

IN THE HIGH COURT OF LESOTHO

CIV/APN/19/2018

HELD AT MASERU

In the matter between:

LESOTHO POLICE STAFF ASSOCIATION

(LEPOSA)

APPLICANT

AND

***THE COMMISSIONER OF POLICE
STAFF OFFICER OF COMMISSIONER
OF POLICE***

1ST RESPONDENT

***LMPS HUMAN RESOURCE OFFICER
INSPECTOR LEBAJOA***

2ND RESPONDENT

SENIOR INSPECTOR RALETHOKO

3RD RESPONDENT

SENIOR INSPECTOR RAMARIKOANE

4TH RESPONDENT

INSPECTOR MOPELI

5TH RESPONDENT

INSPECTOR MOHLAPISO

6TH RESPONDENT

INSPECTOR MONNE

7TH RESPONDENT

THE ATTORNEY GENERAL

8TH RESPONDENT

9TH RESPONDENT

10TH RESPONDENT

JUDGMENT

(on points in limine)

CORAM: S. N. PEETE J.

DATE OF JUDGEMENT: 15th MARCH 2018.

SUMMARY

Police Mounted Service Act No.9 of 1998 – The “Locus standi” of Lesotho Police Staff Association (LEPOSA) to litigate on behalf of its members – Police Act and Regulations 2003 – omnia praesumuntur rite esse acta – Promotion – the merit – the legal interest – the Rule of Law- Supremacy of.

Where a Lesotho Police Staff Association espouses the right of its members who feel aggrieved by the manner in which promotions had been processed, “locus standi” exists because the Police Regulations give the Association the right to act on behalf of the interests of its members. The locus standi of LEPOSA in this case is derived from its constitution and from the Police Service Regulations. Locus standi must be expansively and purposively interpreted to accord with the dictates of the “rule of law.”

The principle of the “rule of law” is “transcendal” and ubiquitous and should exist throughout all institutions of state under the Constitution of Lesotho. The high morale in the police service is embedded in legality, fairness, and justice to all members to all Police Service. Any perception of patronage, nepotism and favouritism should be discouraged.

Annotations

Statutes

Lesotho

- *Constitution of Lesotho 1993*
- *Lesotho Mounted Police Service Act No.9 of 1998*
- *Lesotho Mounted Police Service (Administration) Regulations 2003*
- *Public Service Act No.1 of 1998*
- *Lesotho Correctional Service Act of 3 2016*

South Africa

Constitution of the Republic of South Africa (Act No. 108 of 1996)

Cases

Lesotho

Sekoati v President of Court Martial – LAC (1995 – 1999) 812
Swissborough Diamond Mines vs Attorney General - LAC (1995-1999) 812
Khathang Tema Baitšokoli v Maseru City Council – LAC (2005-2006) 85
Educational Secretary of ACL Church Schools v Ramokone and others – LAC (2009-2010) 523
Lesotho National Olympic Committee v Morolong – LAC (2000 – 2004) 449

South Africa:

South African Milling (Pty) Ltd v Reddy – 1980 (3) SA 431

Zimbabwe:

Catholic for Justice and Peace in Zimbabwe – 1993 (3) SA. 239

Namibia

*Federal Convention of Namibia vs Speaker of National Assembly –
1994 91) SA 177 (Nm SC)*

Books:

1976 CILSA 142

CB Prest – Law and Practice of Interdicts (1996)

Erasmus – Superior Court Practice.

PEETE J.:

- [1] On the 17th January 2017 the Applicant – **The Lesotho Police Staff Association¹** (a.k.a **LEPOSA**) filed an urgent application at the Registry of the High Court of Lesotho claiming an urgent relief couched as follows:

- “1. Dispensing with the ordinary rules pertaining to the modes and periods of service due to the urgency of this application.**
- 2. A Rule Nisi be and it is hereby issued returnable on the date and time to be determined by this Honourable Court calling upon the Respondents to show cause (if any) why:**

¹ Registration No. 2000/32

- (a) *The promotions announced on the 12th day of January 2018 on behalf the 1st Respondent shall not be stayed pending finalization of his application.*
- (b) *The promotions announced on the 12th day of January 2018 shall not be declared null, void and of no effect in law for violating provisions of Section 8 (1) read with 8 (2) of the Lesotho Mounted Police Service Act No.7 of 1998.*
- (c) *The promotions announced on the 12th day of January 2018 shall not be declared null, void and of no legal force and effect for violating provisions of Regulation 7 (1) and (2) of the Lesotho Mounted Police Service (Administration) Regulations 2003 as (amended).*

