

IN THE HIGH COURT OF LESOTHO

CIV/APN/697/14

HELD AT MASERU

In the matter between:

MAMPESA SELEBALO

PLAINTIFF

VS

COMMISSIONER OF POLICE

1ST DEFENDANT

ATTORNEY GENERAL

2ND DEFENDANT

JUDGEMENT

Coram : Hon. Mr. Justice T. E. Monapathi

Date of Hearing : 24th August, 2017

Date of Judgement: 2nd March, 2021

Neutral citation: Selebalo v. Commissioner of Police and One Other [2021] LSHC 15.

SUMMARY

When re-instatement is ordered as a remedy for urgent dismissal, the employer must re-employ the dismissed employee as the first step. Secondly, the employee is entitled to receive payments that she would have been entitled to if the unfair dismissed had not occurred.

ANNOTATIONS:

CITED CASES REFERRED TO:

Sajake vs Naledi Municipality 2014 IJ 500 (LC)

SBV Services (Pty) Ltd vs CCMA 2013 34 IJ 996 (LC)

Nel vs Outshoon Municipality 2013 IJ 1737 SCA Para. 9

In Commissioner of Police and Another vs Nlotšoeu (C of A [CIV] No. 12 of 2004)

STATUTES REFERRED TO: None

BOOKS REFERRED TO: None

[1] The Plaintiff instituted summons seeking the following prayers:

- a) An order directing 1st Defendant to pay or cause to be paid Plaintiff's salary arrears from January 2012 to December 2013;
- b) Damages in the sum of One Hundred and Fifty Thousand Maloti (M150,000.00), during the period from January 2012 to December 2013;
- c) Interest thereon on the rate of 10% per annum;
- d) Costs of suit in the event of opposition;
- f) Further and/or alternative relief.

[2] The undisputed background facts are as follows: The Applicant was employed in the Lesotho Mounted Police Service (LMPS) as a Police Officer in 1957. In 2012 she was discharged and/or dismissed from her duties as Sergeant from the LMPS.

[3] Applicant challenged her dismissal in the case number CIV/APN/134/2013. Before full argument could be made before court, parties reached a settlement that was made an order of court. The dispute herein is primarily about the interpretation of the Deed of Settlement and the meaning of re-instatement as against the meaning of re-employment. It is contended that the meaning and effects are different. In this Deed of Settlement parties agreed as follows:

- a) This settlement agreement constitutes a full and final settlement between the parties, from whatsoever cause arising, which the one may have against the other, with no claim remaining between the parties whatsoever agreement be made an order of this court at the instance of the parties;
- b) That the Applicant shall be re-instated to her position in the employ of the Lesotho Mounted Police Service with effect from the 1st December, 2013;
- c) That each party bears costs of this litigation;
- d) That the present Deed of Settlement shall constitute an order of this court. (my emphasis).

[4] The Deed of Settlement was duly signed by Adv. Resekoai on behalf of Plaintiff/Applicant, Commissioner of Police and Adv. Mhlekwa on behalf of Attorney General and it made an order of court (as aforesaid) by Nomngcongong J. It may also fairly be called a compromise.

[5] Plaintiff was re-instated as per the said Deed of Settlement. However, she alleges that the First Defendant has refused or neglected to pay upon demand, arrears salaries due and outstanding for the period when Applicant was dismissed in January, 2012 until when she was re-instated in December, 2013.

5.1. That as a result of the unlawful and wrongful dismissal of she suffered damages to the tune of M150,000.00 (i.e patrimonial/non-patrimonial damage).

5.2. She also asserted that her pay slip wrongly bears the date of 1st December as date on which she was engaged in LMPS. This she alleges prejudiced her and indicated a resultant misrepresentation.

[6] Respondent argued that because parties signed a Deed of Settlement with a condition that it constituted a full and final settlement and with no claims remaining from whatsoever cause arising, which the one party may bring against the other party therefore, that Applicant was not therefore entitled the bring present claim.

