

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/87/2018

In the matter between

KELEBONE ALBERT MAOPE

APPLICANT

AND

**PRINCIPAL SECRETARY, MINISTRY OF
FOREIGN AFFAIRS AND INTERNATIONAL
RELATIONS**

1st RESPONDENT

**MINISTER OF FOREIGN AFFAIRS AND
INTERNATIONAL RELATIONS**

2nd RESPONDENT

THE PRIME MINISTER

3rd RESPONDENT

ATTORNEY GENERAL

4th RESPONDENT

CONSOLIDATED WITH

In the matter between

JOHN NAAZI OLIPHANT

APPLICANT

AND

**PRINCIPAL SECRETARY, MINISTRY OF
FOREIGN AFFAIRS AND INTERNATIONAL
RELATIONS**

1st RESPONDENT

**MINISTER OF FOREIGN AFFAIRS AND
INTERNATIONAL RELATIONS**

2nd RESPONDENT

THE PRIME MINISTER

3rd RESPONDENT

ATTORNEY GENERAL

4th RESPONDENT

JUDGMENT

CORAM: HON. J. T. M. MOILOA

DATE OF HEARING: 11 JUNE 2018

DATE OF JUDGMENT: 06 AUGUST 2018

ANNOTATIONS

Legislation

1. Constitution of Lesotho, 1993
2. Public Service Act 2005

Cases

1. Sefeane vs Sefeane (2005-2006) LAC 260
2. Lesotho Poultry Coop vs Minister of Agriculture
3. Takalimane vs Serobanyane C of A (CIV) 26/2011
4. Lebohang Ntšinyi vs Minister of Foreign Affairs CIV/APN/92/2018
5. Minister of Foreign Affairs vs Bothata Tsikoane C of A (CIV) No. 32/2016
6. Koatsa vs NUL (1985-89) LAC 335

[1] I have already delivered the Court's decision on both the Contempt application and the Main application in this matter on 6th August 2018 indicating that written reasons for such decisions would follow later. These are the Court's written reasons for those decisions.

[2] GENERAL BACKGROUND

Originally two separate applications were launched in court by the Applicants herein which were both placed before me for adjudication. Mr. Maope's application was CIV/APN/87/2018 while Dr. Oliphant's

application was CIV/APN/89/2018. On my perusal of these applications I was struck by the similarity of relief sought in both and the general tenor of background facts giving rise to both applications. When both counsel first appeared before me I posed the question to them whether these matters were not in fact suitable to be consolidated into one application. I expressed the view that *prima facie* both matters in fact appeared suitable to be consolidated into one application. Both counsel informed me that it was exactly their view as well. Both applied that the two applications be consolidated into one application. Hence Mr. Maope became First Applicant while Dr. Oliphant became Second Applicant.

- [3] Mr. Maope was appointed Lesotho's Ambassador to the United Nations in New York on 5th July 2016 for a period of thirty six (36) months in terms of a written contract between him and Lesotho Government.

Dr. Oliphant was appointed Lesotho's High Commissioner to United Kingdom on 15th May 2017 in London for a period of thirty six (36) months also in terms of the written contract between him and Lesotho Government.

[4]

4.1 By letter dated 19th February 2018 First Respondent addressed a letter separately to Maope and Oliphant instructing them to travel to Rome to meet with Second Respondent (Mr. Minister) and himself on 27th February 2018 to discuss their future positions as Ambassador and High Commissioner.

4.2 Applicants duly travelled to Rome and met with the Minister as arranged.

4.3 EVENTS AT ROME MEETING

The meeting in Rome between Mr. Maope, the Minister and Mr. Monyane took place on 28th February 2018. The Minister informed Mr. Maope that there was a new coalition government in Lesotho which naturally desired to make changes to personnel serving it and that an extra-ordinary Cabinet meeting had reached a decision that Lesotho's Ambassador to the United Nations should be recalled and that the Prime Minister had been to see the King to advise him of the decision. Finally the Minister informed Maope that the decision was no longer negotiable. The Minister stated to Maope at the meeting that his mission to Rome was to inform him (Maope) of the Government's decision and to discuss with him the best way to repatriate him back to Lesotho without prejudicing him. The Minister informed Mr. Maope that he was affording him (Mr. Maope) an opportunity to state reasons why an early repatriation would prejudice him (Mr. Maope). Any prejudicial matter would be duly considered, the Minister stated, and Mr. Maope would be advised of a final decision on his repatriation decision. The Minister describes characterisation by Mr. Maope of the meeting being about his repatriation to Lesotho as inaccurate. He characterises it as "discussion about the termination of [Maope's] engagement and his eventual recall back to Lesotho." To my mind if a cabinet decision had already been made to recall Mr. Maope and the King had already been advised of the Cabinet decision, then meeting in Rome on 28 February 2018 couldn't have been about termination of Mr. Maope's engagement and eventual recall. The decision had already been made prior to the Minister's departure for Rome to meet with Mr. Maope and Dr. Oliphant on 28 February 2018. It seems to me more apt to characterise that Rome meeting as one where the purpose was

