IN THE HIGH COURT OF LESOTHO

CIV/A/43/2010

HELD AD MASERU

In the matter between:

MOHAU LIKA **APPELLANT**

And

ST. JAMES ANGLICAN HIGH SCHOOL **RESPONDENT**

JUDGMENT

Coram	**:**	**L. Chaka-Makhooane J**
Date of hearing	**:**	**28th November, 2011**
Date of Judgment	**:**	**6th December, 2012**

Summary

Appeal - Employment – Appellant a Deputy Principal having been dismissed from work for various charged – Appellant afforded a hearing – Decision of the Teaching Service Commission Confirmed – Appeal dismissed with costs.

ANNOTATIONS

CITED CASES

1. Matebesi v Director of Immigration LAC (1995 – 1999) 616

2. Teaching Service Commission and Others v St. Patricks High School and Another LAC (2005 – 2006) 38

STATUTES

BOOKS

[1] This is an appeal which emanates from the decision of a tribunal properly constructed by the Teaching Service Commission ("TSC"). The appellant appeared before the tribunal which was presided over by an adjudicator, to answer to charges of:

a) assaulting the principal on the 25th April, 2008;

b) continuous absenteeism from work;

c) chronically unpunctual;

d) refusing to draw up a time-table and

e) disruption of the school board meeting on the 28th May, 2008.

[2] The appellant was a teacher and a deputy principal of the respondent while the respondent is a denominational school whose proprietor is the Anglican Church. The appellant was found guilty on all counts except for one on which he was acquitted. The appellant was subsequently dismissed by the TSC. Following the decision of the TSC, the appellant noted an appeal to this court on the following grounds;

1. *The Tribunal a quo misdirected itself in law and fact in finding that the appellant was chronically absent from work when there was insufficient evidence to substantiate the same*
2. *The Tribunal misdirected and erred in law and fact in finding that the appellant was chronically late when there was insufficient evidence to substantiate the same and when there were valid grounds on the part of the defaulter.*
3. *The Tribunal misdirected and erred in law in concluding that the appellant was bound to prepare a time-table alternatively that he refused to do and/or did not do time-table as directed.*
4. *The tribunal misdirected and erred in law in finding that the appellant disrupted the Board meeting when there was no evidence whatsoever to substantiate such finding.*

[3] It would now be prudent to examine each respective count as they were canvassed in the proceedings before the adjudicator. I pause here to observe that, the fact that the present appeal comes straight from the adjudicator to the High Court is not in dispute. The 1st count against the appellant was that he had assaulted the principal on the 25th April, 2008. In my view, it is noteworthy that this is the most serious charge among all

the counts leveled against the appellant. Upon close inspection of the record, it is apparent that there was a fight between the appellant and the principal, though it is not clear as to who exactly instigated it.

[4] The adjudicator ultimately found the appellant not guilty on the assault charge. In its judgment, the commission summarized the evidence relating to the present charge in the following manner:

> *"There were no facts placed before the adjudicator clearly indicating that the defaulter started the fight. In this regard it is not possible to conclude in the light of the facts outlined that one of the parties' version is more probable than the other, moreso when evidence has been tendered that in a criminal proceedings of the same matter both parties were indicted as perpetrators of the fight."*

[5] The 2nd count accuses the appellant for frequently being absent from work. The record of the proceedings shows that a register of the respondent had revealed that the appellant had absented himself from work for a total of nine (9) days between January and June, 2008. It is clear from the evidence that the appellant failed to justify his absence from work, either to the principal or to the adjudicator. The reasoning of the commission on this count deserves reference in relevant parts:

> *"It is not debatable, and was conceded by (sic) defaulter that the principal is his superior wherefrom permission should be sought for absenteeism. He further conceded that the Head of Department is his subordinate and therefore(sic) improper that he begged permission from her.*

....The bottom line is that (sic) defaulter, did not seek permission nor advance reasons for his absence on the dates mentioned."

[6] It was the concern of the TSC that absenteeism by a teacher is a very serious offence that infringes the right of the learners to education.

