

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:

METHODIUS T. PONYA 1st Applicant

LEBOHANG MOHASI 2nd Applicant

And

BERENG CONSTANUS MOSUOE –RECTOR 1st Respondent

ACCADEMIC COUNSEL – ST. AUGUSTINE’S

MAJOR SEMINARY 2nd Respondent

ST. AUGUSTINE’S MAJOR SEMINARY 3rd Respondent

JUDGEMENT

Coram : Hon. Monapathi J

Date of Hearing : 18th February, 2013

Date of Judgement : 28th February, 2013

SUMMARY

Where Applicants' application for positions in further classes at a school and where their applications were rejected solely on allegedly bad character/s or some unreasonable grounds, a balance has to be struck as to a limit to be reached or has to be reached where this denial/rejection affects the Applicants' right to education survival and quality lives as a constitutional right of these Applicants.

CITED CASES

Adelaja Otubanjo v Director of Immigration C of A (CIV) No. 35/05

SA Veterinary Council v Szymanski 2003(4) SA 42 (SCA) at page 15

5 v Mpofo 1989 (3) SA 318

[1] The application sought for inter alia the following orders that a *rule nisi* be issued returnable on the date and time to be determined by this court calling upon the Respondents to come and show cause, if any, why:

- a) the decision of First, Second and Third Respondents of disqualifying and/or expelling the First and Second Applicants from Third Respondent shall not be declared *null and void ab origine* and set aside as unlawful;

- b) The First, Second and Third Respondents shall not be interdicted and or restrained from disqualifying and/or expelling First and Second Applicants from Third Respondent;
- c) The First and Second Applicants shall not be allowed to register and enroll for the 2013 academic year to study for his seventh year and third year of their studies respectively;
- d) The First and Second Applicants shall not have a peaceful and undisturbed access to the premises, buildings and lectures of Third Respondent as students of the Third Respondent

Applicants complain that they have been denied their right to attend school as will be made clear presently. That the Respondents status of study since the “ticket” they used for this admission at the Seminary vanished Could not competently do so.

[2] The Applicants were students at the Seminary in the previous year of study. They respectively passed their examinations well and were allegedly eligible to proceed to their next years of study. The First Applicant was to proceed to his seventh {7} and last year of study while the Second Applicant was to proceed to his fourth {4} year of study.

[3] Both Applicants had been previously members of the congregation of the Oblates of Mary Immaculate a Roman Catholic

Church Order. The congregation had previously applied on their behalf when they were initially admitted at the Seminary. In short they were admitted on the “ticket” of the said congregation so to speak. The Applicants vows were eventually withdrawn by the congregation of the Oblates of Mary Immaculate. The withdrawal of the vows had a direct effect on the Applicants status of study since the ticket they used for their admission and study at the Seminary disappeared.

[4] It is noteworthy that the Seminary may admit students who wish to study as lay students, future Priests non-Catholic and students who are not preparing for priesthood. After the withdrawal of their vows, the Applicants wanted to be considered as lay students for purposes of their study. They were advised to re-apply for re-admission as lay students. This is permissible as Father Joseph Sephamola OMI of the Oblates testified. He added in his affidavit; “basically the Respondent is free to make arrangements with the Seminary if he intends to continue with his studies in the academic year”.

[5] For purposes of such applications as it is common cause, the Applicants needed testimonials from the Superior. The Applicants duly received such testimonials which commended them. The testimonial of the First Applicant was made by one Father Salooe

commending him as “intellectually gifted”. However, it turned out later that the same Father Salooe prepared another testimonial which was made in confidence to the Seminary which spoke initially about the character of the First Applicant. The latter testimonial was an outright contradiction to the first one that was given to the First Applicant. There is no doubt that Father Salooe places premium on the character of the Applicant.

[6] The Applicants were not re-admitted at the Seminary after having applied as lay students. The First Applicant’s application was outrightly rejected and his re-admission refused. No reasons were allegedly advanced. As for the Second Applicant, he was informed that he had applied out of time.

[7] It is Applicants’ case that they were students at the Third Respondent. It is further Applicants’ case that they have passed the academic year 2012 and qualify to proceed the next year of their respective studies. The Applicants have been excluded from the Oblates Scholasticate as the members. As a result of this exclusion, the Applicants state that they approached the Third Respondent for enrollment, however, their applications have been rejected. Applicants state that refusal to register them for their respective years of study was a malicious act, not founded on any legal or reasonable grounds.