to inform primarily; and secondarily to discuss with them the least painful way of effecting that Cabinet decision.

- 4.4 Mr. Maope felt his rights were being infringed by Respondent by not affording them a hearing before decision to recall them was made.

[5] **MAOPE POST ROME MEETING**

I now turn to deal with events concerning Mr. Maope post the Rome meeting. Ambassador Maope approached the Court on 16 March 2018. On 20th March 2018 the parties were before me for the purpose of certain interim relief prayers that sought to preserve status quo ante until this Court heard full arguments of the parties as soon as possible accepting that the matter was urgent. The application for interim relief was opposed by Respondents. At the end of argument on the interim relief I postponed the matter to 23rd March 2018 for the purpose of giving a ruling on urgency and interim relief sought by Applicants. On 23rd March 2011 the matter was further postponed to 26 March 2018.

On 26 March 2018 this Court gave its ruling that the matter was urgent and that prayers 1, 2, 3, 4, 5 and 6 were granted to Applicants as interim relief pending the outcome of the Application. Parties were put to terms as to the filling of further pleadings in the matter on shortened time frames. A Rule nisi was issued and made returnable on 30th April 2018 by agreement of the parties.

[6] **CONTEMPT APPLICATION**

For an application for contempt of court to succeed the following elements must be established by the Applicants, namely:

- (a) that an order of court was granted against the Respondents;*
- (b) that the Respondents were either served with the Order or were informed of its grant against them.*
- (c) that the Respondents disobeyed the Order or neglected to comply with it.*

Once the above elements are shown to exist against the Respondents, then wilfulness to disobey must be inferred. See **Sefeane vs Sefeane C of A (CIV) No.15 of 2005**.

This leg of case was argued by Mr. Mohau for Applicants and by Mr. Ndebele for the Respondents. On 26th April 2018 Applicants filed a Contempt Application alleging that Respondents had violated the Court's Order given on 26th March 2018 in that they have in disregard of that Order caused withdrawal of Mr. Maope's access to United Nations offices and access to the Mission's office premises. The Respondents Answer and oral submission to me during arguments was that it is correct that Mr. Maope's access to United Nations premises was cancelled and Respondents took no steps to rectify their act even after their attention was drawn to the fact that it was in violation of this Court's order dated 26 March 2018. Mr. Ndebele for the Respondents on the Contempt application submitted that the Order of this Court dated 26th March 2018 was not enforceable in the United States and therefore Respondents were not obliged in law to observe that Order in New York. I must point out a few basic truths of importance to Respondents in regard to this argument. It was Respondents' act that triggered denial of Mr. Maope's access to UN premises. It is axiomatic that it was again their act that had the power and authority to reverse that denial in compliance with this Court's Order of 26th March 2018.

All Respondents are subjects in this country and residents in this country. Respondents are public servants of the Government of this Kingdom. The Court that gave the orders is a Court of this Kingdom. Respondents are bound in law to respect and honour the Orders of the Courts of this Kingdom. Accordingly Order of Courts of this land are applicable and binding to them. An Order of Court is binding on all upon whom it is made regardless whether they agree with it or not. See **Lesotho Poultry Coop. vs Minister of Agriculture CIV/APN/433/94; Takalimane vs Serobanyane C of A (CIV) 26/2011**. Their only option is to undo such Court Order by due judicial process. It was therefore, an obligation of Respondents to fully abide by the Court Order of 26th March 2018 “regardless whether they thought it was correct or not” until such Interim Order was undone later by this Court in due course after hearing the merits of the case. Secondly Respondents are no ordinary uninformed subjects of this Kingdom. They are in fact agents of the Executive Branch of government of this Kingdom at the highest level in this country. Respondents have a duty to be exemplary in observance of the rule of law. They have a duty to respect and support the judiciary of this country in their discharge of their duty as arbitrators of disputes between the State, which they represent, and its citizens. In my view it is ill-advised for Respondents to make a submission of the kind that Mr. Ndebele advanced to the Court at the hearing of this aspect of the case. But it is also a revealing attitude of Respondents that they will do whatever they want to do regardless that a court interdict against them exists. I find this attitude unfortunate and pregnant with disaster of the worst type if persisted in by Respondents in their governing of this country. It proves that Respondents breached the Court Order of 26th March 2018 deliberately with intent to be contemptuous of it. I accordingly find that Respondents have been contemptuous of this Court’s Order as alleged by Applicants. I accordingly

