

**CIV/T/246/2005**

**IN THE HIGH COURT OF LESOTHO**

In the Matter Between:-

**MASEFABATHO LEBONA**

**PLAINTIFF**

AND

**MINISTRY OF PUBLIC SERVICE**

**1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL**

**2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Coram : Hon. Majara J**

**Date of Hearing : 1<sup>st</sup> September 2011**

**Date of Judgment: 16<sup>th</sup> November 2011**

**Summary**

*Claim for payment of monies in salaries allegedly owed to plaintiff pursuant to the contents of a government savinggram that re-graded, re-designated and created*

*new grades for legal officers and support staff - whether in terms of the position and qualifications she held, plaintiff was entitled to be upgraded from grade 10 to grade 12 – on the basis of its main purpose and the variables that were considered, the savingram to be accorded a generous interpretation so that plaintiff's position should have been upgraded – plaintiff's claim successful.*

[1]The plaintiff in this case instituted this action as far back as the year 2005 in which she seeks payment of the amount of M58 196.00, interest thereon at the rate of 18.5% per annum as well as costs of suit. In terms of the minutes in the Court's file this matter was postponed sine die by consent on the 29<sup>th</sup> November 2005. On the 15<sup>th</sup> May 2006, a pre-trial conference was held after which the parties were granted leave to approach the registrar to obtain a date of hearing. Nothing seems to have happened since then until the file was placed on the dismissal roll. It is not clear from the minutes what happened thereafter. Eventually, the file was allocated to this Court and placed before me on the 18<sup>th</sup> February 2011 when the matter was postponed for hearing on the 1<sup>st</sup> September 2011.

[2]The facts herein are basically common cause, namely that the plaintiff was employed by the Government of Lesotho in the Ministry of Trade and Industry as a Senior Consumer Affairs Officer from 1989 which position stood at grade 10. She went to further her studies with the National University of Lesotho and obtained a Bachelor of Laws Degree (LLB) in 1990. She was also admitted as an Advocate in the Courts of Lesotho during the same year.

[3]It is also common cause that on the 15<sup>th</sup> June 1992 the salaries of civil servants in the legal profession were revised by means of a savingram, MPS/ETM/3-135 which was tendered as evidence before the Court and was marked exhibit "D". It

is the interpretation of the contents of this savingram that is the only bone of contention between the parties.

[4]It is the case of the plaintiff that in terms of the savingram the entry point of all civil servants that hold the LLB degree was revised from grade 10 to grade 12 and that pursuant thereto, her salary ought to have been so revised even though her position was not termed legal officer. That in spite of this factor, some of her duties required legal training and knowledge and that she fell in the category of the position of advisory legal services. In this regard, the plaintiff also sought to rely on the contents of exhibit “G” namely, the report of the Ombudsman.

[5]On the other hand, the defendants argue that although the plaintiff holds the LLB degree, her position at the material time was not a legal one as envisaged by exhibit “D” and that it did not fall within the category of the positions that were revised in terms of the said document.

[6]I now proceed to deal with this issue. In my opinion it cannot be disputed that a holder of the LLB degree falls within the category of the legal profession. However the issue for the determination of this Court is whether the plaintiff falls or fell within the category of the legal officers whose salaries were revised from grade 10 to grade 12.

[7]In her submissions, Counsel for the plaintiff stated that in terms of **section 12 of the Legal Practitioners’ Act of 1983** a legal practitioner is defined as a person admitted to practice as an advocate, attorney, notary public or conveyancer. She made the submission that on the basis of this definition, the plaintiff falls within the category of persons whose salaries were revised in terms of exhibit “D”. She added that the said document did not make a distinction between practicing and non-practicing legal practitioners. That the revised grades were not conditional

upon a legal practitioner being in office with duties including representing the Ministry in the courts of law and giving legal advice to the Ministry.

