IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/93/2018

In the matter between:

NTABA RAMPHIELO	**1st Applicant**
TUMELO KONTATE	**2nd Applicant**
PUSETSO MOTABA	**3rd Applicant**
MAKAMOHELO BERENG-NKONGOANE	**4th Applicant**
RALIKOMO MOKOALELI	**5th Applicant**
KHOSI KALAILA	**6th Applicant**
RETHABILE MAKATENG	**7th Applicant**
LEFA MATSOELE	**8th Applicant**
MASECHABA TEMEKI	**9th Applicant**
KHAUTA RAPONE	**10th Applicant**
MAKHELE JANE	**11th Applicant**
NKHETHUOA MOSHABE	**12th Applicant**
MABATHO CHONELANGA	**13th Applicant**
SEFALI SEFALI	**14th Applicant**
MAREABETSOE MOFOKA	**15th Applicant**
MATHOLANG SEHAU	**16th Applicant**
SEQABA MOHLOBOLI	**17th Applicant**
RORISANG MAFETHE	**18th Applicant**
THATO CHABALALA	**19th Applicant**
KEKETSO KALI	**20th Applicant**
THABANG MOLELEKOA	**21st Applicant**
MOLOMO MOHALE	**22nd Applicant**
REFILOE NTOI	**23rd Applicant**
NTOLO MOHALE	**24th Applicant**
TSOLO SEKHOTLA	**25th Applicant**
LERATO TOLOFI	**26th Applicant**
KHETSI MATOOANE	**27th Applicant**
MOKHOEBI LEHLOENYA	**28th Applicant**
LILLO SEHLOHO	**29th Applicant**
KHAUHELO PHATELA	**30th Applicant**
MOLEFI SENYANE	**31st Applicant**
THEBE HLAO	**32nd Applicant**
THABANG SETENANE	**33rd Applicant**
MOSHOESHOE TSITA	**34th Applicant**
THABISO SEFALANE	**35th Applicant**

ALEXIS TLALANE **36th Applicant**
TSEPO MBOBO **37th Applicant**

And

COMMISSSIONER OF POLICE **1st Respondent**
MINISTER OF POLICE **2nd Respondent**
ATTORNEY GENERAL **3rd Respondent**

JUDGMENT

Coram : Honourable Justice E.F.M Makara
Date of Hearing : 22 May, 2018
Date of Ruling : 8 November, 2018

SUMMARY

Application for a declaratory order – Applicants having been Police Officers who were promoted – 1st Respondent having demoted Applicants without according them an opportunity to be heard – Court having found that demotion is a consequence of disciplinary hearing provided under Section 46 of the Police Act – And further that the *right to be heard* is an indispensable prerequisite principle of law under natural justice before one could be demoted.

Held:

1. the Applicants have proven their case at the requisite standard;
2. The application is grated as prayed in the Notice of Motion;
3. The respondents are ordered to pay the costs of suit consequent upon employment of two counsel

ANNOTATIONS

CITED CASES

1. **Leposa v Commissioner of Police & 46 Others** CIV/ APN/216/2017
2. **Lebohang Setsomi & 35 Others v Acting Commissioner of Police and 2 Others** CIV/ APN/ 216B/2017
3. **Ramots'abe v Rector, Lerotholi Polytechnic** CIV/APN/412/13
4. **Harsken v Lane NO and Others** CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300
5. **Ramohalali v the Commissioner of Correctional Service & Ors**CC/2/2016
6. **Retselisitsoe Khetsi v The Attorney General** CRI/T/0079/2014
7. **Road Accident Fund v Bennet Lefu Makwetlane** www.saflii.org/za/cases/ZASCA/2005/

8. **Mahoana Matlosa v Ministry of Gender and Youth, Sport and Recreation & Others** CIV/APN/153/12
9. **Aaron Jonathan Brooks v The Minister of Safety & Security** Case No. 036/08

STATUTES & SUBSIDIARY LEGISLATION

1. T**he Police Act** No. 7 of 1998

BOOKS & ARTICLES

MAKARA J

Introduction

[1] This case is sequel to an urgent application filed by the applicants on the 20th March, 2018.They therein sought for an order of this court pronounced in these terms:

> 1. A rule nisi be issued returnable on a date and time determinable by this Honourable Court calling upon the respondents to show cause if any, why:
>
> (a) The rules of court on modes and periods of service of process shall not be dispensed with on account of urgency herein.
>
> (b) Pending determination of this application the Commissioner of Police shall not be interdicted from promoting other police officers to the ranks of Lance Sergeant, Sergeant, Sub-Inspector and Inspector pending finalisation of this application.
>
> (c)The court should not determine the filing periods in this matter.
>
> (d) The Commissioner of police shall not be ordered to pay applicants' salaries to the respective ranks of Lance Sergeant, Sergeant, Sub-Inspector and Inspector to which they were promoted.
>
> (e)The Commissioner of Police shall not be interdicted from continuing to withhold salaries to the respective ranks of Lance Sergeant, Sergeant, Sub-Inspector and Inspector to which the applicants were promoted to.