also order that Respondents shall pay costs of this contempt application on attorney and client basis as a sign of the court's displeasure to their contempt and attitude underlying such attitude. Mr. Maope makes the point at paragraph 17 of his reply that the attitude and actions of Second Respondent in particular have to be viewed and understood in the context of his actions and declared intentions that had earlier become the subject of CIV/APN/02/2018 which had earlier resulted in his capitulation when challenged by Mr. Maope earlier. In my view Mr. Maope's contention in this regard cannot be faulted considering the conduct and actions of Second Respondent against him that they show caprice and malice.

[7]

7.1 In relation to Dr. Oliphant the following facts are relevant in so far as contempt of court allegations are concerned. It will be recalled that Dr. Oliphant was based in London as Lesotho's High Commissioner. He too had received First Respondent's letter dated 19th February 2018 directing him to meet the Minister in Rome on 27th March 2018. Dr. Oliphant did. The meeting in Rome actually took place on 28th March 2018. He was informed by First and Second Respondents that the Cabinet had made a decision to recall him and that the Prime Minister had accordingly advised His Majesty the King of the decision. In essence therefore the decision to recalling Dr. Oliphant had been made in Maseru prior to First and Second Respondents arrival in Rome and meeting with Dr. Oliphant on 28th March 2018.

7.2 The meeting in Rome precipitated the main application CIV/APN/87/2018. The applicant was entertained on urgent basis after hearing both parties on 21st March 2018 and an Interim Order

restraining Respondents from executing their recall of Dr. Oliphant until full arguments on the merits and the court's decision thereon was made. on 26th March 2018, the Court granted Applicants (i.e. Mr. Maope and Dr. Oliphant) interim relief in terms of prayers 1, 2, 3 and 4 of their Notice of Motion in terms of which status quo ante in New York and London was to be maintained pending the outcome of the merits of the application by Applicants.

7.3 From 16 – 21 April 2018 there was a Commonwealth Heads of Government Meeting in London. On 15 April 2018 Dr. Oliphant in discharge of his duties as Lesotho's High Commissioner to United Kingdom attended at Heathrow Airport to welcome Lesotho's Advance Party headed by First and Second Respondents. When he met the delegation it is common cause that Second Respondent took Dr. Oliphant aside and told him not to come to the airport to receive Third Respondent (Prime Minister) because he had been dismissed as High Commissioner of Lesotho to United Kingdom. The Third Respondent (Prime Minister) was due in London for the conference of Commonwealth of Heads of Government on 16th April 2018. Furthermore, First Respondent (Principal Secretary to Ministry of Foreign Affairs) told Dr. Oliphant that he was not to attend the Conference from 16 – 21 April 2018 as he had been dismissed as Lesotho's High Commissioner. Naturally this advice and attitude of Respondents surprised and embarrassed Dr. Oliphant. He naturally sought his lawyer's advice.

7.4 On 16 April 2018 Dr. Oliphant's lawyers wrote to Respondents lawyer (Attorney General) and protested the actions of First and Second Respondents demanding rectification of those actions. No

rectification came from Respondents. On 16 April 2018 Dr. Oliphant did not go to Heathrow to receive the Prime Minister to avoid embarrassment. Also, Dr. Oliphant did not attend the Commonwealth Head of Government meeting which he would have ordinarily done if it had not been for the actions and attitude of Respondents.

