

**1st Respondent
2nd Respondent
3rd Respondent**

J U D G M E N T

**Delivered by the Hon. Mr Justice M L Lehohla on the 8th
Day of September, 1997**

The applicant in his founding affidavit averred that he is a Principal of Life—
High School. Further that the first respondent is cited in this proceeding as the
Supervisor of Government Controlled Schools of c/o Ministry of Education in the
district of Maseru

In this proceeding it is clear to me that in terms of paragraphs 4.2 through 4.4,
the applicant is objecting to his purported transfer effected by the Board of Control

Life High School following which the 1st respondent in contradiction of his undertaking that he would regularise the matter in response to the applicant's indication to him that the move was contrary to Section 42 of the Education Act, 1995, proceeded to embark on moves calculated to compel the applicant to accept the transfer.

Having listened to both parties to the case the Court gave its verdict on 23rd May, 1997 and due to great constraint placed on it by scarcity of time, undertook to give fuller reasons later.

The order given and remarks made by the Court on that day were as follows

ORDER:

~~On the basis that clearly the law in Section 42(1) indicates that the~~ Teaching Service Commission is the one that is entitled to transfer a teacher in the position of the applicant. and on the basis of the argument accepted by the Court that the Board of Control Life High School had none such powers and much less any powers to demote the applicant the rule is confirmed in terms of prayers (b) © and (d).

Court wishes to thank Mr Letsie for bringing to its attention the forms allegedly signed by the applicant but regrets that it cannot make use of

them at this stage of writing down its decision, more so because they were not attached to papers constituting the record before Court in this proceeding. Fuller reasons would be filed in due course.

(Signed: M.L. LEHOHLA)

23\5\97"

The factors that the Court took into account in reaching the above decision are centred on Section 42(1) of the Education Order, 1995; reading -

“The power to appoint a teacher and to promote, demote, *transfer*, discipline or remove from office such a teacher *shall vest in the Commission*”.

The Commission is defined in the interpretation Section 2 -

“‘Commission’ means the Teaching Service Commission established under Section 144 of the Constitution of Lesotho”.

~~It stands to reason therefore that because the Board of Control of Life-High~~
School does not appear in any of the sections cited above nor has it anywhere been designated as having entitlement to act on behalf of the Teaching Service Commission, it has no authority to transfer the applicant who is the principal at Life High School. Needless to say the Board is not the Commission. As such it is not entitled to usurp powers vested in the Commission in terms of section 144 of the most Supreme Law of the Land: the Constitution of Lesotho.

Any purported exercise of the powers set out in Section 42(1) of the Education Order, 1995, by anybody besides the Commission is misconceived for it is an exercise in futility.

Thus the purported transfer of the applicant in contravention of Section 42(1) of the Education Order 1995 is a nullity having no legal force and effect.

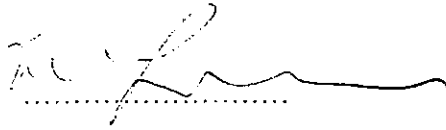
The Court therefore ordered that the period prescribed by the rules of Court regarding service should be dispensed with on account of the urgency of this matter.

The Court further orders :

- 1(b) that the purported transfer of the applicant is declared null and void and of no legal force and effect
- © the first respondent to release the applicant's cheque forthwith.
- (d) that the respondents be interdicted from interfering with the applicant's emoluments save by due process of law.

The Court notices that the applicant has omitted to ask for costs. These would in any case follow the event.

It is so ordered.

A handwritten signature in black ink, appearing to be 'R. L. M.', written over a horizontal dotted line.

JUDGE

8th September, 1997

For Applicant : Mr Mafantiri

For Respondents : Mr Letsie