> (f)The decision of the Commissioner of police to refuse, ignore and fail to pay salaries of the respective ranks of Lance Sergeant, Sergeant, Sub-Inspector and Inspector to which the applicants were promoted shall not be declared null and void.
>
> (g) The respondents shall not pay costs of suit consequent upon employment of two counsel.
> (h)That the applicants be granted such further and/or alternative relief.
>
> 2. That prayers 1.1, 1.2 and 1.3 herein should operate with immediate effect.

[2] The respondents vigorously opposed the application and filed counter-affidavits in support of their reaction. Thus, after both sides had filed their applicable papers, the case was scheduled for hearing on the 8th November 2018.

[3] It is, however, worth noting that the Court disclosed to the counsel its *prima facie* apprehension concerning likelihood of the complications which the police service could encounter structurally and financially should the parties fail to amicably resolve the impasse. On that note, it directed the counsel to bring that to the attention of their clients so that they could explore prospects for a thoughtfully considered practical compromise. The understanding was that the 1st Respondent would better appreciate the inherent challenges and then pro actively initiate some discussion towards a constructive solution.

[4] A compromise was seen to be contextually possible especially when the 1st Respondent had already on record undertaken to give the applicants preferential consideration as and when an opportunity for promotions to the ranks of lower officers would

present itself. An underlying narrative was that he was aware of a potentially successful revelation of the unlawfulness of his decision. Otherwise, there would have been no reason for him to have so promised.

Matters of Common Cause

[5] These are characteristically authored by the reality that by and large the parties share a consensus in relation to the material features of the background scenario which has precipitated the matter. These commences from the background that Applicants were promoted to the ranks of Lance Sergeant, Sergeant, Sub-Inspector and Inspector respectively. This was officially communicated to them through a **Wireless Message Form** authored by predecessor of the incumbent Commissioner dated the 9th June, 2017. Resultantly, they executed duties assigned to the ranks to which they were promoted and commensurately.

[6] Whilst the applicants enjoyed their elevated status and the corresponding benefits, a sudden supervening event likened to a thunder bold struck them. This was occasioned by a letter addressed to them on the 6th July, 2017.The letter bears the heading **RE: LMPS NEWLY PROMOTED OFFICERS' SALARY ABEYANCE.** Its content detailed:

> Reference is made to LMPS Memo **CP/C/STF/9**dated **04/06/17** and **CPHQ/R/6/** dated **09/06/17**.
>
> I have been directed by the Commissioner of Police to herewith inform you, as I hereby do that on the 30th June, 2017, the office of the Commissioner has taken a decision to hold in abeyance salaries of all Police Officers who have been promoted as per the above cited Memos. Please note that this Memo does not **per se** cancel the said promotions. Further note that some of the promotees lodged a civil

claim per **CIV/APN/216B/2017** which was moved before the High Court of Lesotho on the 4th July, 2017. The said case will be heard on the 7th August, 2017 together with the case that was lodged by LEPOSA per **CIV/APN/216/2017.**

Therefore, the final decision of those cases will determine the validity of the promotions and the benefits incidental thereto. As such you are requested to inform the consent officers accordingly.
Best regards,

_____
INSP M.A. MACHELA
Cc: SACPs, ACPs, REGIPOLs & DT
RESTRICTED

[7] Consequently, by operation of the correspondence the promotions of the Applicants were terminated. In response to a confrontation by the Applicants over the decision, the 1st Respondent explained that actually their elevations were placed in abeyance pending finalization of the cases of **Leposa v Commissioner of Police & 46 Others**[1]and **Lebohang Setsomi & 35 Others v Acting Commissioner of Police and 2 Others**[2]**.** However, at the end, they reverted to their original ranks and salaries which they were paid prior to the demotions. The information communicated to them was that the decision was temporary since it was dependable upon a finalization of the cases. These cases are of paramount significance in *casu*. In the former case, Leposa[3] had brought an application challenging promotions of 44 police officers. This was during the commissionership of the predecessor of the incumbent Commissioner who is the 1st Respondent in these proceedings.