- 7.5 On 19th April 2018 First and Second Respondents visited the High Commission offices in London. Dr. Oliphant was in the office. First and Second Respondents elected to meet with rest of staff of the Mission excluding Dr. Oliphant. Later First and Second Respondents met with Dr. Oliphant in the Mission's Board Room where only three of them were in attendance. In that meeting the Minister (Second Respondent) informed Dr. Oliphant that he had advised Mr. Boris Johnson (United Kingdom's Secretary for Foreign Affairs) that Lesotho Government had revoked his status as a Diplomat representing Lesotho in the United Kingdom. Second Respondent also informed Dr. Oliphant that he would soon revoke his passport adding that everything of and concerning Dr. Oliphant accreditation would cease on 5th May 2018. Following this meeting and the Minister's advice Dr. Oliphant decided to pack his belongs and return to Lesotho rather than be stranded in London. He returned to Lesotho to pursue his rights. Dr. Oliphant came back to Lesotho on account of First and Second Respondents coercion and threats of rendering his continued stay without purpose and protection in London.

8.1 Respondent had an obligation to respect and maintain the status quo ante of Dr. Oliphant pursuant to this Court's Order dated 26th March 2018 until determination of the merits of Applicant's main application. Respondents wilfully breached that Order.

8.2 Accordingly I find that attitude and actions of Respondents as narrated above were in flagrant defiance of this Court's Orders of 26th March 2018. I grant Dr. Oliphant attorney and client costs against Respondents.

[9] **MERITS ON MAIN APPLICATION**

When the merits of the main application were heard by the Court, both Applicants had returned to Lesotho under coercion. In the case of Mr. Maope his card giving him access to the UN premises had been cancelled at the instance of the Respondents. He had also learned of the decision to terminate the lease of his residence in New York. These facts are not denied. Similarly, Dr. Oliphant had been told to his face by First and Second Respondents in the High Commission's Board Room that his passport was being withdrawn and that the British Foreign Secretary had been advised that his diplomatic status in London had been withdrawn. He had already been warned by First Respondent that he was not welcome to receive the Prime Minister on 16th April nor to attend the Commonwealth Heads of Government Meeting in London, as he would have ordinarily done, from 16 – 18 April 2018. Oliphant did not attend the two engagements as warned to avoid being humiliated and embarrassed by Respondents. In the circumstances too he was coerced by Respondents to return home before determination of the merits of this case as explained above.

[10] On 11th June 2018 full arguments were addressed to the court by counsel of the Applicants and Respondents. Mr. Mohau argued the case of the merits of Application while Mr. Rasekoai argued the position of Respondents on the merits.

[11] Mr. Mohau commenced his arguments on the merits of the Applicant's case by defining what the issues for determination of the Court were from Applicants' stand point. He submitted that the issues for determination were as follows:

(a) Were Applicants entitled to a hearing before their appointments were terminated or were their appointments terminable merely on notice as contended for the Respondents?

(b) If Applicants were entitled to a hearing were they in fact given a hearing before their appointments were purportedly terminated by Respondents?

(c) If Applicants were dismissible merely on notice were they in fact given such notice?

(d) In terminating appointments did Respondents act rationally without malice?

(e) Were appointments of Ms. Monoko (in New York) and Mrs. Majoro (in London) as Heads of respective Missions rational in the circumstances?

[12] **FACTS**

As to what transpired the facts are largely not in dispute and in many respects they are common cause. They are also contained in my outline of facts in relation to the contempt application.

12.1 **MR. MAOPE**

Mr. Maope, at the relevant time to our inquiry here, was serving his second tour of duty in New York. Mr. Maope's second tour of duty commenced on 5th July 2016 and was to end on 5th July 2019. See Record page 15 – 16: Annexure KA₁. On 19th February, First Respondent addressed a letter (Annexure KA₂) to Mr. Maope instructing him to travel to Rome to meet with First and Second Respondent at a specified location in Rome, Italy. It is common cause that Mr. Maope did as directed. It is also common cause that the meeting in Rome between Mr. Maope and First and Second Respondents in fact took place on 28th February 2016. It is common cause that the decision to terminate Mr. Maope's appointment was taken by cabinet in Maseru prior to the Minister's departure for Rome on 27/2/2018.

12.2 **DR. OLIPHANT**

Dr. Oliphant was appointed as High Commissioner to the United Kingdom in London on 15th May 2017 for a term of 36 months ending 15 May 2020. See Record page 52.