[7] In count three (3) the appellant was accused of being chronically unpunctual. The appellant virtually admitted to being late. It is common cause that between 07h45 and 08H00 during week days, the respondent holds an assembly for purposes of praying and making announcements. The appellant admitted that he never attended the assembly and claimed that it was against his religious convictions. He agreed that the motto of the school is "prayer is the key to success". This appears even in the school letter heads.

[8] The appellant called a witness on his behalf, DW3 who claimed that the appellant did not know about the assembly and the notice/instructions to teachers and students, to attend prayers. The witness was shown a letter written by the appellant queering the "often over-emphasised" instructions to teachers to attend the prayer sessions. The witness was exposed as untruthful when he was confronted with the appellant's letter proving his knowledge. The letter was an exhibit at the hearing. The appellant and DW2, were also confronted with the fact that prayer is a form of discipline

and primarily responsible for discipline in the school, in terms of the manual from the Ministry of Education.

[9] On the count of refusing to draw-up a school time-table, which was the 4th count, the testimony was quiet telling. It is common cause that the appellant was given a directive to draw-up a time table when school resumed in January, 2008. Instead, the time table was ultimately prepared by one Bolebali Lebitsa ("PW2"). She testified that the time table had not been prepared by the appellant, showing that his involvement was only to check the time table and solve any clashes. The appellant further stated that he eventually prepared the master time table at the end of March 2008, up to the beginning of April 2008, based on the daily time-table drawn up by PW2.

[10] The appellant called among others DW2 and DW5 to his defence. DW2 testified at the hearing amongst others that, the appellant had been involved in the drawing up of the time-table from the opening of the school to the end of February, 2008, a matter never put to both PW1 and PW2. This assertion contradicted that of the appellant which was that he only got involved with the time-table at the end of March to the beginning of April, 2008. DW5's testimony worsened the situation. She showed that the said time-table had not been drawn as scheduled when the school opened including February, 2008 because the appellant was not aware that he ought to supervise the time-table committee. The appellant does not seem to have had a convincing answer to the charge.

[11] The final charge was count five (5) which was for disrupting the school board meeting on the 15th May, 2008. The following narration is a sequence of events on that day; the appellant had informed the Board prior to their meeting that there were some issues he wanted to raise in the meeting, however, he needed the presence of his followers in the board meeting. When the board suggested that he could bring only two (2) of his followers in the meeting, because there was insufficient space, the appellant indicated that the situation might turn out to be chaotic if the group was not allowed in, in large numbers.

[12] The appellant negotiated with the board to relocate to a bigger room in order to accommodate more of his representatives. The board insisted that two (2) representatives were sufficient. It is evident that this did not augur well with the appellant and his followers, hence the singing and consequent disruption of the board meeting. The board seems to have been quite accommodating on this issue, since it permitted dialogue and final concession that the appellant could two (2) bring representatives to attend the board meeting.

[12] In the case of **Matebesi v Director of Immigration**[1], the appellant had been dismissed from work for absenting himself at the workplace without a valid explanation. The Court of Appeal then confirmed his dismissal on the sole reason that he had absented himself, from his duties without a reasonable explanation. This is a clear indication that, in the present case the appellant could have been charged and correctly dismissed on the count of being absent alone. Clearly his transgressions are worse.

[13] In my view, the finding of the TSC cannot be faulted, and the reasons for the appeal must therefore, fail. It would be insensitive for this court to reverse the decision of the TSC at the expense of the students of the respondent, who would one day enjoy prosperous careers if their learning paths were not to be disrupted by actions such as those of the appellant. See the **Teaching Service Commission and Others v St. Patricks High School and Another**.[2]

[1] LAC (1995 – 1999) 616
[2] LAC (2005 – 2006) 38

[14] The appeal is therefore dismissed with costs.

L. CHAKA-MAKHOOANE
JUDGE

For Appellant : Mr. Mosotho

For Respondent : Mr. Ntlhoki