6.1. Plaintiff was not entitled to any amount of money in damages because that owing to the Deed of Settlement which was turned into an order of court Applicant demand was unsubstantiated, baseless and/or devoid of merit.

[7] The question as to whether re-instatement entitles Applicant to payment of salaries due from the date of dismissal to the date of re-instatement was answered as follows, as Applicant submitted.

[8] Reinstatement is a legal remedy for unjust dismissal. Where re-instatement is ordered employees should on principle be given back their jobs. In addition a person who has been re-instated is entitled to moneys that he/she would have been paid during the period of his or her unfair dismissal. In *Sajake vs Naledi Municipality 2014 IJ 500 (LC)* the court held that if a dismissal is found to have been substantiated by unfair and unjust dismissal, the presiding Officer decides that re-instatement is the appropriate remedy in the circumstance, the employee should receive payment for the time that he or she had not been allowed to work and, consequently to receive remuneration from the date of his or her dismissal.

[9] However, in CIV/APN/134/2013 between the parties no decision was made on the legality/lawfulness or otherwise of the dismissal. Parties reached an agreement in terms of which Applicant was to be and was re-instated to her job. The issue now is whether by virtue of that Deed of Settlement which was turned into an order of court, Applicant is precluded from claiming to wit:

- a) Arrears salaries from January 2012 to December 2013 – being salaries lost due to the dismissal;
- b) Damages in the sum of M150,000.00 during the period from January 2012 to December 2013.

I took the view that wrongfulness, illegality or wrongfulness could be observed, even on common sense basis. That is why there was a dispute.

[10] When re-instatement is ordered as a remedy for unjust dismissal, the employer has to re-employ the dismissed employee as the first step. Secondly, the employee is entitled to receive payments that she would have been entitled to

if the unfair dismissal had not occurred. *SBV Services (Pty) Ltd vs CCMA 2013 34 IJ 996 (LC)*.

10.1 Consequently, re-instatement does not mean that a new contract is concluded. It means that the employer restores the situation that existed before the dismissal had occurred. The employee will be restored to the position she filled and will perform the same functions on the same terms as previously. *Nel vs Outshoon Municipality 2013 IJ 1737 SCA Para. 9*

[11] *In Commissioner of Police and Another vs Ntlotšoeu (C of A [CIV] No. 12 of 2004)*. The letter of reinstatement reads:

“I am instructed by the Commissioner of Police to advise you that a decision has been made to reinstate you to police duty effective from 28th February, 1997. However, you are further to recall that you disappeared from your duty without leave since 7th February, 1997 until when you were arrested by the police on 3rd September, 2000n which date you were put in prison custody to answer a charge of sedition. The fact that a period covered during the dates between February 1997 and September 2000 of your being away from police work was in your own accord that made to impossible for you to render police services to LMPS client deprives you a privilege to access salary for the said period.

In respect of arrear salaries the court of Appeal accepted that because of Respondent’s absence “from police work was in your own accord that made it impossible for you to render police services to LMPS” he was not entitled to a salary over that period. In other words the first appellant specifically invoked the common law principle of “no work no pay” in relation to the first period. Apart from that fact that his reinstatement for this period was conditional upon no salary being paid to him, the

Respondent, in my view, made out no proper case for the payment of salary in respect of that period.”

Then the court made an order that: The Commissioner be ordered to pay, or cause to be paid the Applicant’s salary arrears for the period 3rd September 2000 to 31st July 2003; and that the Commissioner of Police pay interest on the amount of the said salary arrears from 31st July, 2003 to the date of payment at the of 6%.

[12] In my view, in the same vein Applicant should receive payment for the period that she had not been allowed to work by reason of the dismissal. She is entitled to remuneration from the date of her dismissal.

T. E. MONAPATHI
JUDGE

For Applicant : Adv. Lebakeng
For Respondents : Adv. Moshoeshoe