Similarly it is common cause on the pleaded facts that the decision of the Cabinet terminating Dr. Oliphant's appointment as High Commissioner was taken by Cabinet in Maseru and advised to the King prior to the departure of the Minister and his Principal Secretary prior to their departure to Rome on 27 February 2018 to advice both Dr. Oliphant and Mr. Maope (and others who are not relevant to our inquiry here) and to work out the modalities of their return home with them.

12.3 In other words the purpose of the trip of First and Second Respondents to Rome was to convey the decision of the Cabinet of Respondents that their appointments had been terminated and the King had been advised accordingly.

According to Respondents theirs was an invocation of a term of contract and it placed no obligation on them to give Respondents a hearing. Theirs was an executive decision that is not reviewable by Courts of law.

[13] **THE LAW: NATURE OF POSITION OF AMBASSADOR/HIGH COMMISSIONER: DOES AUDI ALTERAM PARTEM RULE APPLY TO THEM**

13.1 There are some sharp differences between Mr. Mohau and Mr. Rasekoai regarding the nature of the office of Ambassador/High Commissioner. Mr. Mohau contends that the Applicants are public officers serving Lesotho as such against public office positions established in terms of the Constitution and the Public Service Act. Applicants cite **Annexures KA1 and J1** as prove of this contention. *Annexures KA1 and J1* are titled “**Agreements for Contract Officers Employment on Local Terms.**” At clause 2 of these contracts it is made clear that Applicants are contracted in terms of the **Public Service Act, 2005** and the **Regulations** made thereunder as well as **Standing Orders of Government** for the time being in force. Clause 8 stipulates that Applicants annual leave is determined as provided for in the **Public Service Regulations**. So their terms and conditions of service are primarily governed by the **Public Service Act and Regulations**. He relies on the decision of Court of Appeal in **Minister of Foreign Affairs and others vs Bothata**

Tsikoane and others as well as the decision of Court of Appeal in **Koatsa vs NUL (1985-89) LAC 335**. Mr. Rasekoai on the other hand contends that Applicants' positions are political appointees who occupy their offices in terms of "deployment contracts". He relies for this proposition on the decision of my brother Mokhesi AJ in **Lebohang Ntšinyi and others vs the Minister of Foreign Affairs and others CIV/APN/ 92/2018** (unreported) which held that Ambassadors are key levers of executive control of its foreign policy. In contrast Mr. Mohau contends that the Applicants are engaged in terms of "a contract of employment" by the Public Service of Lesotho. I proceed to examine this important issue below.

13.2 Positions occupied by Applicants are established by **Section 143 of the Constitution**. **Section 143** is one of the Sections of the Constitution that fall under Chapter XIII titled "**The Public Service**."

"43 (1) the power to appoint persons to hold or act in offices to which this section applies and to remove from office persons holding or acting in such offices shall vest in the King acting in accordance with the advice of the Prime Minister.

(2) Before tendering advice for the purposes of this Section in relation to any person who holds any office in the Public Service other than an office to which this Section applies, the Prime Minister shall consult the Public Service Commission.

(3) The offices to which this section applies are the offices of Ambassador, High Commissioner or other principal representatives of Lesotho in any other country."

In my view both offices (Ambassador/High Commissioner) are offices in the Public Service of Lesotho similarly to any others. **Section 154(1) of Lesotho Constitution 1993** defines **public office** as "*any office of emolument in the public service.*" It further defines

“public service” as, “subject to the provisions of this section, the service of the King in respect of the government of Lesotho.”

“**Public officer**” is defined as “*a person holding or acting in any public office.*”

The exclusions referred to in the definition of public service are contained in sub-section 4 and are specified therein as follows:

- (a) *References to the office of King, the Regent, the President or Speaker of Vice President or Deputy Speaker of either House of Parliament, the Prime Minister or any other Minister, an Assistant Minister or a Member of either House of Parliament: or*
- (b) *To the offices of a Member of the Public Service Commission or the Judicial Service Commission, a Member of the Council of State, a Chief or a Member of College of Chiefs: or*
- (c) *References to the office of a Member of any other council, board, panel, committee or other similar body whether incorporated or not established by or under any law.*

