IN THE HIGH COURT OF LESOTHO

HELD AT MASERU **CONST.NO.003/2020**

In the matter between

JANE LEKUNYA	**1ST APPLICANT**
SEKOBOTO MOLISE	**2ND APPLICANT**
SERA MPHAFI	**3RD APPLICANT**
LEKHORO RALEBESE	**4TH APPLICANT**
HLOMOHANG MOROKOLE	**5TH APPLICANT**
KATLEHO MABELENG	**6TH APPLICANT**
PALI LETSOISA	**7TH APPLICANT**
LEKHOOA MATLALI	**8TH APPLICANT**
'MALIKA MPHOFE	**9TH APPLICANT**
KETSO KALAKE	**10TH APPLICANT**
'MALEBOHANG JANE	**11TH APPLICANT**
RAPELANG THUOELA	**12TH APPLICANT**
MOLEFI MATSOSO	**13TH APPLICANT**
JOBO SEKAUTU	**14TH APPLICANT**
MOLIBETSANE MAFETHE	**15TH APPLICANT**
KEKETSO MAKHUPANE	**16TH APPLICANT**
AND	
MINISTER OF FOREIGN AFFAIRS &	
INTERNATIONAL RELATIONS	**1ST RESPONDENT**

MINISTRY OF FINANCE **2ND RESPONDENT**

MINISTRY OF PUBLIC SERVICE **3RD RESPONDENT**

ATTORNEY GENERAL **4TH RESPONDENT**

Neutral Citation: Jane Lekhula & 15 Others v Minister of Foreign Affairs & International Relations & 3 Others CONST.NO.003/2020 [2021] 94

JUDGEMENT

CORAM: BANYANE J

MOAHLOLI J

HEARD: 23/03/2021

DELIVERED: 19/10/2021

Summary

Diplomats based in South Africa - differently salaried from diplomats in other missions-challenge on the differentiation on constitutional grounds - whether approach appropriate where a complaint may adequately be addressed under Administrative Law

Exercise of jurisdiction of the High Court under Section 22 of the Constitution - principles guiding the excise of discretion under this provision restated - Court declines jurisdiction.

ANNOTATIONS

Cases cited:

Lesotho

1. Attorney General v Mahlathe Majara & 40 Others C of A (CIV) 63/2013
2. Matsaseng Ralekoala v Minister of Human Rights and Others CC 03/11
3. Matsoso Ntsihlele v Independent Electoral Commission & Others C of A (CIV) 57/19

4. Lesotho Defence Force v Masokela LAC (2000-2004) 1013
5. Lesotho National General Insurance v Nkuebe LAC (2000-2004) 885
6. Sekhonde v Lesotho National Insurance Corporation LAC (1980-1984) 184
7. Sole v Cullinan NO and Others LAC (2000-2004)572
8. Moshoeshoe Molapo v P.S. Ministry of Communications, Science and Technology & 3 Others C of A (CIV)02/2020
9. Mohau Makamane v Ministry of Communications C of A(CIV) 27/2011
10. Lelimo v Teaching Service Department C of A(CIV) 1 of 2012

Other Jurisdictions

11. S v Mhlungu and Others 1995(3) SA 867
12. Slowmowitz v Vereeniging Town Council 1966(3) SA 317 (A)
13. Mbuyiza v Minister of Police Transkei 1995 (2) SA 362
14. Uniliver Best Foods Robertsons (Pty) Ltd and Others v Soomar and Another 2007 (2) SA 347 (SCA)
15. Barnett and Others v Minister of Land Affairs and Others 2007 (6) SA 313 (SCA).
16. South African Railways & Harbours v Fisher's Estate 1954 (1) SA 337 (A)
17. Motorvoertv-gsddurancie Funds v Gewabe 1979 (1) SA 986 (A).
18. Classen v Bestar [2011] ZASCA 197
19. Minister of Finance v Gore N.O [2006] ZASCA 98
20. Mtokanya v Minister of Police [2017] ZACC 33
21. Attorney General of Trinidad and Tobago v Romanoop [2005] UKPC 15; [2006]1 AC 328

Legislation

1. The Constitution of Lesotho 1993
2. Diplomatic Privileges Act 1969
3. Public Service Regulations of 2008

BANYANE J

Introduction

[1] The applicants are public officers serving in Lesotho diplomatic missions or consulates in South Africa. Salaries, allowances and benefits of officers serving diplomatic missions abroad are governed by the Public Service Regulations of 2008 (which repealed the 1969 Regulations). In terms of these regulations, they are eligible to a manifold of allowances, one of which is the Non-Accountable Foreign Service Allowance which is an aid to enable the officer to maintain themselves and his family in a condition and at a standard in which he will most usefully and conveniently be able to carry out his or her duties as a representative of Lesotho in another country. [see Regulation 1442 of the 1969 Regulations].

