IN THE HIGH COURT OF LESOTHO

HELD AT MASERU **CIV/APN/517/10**

In the matter between:

'MAMPAE AGNES TSOAELI **APPLICANT**

AND

PRINCIPAL SECRETARY (MHSW) **1ST RESPONDENT**
PUBLIC SERVICE COMMISSION **2ND RESPONDENT**
SUPERITENDENT – QUEEN II HOSPITAL **3RD RESPONDENT**
ATTORNEY- GENERAL **4TH RESPONDENT**

JUDGMENT

Delivered by the Honourable Madam Justice L. Chaka-Makhooane on the 13th June, 2011

[1] The applicant herein seeks an order against the respondents framed in the following terms:

(a) *The indefinite suspension from work imposed on applicant since 1989 to date be declared null and void ab initio.*

(b) *The non-payment of applicant's salaries from the time of applicant's suspension in 1989, to date of judgment hereof, be declared null and void ab initio.*

(c) *Applicant's monthly emoluments from August 1989 to date of judgment hereof be paid to applicant*

(d) *Costs of suit.*

[2] The respondents filed a notice of intention to oppose following which they also filed a Notice in terms of **Rule 8 (10) (c)** of the **High Court Rules, 1980** ("the Rules"). The respondents have also asked for the leave of court to file an Answering Affidavit in the event that their point of law fails.

[3] The applicant's case in brief as gleaned from her Founding Affidavit is that she was employed by the Ministry of Health and Social Welfare ("MHSW") in 1973 as a Ward Attendant, stationed at the Queen Elizabeth II hospital ("QEII") in Maseru. The applicant was suspended from work on the 27th July, 1989 to date on the suspicion of having helped herself to

hospital food to the amount of M50.00. Since her suspension, she has not been receiving any salary. No disciplinary charges have been brought against her, instead, she has been taken from pillar to post every time she has made inquiries on her situation.

[3] The respondents have raised a point *in limine* that the applicant's claim brought against the Government has prescribed in terms of **section 6** of the **Government Proceedings and Contracts Act, 1965** ("the Act"). In terms of **section 6** of the Act the legally prescribed period for suing the Government is two (2) years.

[4] **Mr. Moshoeshoe**, Counsel for the respondents argues that the law requires that the applicant ought to have claimed her suspension to be declared null and void and to have her salaries paid within two (2) years. He further argues that a delay of about twenty-one (21) years is inordinate and should

be seen to have prescribed. Counsel submitted that in terms of **section 6** of the Act the prescription commenced to run as soon as the applicant became aware that a reasonable period had expired.

[5] **Mr. Mokoko** for the applicant in response submits that the question of law taken by the respondents is improperly taken and should be dismissed in that the suspension imposed in 1989 is still in force and as a result, she had not been carrying out her duties as a ward attendant. Another consequence of the suspension is that she has not been paid any salary since 1989. It is **Mr. Mokoko's** contention that the suspension is a continuing wrong against the applicant, seeing that it has never been stopped or interrupted by any action.

[6] Counsel for the applicant submitted further that the Act relied upon by the respondents, does not apply to the circumstances *in casu.* His contention is that because no final determination

was ever made to the applicant's case, such as a disciplinary hearing, prescription will not apply. It would be improper for the respondents to suspend the applicant for so long, without doing anything and when she seeks relief from the court, they plead prescription.

[7] It is clearly not in dispute that the applicant has been suspended from work as a Ward Attendant at QEII since some time in July 1989 to the present. It is also common cause that following that suspension, the applicant has not received any remuneration in the form of her monthly salaries. Further more, since the respondents do not deny this, it is clear that so far no disciplinary hearing has been held against the applicant.

[8] I pause here to consider whether the point *in limine* has been properly taken by the respondents. It is alleged that in terms of **section 6** of the aforesaid Act, the legally prescribed period

for suing the Government is two (2) years. **Section 6** provides as follows:

> *"Subject to the provisions of section six, seven, eight, nine, ten, eleven, twelve and thirteen of the Prescription Act (1) 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."*

[9] The applicant has approached the court to have the suspension that has been hanging on her head for twenty-one (21) year declared *null and void ab initio.* She is also asking the court to declare the non- payment of her monthly salary from 1989 to the present *null and void.* She further wants the court to order that her salaries be paid to her from August, 1989 to the date of judgment. It is against this back ground that the respondents are vehemently opposing the matter, arguing that the applicant should not be allowed to sue the Government after an ordinate delay of twenty-one (21) years. They argue that she is time barred by the provisions of **section 6** of the aforesaid Act.

[10] I am however, persuaded by Mr. Mokoko's argument that the respondents cannot be heard to say that applicant's claim has prescribed if during that time of suspension there has not been any attempt on their part, to either hold a disciplinary hearing or to have the matter resolved to finality one way or another. It is a matter of fact that as far as MHSW is concerned, the applicant's suspension is still in force, since up to now no final determination has been made regarding this case. For all intents and purposes the applicant in still in the employment of the 1st respondent.

[11] The respondents opted not to file their opposing papers and instead went the route of a Notice in terms of Rule 8 (10) (c) of the Rules. I find that it is proper for the main application to be heard and as such the point *in limine* aught not to succeed.

[12] It is therefore, the order of this court that the respondents' point *in limine* is dismissed with costs. Costs to be in the

cause. The respondents are ordered to go ahead and file their opposing papers in terms of the Rules.

_____

L. CHAKA-MAKHOOANE
JUDGE

For Applicant : Mr. Mokoko

For Respondents : Mr. Moshoeshoe