

# IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

**CIV/T/510/1999**

In the matter between:-

**MASHAO MOTSUMI**

**PLAINTIFF**

**AND**

**THE PRINCIPAL SECRETARY MINISTRY OF  
HEALTH AND SOCIAL WELFARE**

**1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL**

**2<sup>ND</sup> DEFENDANT**

## **JUDGMENT**

**Coram** : Hon. Mahase J.  
**Date of hearing** : 19<sup>TH</sup> November, 2008  
**Date of Judgment** : 28<sup>th</sup> August, 2013

### **Summary**

*Civil Procedure – Suspension from work – Damages – None observance of the  
audi alterum principl.*

ANNOTATIONS

CITED CASES: **NONE**

STATUTES: -

BOOKS:

[1] This is a case in which plaintiff is claiming damages against the defendants.  
This case has been pending before the High Court and before various Judges

since 1999 when summons were first issued and served. For reasons not clear to this Court, the matter was on the 11<sup>th</sup> December 2000 removed from the roll of cases of this Court. Subsequently and for not clear or for no specific reasons, it was postponed a number of times but it was ultimately prosecuted before the Hon. Kheola J. as he then was.

[2] Unfortunately, he retired before he could hear addresses and deliver judgment. Consequently, after being reallocated to this Court, counsel for parties agreed that, and in accordance with the provisions of Rule 32 of the Rules of this Court that state they should and summarize the facts established at the trial.

[3] These have accordingly been so stated and have been signed by both counsel. Refer to page 2 of the said statement herein filed of record but which has unfortunately not been dated.

[4] This Court has, per such an agreement as to the facts therein stated, been asked to determine the case on the basis of those facts without the need to start the matter de novo on account of prejudice that may be occasioned either party by such proceedings given the length of time that has since last since the retirement of the Hon. Kheola C.J. (as he then was).

[5] The facts are that:

1. The plaintiff was employed as a Senior Accountant heading the accounts department at the National Health Training Centre.

2. The revenue section within the plaintiff's department was manned by one 'Mabahlakoana Kome whose responsibility was to collect money;
3. In 1998 and while plaintiff was on leave a shortage amounting to about M17,000.00 occurred in the money collected by the said 'Mabahlakoana. This shortage was discovered by the plaintiff upon her return from leave and on the day that she reported back to work. 'Mabahlakoana acknowledged that there was such a shortage. This she did in writing and she undertook to repay it. Refer to exhibit "B";
4. On the 15<sup>th</sup> May 1998 the said 'Mabahlakoana wrote a detailed statement and a break down of the shortage explaining how she has used that money. She unequivocally admitted that she has used it. Refer to exhibits "C";
5. On the 25<sup>th</sup> May 1998, the plaintiff was ordered to go on compulsory leave by the first defendant as appears in exhibit "A";
6. She (plaintiff) eventually sort and obtained an order of Court reinstating her to her substantive post. This was in CIV/APN/433/ 1998 filed in October 1998.
7. The plaintiff is a sickly person suffering from hypertension.
8. She contents that she was put through mental anguish by being suspended from work following her discovery of the misappropriation of public funds despite the fact that the culprit, (Mabahlakoana) had unambiguously acknowledged having misappropriate such funds. She

contents further that as a result of this she has been deeply hurt emotionally and that this has exacerbated her medical condition and was attending medical check-up on a monthly basis at a cost of M220.00. Refer to exhibits “E” herein for the opinion of a medical doctor who attended on the plaintiff.

9. She contents further that as a result of the incident and of the conduct of the defendants, her reputation and dignity have been impaired and tarnished.

10. The defence case is that the plaintiff's suspension was not intended to tarnish her image but was to ensure that she could not interfere with investigations.

[6] To sum up very briefly, it is a matter of common cause that the plaintiff herein was without, ever being given any hearing, forced to go on compulsory leave by the then Principal Secretary of the Ministry of Health and Social Welfare – One Dr. M. Mosotho.

[7] This was done even though it had been clear to the defendants that it was not the plaintiff who had caused the shortage of the public funds, and in spite of the fact that the actual culprit had confessed to and acknowledged to that shortage.

[8] Most disturbingly, this shortage had been discovered by the plaintiff herself who had been away on leave when the culprit herein mismanaged public funds. Plaintiff was not even afforded a hearing of any kind before this drastic measures were taken against her.

- [10] It is not clear from the facts herein stated whether the Principal Secretary had a suspicion that the plaintiff was involved in the mismanagement and or in the embezzlement of the said public funds as well. Further on these, there is nothing indicating whether or not, subsequent to that discovery by the plaintiff of this shortage, she was found to have also contributed in bringing about this situation. In fact no disciplinary inquiry was even taken against plaintiff nor was he also surcharged together with the said 'Mabahlakoana, neither was plaintiff criminally charged for having created such a shortage.
- [11] The basis upon which the first defendant forced the plaintiff on compulsory annual leave so as to allow investigations to be carried out following the discovery by her of the mismanagement of the said finance at N.H.T.C is not clear. There is nothing to explain that the first defendant had formed an opinion that the plaintiff was also a culprit in this incident.
- [12] The defendants make a bare denial that they never associated the plaintiff with any alleged acts of misconduct, but they say that contents of exhibits A do not refer to any particular or single incidence of nor to the M17,000.00 shortage caused during the absence from office by the plaintiff. They however do not deny that the said discovery by the plaintiff of this above shortage is what triggered on the incident against the plaintiff and which incident the plaintiff complains about.
- [13] They do not say that some other funds were found to have been mismanaged and or misappropriated immediately after the one discovered by the plaintiff and that such latter mismanagement was attributable to the actions of the plaintiff. The defendants wrote exhibits "A" to the plaintiff without as so

much having asked her to explain herself in relation to any suspected mismanagement and or misbehaviour on her part in her official position as the senior most officer and head of the accounts department such that the reason for her said suspension is and remains anybody's guess. This was an arbitrary, baseless decision based on personal whims. One cannot avoid asking whether the plaintiff's greatest sin was to have discovered and reported about the mismanagement and misappropriation of the said M17,000.00 by the said 'Mabahlakoana.

