

**CIV/APN/43/2005**

**IN THE HIGH COURT OF LESOTHO**

In the matter between:

**THABANG MAKATENG**

**Applicant**

**vs**

**THE COMMISSIONER OF POLICE**

**1<sup>st</sup> Respondent**

**ATTORNEY – GENERAL**

**2<sup>nd</sup> Respondent**

**JUDGMENT**

**Coram:** **Hon. Hlajoane J**

**Date Hearing:** **24<sup>th</sup> May, 2012.**

**Date of Judgment:** **1<sup>st</sup> August, 2012.**

**Summary**

*Application member of Lesotho Mounted Police Service – Having fled Lesotho for South Africa in February 1997 for fear of his life – Came back to Lesotho only in April 2004 - :etter of dismissal fated 28<sup>th</sup> June, 2004 – whether Applicant entitled to his salary between period February 1997 to 28<sup>th</sup> June, 2004 when he was dismissed.*

[1] The matter came before Court by way of an Application requesting the Court to grant the following prayers;

- (a) Directing the 1<sup>st</sup> Respondent to pay or cause to be paid the Applicant's salary arrears from February, 1997 to June 2004 with interest at the rate of 12.5% per annum with immediate effect.
- (b) Directing the purported dismissal of the Applicant from the Lesotho Mounted Police Service (LMPS) null and void in law.
- © Directing the 1<sup>st</sup> Respondent to pay the costs of this Application.

[2] The facts briefly being the Applicant had been a member of LMPS holding the rank of sergeant. That following the death of one sergeant Senekane whom he said was killed in his presence by members of the Lesotho Defence Force (LDF) here in Maseru, he was forced to flee Lesotho to the Republic of South Africa (RSA).

[3] The Applicant remained in RSA till when he was deported back to his country in April 2004. He was then detained in Prison where he was facing charges which resulted in his conviction and sentence. He has since served his term and been released from Prison.

[4] Whilst still in Prison, the Applicant wrote a letter on the 25<sup>th</sup> August, 2004 indicating his desire to retire. But before then, the 1<sup>st</sup> Respondent had already written a letter of representation to the Applicant to give reasons why he would not be dismissed from Police Service in terms of **section 31 (1) (h) of the Police Act**<sup>1</sup>, with effect from 16<sup>th</sup> February, 1997. The letter dated 5<sup>th</sup> May, 2009.

[5] The Applicant did respond to that letter of representation on the 13<sup>th</sup> may, 2004. Following that response from the Applicant, he was thus dismissed from Police Service with effect from the 28<sup>th</sup> June 2004.

[6] It would be important at this stage to point out that Applicant was no longer pursuing prayer (b) for declaring the dismissal as unlawful. His main reason being that he was charged and convicted and has already served his term of imprisonment.

[7] The Applicant then pursued his case in terms of Prayers (a) and (c) of the Notice of Motion. He contented that he was entitled to salary arrears between the period of February 1997 when he fled Lesotho to RSA until his dismissal on the 28<sup>th</sup> June 2004.

[8] Applicant showed that he considered himself to still have been a member of the Lesotho Mounted Police Service, until when he was so dismissed on the 20<sup>th</sup> 20<sup>th</sup> June 2004, He said his letter of disssmissal

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<sup>1</sup> Police Act No.7 of 1998

showed that the effective date of dismissal was the 28<sup>th</sup> June, 2004 not any date earlier than that.

[9] Applicant further argued that he did not willingly flee from Lesotho, but was forced to leave by circumstances beyond his control. He also argued that if it had been the intention of the 1<sup>st</sup> Respondent to dismiss him from February 2007 when he fled the country, nothing could have prevented the 1<sup>st</sup> Respondent from doing so. So that he considered his absence earlier than when he was so dismissed.

[10] In support of his argument, Applicant referred the Court to the case of **Commissioner of Police and Another v Ntlo-Tsoeu**<sup>2</sup>. This was also a case where the Applicant, a Police Officer absented himself from duty from February 1997 to 3<sup>rd</sup> September, 2000. He was arrested on the 3<sup>rd</sup> September, 2000 and detained in Prison for the alleged offence of sedition. He was released on bail on 17<sup>th</sup> February, 2003 but no Criminal Proceedings were proceeded with.

[11] What was distinguishable from that case to the present was that the Applicant was re-instated into his former position effective from 28<sup>th</sup> February, 1997. The reinstatement letter however, made it clear that he was not going to be paid for the period of his absenteeism.

[12] The High Court had ruled in favour of the Applicant to be paid arrear salary for the entire period from his absenteeism to the time when

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<sup>2</sup> 2005 – 2006 LAC 156

he was re-instated. But the Court of Appeal decided that, he could not be paid for the 1<sup>st</sup> period from the time he absented himself to the time of his arrest as he had not rendered any services due to his fault.

[13] The Court on appeal based its decision on the fact that no facts had been placed before Court to justify the prolonged absence from Lesotho. Also that as a Police Officer he was expected to have communicated with his superiors with regard to his predicament and to have caused enquiries to be made as to when it would be safe to return. But he had maintained a complete silence.

[14] In the same vein, the Applicant in this case fled to RSA and like Ntlo-Tsoeu maintained a complete silence to his superiors about his whereabouts. It was therefore through his own fault that he failed to render services.

[15] It has become a well established principle of our law that payment is effected for services rendered, unless it has been through no fault of yours that you were not able to render such services. That is why in Ntlo-Tsoeu the Court granted payment for arrear salary in respect of the period that the Applicant had been detained in prison as he was not to blame that he could not render services during that period. Coupled with the fact that after his release on bail, no criminal proceedings were proceeded with against him.

[16] Bcause the Applicant has claimed arrear salary for the period when he never rendered any services through his own fault, he was rightly deprived of his salary for that period.

[17] The Application is thus dismissed with costs.

**A. M. HLAJOANE**  
**JUDGE**

**For Applicant:        Mr Hoeane**

**For Respondents:    Mr Motsieloa**