- 3. *Costs of suit.*
- 4. *Further and or alternative relief.*
- 5. *That prayers 1 and 2 (a) operate with immediate effect as interim court orders.”*

A Factual Matrix

- [2] The application papers had also been served upon the 1st Respondent (*Commissioner of Police - COMPOL*) and upon the *Ministry of Law and Constitutional Affairs* on the 17th January 2018. The 2nd Respondent is the *Staff Officer to Commission of Police*, 3rd

Respondent is the *LMPS Human Resource Officer*; the 4th, 5th 6th 7th 8th, and 9th Respondents are the “*promoted officers*”.

*Lesotho Mounted Police Service*²

- [3] *Section 147 (1) of the Constitution of Lesotho 1993* established the *Lesotho Mounted Police Service*. It reads:

“147. (1) There shall be a Police Force (Service) for Lesotho that shall be responsible for the maintenance of law and order in Lesotho and shall have such other functions as may be prescribed by an Act of Parliament.”

- [4] *Sections 4 of the Lesotho Mounted Police Service Act No. 9 of 1998* in turn reads:

“4. The police service maintained under Section 3 shall be called the Lesotho Mounted Police Service, and shall be deployed in and throughout Lesotho to uphold the law, to preserve the peace, protect life and property, to detect and prevent crime, to apprehend offenders, bring offenders to justice, and for associated purposes.” (My embolden)

² The Basutoland Mounted Police Force was first established around 1878

The Lesotho Police Service Association

- [5] ***Regulation 24 of Lesotho Mounted Police Service (Administration) Regulations 2003*** provides:

“Lesotho Mounted Police Staff Association

24. *There shall continue to be in existence the Lesotho Mounted Police Staff Association which shall be:*

- (a) a body corporate;*
- (b) independent;*
- (c) have a right to sue and be sued; and*
- (d) have a right to issue summons and be summoned in its own name.”*

- [6] This Court is very pleased to note that the **Lesotho Public Service** and **Lesotho Correctional Services** also have their own Staff Associations.³ This accords well with the principles of good governance and of the rule of law.

Main Objects of LEPOSA

- [7] The objectives of ***LEPOSA*** are articulated under *Article 5* of its Constitution as follows:

“4. Aim

4.1. The aim of the Association shall be to improve the efficiency of LMPS and the interests of its members.

³ See ***Public Service Act No.1 of 2005*** and ***Lesotho Correctional Service Act No.3 of 2016***

5. **Main Objectives**

The main objective of the Association will always be consistent with the aim and will include:

- 5.1. *Representing the interests of all members of **LEPOSA** irrespective of their creed, religion, gender or any other factor in relation to improving the employment, professional, economic, social, health and cultural interests of such members.*
- 5.2. *Securing sufficient resources by means of regular subscriptions from members and through other fund raising activities to enable the Association to effectively and efficiently discharge its whole range of functions.*
- 5.3. *Promoting the welfare of members and a positive relationship between the police service and the people of Lesotho.*
- 5.4. *Safeguarding the interests of members, including providing advice to individuals on matters of discipline and the handling of any grievances.*
- 5.5. *Providing an informed and constructive Staff Side to the Police Negotiating Council and generally, by offering advice and taking part in discussion with management, to contribute to the positive development of the Police Service.*

6. **Policy**

- 6.1. *The Association shall be apolitical and not be used for furtherance of any political parties' aims or objectives.*

7. **Legal status**

- 7.1 *The Association may sue and/or be sued in its name and may own assets, movable or immovable, may enter into contracts and/or hold property in its name.*

8. **Membership**

8.1. *General*

- 8.1.1. *Membership is open to all serving members of LMPS including civilian staff in the LMPS, and new appointment to the LMPS. ” (My underline)*

[8] **Moraleli Motloli** in his Founding Affidavit informs court that he is the Secretary General of **LEPOSA** and that:

"1.2. The Applicant is the Lesotho Police Staff association, a body duly established in terms of the Police Act and incorporated by its constitution. Its mandate is to protect the interests and welfare of the police officers. I attach the excerpt of its constitution and mark it "LMPS 1."