[2] They similarly enjoy certain privileges and immunities in terms of Diplomatic Privileges Act of 1969 (schedule 2 of which contains the Vienna Convention on Diplomatic Relations of 1961).

[3] They have approached this court to challenge the differential treatment accorded to officers serving in Lesotho-South Africa missions against those serving in other countries. Their grievance is founded on certain decisions made by the Ministry of Foreign Affairs in November 2006 and October 2019 respectively, whose effect is that; a) they are not similarly salaried with their colleagues based in other missions, and; b) they are denied certain privileges, in particular, duty-free purchases to which they are eligible by virtue of holding posts in the foreign service.

Factual Background

[4] The background facts that gave rise to this litigation are straightforward and undisputed. They are these. It is common cause

between the parties that in June 2006, a directive was issued and addressed by the Principal Secretary for the Ministry of Foreign Affairs to all Lesotho Missions in Foreign Countries to the effect that their salaries and allowances must be converted into their respective local currencies at the bank ruling rates.

[5] In November 2006, another directive (hereinafter referred to as an impugned decision), apparently an addendum or explanatory memorandum to the directive referred to above, was made. It reads [in relevant parts] as follows;

> With regard to the Lesotho – Pretoria mission and all Lesotho consulates in the republic of South Africa, application of the bank ruling rate for conversion should ONLY be confined to foreign services allowances. Only Foreign Service allowances would be converted into their local currency at the bank ruling rates.

[6] On the 30th October 2019, the ministry suspended duty-free purchases in diplomatic shops in relation of Lesotho-SA missions.

The applicants' complaint before this Court

[7] Disgruntled with these two decisions, the applicants approached this Court seeking the following reliefs;

1. The impugned Savingram **FR/FIN/8** of **1st November 2006** be declared as discriminatory against the applicants in that it seeks to afford them unfair deferential treatment to other Lesotho diplomats.
2. The impugned Savingram **FR/FIN/8** of **1st November 2006** be declared irrational to the extent that it seeks to exclude Applicants from the application of Savingram of the **26th June 2006**.
3. Savingram **FR/FIN/9** of **1st November 2006** be declared null and void and of no force and/or effect as it is both irrational and discriminatory against the Applicants.

4. The memo of 30th October 2019 under reference number **LHC/P/STAFF/1** be declared unfair, hence discriminatory for lack of rational connection between the differentiation of the Applicants from their counterparts and the decision to suspend their duty-free purchase.
5. The 2nd Respondents be directed and/or ordered to pay the Applicants' salaries and allowances in converted form at bank ruling rates in accordance with the savingram of **26th June 2006**.
6. The 2nd Respondents be ordered and/or directed to pay the Applicants' salary arrears from **July 2006**.
7. The 1st Respondent be ordered and or directed to reinstate the Applicants' proprietary Duty-Free Purchase allowance forthwith, *omnia ante*.
8. Costs of suit in the event of opposition.
9. Further and/or alternative relief.

[8] The nub of the applicants' complaint is two-pronged. The first, in relation to payment of salaries, is that the impugned decision unfairly accords differential treatment to Pretoria-based officers from those serving in other countries. They aver that other diplomats in all Lesotho Consulates across the globe have their salaries and allowances paid in dollars and converted into their respective local currencies at bank ruling rates. They assert on this basis that the impugned decision is discriminatory.

[9] Furthermore, they impugn the decision on grounds that it is irrational for the reasons that;

a) All other diplomats are paid their salaries in dollars even those whose standards of living are way less than in South Africa.
b) If at all the standard of living in South Africa warrants no conversion of net salaries in Lesotho-South African Consulates,

the 3rd respondent would not convert their subsistence allowances into US Dollars when visiting South Africa.

[10] They aver that despite numerous requests by the erstwhile South African High Commissioner Mr. Moteane and the current Mr. Ntoane, the respondents turned a blind eye to this anomaly. They never addressed the issue until the applicants resorted to this litigation to seek the Court's intervention.

[11] They contend that their salaries and allowances constitute property for purposes of section 17(3) of the Constitution and therefore that the respondents' conduct of affording them lesser salaries due to the fact that they are not paid in dollars is a fragrant violation of their constitutional right from discrimination.