It will be seen from the above that the positions of Ambassador/High Commissioner are not included in the exceptions mentioned in **Section 154(4) of the Constitution**. In my view they remain public offices occupied by public officers. That being the case persons occupying these offices are entitled to the application of *audi alteram partem rule* and are entitled to be heard before their contracts of employment are terminated. See the case of **Koatsa vs NUL (1985-89) LAC 335: Matebesi vs Director of Immigration and other (1995-1999) LAC 616**. I do not accept that the positions of Ambassador/High Commissioner are political appointments akin to positions of Minister who are engaged and disengaged at the will of the executive arm of government without any need to give them a hearing or furnish them with any reason for termination of their

contracts. Ambassadors/High Commissioners as public officers in terms of the Constitution are entitled to be heard and treated fairly and reasonably when their contracts of engagement are terminated by Respondents. I accordingly prefer to follow the decision in **Minister of Foreign Affairs vs Bothata Tsikoane** which held that *audi alterim partem* rule applied to the dismissal of a public servant. In my view it is always the duty of those vested with power to dismiss to act rationally, fairly and reasonably in exercising that power. In that way our democracy will better serve the people of Lesotho if government at all times acts constitutionally and in accordance with the rule of law. In my view the Applicants were not afforded a hearing before being dismissed from the posts as Ambassador/High Commissioner.

[14] **RELIEF SOUGHT BY APPLICANTS**

14.1 In the main the relief sought by Applicants were as follows:-

14.1.1 Interdicting respondents from implementing the decision to recall the Applicants from their posts as (in the case of Mr. Maope) Ambassador and Permanent Representative of Lesotho to the United Nations and (in the case of Dr. Oliphant) as Lesotho High Commissioner to the United Kingdom.

14.1.2 Interdicting the respondents from appointing another Ambassador to United Nations (in the case of Mr. Maope) or appointing another High Commissioner in the case of Dr. Oliphant pending the outcome of this application.

14.1.3 Restoring the status quo ante at the Lesotho Embassy and Mission to the United Nations in New York (in the case of Mr. Maope) and at the Lesotho High Commission to the United Kingdom in London in the case of Dr. Oliphant before the dispatch of the Letter of Recall dated 5th March 2018 pending this application.

14.1.4 The Rule Nisi be issued and be made determined by this Honourable Court calling upon Respondents to show cause, if any, why:-

- (a) The decision to recall Applicants from their respective posts as Ambassador to United Nations in New York in the case of Mr. Maope, and Lesotho High Commissioner to the United Kingdom in London in the case of Dr. Oliphant, shall not be reviewed, corrected and set aside.*
- (b) The decision of Respondents to appoint Chargè d' affaires to discharge the functions and duties of Ambassador of London while the Applicants remains respectively at their posts shall not be reviewed, corrected and set aside.*
- (c) Respondent shall not be directed to communicate respectively, with United Nations in the case of Mr. Maope and with the United Kingdom, in the case of Oliphant, and notify them of them of the reversal of the decision to recall them.*
- (d) Respondents shall not be directed to pay costs of Applicants on attorney and client scale*
- (e) Further and/or alternative relief as the Court deems fit.*
- (f) In prayers 1, 2, 3, 4 and 5 shall operate with immediate effect as interim orders of Court.*

[15] **FACTS THAT ARE COMMON CAUSE BETWEEN PARTIES IN THE DISPUTE**

- 15.1 First Applicant was on his second and last term of duty as Ambassador and Permanent Representative of the Kingdom of Lesotho to the United Nations based in New York when the Letter of Recall dated 5th March 2018 was addressed to him.
- 15.2 Second Applicant was on his first term of tour of duty as Lesotho's High Commissioner to United Kingdom of Great Britain based in London when Respondents addressed to him a Letter of Recall dated 5th March 2018.
- 15.3 The two Applicants were required to immediately wind up the their affairs at their duty stations and were required to report at the headquarters of the Ministry of Foreign Affairs in Maseru, Lesotho on 5th May 2018.
- 15.4 That on receipt of their Letter of Recall dated 5th March 2018 their immediate juniors were appointed Chargè d' Affairs and assumed the reigns of their respective Missions in New York and London until arrival of new appointees.
- 15.5 The Applicants would each be paid cash in lieu of notice for one month.
- 15.6 On conclusion of the recall Applicants would be paid terminal benefits due in terms of their contracts **including but not limited to salary for the remaining term of their contracts.**

[16] ROME MEETING OF 28 FEBRUARY 2018

The litigation was triggered by the Letters of Recall dated 5th March 2018 following the meeting between Applicants and First and Second Respondents on 28th February 2018. At the Rome meeting Applicants were informed that the new Government in Lesotho was desirous of appointing its own people to positions held by Applicants. They were told that the Cabinet of the Government of Lesotho had taken a decision to recall the Applicants and that in pursuance of that decision the Prime Minister had advised His Majesty the King of the Cabinet's decision. The purpose of the trip to Rome and the meeting with Applicants on 28th February 2018 was to convey that decision of Cabinet and to discuss with the Applicants the modalities of implementing that decision.