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- 2.1. *The 1st Respondent is the Commissioner of Police. His offices are situated at the Police Head-quarters in Maseru and he is cited herein in his capacity as such.*
- 2.2. *The 2nd Respondent is the Staff officer to the Commissioner of Police. He is cited herein in his capacity as such.*
- 2.3. *The 3rd Respondent is the Lesotho Mounted Police Service Human Resource Officer. He is cited herein in his capacity as such.*
- 2.4. *The 4th - 9th Respondents are members of the Lesotho Mounted Police Service who have unduly benefited from the promotions challenged herein. They are sued herein in their private capacity as such. They can be served at their work at the Human Resource Office at Police Headquarters in Maseru.*
- 2.5. *The 10th Respondent is the Attorney General. His is sued herein in his capacity as the legal representative of the government of Lesotho in civil suites. His offices are situated at Sun Gardens Office Complex in Maseru.*

This Honourable Court has jurisdiction to entertain this matter in as much as the cause of action herein arose within its area of jurisdiction.

The facts which precipitated the institution of this matter are in a nutshell as follows:

- “4.1. On the 11th December 2017, a Memo published by the 1st Responded announced six (6) vacancies in the **Lesotho Mounted Service**. In particular the vacancies were in the ranks of **Assistant Commissioner of Police, Senior Superintendent, Superintendent and Senior Inspector**. Candidates were given just seven (7) days to apply. A copy of the said Memo is herein attached and marked as “annexure LMPS 2”. Its contents are clear and self-explanatory.*
- 4.2. The profiles of the positions attached to the memo purportedly provided the requirements for the positions. However, the specifications were intentionally couched in generalized terms with a view to evade the legal obligations placed upon the 1st Respondent to base promotions in the **LMPS** on merit as envisaged by Regulation 7(2) of the **Lesotho Mounted Police Service (Administration) Regulations 2003 as amended**. Important and verifiable considerations such as training and educational qualifications were deliberately left out in the job specification even for the senior positions such as the **Assistant Commissioner of Police**.*

4.6. *As it would be apparent from LMPS 3, three officer, Inspector Lebajoa, Senior Inspector Ralethoko and Inspector Mopeli, have skipped ranks contrary to Regulation 7 (1) of the Lesotho Mounted Police Service (Administration) Regulations 2003 as amended. This clearly demonstrates the wanton disregard for law in the processing of these promotions.*

4.7. *To demonstrate further the malice and indiscretion of the 1st Respondent regarding these promotions, it is befitting to present to this Honourable Court that the 1st Respondent launches this promotion crusade right in the middle of the financial year which is only indicative of the fact that the 1st Respondent has his own preferences who cannot even wait for beginning of the financial year. These promotions are not budgeted for and therefore violate the principles of good administration."*

[8] He contends that the promotions of 4th, 5th, 6th, 7th, 8th, and 9th Respondent (*incidentally he is president of LEPOSA*) are without merit ... *"as the 1st Respondent I aver that the promotions of these officers are without merit as the 1st Respondent has been promoting them based on his mere preference. These promotions are unfair, discriminatory and violate the provisions of the Police Service Act of 1998 read with Lesotho Mounted Police Service (Administration) Regulations 2003 as amended. ..."*

- 4.3. *Following the call for applications on a merit based system, as the law so provides, would ordinarily go through the competitive stages such as shortlisting and interview of candidates. In this particular instance, there have never been any competitive stages after the advertisement. Instead, there has been startling secrecy which clearly offends against the dictates of fair competition.*
- 4.4. *In terms of the law, there should be Police Appointments and Promotion Board which presides over all the stages of Promotion and Appointment of Police Officers. The members of this Board are the (1) Commissioner (2) a person nominated by the **Minister of Police** and a (3) person nominated by the **Minister of Public Service**. This is the body empowered to preside over all the stages of recruitment; starting with advertisement, shortlisting, interview and the actual promotion of senior officers. With these particular promotions, the advertisements and all other stages in the recruitment were done by and on behalf of the 1st Respondent thereby violation the dictates of Section 8 (1) read with (2) of the Police Act, 1998.*
- 4.5. *On the 12th of January 2018, the 2nd Respondent, purportedly on behalf of the 1st Respondent, announced the promotion of six officers to the ranks that were initially advertised. The anomaly with these Promotions is that they were not done by the Board, and they are not based on any established criteria of promotions contrary to the provisions of Regulation 7 of the **Lesotho Mounted Police Service (Administration) Regulations 2003 as amended**. The said Memo is attached hereto and marked **LMPS 3**.*