[8] Intriguingly, after the 1st Respondent assumed office, he withdrew the opposition and the answering affidavits filed in this

[1] CIV/ APN/216/2017
[2]CIV/ APN/ 216B/2017
[3]A Lesotho Police Staff Association registered in terms of section 66 (3) of Police Service Act No. 7 of 1998

Court by his predecessor and thereby tacitly supporting both cases brought by Leposa. In the main Leposa had asked this court to make an order calling upon the Respondents to show cause (if any) why:

> 1. .....
>
> 2. (a) The forty four (44) promotions announced on the 4th day of June, 2017 on behalf of the 1st Respondent shall not be stayed pending finalisation of this application;
>
> (b) The forty four (44) promotions announced on the 4th day of June, 2017 shall not be declared null, void and of no effect in law for violating provisions of section 8((1) of the Lesotho Mounted Police Service Act No. 7 of 1998;
>
> (c) The forty four (44) promotions announced on the 4th day of June, 2017 shall not be declared null, void and of no legal force for violating provisions of Regulation 7 (1) (2) and (3) 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 an interim court orders.

[9] Interestingly, the Respondents have conceded that Applicants were not given a hearing before it was decided that they revert to the respective lower ranks. The same applies to the charge advanced by the Applicants that in the mean while **there are police officers who are being promoted to senior ranks and to the lower ranks of Lance Sergeant, Sergeant, Sub-Inspector and Inspector.**

[10] The relevancy of **Lebohang Setsomi & 35 Others v Acting Commissioner of Police and 2 Others**[4] is according to the Respondents that it would be wise to firstly wait for the judicial ascertainment

[4] CIV/APN/216B/2017

of promotions to senior ranks since the currently contested would be dependable upon that determination. A fear expressed was that otherwise, there could be excess multiplication of ranks which shall not have been budgeted for.

Issues for Determination

[11] It consequently transpires that the issues centre exclusively on the questions of law. The primary one is whether or otherwise, the 1st Respondent had acted lawfully by deciding that the promotions of the Applicants be suspended upon the grounds he advanced. A complementary one concerns the *bona fides* exhibited by the 1st Respondent on his undertaking to accord the Applicants preferential consideration for promotions should there be vacancies in the lower stratum of the police.

Arguments Advanced

[12] A foundation of the case of the applicants is that the 1st Respondent had throughout acted unlawfully by demoting them. Their first ground hereof is that because he violated their procedural rights as human beings by deciding to do so without having afforded each of them a hearing and thereby allowing them to make counter representations. Secondly, his *bona fides* are evidentially questionable. To attest to that, they have drawn to the attention of the Court that though the 1st Respondent has pleaded lack of funds to sustain their salaries, he has continued to promote other police officers to the ranks to which they were promoted and thereby unfairly discriminating against them. They maintained that the promotions of the other police officers to the same ranks

contradict the undertaking of the 1st Respondent to accord them first preference whenever opportunity avails itself.

[13] On the other hand, the Respondents counter-argued that the decision to demote the applicants was contextually legally justifiable. They sought to illustrate the point by explaining that had the *status quo* been maintained, there would be a duplication of the ranks under consideration. So, it would be practically impossible to secure funding for the salaries. An underlying narrative was that this would have created organisational and financial chaos.

Decision

[14]The *impri matur* of this case is the memo that the 1st Respondent addressed to the Applicants regarding the suspension of their promotion and the applicable incidents. It logically obliges the court to primarily interpret its meaning and effect. The Court realizes that it is couched in circumspective terms in that it refrains from pronouncedly stating that its addressees were demoted. Instead, it says that their promotions are suspended *pedente lite*. This notwithstanding, the Court adopts a contextual interpretation that the correspondence effectively demoted the Applicants. The promotion of the other officers to the ranks to which they were promoted, bears testimony to that. The same applies to the admitted fact that hitherto the status *quo* still obtains.

[15] The Court fully recognises the organisational and financial related challenges which the organisation may have encountered had the 1st Respondent not reversed the promotions. This notwithstanding, it remained indispensable for him to have realized that after the Applicants were promoted, they automatically acquired rights, privileges and incidental legitimate expectations. Thus, he ought to have realized that in considering their demotion for whatever reason, he was acting *quasi judicial* and, therefore, by operation of the law, should have invited each of them to make a counter representation.