[12] The second prong of their grievance relates to duty-free purchases in diplomatic shops. This privilege was terminated on the 30th October 2019 as stated above. They contend that this decision is also discriminatory, irrational and malicious because;

a) They were not afforded hearing before the decision was made;
b) The reasons advanced for the suspension of this privilege are vague and unsubstantiated.
c) The decision is blanket and punishes even innocent diplomats who have not "misused" this privilege.
d) Termination of the privilege prior to the investigation is tantamount to punishing the applicants before being found guilty by a court of competent jurisdiction.
e) The suspension was used as a means to coerce the applicants to assist the police in an investigation against them by furnishing the respondents with information relating to the duty-free purchases, contrary to the Law that the no one is compelled to give evidence against oneself.

Respondent's case

[13] The respondents oppose this application. In an affidavit deposed to by Mr Lerotholi Theko who describes himself as the Chief Accounting Officer in the Ministry of Foreign Affairs and International Relations, a preliminary issue of prescription is raised on grounds that the applicants' cause of action accrued in 2006 and this application was filed 14 years after its accrual. On this basis, he asserts that the claims pertaining to payment of salaries and allowances must all be dismissed. He did not plead over the merits on the 2006 impugned decision but confined his averments to what he considers a live issue, namely; suspension or termination of duty-free purchases privilege.

[14] He salvages the rationality of the decision to suspend this privilege by stating that it was not only susceptible to abuse, but has in fact been by abused by officers posted in Pretoria. To substantiate abuse allegations, he stated that they received reports form SARS of unjustifiably high alcohol purchases beyond the earning capacities of the officers in question; secondly that a spouse to one of the consular staff was arrested by the SAPS for illicit sale of alcohol, this being one of the many items purchasable in diplomatic shops.

[15] He states that after receipt of this information, the Ministry embarked on an investigation into the alleged misuse. Pending the outcome of the investigations, the ministry deemed it fit, in order to preserve good diplomatic relations between Lesotho and South Africa, to suspend the privilege because the applicants or the mission were not cooperative in furnishing the ministry with the relevant information despite several requests to do so. This left the ministry with no option but to approach the duty-free shops in South Africa for records of individual purchases. He avers that this route is lengthy and

cumbersome, but it is inevitable because investigations into the matter must be carried out.

[16] Justifying the blanket application of the suspension, he avers that regard being had to the amounts involved in the purchases concerned, it is unlikely if not impossible that a single person is responsible, hence the need for thorough investigation into the matter to establish individual purchases, their extent and all. He annexed to his answering affidavit, the salary schedule and the average purchases for the period of 1st March to 30th August 2019 to support this allegation.

[17] He contends that the suspension is not discriminatory nor irrational because it affects diplomats and consular officers based in South Africa, the only mission which has been reported by SARS to have been misusing the privilege, while no similar complaint has been lodged against diplomats in other missions.

The parties' submissions

[18] Advocate Lebakeng argued on behalf of the respondents that in terms of section 6 of the Government Proceedings and Contracts Act 1965, the applicants' claim ought to have been filed within a period of 2 years from the date on which the cause of action accrued, and that the applicant's failure to do so renders their claims in relation to prayers 1, 2, 3, 5 and 6 dismissible by reason that they have prescribed. She relied on **AG v Mahlathe Majara & 40 Others C of A (CIV) 63/2013** to submit that there is no dispute as to when the cause of action arose i.e in 2006

[19] With regard to Suspension of duty-free purchases, the respondents' counsel argues that there exists a good and rational reason for suspending the privilege; this being that, Lesotho, like any state has

the duty to maintain [as the sending state] good relations with the receiving state; which relations, on the facts of this matter, were at a brink of destruction due to indiscipline or the criminal acts committed by the diplomats based in South Africa. Further that the blanket coverage is justified by the SARS records, in terms of which it was revealed that there is a high possibility that every individual named therein had made exorbitant purchases, beyond their earning capacity.

[20] She thus submitted that the differential treatment is therefore justified under section 18 of the Constitution. She referred us to **Matsaseng Ralekoala v Minister of Human Rights and Others CC 03/11** to submit that discrimination is reasonably justifiable in a democratic society where there a pressing or substantial objective for the limitation and the means adopted to limit the right are be proportional.