- [9] He continues “... *It is my further averment that the promotions are therefore null and void and without any legal force or effect as the 1st Respondent failed to adhere to the **LMPS** (Administration) Regulations and the Police Act as the 1st Respondent promoted them without merit and without him being authorised by the Board of promotions.*”

Urgency

- [10] Deponent contends that the application is a matter for urgent relief because the Memo provides that promotions are effective with immediate effect and will therefore be processed “*this very month*” for other benefits of the purported ranks.
- [11] Supporting Affidavit of ***Teboho Molumo*** has confirmed the contentions of the deponent.

- [12] Notices of intention to oppose were duly filed on the 19th January 2018. ***Advocate Mosotho*** represents 4th to 9th Respondents – i.e. “*the promoted police officers.*”
- [13] The answering of ***Commissioner of Police - COMPOL Holomo Molibeli*** was duly filed on the 30th January 2018. The Commissioner of Police in his Answering Affidavit states:

“3.4. LOCUS STANDI

Applicant does not have a sufficiently direct and substantial interest in the matter. Applicant has failed to show to this court how the promotions have affected it adversely. There is no link whatsoever to the decision made how that affects Applicant or its members directly or indirectly.

3.4.1. *It is only a bare allegation that Applicant protects interest of the Police officers but as to how it has been affected there is no mention.*

3.4.3. *It should be noted that to seek stay of the decisions already made is to seek an Interdict, and applicant must first pass the test of a prima facie right which is not the case in this matter.*

3.4.3. *It is therefore prayed that this application be dismissed on the above points of law as its merits do not warrant entertainment.” (My underline)*

Points in limine

[15] Having heard Counsel **Mr. Mosotho**, the counsel for 4th, 5th, 6th, 7th, 8th and 9th respondents and **Advocate ‘Nyane** for Applicant each of whom, submitted brilliantly on these issues *in limine, i.e. locus standi, urgency, authority*. After due consideration, I ruled that the matter was not urgent and that the court does not grant *Prayer 2 (a)* which was a prayer seeking in effect to stay or to suspend the purported promotions

on the sole ground that the purported promotions were done contrary to the *Lesotho Mounted Police* Act 1998 and Regulations 2003.

[16] It is not in dispute that the promotions of six police officers were purportedly done in exercise of official functions under the provisions of the LMPS Act 1998 and in my view the maxim of “*omnia praesumuntur rite esse acta*” applies – *legality of official function*” applies.⁴

[17] On the same day *Advocate Molati* also appeared for other police officers purportedly aggrieved by unfairness in promotion process. The court was informed that their case was on appeal (CIV/APN/19/2017). His clients wished to intervene in this proceedings. *Mr. Molati* was however prepared to withhold his brief till this matter was determined fully by this court.

Advertisement of vacancies - 11th December 2017

[18] It is not in dispute that an official advertisement had been made on the *11th December, 2017*, inviting applications for six (6) positions in the Police Service. The “**MEMO**” dated 11th December 2017 reads:

⁴ *Wille – Principles of South African Law (1996)* at

“Re Vacancies Announcement

The captioned subject bears reference.

*1) Suitably qualified and serving members of the **Lesotho Mounted Police Service (LMPS)** are invited to apply for the following vacant positions in the **Lesotho Mounted Police Service** as per advertisements attached herein:*

*a) Assistant Commissioner of Police Community Policing – 1 Vacant Post of ACP: **Grade 22 (1)***

*b) Senior Superintendent (SSP) - 1 Vacant Post of DISPOL: **Grade 21***

*c) Superintendent (SUPT) – 2 Vacant Posts of OCPS: **Grade 20-12***

*d) Senior Inspector (S/Insp) – 2 Vacant Posts: **Grade 17-19***

(2) Interested candidates should meet the requirements shown on the attached vacancy announcement document in order to apply.