[8]Further that in terms of the plaintiff's evidence, among her duties as contained in exhibit "A", she was required to advise the Ministry on legislation and other measures required to ensure optimum protection of the interests of consumers. That the requirement for that position was an LLB degree and that as such, if the position was not a legal one, there would not have been a specific requirement that a person eligible to hold that position ought to have an LLB degree.

[9]It was lastly submitted on behalf of the plaintiff that in terms of the contents at page 5, paragraph 2.2.4 -2.2.6 of the Ombudsman's report, i.e. exhibit "G" career levels in legal aid and other lawyers in other government ministries should be similarly equated with those in the Law Office and that the entry level should be grade 12.

[10]For the defendants, it was argued that exhibit "D" in terms of which the plaintiff basically seeks to rely in her case lists a number of positions which were to be created, re-designated and/or re-graded and that the plaintiff's position i.e. Senior Consumer Affairs Officer does not appear among those listed therein. It was the submission of Counsel for the defendants that the exhibit is clear that the intention was not necessarily to cater for the LLB degree holders but only for positions within the legal profession and their support staff. He added that a Senior Consumer Affairs Officer is not a position within the legal profession.

[11]Further that exhibit "E" does not support the plaintiff's case in terms of the heading and contents that appear at the top of page 3 thereof. Counsel for the defendants added that it is incorrect to suggest that a Senior Consumer Affairs

Officer is a member of the family of legal practitioners nor can it be argued that his/her day to day activities are restricted to legal duties.

[12]Exhibit “D” whose contents form the crux of the plaintiff’s case is a savingram dated June 15, 1992 from the Ministry of Public Service to the following ministries/departments, LEGAL, JUSTICE, FINMIN, TRADE, INTERIOR, PLANOFF, FOREIGN, WORKS, TRANSCOMMS, EMPLOYMENT AND TOURISM.

[13]It bears the title – PARITY OF POSITIONS IN THE LEGAL PROFESSION. It contains *inter alia*, a list of Position Titles, Grades, and Remarks. The column that appears below the heading Position Title contains some of the following positions in relevant parts, Legal Officer, Director, Deputy Director, Principal Probation Officer, Legal Aid Counsel, Magistrate II/I and III, Principal Assistant Legal Draftsman, Crown Counsel, Senior Assistant Registrar General, Assistant Registrar General, Principal Legal Officer, Senior Legal Officer etc. Next to this column is that of the different grades as re-graded, re-designated and created as the case may be.

[14]At the bottom of these columns are the following words, ‘*entry level to positions of Legal Officer, Grade 10/12 and Magistrate III, Grade 10/12 is Grade 12 for LLB holders*’. Unfortunately, the savingram does not define what is meant by the term Legal Officer, nor does it specify the specific duties and responsibilities of such an officer. However, the words that appear above the columns read as follows, ‘*Approval is hereby given to **effect parity of positions in the Legal Profession** and its support staff as shown below*’. (my emphasis)

[15]On the face of it, what appears to be the basic commonality is the fact that the specified officers must be holders of an LLB degree. In the light of the absence of

a definition of what a legal office is, it is my opinion that reliance has to be placed on other sources. One such source is exhibit “G” namely the report from the Ombudsman. This is because the report gives more clarity and details on what can be called the *raison d’etre* of the coming into being of the savingram. At paragraph 1.1.1 of the report are the following words:-

*“The report which follows concerns relative comparability of Positions in the legal profession, the allied legal groups, the social work occupation and the group of interpreters and translators.”*

At paragraph 1.4.2 thereof appears the following words:-

*“The starting point in this exercise was to group positions into “like jobs”. The factors which were used for this purpose are (1) common education and training requirements, (2) experience patterns which are sufficiently related to ensure (3) interchangeability at any level and (4) reasonably common ability standards.”*

[16]In my opinion, the above words seem to suggest that the basic reason for the re-grading, re-designation and creation of new grades in terms of the savingram was to create equity and do away with the apparent discrimination amongst what are called ‘like jobs’ in terms of variables such as education, training, interchangeability at any level, related experience patterns and other commonalities. Proceeding from this premise, it is also my view that the savingram should therefore be accorded a generous interpretation.