[8] First Applicant states that he obtained a testimonial from Oblate Scholasticate which recommended his enrollment at the Third Respondent. In the same token, the Second Applicant states that the rejection of his application for enrollment was a malicious act, not founded on any legal or reasonable ground. The two Applicants state that their expulsion from the Third Respondent was not founded on any legal ground.

[9] On the other hand the Respondents deny the Applicants were expelled from the Third Respondent. The Respondents state that after the exclusion of the two Applicants from the congregation, which had made arrangements with the Third Respondent for their studies, they had to apply for enrolment as lay students, so that they could have qualifications and status.

[10] The Respondents submitted that, once the Applicants were excluded from their congregation, and they intended to further their studies, all they had to do was firstly, to apply for enrollment as lay students, for the Applicant, who has been excluded from his congregation, must be accompanied among others by a testimonial from the Applicant's superior outlining the reason for his dismissal or departure. The provisional statutes of the Lesotho Catholic Bishop's Conference for St. Augustine's Seminary, Roma, Lesotho

states that the Seminary may accept some students who are not preparing for the Catholic Priesthood, such as Catholic religions or lay students and non-catholic students, who want to follow lectures at the Seminary.

[11] The **code** of **Canon** law, which governs the Catholic Church, states at **Canon** 241 (3) that :

“if there is a question of admitting those who have been dismissed from another Seminary or religious institute, there is also requires the testimony of the respective superior, especially concerning the reason for their dismissal departure”.

The question that arises is what is a testimonial **Concise Oxford English Dictionary** says testimonial is a formal statement testifying to someone’s character and qualification. A public tribute to someone and to their achievements. **Oxford Dictionary** says

“testimonial is a written statement testifying to a person’s merits, abilities, qualifications, etc, e.g as sent with an application for a position.”

[12] It is the Respondents’ case that having received the First Applicant’s testimonial (annexure “Test 1”), it was decided that the First Applicant’s application for enrollment should be rejected, on the

ground that, the contents of “Test 1” clearly disclosed that it does not meet the criteria in so far as his character, behavior and morals were concerned. It is the Respondents’ submission that the requirements for testimonial for the superior are very crucial documents for consideration, in deciding whether or not to accept one’s application for enrollment. Respondents submit that, it is very important for the court to consider what the Seminary is, **Oxford Dictionary** says: “Seminary is a training college for priests or rabbis”. “Rabbis” according to **Concise Oxford English Dictionary** is a Jewish religion leader”.

[13] The Respondents further submitted that, when taking into account the meaning of the Seminary, it is expected that people who study there must behave in a certain manner. It should be remembered that, even if someone is to study as a lay student, his character and behavior must be taken into account, when consideration for his application for enrollment is being made, because he is not only to study, but he is going to interact with other students on daily basis. The Respondents’ submission that the contents of the First Applicant’s testimonial, were taken into account, and influence the decision whether or not to accept his application.

[14] The Respondents further submitted that the requirement for testimonial is made for a purpose. The sole reason for such

requirement is to be appraised of character and qualities of the Applicant. They say that there were valid reasons for rejecting First Applicant's application for enrollment. Respondents contend that First Applicant's application for enrollment. It is Respondents' submission that the Applicants were not expelled but that the First Applicant's application to be enrolled as a lay student was not accepted, on the simple ground that, the contents of his testimonial caused the Respondents to reject his application. Respondents say that the reasons for such rejection were communicated to the First Applicant, in the presence of one FR. Moshe. The First Applicant counters that there is a testimonial, affidavits and letters by certain priests, which recommended his enrollment at the Seminary. However, the First Applicant has failed to attach the testimonial, affidavits and letters that he refers to. However, "MTP1" does not make any recommendation, whatsoever for his enrollment at the Seminary.

[15] The Applicants have submitted that they are entitled to be enrolled and registered and lay students, since they have passed. They state that they had legitimate expectation to be enrolled. For the legitimate expectation the Applicants had to satisfy the following requirements as laid out in the case of ***Adelaja Otubanjo v Director of Immigration C of A (CIV) No. 35/05 especially at page 6 and SA Veterinary Council v Szymanski 2003(4) SA 42 (SCA) at page 15***. It is the Respondents that the Third Respondent has not made

any representations to the Applicants. Respondents submit further that the exclusion of the Applicants extinguished their expectation to continue as members of the congregation, and since their enrollment was dependant on the fact that they remained members of oblates, once they were excluded from the Oblate Sholasticate, then a need to make fresh applications as lay students came up. The suggestion by the Applicants that the passing of their examinations amounted to the representation has no legal basis, and it must be dismissed with costs.