3) Interested candidates should hand deliver their applications to the Human Resource Office (Police headquarters) on or before Monday the 18th December, 2017 and on or before 1630 hours.

4) Addressees are urged to communicate this advertisement extensively to all staff so that eligible people could apply well informed of the requirements enclosed herein.

5) Applicants should indicate the positons(s) they are applying for.

Kind regards,

S/INSP. L.C. RALETHOKO
(HUMAN RESOURCE OFFICER)

CC: SACPS, ACPS, DT AND REGIPOLS”

It appears that *Senior Inspector* for *Ralethoko* and *Inspector Monne* are 5th and 9th Respondents respectively.

- [19] Notice was also attached detailing requirements for the positions. It reads:

*“Applications are hereby invited for suitably qualified candidates for the following vacant position in the **Lesotho Mounted Police Service**:*

*Assistant Commissioner of Police (Community Policing)
– one vacant post*

REQUIREMENTS

- *All written applications shall be directed to the office of the Human Police Head Quarters via Dispol, Officer Commanding SOU, Officer Commanding SSU, Heads of Units, Deputy Director Training, Assistants Commissioner of Police, and Regipols, whichever way is applicable.*
- *Applicant must possess or show an exceptional satisfactory performance in police duties in general.*
- *Applicant must have been confirmed into a permanent and pensionable establishment.*
- *Applicant must have been in charge of a Unit, Police Post, Police Station, or Police District, for at least one (1) year, (leadership skills will be an added advantage).*

- *Applicant must attach a motivational letter which indicates clearly, why they are suitable to fill the advertised vacant position.*
- *Applicant must clearly indicate the feasible strategies in which he or she wishes to engage in order to address the current problems in this office.*
- *Applicant must have been a member and served for a period not less than twenty (20) years in the Lesotho Mounted Police Service.*
- *Applicant must have good disciplinary record.*
- *Applicant must not have pending criminal or disciplinary matters against them before courts of law.*

All applications must reach the Office of Human Resource at Lesotho Mounted Service Head Quarters on or before 18th December, 2017 at 1630hours.

It is not in dispute that the requirements for Senior Superintendent, Superintendent and Senior Inspector were similarly posted.

[20] On the 23rd *Advocate ‘Nyane* for Applicant (*LEPOSA*), *Advocate Lebakeng* for 1st, 2nd 3rd, and 10th Respondent appeared before court to address issues of “urgency” and of *locus standi* (of Applicant) in these proceedings.

- [21] In his Answering Affidavit filed on 30.01.2018 the *Commissioner of Police* submits that the Applicant was aware of the promotions as far back as 12th January 2018 and the fear of prejudice was not justified financially or otherwise re: *locus standi* – The Commissioner attacks the *locus standi* of the Applicant stating that Applicant *LEPOSA* has no “*sufficient direct and substantial interest*” in this application.
- [22] Basic to the paramount issue of *locus standi* principle that is embedded and entrenched in our common law,⁵ is that the Applicant or Plaintiff “*must show a direct and substantial interest*” in the application or action before court. In my view this test must be related to the circumstances of the case at hand.

Locus standi of LEPOSA

- [23] The Constitution of *LEPOSA* then immediately comes to the fore. The main objectives of *LEPOSA* read:

“4.1. The aim of the Association shall be to improve the efficiency of *LMPS* and the interests of its members.

⁵ *CB Prest – The Law and Practice of Interdicts - Erasmus – Superior Court Practice - 1976 CILSA 142*

5. Main Objectives

The main objective of the Association will always be consistent with the aim and will include:

*5.1. Representing the interests of all members of **LEPOSA** irrespective of their creed, religion, gender or any other factor in relation to improving the employment, professional, economic, social, health and cultural interests of such members.*

5.2. Securing sufficient resources by means of regular subscriptions from members and through other fund raising activities to enable the Association to effectively and efficiently discharge its whole range of functions.

5.3. Promoting the welfare of members and a positive relationship between the police service and the people of Lesotho.

5.4. Safeguarding the interests of members, including providing advice to individuals on matters of discipline and the handling of any grievances.

5.5. Providing an informed and constructive Staff Side to the Police Negotiating Council and generally, by offering advice and taking part in discussion with

management, to contribute to the positive development of the Police Service.