[21] She contends on the strength of this authority that the requirements for proportionally have been met in this case; namely; a) the means adopted must be rationally connected to the objective; b) there must be minimal impairment of rights; c) there must be proportionally between the infringement and the objective.

[22] In respect of the second claim, it is the respondents' alternative contention that the applicants have adequate means of redress in respect of all reliefs sought. That the applicants' case is solvable by the High Court exercising its ordinary jurisdiction. She submitted on this basis that constitutional approach must only be resorted to where adequate means of redress are unavailable. For this submission, she relied on **Matsoso Ntsihlele v Independent Electoral Commission & Others C of A(CIV) 57/19** and **S v Mhlungu and Others 1995(3) SA 867.**

[23] On prescription, Mr. Sehapi on behalf of the applicants advanced a three-pronged approach to the provisions under scrutiny i.e. the Government Proceedings and Contracts Act of 1965. The first being that the section must be read together with sections 8,9,10,11,12 and 13 of the Prescription Act No.6 of 1861 and for purposes of this case, prescription could not run during the period of applicants' absence in the country. In other words, the cause of action arose while they were absent from this court's jurisdiction. He contends that the point *in limine* ought to fail because the respondents failed to allege and prove that the applicants' claim does not fall under the sections 8,9,10,11,12 &13 exceptions to the running of prescription.

[24] The second relates to the types of causes of action, namely; the causes of action that accrue once and for all and causes of action that recur from time to time as long as the adverse results of an injurious act are suffered by an applicant or plaintiff.

[25] For the differentiation, he referred the court to the cases of **Slowmowitz v Vereeniging Town Council 1966(3) SA 317 (A), Mbuyiza v Minister of Police Transkei 1995 (2) SA 362, Unilever Best Foods Robertson's (Pty) Ltd and Others v Soomar and Another 2007 (2) SA 347 (SCA), Barnett and Others v Minister of Land Affairs and Others 2007 (6) SA 313 (SCA).**

[26] He submitted that the applicants' claim would prescribe if it falls within the "once and for all category" of causes of action; but for the reason that the discrimination or differential treatment of the applicants amounts to a continuing wrong, their claim falls in the second category of causes of action that recur for so long as the

wrongful act persists. In other words, the nature of the cause of action is impervious to prescription.

[27] He contends that all the applicants need to prove is that at the time of institution of the application, they were undergoing discriminatory deprivation of their property. He relies on **South African Railways & Harbours v Fisher's Estate 1954 (1) SA 337 (A)** to buttress his point that prescription finds no application where the wrong is continuing. He submitted that the first date of accrual of a cause of action is immaterial for purposes of this case and that this date would only be relevant where the cause of action is fixable to a particular date and expires upon effluxion of statutory suing time limit.

[28] The third argument is that a litigant's right of access court cannot be clogged by the delay. For this submission, he relies on **Commander of the Lesotho Defence Force v Masokela LAC (2000-2004) 1017**. He argued that the use of the word shall, under section 6 does not necessarily imply that the provision is peremptory, but that it is directory. He also cited the case of **Motorvoertv-gsddurancie Funds v Gewabe 1979 (1) SA 986 (A)** in support.

[29] He submitted further that legislation which deals with a litigant's right of access to court must be strictly construed. For this submission, he referred us to **Sekhonde v Lesotho National Insurance Corporation LAC (1980-1984) 184, Lesotho National General Insurance v Nkuebe LAC (2000- 2004) at 885.**

[30] He submitted that it cannot be the intention of the legislature to oust the jurisdiction of the court to exercise its discretion whether to allow a late claim; that if this was the intention of the legislature for the section under scrutiny, then the section is clearly inconsistent with the constitution and therefore unconstitutional.

[31] He is of the view that this does not necessarily mean the section can wholly be invalidated but that it must be construed in such a manner, with such modifications and adaptations by reading into the section, words permitting exercise of discretion by the court so as to bring the provision into conformity with the constitution. For this submission, he referred us to section 156 (1) of the Constitution.

[32] He added that the court has "Constitutional Common Law inherent powers" to extent a statutory time-limit even in the absence of express provision to do so after the expiry of the prescription period.

[33] He advanced yet another argument on why the defence must fail. He contends that the respondents failed to prove the period each diplomat was posted at the Diplomatic Mission(s) in question so as to count the prescription period immediately from the date of their placement.

[34] According to him, it is a notorious fact, which the court should take judicial notice of, that some of the applicants, Jobo Sekauti, Pali Letsoisa, Sekoboto Molise were deployed at the Pretoria Mission on the 1st September 2019, 2nd April 2019 and February 2019 respectively and clearly their claims cannot be said to have prescribed even before they accrued. He says their cause of action accrued only upon their deployment and not before.

