

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:

NATIONAL UNIVERSITY OF LESOTHO

Applicant

And

THABO NTITSANE AND 61 OTHERS

Respondent

JUDGMENT

Coram : Hon. Monapathi J

Date of Hearing : 30th October 2012

Date of Judgement : 31st December 2012

SUMMARY

CITED CASES

Setlogelo v. Setlogelo 1914 AD 221

STATUTES

Public Meetings and Processions Act, 2010

- [1] The Applicant seeks an interdict essentially against the First to the Fifty-sixth Respondents. The application is sought to interdict NUL staff for allegedly convening an unauthorised “prayer sessions” near its administration premises. The application is vehemently opposed.
- [2] The Applicant in this matter is the National University of Lesotho which is an academic institution. The First to the Fifty-sixth Respondents are staff members of the Applicant collectively comprising of both the academic and non-academic staff (for convenience referred to herein as the NUL staff). The Fifty-seventh to Fifty-ninth Respondents are the trade unions whilst the rest of the Respondents are the law enforcement agencies.
- [3] These the brief facts are common cause. The NUL staff had allegedly started demonstrating around the 17th September, 2012 apparently not satisfied with the administration of the Application. The demonstrations had been a sequel of long-standing administrative issues that the NUL staff and management did not see eye to eye. This time around the NUL staff decided to convene for what they branded ‘NUL Community Prayer’ and or ‘NUL Beatitudes’. Applicant contended that the said prayer meetings disguised what was in reality protest meetings against the Vice Chancellor and the University administration.

- [4] The NUL staff allegedly convened for such prayer sessions every working day, twice a day. The first meeting was held around eight o'clock in the morning and the last round at four o'clock in the afternoon. Those prayer sessions were held in the proximity of the administration block of the Applicant. It is common cause that the payer sessions in question were never sanctioned or approved by the Applicant.
- [5] It is alleged that during those payer meetings a loud hailer was used to lead the prayer and to address the worshippers. The '*malipompo*' whistle was also allegedly blown by some of the worshippers whilst deeply absorbed and enjoying their prayer. In their worship, the NUL staff had been accused by the Applicant to have been hurling insults and chanted a chorus which ran: '*Sharon Siverts should resign*'. Sharon Siverts, a deponent to the supporting affidavit of this application, turned out to be a Vice-Chancellor of the Applicant.
- [6] The content of one of the prayers per annexure 'NUL 1' is reflected thus:

“NUL COMMUNITY PRAYER

Oh father, bless your sons and daughters, who have assembled here to pour their hearts out to you, that the evil spirits in this university be driven out into the wilderness.

We beseech unto you father, to hear our prayer that the plans by those hard at heart, those pushing this University into oblivion be rendered into a flop. Help us to preserve this University for the present and future generations, so that our graves shall not be unnecessarily spat on by our future progeny. We are not asking you father, to remove them from the earth, but to guide them out of the National University of Lesotho. Amen”

[6] The other version of the prayer ran thus per annexure ‘NUL 2’:
“NUL BEATITUDES 2012 (VERSION)

1. Blessed are those who united for a good purpose – To foil the tragic destruction of NUL.

2. Blessed are those crying with a loud voice that NUL integrity be secured.

3. Woe betides those meeting in the dark corners in order to bring NUL to its knees.

4. Woe betides those whose hearts are made of steel and refuse to listen to the voice of the multitudes.”

- [8] The Applicant seeks to interdict the NUL staff from continuing with their unauthorised prayer sessions on its premises near the administration block. The basis for the application is that such prayer meetings constitute a nuisance to the Applicant and its community; can bring about destruction of property and disturbance of peace; were threatening, harassing and intimidating the Applicant's personnel, amongst others.
- [9] In response to the application, the Respondents raised several points of law. Both Counsel commendably agreed that such points be argued together with the merits. There was a point to the effect that the court lacked jurisdiction to deal with the matter as the case fell squarely within the ambit of the jurisdiction of the Labour Court as it involved the dispute between the employer and employees.
- [10] The Applicant contends however that the NUL staff alleged acts did not qualify as picketing nor strike but as mere acts of individuals who decided to hold controversial prayer sessions where they were not authorized to that and in turn caused unnecessary disruptions in the Applicant's premises. The Court is inclined to agree with the Applicant that indeed it has jurisdiction to entertain this interdict application.

[11] There was also a question of misjoinder of one Mohau Ntlama (Forty-sixth Respondent). The Applicant agreed that the rule should be discharged in relation to the matter affecting the said Mohau Ntlama. The point cannot be taken further, the rule is so discharged against the said Mohau Ntlama. There was also the issue of *locus standi* which was to the effect that the Applicant had no authority to rely on the **Public Meetings and Processions Act, 2010** in terms of section 3 (1) thereof.

[12] The Applicant however claims that most of the prayers sought had nothing to do with the Act in question. Further that the Applicant has all the rights in law to protect and maintain law and order in its premises. It is true that the legal right of enjoyment of the use of its premises by the Applicant cannot be vitiated by the Act in the manner the claim is couched, and in view of the fact that the claim is against the Applicant's unlawful disturbance of its right to the enjoyment of its land and premises. The point of *locus standi* is not well taken either.

[13] There was also a further claim that this application is riddled with serious material dispute of facts which renders a motion procedure inappropriate. The Respondents claim that there is no evidence to show that they committed acts of violence and

of damage to property. They contend that the Applicant's claim is just speculative and should be rejected. The Respondents also claim that they held their prayer meetings in a civilized manner as opposed to what is alleged by the Applicant, that it is unfair to brand their legitimate religious assembly a nuisance. They further deny that they demanded the resignation of the Vice-Chancellor.

[14] The fact of the matter is that it is not in dispute that the NUL staff in question hold their alleged prayer meetings (whether in a civilized manner or not) in the premises of the Applicant without the latter's authorization and to the Applicant's much discomfort and inconvenience. That is the issue. Though the disputes of facts exist as claimed, they are not so material as to incapacitate the Court to decide the issue before it without the benefit of *viva voce* evidence. This point is equally dismissed.

[15] On the merits, the question is whether the Applicant has succeeded in satisfying the considerations laid down in the seminal case of **Setlogelo v. Setlogelo 1914 AD 221**, for an application for interdicting the Respondents. It is common cause that the NUL staff in question hold their prayer meetings without the necessary authorisation of the Applicant in the latter's premises and in the

place not approved by the Applicant (near administration block). Whether the NUL staff's prayer meetings are a 'legitimate religious assembly' is neither here nor there. That is not a test. On the whole conspectus of the facts in this matter, the Court is satisfied that the Applicant has made out a case for an interdict against the Respondents and it is so held.

Order:

Application granted with costs.

**T.E. MONAPATHI
JUDGE**

For Applicant : Mr. L. Molati
For Respondents : Mr. Q. Letsika