[17] NATURE OF ROME MEETING

17.1 APPLICANTS CHARACTERISATION OF ROME MEETING

Applicants characterise the Rome meeting as one where First and Second Respondents were sent by Cabinet of Respondents to convey to them its decision already taken in Maseru to recall them from their posts. Applicants contend that the meeting was not intended by Respondents to be a Hearing preceding a decision to be made by Cabinet of Government of Lesotho. It was a meeting to discuss with Applicants modalities of implementation of that decision (which had already been made) in the most painless manner. But the decision itself had already been made in Maseru before the departure of First and Second Respondents to Rome, so contend the Applicants. The Rome Meeting did not pass the test of "Hearing" in law, however one looks at it, so went the argument.

17.2 RESPONDENTS CHARACTERISATION OF ROME MEETING

Respondents characterise the nature of the Rome Meeting in two irreconcilable ways at the same time. Firstly, they say it was a hearing before a final decision was made. See Paragraph 5.1 in Mr. Monyane's Answer. In argument before me Mr. Rasekoai for Respondents cited the situation of Ambassador Mahase-Moiloa that following her representations concerning the school term of her daughter she was granted more time than was initially contemplated by Government to wrap up her affairs in Brussels.

17.3 But, in my view these facts only go to confirm what Applicants say in their Founding Affidavits that the purpose of the parties' meeting in Rome was for First and Second Respondents to convey to them a decision already made in Maseru by the Cabinet to recall them which decision had also been advised to His Majesty and accepted. Its second purpose as demonstrated by the case of Ambassador Mahase-Moiloa was to discuss with affected parties, the modalities of implementation that decision in the least painful manner to them. It was not for Applicants to make out a case why their recall should be made. In other words the issue of recall of Applicants was not merely in the contemplation of Respondents subject to being made final or abandoned depending on representations to be made by Applicants. It was already done in Maseru before Respondents left Maseru for Rome. In my opinion this argument of Respondents is not tenable in law.

17.4 The second argument vigorously made to me by Respondents is that the termination of Applicants appointments is a purely contractual matter grounded only in the *"invocation of the terms of the contract"*

as provided for under the contract.” See Paragraph 2 of Mr. Monyane’s Answer. In Paragraph 5.2 of Mr. Monyane’s Answer he asserts that he disputes the suggestion of First Applicant that his relationship with Lesotho Government is one of “**Employment Contract.**” Mr. Monyane ventures to suggest that it is what he terms “**deployment contract.**” He insists that the relevant termination clause of that relationship between the parties permits unilateral termination by either one of the contracting parties. That line of thought is repeated by Second Respondent in his Answer in Paragraph 11.2 and 13.2. It is again repeated by the Third Respondent in his Answer where he seeks to equate the appointment of Ambassadors with appointments of Ministers of State.

- 17.5 But the reality of the pleadings and annexure relied upon in those proceedings indicate that Applicants are in fact civil servants appointed on local contract terms pursuant to the Public Service Act and Regulations. They are appointed on contract of employment terms for a specified period. Their terms and conditions of service are governed in respects pertaining to terms and conditions of service and contained in **Chapter VIII of Public Service Regulations.** In my opinion an employee on contract (written or not) cannot be terminated unilaterally and irrationally without affording him/her a hearing. An employer cannot pretend that he has given an employee a hearing if he has not advised that employee ahead of that hearing what wrong he has committed or what informs that thought of terminating his/her employment. The reason for this is to afford such employee meaningful opportunity to prepare himself/herself to answer the employer’s complaint or if it is a question of scaling down of the employer’s operations what

informed the employers decision to pick on that position occupied by the employee. In *casu* nowhere in the Contract of Employment engaging these Applicants is there any reference to “**contract of deployment**” as alluded to by Respondents in their Answer. In this case the Applicants were not only employees of Respondents but more importantly they were public officers in terms of the Constitution and within the meaning of Public Service Act. Their employer is Lesotho Government, a public entity supported from public funds. In these circumstances the Respondents were duty bound in law to give Applicants a hearing before deciding to terminate their employment. Respondents did not do so.