[35] He further submitted that prescription does not run against an applicant who never had knowledge of the date of accrual of his cause of action. For this submission, he cited **Classen v Bestar [2011] ZASCA 197, Minister of Finance v Gore N.O [2006] ZASCA 98 and Others.** He submitted that the respondents failed to allege and

prove that the applicants had knowledge of the accrual of their cause of action.

[36] In relation to availability of adequate redress, Mr Sehapi contends that since the issue of prescription has been raised, it is a constitutional issue by reason that it affects a litigant's right of access to court. It is for this reason, so he contends, that the matter falls squarely within the section 22 jurisdiction. For this proposition he relied on a South African decision in **Mtokanya v Minister of Police [2017] ZACC 33.** He further submitted that the court thus has no discretion to decline jurisdiction over this matter and that even if it possesses such discretion, it must adjudicate over the matter as it implicates fundamental rights. He referred us to **Sole v Cullinan NO and Others LAC (2000-2004)572.** He added that the test whether the section 22 jurisdiction must be excised is that where a litigant complains about violation of fundamental rights by the state, their disputes must be adjudicated by the High Court under this provision.

Issues

[37] The primary issue that must first be addressed is whether the applicants' claim is justifiably brought on grounds of Human Rights violation in order to invoke the section 22 jurisdiction. Allied to this is the issue whether, the applicants have adequate means of redress under any other law.

Analysis

[38] The determination of the identified issues falls on the nature of the applicants' claim. As I understand it, their claim is predicated upon the alleged unfairness and irrationality of the two decisions under scrutiny. [i.e differentiation in salaries of diplomats based in South Africa from those in other countries and suspension of duty-free purchase privilege].

[39] They contend that the differentiation in the salary scales as well as and suspension of the privilege involve a contravention of the human rights entrenched in section 18.

[40] I should hasten to state that even if the applicants have valid constitutional complaints entitling them to invoke the section 22 machinery; if their complaints can adequately be addressed in the High Court exercising its ordinary jurisdiction, this court has ample powers to decline jurisdiction to hear their claim. I proceed to indicate my reasons for this view.

[41] Our Apex Court in **Moshoeshoe Molapo v P.S. Ministry of Communications, Science and Technology & 3 Others C of A (CIV)02/2020** cautioned litigants against casting all forms of perceived unfairness as discrimination in order to present a complaint as an equality and thus Human Rights case.

41.1 Van Der Westhuizen AJA (with whom Damaseb and Mtshiya AJA concurred) held that in an application based on section 18 of the constitution, an applicant has to show that the ground relied upon for an alleged discrimination is cognisable under this clause. At para 16, he said;

> one cannot be discriminated against in favour of someone with the same status, just as discrimination on the basis of race or sex cannot happen against people of the same race or sex. Differentiation between black people cannot be constitutionally prohibited discrimination. The same applies to sex. The very essence of discrimination is that differentiates between people, for example with regard to race or colour, are used to disadvantage some compared to others. In so far as the appellant and his colleagues enjoyed the

same status in the workplace, he could not have been discriminated against when he was excluded from upgrading…

41.2 Further that;

one's situation in the workplace is hardly what the constitution refers to with the term status. A much more generally accepted example of status would be marital status.

41.3 At para 19, he significantly remarked that;

To cast all forms of perceived unfairness as discrimination in order to present a complaint as an equality and thus Human Rights case, is indeed dangerous for constitutionalism and the project to create a human rights culture.

[42] Section 22 sets out the method for enforcement of fundamental rights contained in sections 4-21. It confers Jurisdiction on the High Court to hear and determine an application in this connection. It provides that;

22(1) Any person who alleges that any of the foregoing provisions has been, is being or likely to be contravened in relation to him or her, then, without prejudice to any other action with respect to the same matter, which is lawfully available to him or her, that person may apply to the high court for redress.

42.1 Section 22(2) provides that;

The High Court shall have original jurisdiction;

a) To hear and determine any application made by any person pursuance of subsection 1.
b) To determine any question arising in the case of any person which is referred to it in pursuance of subsection (3).
c) and may, make such orders, issue such process and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any provisions of section 4 to 21(inclusive) of this Constitution.

Provided that the High Court may decline to excise its powers under this subsection if it is satisfied that that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law".