[16] The *quasi judicial* dimension is introduced by a mere fact that the 1st Respondent ought to have realized that the demotion adversely impacts upon the rights of the Applicants status wise and financially. Our case law is instructively clear that in such circumstances anyone in the position of the Applicants acquires aright to have been accorded a hearing before any such decision could be considered. This is attributable to a possibility that the Applicants could have cooperated with the 1st Respondent in mutually finding immediate to a long term solution in recognition of whichever complications identified and discussed. Such a possibility rhymes well with a Sesotho wisdom that *pharela ha e eo banneng* which could be translated to mean that men always find some solution to a problem.

[17] It for ages been acknowledged that the procedural requirement under consideration originates from the judicial teachings in the Holy Bible. God the Almighty exemplified this in

the Garden of Eden where despite His unlimited knowledge, He, nonetheless, enquired from Adam where he was and why he was hiding himself. It was only after Adam gave his explanation that God pronounced punishment over him and the rest of mankind[5]. He similarly observed the same procedure before sentencing Cain who had killed his brother Abel[6].

[18] Case law has bears testimony of the entrenchment of the right of any person to be heard before any decision which could negatively affect ones status, remuneration and legitimate interest could be made. The sacrosanct principle has for decades been acknowledged in many decisions throughout the free world. It has its roots in Canon law[7]. Later, over the ages it transcended into administrative and constitutional law. Lately, it penetrated into the law of contract as demonstrated in **Ramots'abe v Rector, Lerotholi Polytechnic[8]**that**:**

> It would appear from the case law literature that the *Natural Law principles* transcend across all the provinces of the law. This is indicative that generally its application is not restricted to any particular law governing the human relationship with others. Instead, the main law that sustains the different associations demonstratively interfaces with the other incidental laws. There are incidences where the Constitution, the Law on the Interpretation of Statutes, Customary Law, and Administrative Law etc automatically apply to the relationships. The Natural Law rights may depending on the circumstance of each case such as the present one, have to be readable into the contract between the parties. This leads to the Court's resolute conclusion that the submission tendered by the Counsel for the respondent that the matter should be exclusively resolved through the application of the principles of the Law of Contract; to be misplaced.

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[5]Genesis3:9 - 19
[6]Genesis 4:9 - 13
[7]Canon 1720 of Code of Canon Laws on Trials
[8](CIV/APN/412/13) para 48

[19] The 1st Respondent has not, in any manner whatsoever, contested a deposition by the Applicants that his subsequent action contradicted his original undertaking to preferentially consider them to the junior ranks as and when the opportunity presents itself. To illustrate the point, reference was made to another undeniable development that as they were desperately looking forward to be progressively elevated to the said ranks, he had the audacity to unilaterally gradually promote some of their colleagues to the same ranks.

[20] The contextual interpretation which the Court assigns to the promise made to the Applicants by the 1st Respondent is that in the absence of any credible explanation to the contrary, this is indicative that he acknowledged the unlawfulness of his decision. If he maintained, otherwise, it would be illogical for him to have made a concession. In the circumstances, the Applicants were justified to have developed a legitimate expectation that their promotions would be reinstated as agreed and scheduled. Moreover, the promotion of others to the offices from which they were unilaterally demoted compromise the *bona fides* of the 1st Respondent in arriving at the decision questionable.

[21] An incidental result of the impugned decision is that it amounts to an analogously discrimination of the Applicants. This is ascribable to the fact that after their demotion, their colleagues with whom they are similarly situated were promoted. Their discriminative treatment is found to be unfair since the

Respondents have not justified it to demonstrate that it is nevertheless, the one countenanced by a democratic Constitution.

[22] It should be highlighted that whilst the Applicants should by virtue of their *dominis litis* status, prove their case on the balance of probabilities, the 1st Respondent bears a burden to justify the constitutional fairness of the discrimination. It has become a trite constitutional principle that this should be approached within the context of a democratic constitution founded upon its dedication to protect and advance the three pillars of such a constitution. These are *equality, freedom* and *human dignity*[9].

[23] The underlying narrative is that the 1st Respondent should in the scenario have demonstrated that the limitation of anyone of the key features was constitutionally justified, bears both a rationale and proportional measure to a desired legitimate objective.