[18]

18.1 I have already set out above the relief sought by Applicants. In essence Applicant pray that I order that they return to their duty stations in New York and London respectively. The attitude of Applicants is that they were coerced, despite the Court’s Interim Order dated 26 March 2018, to hurriedly pack their belongs and return home as a result of the contemptuous response/conduct of Respondents to that Order. They packed belongings and came home in order to avoid being stranded in foreign lands in the face of Respondent’s wilful disobedience of the Court Order dated 26th March 2018.

18.2 During oral argument to the Court on the merits on 11th June 2018 I drew Mr. Mohau, Mr. Rasekoai to **Paragraph 2.5 of First Respondents Answer** (echoed) by other Respondents, where they say:

“As an indication of the benevolence and good faith of Government of Lesotho, the invocation of the Government of Lesotho, the invocation of the relevant clause was not applied in the strict sense because all the mentioned diplomats are to be paid terminal benefits due in terms of their contract including but not limited to salary for the remaining terms of their contract.” [Record page 68]

I asked them to tell me whether it would make any practical sense to grant prayer 6(a) (b) and (c) in their totality given that the Respondents have made this commitment on oath to the Court. Mr. Mohau’s response was like Mr. Shylock’s demand for his full pound of flesh. Mr. Mohau demanded that the Applicants must be returned to their posts in New York and London respectively despite the costs involved and the embarrassment of the manner in which this matter was handled by Government of Lesotho. Mr. Rasekoai stood by what they offered in terms of their pleading in their Answer. Mr. Rasekoai argued that Applicants have come home and that they would be paid their full compensation for the value of their country to their end.

[19] CONCLUSION ON PRAYERS SOUGHT

In the light of Respondents’ Answer aforesaid and confirmed to me in oral arguments on 11th June 2018 I declined to grant prayer 6(a) (b) and (c) in *toto* but ordered that Respondents pay Applicants the value of their contracts and all their terminal benefits in terms of their contracts to the end of those Contracts within a period of 60 days from the date of my Order.

[20] FINAL COURT ORDERS IN RELATION TO MAOPE

The following final Court Orders are hereby made in respect of Mr. Maope:

On Contempt

1. Respondents are guilty of blatant and wilful contempt of court order issued on 23rd March 2018
2. Applicant is granted costs against Respondents on Attorney and client scale.

On main application

1. In view of the forced permanent return to Lesotho of Applicant as a result of Respondents' contempt of the court's order dated 23rd March 2018 and the position of Respondents that they offer Applicant payment of benefits including his salaries for the remaining term of his contract no practical purpose would be served by granting Applicant prayers (6 (a), (b) and (c)) of the notice of motion. Instead the court orders that the Respondents pay Applicant his terminal benefits including but not limited to salary for the remaining term of his contract by no later than sixty days from today's date.
2. Respondents are ordered to pay Applicant's costs of suit.

[21] FINAL COURT ORDERS IN RELATION TO DR. OLIPHANT

The following final Court Orders are hereby made in respect of Dr. Oliphant:

On contempt

1. Respondents are guilty of blatant and wilful contempt of court order issued on 23rd March 2018
2. Applicant is granted costs against Respondents on Attorney and client scale.

On main application

1. In view of the forced permanent return to Lesotho of Applicant as a result of Respondents' contempt of the court's order dated 23rd March 2018 and the position of Respondents that they offer Applicant payment of benefits including his salaries for the remaining term of his contract no practical purpose would be served by granting Applicant prayers (6 (a), (b) and (c))

of the notice of motion. Instead the court orders that the Respondents pay Applicant his terminal benefits including but not limited to salary for the remaining term of his contract by no later than sixty days from today's date.

2. Respondents are ordered to pay Applicant's costs of suit.

J. T. M. MOILOA
JUDGE

FOR APPLICANTS:

ADV. K. MOHAU KC
(Instructed by G. G. Nthethe & Co.)

FOR RESPONDENTS:

ADV. M. RASEKOAI
ADV. K. NDEBELE
(Instructed by Attorney General's Chambers)