

IN THE HIGH COURT OF LESOTHO

CIV/APN/21/2013

In the matter between:

**SEPHOHLE MOELETSI
THABANG GRIFFITHS
MAFAESA MASHESHA**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT**

And

**TEACHING SERVICE COMMISSION
MINISTER OF EDUCATION
ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT
2ND RESPONDENT**

JUDGMENT

Coram : Honourable Acting Justice E.F.M. Makara
Dates of Hearing : 3rd May, 2013, 2nd November, 2013
Date of Judgment : 8th November, 2013

Summary

The applicants' rights to a fair hearing in the disciplinary proceedings against them violated by the Deputy Principal who despite having preferred the charge against them subsequently, assumed the chairmanship in the proceedings – The Deputy further forwarded to the 1st Respondent a recommendation for the dismissal of the applicants and yet this should have been made by the School Board – The proceedings set aside due to the stated procedural irregularities – The incidental prayers also granted.

STATUTES

Education Act 2010

Teaching Service Regulations No.3 of 2002

Codes of Good Practice 2011

High Court Rules 1980

MAKARA A.J

[1] Applicant has resorted underneath the shelter of this Honourable Court for the Review of the Disciplinary proceedings in which the Applicants were charged of having contravened **Sec. 57 (i) (a) (i) of the Education Act 2010**, read together with **Sec. 3 (2) (i) of the Codes of Good Practice 2011 and Regulation 41 (2) (g) of the Teaching Service Regulations No.3 of 2002**, in that on or about August, they issued unauthorized statements to the press (Radio Lesotho) relating to the affairs of Holy Trinity High School.

[2] In count 2, they were also charged in terms of **Sec. 57 (i) (a) (i) of the Education Act 2010** read together with **Sec. 3 (2) (i) of the Codes of Good Practice 2011**, and **Regulation 41 (2) (g) of the Teaching Service Regulation No.3 of 2002**, in that on or about 12th September, they issued unauthorized statements to the press (Lesotho TV) relating to the affairs of the same school.

[3] The applicants have brought the application in terms of **Rule 50 of the High Court Rules 1980** and consequently sought for an order in the following terms:

- (i) The proceedings in a certain disciplinary case against the Applicants be reviewed, corrected and set aside;
- (ii) The purported dismissal of the applicants be declared as null and void, unlawful and of no legal force and effect;

- (iii) The Applicants herein be reinstated to their positions as teachers and the *status quo* concerning applicants' rank benefits and salaries be maintained;
- (iv) Directing and ordering the 1st and 2nd Respondents herein to pay Applicants all their arrear salaries computed from the purported date of dismissal to a date of judgment with 12.5% interest per annum thereof;
- (v) Directing the Respondents to pay costs hereof;
- (vi) Granting Applicants such further and/or alternative relief.

[4] It should at this juncture be appropriate to state the fact that the said listed prayers have further been complimented with an incidental prayer that the affidavit executed by the Acting Head of the Teaching Service Commission Mr. Tsunyane be expunged from the record of the proceedings. The basis hereof being that he has not demonstrated that he had the requisite credentials entitling him to have had a personal knowledge of the material developments which he has deposed about.

[5] The Respondents have opposed the Application and filed the answering papers. This is notwithstanding, it transpired at the commencement of the hearing that the respondents' case had no legal basis to sustain any further interrogation of the issues involved. In this realization however the Court recognizes with appreciation the legal assistance which the Counsel for Respondents had endeavoured to advance. She ultimately acknowledged the fact that the proceedings had from the onset been unprocedurally administered.

COMMON CAUSE BACKGROUND

[6] It has emerged to the Court that the parties are in concert of minds on the material aspects of this case. They both subscribe to the fact that the Applicants were at all material times under the employment of the 1st Respondent as teachers. In that capacity they were assigned to Holy Trinity High School. The proceedings in question were occasioned by the disciplinary measure which had been taken against them by the Deputy Principal Mrs Mamokoatja Ramakhula.

[7] It is not in any manner, whatsoever, in dispute that the Deputy Principal had had herself presented the charges against the applicants before the Disciplinary Panel and subsequently assumed the chairmanship of the same committee.

[8] The proceedings culminated in the conviction of the charged teachers. At the end, the Deputy forwarded a recommendation to the Chairman of the Teaching Service Commission for their dismissal from the teaching services.

ARGUMENTS ADVANCED BY COUNSEL

[9] Advocate Setlojoane principally argued against the background that the disciplinary committee had in its conduct of the proceedings violated the applicants' procedural rights.

In this respect, he contended that the sitting had not in its administration of the proceedings observed the *Rues of Natural Justice in particular nemo judex in sua causa* (no one shall be judge in his own Court). In his elucidation of this attack, he explained that procedural justice does not countenance proceedings in which the same person features as a complainant and at the same time as a Chairman. This clearly according to him, undermined the philosophy encapsulated in the maxim.

[10] On a different legal terrain, the Counsel warned that the proceedings were administered contrary to **Sec. 9 (3) of the Code of Good Practice 2011**: The instrument derives its legal force from the **Education Act 2010** The Section details:

- 9(3) the following persons shall attend a disciplinary inquiry:-
- (a) The teacher's next immediate supervisor who shall be the chairperson;
 - (b) In the case of a small school, the Vice-Chairperson of the board who shall be the chairperson;
 - (c) The teacher's immediate supervisor (complainant);
 - (d) The teacher (defendant)
 - (e) A person appointed by the chairperson who shall be the secretary at the hearing;
 - (f) The teacher's representative (a colleague at the school that he or she serves or a teacher's formation representative);
and
 - (g) Witness if any;

[11] It was with reference to the section indicated that the composition of the Disciplinary Panel does not expressly or by necessary implication include a teacher who has preferred the

charge against the teacher concerned. This according to him was adverse to the due process rights of the applicants.

[12] The Counsel further questioned the qualifications of the Deputy Principal to have forwarded the recommendation of the dismissal of the applicants to the Teaching Services Commission. He advised that in terms **of 9(11) of the Codes of Good Practice 2011**, such a move should have been initiated by the School Board. The picture presented is that the Deputy Principal lacked the authority to have exercised the powers which has been statutory entrusted upon the Board.

[13] In conclusion, it was pointed out that the Acting Head of the Teaching Services Commission (TSC) has *ex facie* his answering affidavit failed to demonstrate that he had a personal knowledge of the developments he has averred about and, therefore, that it be expunged from the record of proceedings.

[14] On the Respondents' side it should suffice to indicate that the Counsel representing them professionally acknowledged the existence of the identified procedural default.

[15] The affidavit executed by the Acting Head of the Teaching Service Commission (TSC) is expunged for the stated reason.

[16] The application is, consequently, granted as prayed.
There is, however, no order on costs.

**E.F.M. MAKARA
ACTING JUDGE**

For the Plaintiff : Adv. R. Setlojoane instructed
by Mei & Mei Attorneys Inc.

For the Defendant : **Adv. T. Lebakeng of the DPP's**
Chambers