[16] The Second Applicant says that he was told that there is no space, however, the Respondents state that he was told that he had not met the deadline for the submission of the application. Respondents submit that, they had reasonable ground for rejecting Second Applicant's application, because every institution operates within time frames. It cannot be that someone who fails to meet the deadline is being treated unreasonably or unfairly. It is the Respondent's submission that the Second Applicant's case is based purely on hear say, therefore is admissible. **5 v Mpofu 1989 (3) SA 318**, where Alexander J. stressed that the important criteria in determining admissibility were truthfulness and reliability. The Respondents submit that, the Second Applicant's case is based purely on hearsay therefore should be dismissed. Respondents pray that the Applicant's case be dismissed with costs.

[17] I acknowledge that these two Applicants have applied to this court for these orders challenging either the disqualification or expulsion from the institutions which are the bodies in the Roman Catholic Church, one of them being a school – a Seminary. They ask that the disqualification or expulsion be declared null and void. Most importantly is that they be allowed to enroll at the Seminary, among others that they should have undisturbed access to the premises. They have passed and want to proceed to the next year of study.

[18] In the background is the fact that sometime in the past the Applicants vows were withdrawn. The suggestion being that they no longer belonged to the congregation of the Mary Immaculate. They were told that may they proceed to further classes except as lay students. This comes clear by acknowledgement from the testimonials. The suggestion to ordinary people, seem to be that once Applicants have passed, there are no other requirements. But there is a catch according to the Respondents. It is to the effect that Applicants may not be admitted because they are people of wrong character.

[19] This thing about character and integrity is relevant according to the Respondents. They say you may go there as a lay person but there is something about character. The Seminary, it seems on the strength of what is contained in the testimonials, appears to give with

one hand and take with the other. The same reasoning that is presumably used about the withdrawal of vows is used for declining the Applicants' admission. This in my view is untenable. I do not accept it clearly this should be the reason for not accepting Respondent's defence.

[20] It looks abundantly clear that the consideration of the Applicants application was based on the application of Canon 241. I was surprised why in terms of that Canon one was not bound to tell the truth.

[21] That there may be contradiction in the testimonials is not sufficient. I would welcome a situation where Father Salooe would say "I discourage admission of this person". I lay emphasis on the fact that these Applicants have become lay people but for purpose of being admitted to further classes. But same standards are used for members of the Oblate whose vows were not withdrawn. I think it should not be so. Most importantly it is about the rights of these people as lay individuals. The requirements applied to them accordingly become ambiguous. The school itself does not pronounce itself. Reference is only made to the testimonials of Father Salooe and the superior.

[22] It may but be that what the school is doing is not done in bad faith but it is irrational. This is the age of human rights. On the Second Applicant the allegation that he was told that he applied out of time shows clear bad faith. It is a pity that the test for people who have vows is equated to that of lay people for admission to the school. There is no good reasoning why the Applicants are denied admission to continue with their studies at the school.

[23] I have considered that in terms of the constitution and a high legal principle at that while the requirements as for admission to the Seminary by members of Oblates ought to be strict in terms of **Canon 241, 3-1** and see also **Provisional Statutes** of Lesotho Catholic Bishops Conference for St. Augustines Seminary, this needs not be so with regard to Applicants who have committed and undertaken to study as lay people.

[24] In my view for purposes of Applicants schooling the alleged grounds of bad character or the bad discretion of not allowing Second Applicant to be admitted are unreasonable in the circumstances. A balance has to be struck or a limit has to be reached when the denial/rejection by the Seminary if not their decision has to be nullified and be declared as invalid . The reason is simple. The rejection or denial affects the Applicants right to education their survival and quality lives (as citizen) as constitutional rights to the Applicants.

[25] Application succeeds. I award only half of the costs to the Applicants.

T. E. MONAPATHI
JUDGE

For Applicants : Mr. Nthontho
For Respondents : Mr. Mokoko