[24] In our mist, the jurisprudence on discrimination was comprehensively articulated in **Harsken v Lane NO and Others**[10]**.** In that case, a four levelled diagnostic enquiry to resolve the constitutionality or otherwise of discrimination was initiated. The methodology was thereafter followed in South Africa. In this jurisdiction it was *inter alia* relied upon in **Ramohalali v the Commissioner of Correctional Service & Ors**[11] and **Retselisitsoe Khetsi**

[9]Thabo Fuma v The Commander LDF and Others para 44
[10](CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 para 53
[11]CC/2/2016 PARA 28

v The Attorney General[12]. There this Court had to determine the constitutionality of a discriminatory treatment of the Applicant who in comparison to his colleagues who held LLB degree had for years not been promoted and remunerated at a higher scale. The approach culminated in the decision that the discrimination was constitutionally unfair.

[25] Aside from the constitutional jurisprudence traversed, it emerges that the 1st Respondent committed a fatal omission by having failed to observe the right of Applicants to the *audi altram partem rule* of natural justice. This should have been realized before considering their demotion. It appears that it also fatally escaped his wisdom that **demotion** is specifically circumscribed under Section 46 of the Police Act[13] which provides:

> Subject to any provision in regulations made under section 84 (2) (c), a Board appointed under section 44 shall, on conviction, recommend to the Commissioner, one or more of the following punishments:
>
> (a) Reprimand;
> (b) Severe reprimand;
> (c) Fine not exceeding 21 days pay;
> (d) Reduction in rank; or
> (e) Dismissal.
>
> On receipt of the recommendation by the Board, the Commissioner may accept, vary or reject the recommendation and shall inform the police officer concerned of his decision and of any punishment he imposes.

[26] It is clear from the law that a Board before which a police officer is convicted for a transgression of a disciplinary rule could *inter alia* recommend to the 1st Respondent that the officer concerned, be reduced in rank. It would only be thereafter that

[12]CRI/T/0079/2014
[13]No. 7 of 1998

the 1st Respondent could accept, vary or reject the recommendation and imperatively inform the police officer concerned of his decision and of any punishment he imposes. The provision is configured in such a way that the 1st Respondent does not feature as a court of 1st incidence in disciplinary matters. He should patiently wait for a sentence recommended by the Board and then intervene accordingly as empowered in the section.

[27] Unfortunately, in the instant case, the Respondents had never been featured before the Board over any disciplinary charge, convicted them individually and then recommended their demotion. This is a pre requisite for him to have discretionally decided their fate within the parameters of the listed optional sentences including declining to follow the recommendation or vary same. In the final analysis, the 1st Respondent had no disciplinary related jurisdictional facts to have demoted the Applicants. Moreover, he contextually acted *ultra vires* the substantive and procedural requirements of the applicable legislation. This renders his decision void *ab initio.* This position of the law was succinctly stated in **Road Accident Fund v Bennet Lefu Makwetlane**[14] in that:

> Thus what would have been *ultra vires* under the common law by reason of a functionary exceeding a statutory power is invalid by virtue of the doctrine of legality under the Constitution (*Pharmaceutical Mnfrs.* para 50*;* see also *Minister of Correctional Services and Others v Kwakwa and Another* 2002 (4) SA 455 (SCA) para 35*).* The doctrine of legality required of the Minister that he comply with the Constitution as well as act within the parameters of the power conferred upon him by the Act.

[14] www.saflii.org/za/cases/ZASCA/2005/1.rtf para 14

[28] The Court of Appeal decision in **Mahoana Matlosa v Ministry of Gender and Youth, Sport and Recreation & Others**[15] is instructive that where there is an enactment which pertains to how a person could lose status or privilege, the relevant provisions should provide primary guidance. It elaborately cautioned that it constituted misdirection for the Court to have considered other grounds which were not provided for under Section 5 (1) (g) of National Youth Council Act[16] however the reasoning advanced to justify any departure from it. So, in the present case the demotions should have been determined on the basis of Section 46 of the Police Act. This has not been the case. It appears that the Court of Appeal emphasized on the strict adherence to the provisions of the law by avoiding extra considerations uncontemplated therein.

[29] Granted, the demotions could have been occasioned by extra ordinary circumstances as the 1st Respondent has counter argued. Be that as it may, the fact that he continued to promote other officers to the same ranks earlier held by the Applicants seriously contradicts that and as already stated, compromises his *bona fides* in the matter.