It is important to note that **LEPOSA** derives its lawfulness from Police Regulation 27 - 2003. **Mr. Mosotho** says he does not question the juristic personality of **LEPOSA** and its right to sue or be sued. He submits **LEPOSA** lacks the necessary locus standi to litigate on behalf of its members.

[24] In my view where the “*locus standi*” of an association to sue on behalf of its member is questioned, reliance must be made on its constitution – the association is a creature of its own constitution and can only act or separate within the parameters of that constitution. The “*locus standi*” of an association in a Public Service Institution must be interpreted purposively within the parameters of the rule of law, and of access to justice.

[25] The issue of cardinal importance in this case is whether **LEPOSA** can espouse the grievances of the police officers who had applied for the advertised posts, conversely, whether only each of the aggrieved Police Officers who had applied for advertised posts individually had right to vindicate his or her right to be considered in their respective applications according to the 1998 Police Service Act and Regulations.

[26] *En passant*, I am acutely aware that in CIV/APN/19/2017 *Advocate Molati's* application, *LEPOSA* is not an Applicant espousing the claims of some 45 police officers also aggrieved about their promotions. But it would indeed have made the court's job easier if the 4th, 5th, 6th, 7th, 8th and 9th Respondents had been joined as Applicants in this application. *LEPOSA* went it alone. In the recent case of *LEPOSA* vs *COMPOL* and 47 others CIV/APN/216/2017 (*now on appeal*), *LEPOSA* has instituted a civil application regarding promotion of 47 police officers with its locus standi being questioned. Where the issue of *locus standi* scuttles litigation over rights, the court should interpret issue of *locus standi* expansively to avoid prejudice.

[27] In my view, the principle of *locus standi*⁶ is directly linked to the ethos “*access to justice*” of any litigant before a court of law. Grounded on an old *Roman Dutch* law, the concept of *locus standi* must be interpreted in a “*purposive and benevolent*” manner. Courts must avoid “*closing the doors of justice*” to a litigant or litigants. It generally means the right to sue or to stand in court claiming vindication of a right and that right will be determined by the facts of each particular case.

⁶ In Sesotho we say ... “*o na le kobo ea bohali – o cha a tšola...*”

[28] What is a direct and substantial interest is a matter relevant and relative to the circumstances of each case. An interest may be patrimonial or legal. Here we speak about promotion. Is it a right to be promoted or is it the right to be considered in the promotion process and therein the right to be considered fairly and meritocratically. There is no magical spell cast in stone by the words “*direct or substantial.*” Anyway we should move away from classical manner of interpreting principles like *locus standi*, *prima facie* etc. Law must adapt to human relationships and we should not pigeon-hole those human relationships into legal jargon or phrases.

[29] In the *Constitution of Lesotho 1993* Section 19 lays down that:

“19. Every person shall be entitled to equality before the law and to the equal protection of the law.”

This section – short and brief as it is – must be given a meaningful, purposive and benevolent interpretation. The court must avoid any “*tabulated legalism.*”⁷ In my view “*Locus standi*” and “*direct and substantial*” interest are mere principles under our common law – they are not statutory provisions nor are they cast in stone.

[30] In comparison, Section 38 of the *South African Constitution 1996*, Section 38 reads:

⁷ *Sekoati vs President Court of Martial – LAC (1995 - 1999)*

“Enforcement of human rights:

38. Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are

- (a) anyone acting in their own interest.*
- (b) anyone acting on behalf of another person who cannot act in their own name;*
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;*
- (d) anyone acting in the public interest; and*
- (e) an association acting in the interest of its members.” (My underline)*

This is an all embracing provision that guarantees access to law. Although we do not have a similarly worded provision in our **Constitution of Lesotho 1993**, it is a provision worth quoting and to bear in mind for any jurisprudential analysis.

[31] Furthermore, the words used as expressing the main objectives under *Article 5* of **LEPOSA** Constitution should be *expansively* and *purposively* applied in cases such as promotion, discipline, etc. The word “*interest*” under our law, may apply to many human relations; it is a nebulous word, which may describe rights and freedoms - social, economic, administrative and to advantages such concerns may range from safeguarding, “*advice*” and “*handling of grievances*” of the members of the **LMPS**. The members of **LEPOSA** look up to **LEPOSA** in times of need. Interest is thus a nebulous and generic word.