[17]This is because the savingram was meant for all the ministries as listed therein and quoted above, including the ministry of Trade under which some of the titles might not have necessarily been specified or labeled albeit their bearers have the same common ability standards. This is reinforced by the fact that one such variable is the holding of the LLB degree by the concerned officers especially at

grades 10/12 at which the present plaintiff was before the re-grading and or restructuring was done, the other being to advise the Ministry on legal matters.

[18]There is also another heading under exhibit “G” at page 3 itemised as **2.1.0 LEGAL PRACTITIONERS** under which are listed six basic jobs and functions. The fourth is the relevant one in this case. It is styled Advisory Legal Services whose functions are spelt out as follows; *‘to provide general advice on legal matters and represent Ministries in Courts of Law.’*

[19]While the submission that the position of Senior Consumer Affairs Officer does not appear in the list is indeed correct, it is my opinion that nothing really turns on it as it must have merely been an oversight especially bearing in mind the main purpose behind the entire restructuring exercise and the factors that were taken into consideration when it was undertaken as already alluded to above.

[20]Further, while indeed the duties and responsibilities of the said officer are not restricted to advising the Ministry and representing it in the Courts of law, amongst her duties and responsibilities in terms of exhibit “A” is:-

*“Advise the Ministry legislation (sic) and other measures required to ensure optimum protection of the interest of consumers.”*

[21]It cannot be disputed that this particular duty contains a component of advising the Ministry on **legal** matters which the term **legislation** falls under. The said term is defined thus at page 811 of the **Concise Oxford English Dictionary**; *laws, considered collectively*. In my opinion the suggestion that this position was not meant to be included amongst those that were re-graded is in turn suggestive that its holder would not be eligible for interchangeability despite her holding the same academic qualifications as those of other officers that are specified in the

savingram, namely the LLB degree as well as advising the Ministry on the applicable laws.

[22]In my further view, such an interpretation flies in the face and defeats the very purpose of the savingram which was to place ‘like jobs’ within the legal profession in terms of *inter alia*, training, education, advising the Ministry on legal matters and representing it in the Courts of law, at par. Further, the fact that like the other officers that are listed in the savingram, the plaintiff started at grade 10 before the re-grading to 12 was done is suggestive that her position also stood to be re-graded.

[23]I might also venture to add that it was not even suggested that there is or was any other officer in the Ministry of Trade whose specific job description was to advise the ministry and represent it in the Courts of Law, whose occupant had to hold the LLB degree which in turn might have persuaded me to believe that that would be the officer whose position would be subject to the re-grading, re-designation and creation in terms of the savingram and not that of the plaintiff herein.

[24]In addition, it must be remembered that there are other positions/titles that were also re-graded and included in the savingram whose duties are not restricted to representing government ministries in the Courts of law and/or offering legal advice *strictu sensu* such as that of Principal Probation Officer to mention one, but whose occupants hold the LLB degree.

[25]This factor again reinforces my view that the savingram should be accorded a generous interpretation more so in light of the disparity it was meant to do away with in so far as officers within the legal profession and support staff are concerned. Another commonality as I have already mentioned above is that, like the other positions, a Senior Consumer Affairs Officer in the ministry of Trade had



previously been graded at 10. I therefore see no reason why it would have purposely been left out in the re-grading especially when its occupant also held similar qualifications (LLB degree) with part of her duties having as one of its components, advising the Ministry on legislation which term as I have stated, falls within the broader one of legal. For the avoidance of doubt, the term legal is defined in the Concise Oxford English Dictionary as follows; '*of, based on, or required by the law*'.

[26]It is on the basis of the foregoing reasons that I find that the plaintiff has successfully made out her case for the relief sought and I accordingly grant her prayers 1, 2 and 3 as they are stated in the summons.

N. MAJARA  
JUDGE

For the plaintiff : Mrs. Mapetja

For the defendant : Mr. R. Motsieloa