[30] In the circumstances of this case, the Court appreciates that a confirmation of the *rule nisi* has a potentiality to introduce a nightmare in the organizational structure of the police, the budget allocated for salaries and allowances. It was precisely in that

[15](CIV/APN/153/12) [2013] LSHC 93 para 14

[16]No. 87 of 2008

perception that this Court found it prudent to postpone writing of the final order to enable them to negotiate towards agreeing on some form of a practical compromise. Both counsel had correspondingly seen wisdom in the proposed avenue. They were accordingly ordered to appraise the Court about the progress made on a specified date. Understandably the Court reserved its right to subsequently consider the final order as it finally did.

[31] Strikingly, on the date scheduled for a reporting of the developments in the negotiations, the Applicants explained that counsel for the Respondents has ultimately advised that her instructions are that she should not in any manner, whatsoever, consider a settlement. On the other side, counsel for the Applicants presented a document which he proposed that it constitutes basis for discussion towards a settlement. It *prima facie* appeared to be a genuine compromise and having some merit. The expectation of the Court was that the 1st Respondent would in the course of the discussion utilize his intricate knowledge of his organization and its financial affairs to initiate some immediate, medium and long term practical solution.

[31] There is currently a regrettable trend for the counsel representing State authorities to persistently refuse settling matters. They, usually attribute that to their instructions against that and maintain the belligerence even in instances where *ex facie* the papers their cases are seriously compromised in both facts and law. It is a bad example to be set by the Government. This protracts litigation and occasions unnecessary costs. Most

disturbingly, it undermines the professionalism and ethics of lawyers. There could have been incredible wisdom in the earliest collaboration between the Respondents and the Applicants. The impression is that the settlement proposed by the Applicants would have facilitated for the achievement of a practically equitious judgment. It would be materially different from the adversarial one premised exclusively upon the prayers in the application and safe costs.

[33] It unfortunately transpires that the decision of the 1st Respondent authored the stalemate. This could have been due to inadvertence occasioned by good faith assessment of the situation on account of the exigencies on the ground. Thus, the Court refrains from adopting a pure armed chair perception. This notwithstanding, justice dictates that whilst it has to recognize the potential complexities to be encountered if the application succeed, it must lay emphasis on the impact that the decision would have on the *rights, privileges* and legitimate expectation of the Applicants. In that approach, the Court would be instrumental in causing the Executive to honour the key vertical obligation of the State to prevent violation of human rights.

[34] This is typical case for the Court to apply a principle that a person or authority should not be allowed to benefit from his wrongful act. This is found to be the exact problem with the 1st Respondent. He is in essence seeking to rely upon his wrongfulness to justify his case. The jurisprudence was elaborately espoused in **Aaron Jonathan Brooks v The Minister of**

Safety & Security[17] and then cited with approval in several subsequent decisions. In that case the Supreme Court of Appeal cautioned:

> It is true that in matters of human behaviour we are told not to judge by results, but in law, when considering whether a contention is well founded, the absurdity of the results ..... is not immaterial. That ..... Brooks could by his own intentional wrongful act create in favour of his dependants a cause of action that would not otherwise exist is ..... preposterous; Indeed ..... that would be a dangerous proposition. After all, it is trite principle that a person should not be allowed to benefit from his/ her wrongful act[18].

[35] The posture of the presented factual and legal scenario, leads to a thesis that the 1st Respondent had wrongfully[19] demoted the Applicants.

[36] The rule is consequently confirmed as prayed safe for prayer 2 (a) which is over run by developments in that:

1. The 1st Respondent is interdicted from demoting the applicants in terms of their status, remuneration and privileges.

2. The 1st Respondent is ordered to pay applicants' salaries to the respective ranks of Lance Sergeant, Sergeant, Sub-Inspector and Inspector to which they were promoted.

3. The 1st Respondent is interdicted from continuing to withhold salaries to the respective ranks of Lance Sergeant, Sergeant, Sub-Inspector and Inspector to which the applicants were promoted to.

4. The decision of 1st Respondent to refuse, ignore and fail to pay salaries of the respective ranks of Lance

[17]Case No. 036/08

[18]*Op cit* para 16

[19]In the technical legal sense this denotes that the decision was unjust, unfair and devoid of legal basis.

Sergeant, Sergeant, Sub-Inspector and Inspector to which the applicants were promoted is declared null and void.

5. The Respondents should pay costs of suit consequent upon employment of two counsel.

E.F.M. MAKARA
JUDGE

For Applicants	**:**	**Adv. Molati** **Assisted by Adv. Chabana instructed M.W. Mukhawana Attorneys**
For Respondents	**:**	**Adv. Lebakeng from Attorney General's Chambers**