[32] **Mr. Mosotho** submits that while **LEPOSA** possesses a juristic personality, it lacks *locus standi* ... (*kobo ea bohali*)... in the present application and hence **LEPOSA** is “*non-suited*.” He submits that **LEPOSA** has no “*direct and substantial interest*” – it has no rights on its own to speak about. **Advocate Mosotho** argues and that only the aggrieved police officers can have *locus standi*. In my view that would merely be “*dilatory*” and at the end of the day, this Court would have to finally determine the legality of the promotions. In my view, it is in the interest of justice that this matter be put to rest.

[33] I referred **Mr. Mosotho** to the celebrated case of ***Khathang Tema Baitšokoli*** wherein registered association of street vendors of Maseru claimed that the members’ forced removal by the Maseru City Council from their street stalls violated their human rights!⁸ ***The High Court*** and the ***Court of Appeal*** had straightaway treated the ***Khathang Tema Baitšokoli Association*** as suited to vindicate the rights of its members (*the street-vendors*). Similarity of **LEPOSA**’s claim is very striking.

[34] **Advocate ‘Nyane** philosophically submits that even if **LEPOSA** did not exist, the right or interest would still exist and prevail. Even in the pre-2003 era before **LEPOSA** came into existence, the police officers aggrieved in the promotion process would still have the right to vindicate their rights.

⁸ LAC (2005-2006) 85

Rule of Law

[35] The often also quoted case of **Swissborough**⁹ (a *locus classicus*) was referred to by *Advocate 'Nyane* submitting that the *rule of law* required the rights of the aggrieved police officers be protected and that **LEPOSA** was a guardian of that interest. *Rule of law* today is a universal concept recognised in many protocols and conventions. I can only add that rule of law is a transcendal and an ubiquitous throughout all institutions of state.

[36] In my view, it is essential that the **Lesotho Mounted Police Service** – in order to discharge its fundamental functions under the Constitution that *rule of law* and justice reign and prevail in all its ranks along with fairness in conditions of service and in matters of promotion, discipline and of all administrative processes. All these must pass the muster of the *rule of law*.

Authority

[37] On the issue of authority to sue, the court observes that the President of **LEPOSA** is the 9th Respondent and 5th Respondent is the Human Resource Officer, and both had been promoted there is no way that the fully panelled Executive Committee could have authorised this litigation.

⁹ *Swissborough Diamond Mines vs Attorney General* – LAC (1995 – 1999) 812

[38] The Constitution of **LEPOSA** has a general provision – “*safeguarding the interests of members*” (**Article 5**). Under our law “*Interest*” is a broad concept is protected against violation. It generally means positive “*advantage or benefit.*”¹⁰ No doubt, promotion is an important interest and a wish to every police officer because promotion increases the status and financial well-being of an officer in the police service. Indeed nobody hates promotion. Everyone – “*including us judges*” – loves promotion! Qualification or *criteria* for a higher position should be clearly stated and achievable, transparent and pass through all stages with fairness excluding favouritism, nepotism or patronage. It is not a “*right to be promoted*” but “*a right to be considered*” in the process.

[39] I am of the view that the **LEPOSA** has an “*interest*” to ensure that its members are treated fairly when they apply for promotion. Benevolently defined “*interest*” should cover all advantages and benefits which police officers have under the Police Service. This is indeed an ethos encompassed under *Section 19* of the **Constitution of Lesotho**.¹¹

[40] “*Equal protection before law*” guaranteed under *Section 19* of the **LEPOSA** Constitution is the foundation to the rule of law and law should protect the rights and interests of police officers in matters of promotion and of discipline etc. within the Lesotho Mounted

¹⁰ Oxford Dictionary

¹¹ Para 26 (*supra*)

Police Service. Good governance can bring out talent in the members of the Police Service in the discharge of their important function under the *Constitution of Lesotho* and of the law.