[43] One must emphasize that this Court must be vigilant in excising its powers under section 22 and guard against misuse of constitutional litigation. In **Sole v Cullinan NO and Others**(supra) the Court of Appeal held that the High Court has ample powers under this provision to prevent misuse of constitutional litigation; that where the Court is satisfied that adequate means of redress for the contravention alleged are available, it may decline to hear a claim under this provision.

[44] The point that constitutional claims should not supplant or circumvent claims for relief according to ordinary general Law has also been emphasised in other jurisdictions. Interpreting a substantially similar clause in the Constitution of Trinidad and Tobago, Lord Nicholls in **Attorney General of Trinidad and Tobago v Romanoop [2005] UKPC 15; [2006]1 AC 328**(cited with approval in **Matsoso Ntsihlele(**supra) explained at (para 23) that a Court has discretion whether to grant relief pursuant to a constitutional claim and gave guidance at para 24 as to how that discretion should be exercised. It is this. Where a parallel remedy at common law or under statute is available to an applicant, it would be an abuse of section 14 [the equivalent of our section 22 involving an application to the High Court for relief in respect of infringement of a constitutional right] if it is invoked solely as a substitute for an application in the normal way for an appropriate judicial remedy for unlawful action by a public authority. At para 25-26, he said;

> "25 in other words, where there is a parallel remedy, constitutional relief should not be sought unless the circumstances of which the

complaint is made include some feature which makes it appropriate to take that course. As a general rule, there must be some feature, which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be misuse, or abuse, of the court's process…

26 That said, their lordships hasten to add that the need for courts to be vigilant in preventing abuse of constitutional proceedings is not intended to deter citizens from seeking constitutional redress , where acting in good faith, they believe the circumstances of their case contain a feature which renders it appropriate for them to seek such redress rather than rely simply on the alternative remedies available to them. Frivolous, vexatious or contrived invocations of the facility of constitutional redress are to be repelled. But bona fide resort to rights under the constitution ought not be discouraged…"

[45] Reverting to the facts of the present matter, it is clear in my view that the approach used by the applicant to challenge the legitimacy of these impugned decisions is not justified in the circumstances of this case. I say this because an examination of the reliefs sought reveals that these decisions are challengeable through judicial review in the High Court without reaching the constitution determination sought, thus the applicants have adequate means of redress else-where than under section 22 jurisdiction.

[46] To put it differently, there are other proper routes for challenging the two decisions under the radar. This remedial route should be given priority as against the constitutional claim which seeks in substance to raise the same issues.

[47] The last issue worthy of comment is prescription being relied upon as a justification for impugning the decisions on constitutional grounds.

[48] I am alive to the fact that in **Attorney General v Majara & Others C of A (CIV) 63 of 2013** the plaintiffs there based their claim on a certain expropriation of their land in 1985. A similar argument was raised that their claims were based not on a single wrongful act but a continuing wrong which caused damage from day to day. It is to be noted that in Majara, the case of **Slomowitz, Symmonds v Rhodesia Railway** was cited in support of this argument. The court acknowledged that this case (Slomowitz) involved continuing acts which caused damage from day to day but distinguished such from the case [Majara] and held that;

> "The respondents' cause of action is based on a single wrongful act as a result of which they were divested of their land and "suffered loss of their interest in land."

[49] I do not however intend to decide the issue whether the applicants' salary and allowances claim has prescribed. This can adequately be dealt with in the review proceedings, suffice it to say that the mere fact that prescription is raised does not qualify the matter to be heard by this court excising its section 22 powers. This is due to the fact that the constitutional validity of section 6 of the Government Proceedings and Contracts Act need not be revisited by this court as it was dealt with and put to rest in **Mohau Makamane v Ministry of Communications C of A(CIV) 27/2011** where Ramodibedi P (as he then was) held that the provision is not unconstitutional; See also **Lelimo v Teaching Service Department C of A(CIV) 1 of 2012**.

Conclusion

[50] For the foregoing reasons, I conclude that on the facts of this matter, the use of constitutional motion for resolution of claims whose features are not suggestive of absence of adequate means of redress to the applicants is inappropriate and for this reason, the Court must

decline to exercise its jurisdiction under Section 22(2)(a) of the constitution.

Order

[51] In the result, this Court declines to excise its jurisdiction under Section 22(2)(a) of the Constitution.

P. BANYANE
JUDGE

I agree

K. MOAHLOLI
JUDGE

For Applicants: Advocate Sehapi

For Respondents: Advocate Lebakeng