[14] The defendants admit having forced the plaintiff to go on compulsory leave after her discovery of the said mismanagement and or shortage of public funds, which action has been directly and clearly linked to a junior officer with whom the plaintiff works, in the circumstances already alluded to above, but they deny wrongdoing, unlawfulness and arbitrariness on their part. They deny ever associating plaintiff with any alleged acts of misconduct. They do not support nor justify their said action against the plaintiff, neither do they afford her any hearing before taking that adverse, injurious step against her.

[15] They do not deny that their said action subjected her to impairment of dignity. They are content to only state that she was so suspended on full pay. They further say that they did not oppose her application of her reinstatement to her position. This does not advance their defence in anyway; instead its effect is to support the plaintiff's case that her being compelled to go on compulsory annual leave barely a day from the date when exhibit "B" was written by the said 'Mabahlakoana Koma is an act that was calculated to have associated the plaintiff with mismanagement and

misappropriation of funds at the NHTC. This, defendants deed although they already knew who the actual culprit was.

[16] The said action of the defendants had no lawful basis whatsoever, but it was maliciously calculated solely at and did have the effect of humiliating the plaintiff and injuring her in her good name and reputation as well as emotionally. The first defendant has not even stated the powers under which he compelled the plaintiff to go on compulsory, indefinite annual leave.

[17] The defendants' alleged disregard of the principle of natural justice before it took an adverse decision against the plaintiff has not been denied by them. It is trite that it is a fundamental principle of natural justice that whenever a public authority contemplates taking action likely to adversely affect another in their rights and interests, then such a person has firstly to be given a hearing. This is truly the essence of the *audi alteram partem* rule. The fact that the defendants contend that they had no motive nor the object to hurt her and or to impair her dignity and reputation in the eyes of her colleagues and that of the right thinking/reasonable members of the society does not assist to advance their case. For a very senior officer in the position of the plaintiff to be associated with the very unlawful conduct of her juniors in a situation where she discovered that mismanagement and acted upon it defies logic.

[18] The fact that the plaintiff's medical condition referred to in her written submissions was probably aggravated by the stressful situations she was subjected to by the defendants having compelled her to go on compulsory annual leave has not been denied. The defendants have sort to downplay the opinion of the medical doctor regarding the stressful situation he has referred

to as having probably aggravated the plaintiff's prior hypertension medical situation, but their opinion is not supported by any other medical opinion nor do they argue that the period of five months from May 1998 to October 1998 is medically a reasonable period within which the plaintiff's stressful conditions should have abated. This is a bare denial of the medical doctor's opinion.

[19] As has been alluded to above, the defendants have not laid down and nor have they established the basis upon which they compelled the plaintiff to go on compulsory leave immediately after she had uncovered this massive mismanagement and misappropriation of public funds. In the circumstances, and due regard being had to their disregard with impunity of the *audi alteram partem* rule, they acted unreasonably and unlawful in having send the plaintiff on compulsory annual for leave, thereby causing the plaintiff the injury etc she is now complaining about.

[20] The plaintiff's claim against the defendants is in the nature of general damages. Refer to her declaration; paragraph 12 herein. Of course an award of same is in the discretion of the court which has to exercise its discretion judiciously; regard being had to the far reaching consequences the act(s) complained of has had on the plaintiff's health, dignity as well as her reputation.

[21] The defendants in challenging this claim, rely, on the medical doctor's remarks to the effect that her hypertension medical condition was not caused by stress, but they have not pleaded issuably to her allegation that her stressful condition was caused by the defendants' alleged acts against her.



[22] In fairness to the defendants, the plaintiff has not attached any medical cash receipts in support of her medical expenses she had incurred since being compelled to go on compulsory annual leave, and which expenses she alleges as being included in prayer 12(2) of her declaration. She has not disclosed the period for which she paid the sum of M50.00 as proof of her having attended medical check up. Refer to paragraph 10, last sentence of her declaration.

[23] Be that as it may, one can only remark that there is no scales by which this court nor anybody can measure the injury and the indignity which the plaintiff suffered because of the acts of the defendants about which she complains. However, regard being had to the fact that the plaintiff was not subjected to any physical torture, neither was she criminally hauled before courts of law thereby being publicly defamed and or humiliated, this court's view is that the sum of M50,000.00 for impairment of plaintiff's dignity is reasonable, but that payment of M200,000.00 for mental and emotional stress is excessive. (Compare with case of **Mohlaba and 2 Others v. Commander of Lesotho Defence Force and Another, LLR (1991 – 1996) Vol. I 648** where some very high ranking officials were unlawfully detained and physically severely tortured).

[24] In the circumstances, the plaintiff is awarded damages in the sum of M50,000.00 for impairment of her dignity and reputation. An amount of M10,000 for mental and emotional stress

Interest is fixed at 18% .

She is further awarded costs of suit.

**M. Mahase**

**Judge**

For plaintiff: Adv. K.K. Mohau

For Defendants: Adv. L.V. Letsie