[41] The court is aware that the *Secretary General of LEPOSA* stated that he had been authorised by a body called National Office Bearers.¹² This was precipitated by the fact that the Executive Committee could not be fully empanelled as the *President of LEPOSA* executive was also the one of the promoted officers. A practical approach has to be adopted and the court has a discretion of exercise¹³ and can direct that promoted officers be joined as applicants.¹⁴

[42] It should be noted that even the *Constitution of LEPOSA* does not specifically empower the National Executive Committee to litigate on behalf of *LEPOSA* and to non-suit *LEPOSA* by defining its *locus standi* restrictively would fly in the face of *Section 19* of the *Constitution of Lesotho* and of the *rule of law*.

[43] A distinction must be made on the issue of authority. Article 24 of *LEPOSA* constitution does not provide that the executive

¹² See Article 21 – Duties of the National Office Bearers

¹³ LAC (2005 – 2006) – LAC (2000 - 2004); *Prest – the Law and Practice of Interdicts* (1996) 30; *South African Milling v Reddy* 1980 (3) SA 431

¹⁴ LAC (2009 – 2010) 523 *Lesotho National Olympic; Educational Secretary of ACCL Church Secretary vs Ramakone* – LAC (2009 – 2010) 523

committee must litigate on behalf of the *LEPOSA* nor does the constitution empower the Executive Committee to litigate.

[44] It should be noted that even the *Constitution of LEPOSA* does not empower the national Executive Committee to litigate on behalf of *LEPOSA* and to non – suit *LEPOSA* by defining its *locus standi* restrictively would fly in the face of *Section 19* of the *Constitution of Lesotho* and of the *rule of law*.

[45] To restrict meaning of *locus standi* where an association litigates on behalf of its members who have an interest to be treated fairly under an regulations of the institution, would be totally antithetical to the fundamental ethos of the *rule of law*¹⁵. According to *Professor Erasmus* it is not a prerequisite for “*associational standing*”¹⁶ to demonstrate that it or its member have a legal interest in the subjection of the litigation.

[46] In this application, the members of *LEPOSA* are police officers who – *ex facie* have a legal interest to be considered fairly in the promotion process – though it is not a full “*right to be promoted*” but a right or interest “*to be considered fairly unless disqualified*” by any certain factors it must be very clear that the *Appointment and Promotion Board* is vested by law to exercise its powers

¹⁵ *CB Prest – The Law and Practice of Interdicts* 297 at 306 -27; *Catholic for Justice and Peace in Zimbabwe - 1993 (3) SA 239 at 246*

¹⁶ *Erasmus – Superior Court Practice – p297 at 306*

discretions administrative to be exercised fairly in the promotion process.

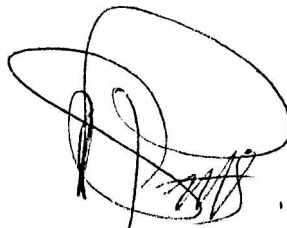
A Conclusion

- [47] It makes a good interpretational sense to hold that where a constitution has a *Lacuna* (*is silent*) on a right or interest such as who should institute proceeding, the constitution should be interpreted positively so as to preserve the rights or interests of members rather than to prejudice such members.
- [48] I have considered all circumstances of this application and the legal principles involved and in my view, to “*non-suit*” the Applicant in this application would merely be deny them access to justice and be dilatory if the officers would ultimately insist on litigating. That would only put off the “*D-day*”¹⁷. “*Rule of law*” is a sacred concept that defies all definition; it is a “*transcendal*” and an “*ubiquitous*” one in that it should prevail through all institutions of state established under the *Constitution of Lesotho 1993*. A *LEPOSA* that operates well under its constitutional mandate would do well in safeguarding the interests of its members thereby promoting and advancing their careers in the police service. For example – through education and training of members to polish their talents for better service and performance.

¹⁷ See also *Federal Convention Namibia v Speaker National Assembly Namibia* – 1994 (1) SA. 177 at p196 H

High morale in the Police Service can be founded upon the pacific and cordial relationships between the management and **LEPOSA** and its members. Good governance and goodwill are often indispensable factors in the maintenance of discipline in the command strategy and for the discharge of its functions under the Constitution. There cannot be any good governance in **Lesotho** if the law enforcement agencies have not done housekeeping.

[49] For all what been said, I rule that **LEPOSA** has a *locus standi* in this application.

A handwritten signature in black ink, appearing to be 'S.N. PEETE', is written over a horizontal line.

S.N. PEETE
JUDGE

For Applicant: *Advocate 'Nyane*

For Respondents: *Mr. Mosotho*