

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**CIV/T/290/2019**

In the matter between

**RAMATSOSO MOPELI**

**PLAINTIFF**

**AND**

**COMMISSIONER OF POLICE**

**1<sup>ST</sup> DEFENDANT**

**MINISTRY OF POLICE**

**2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL**

**3<sup>RD</sup> DEFENDANT**

**CIV/T/257/19**

**TOTA MOHALE**

**PLAINTIFF**

**AND**

**COMMISSIONER OF POLICE**

**1<sup>ST</sup> DEFENDANT**

**MINISTRY OF POLICE**

**2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL**

**3<sup>RD</sup> DEFENDANT**

Neutral Citation: Ramatsoso Mopeli v Commissioner of Police & 2 Others  
CIV/T/290/2019 [2021] LSHC 102

## **JUDGEMENT**

**CORAM: BANYANE J**

**HEARD: 11/12/20**

**DELIVERED: 23/08/2021**

### **Summary**

*Claim for payment of subsistence allowance - officers attending a short course abroad per authorization of the commissioner of police - necessary authorisation from the Head of Department not obtained - policy guidelines for attendance of training - not followed - claims dismissed*

## **ANNOTATIONS**

### **Cases cited**

1. Molelekeng Foulo v PS Ministry of Forestry and Land Proclamation CIV/APN/191/2009
2. Crown v Ntaote C of A (CRI) No 13/09
3. Otubanjo v Director of Immigration and Another LAC (2005-2006)336

### **Statutes and subsidiary legislation**

1. The Public Service Act No. 1 of 2005
2. The Public Service Regulations of 2008

### **Policy**

1. The Human Resources Policy of 2007

## **BANYANE J**

### **Introduction**

**[1]** The plaintiffs in CIV/T/257/19 and CIV/T/290/19 (which were consolidated by consent of the parties) are police officers stationed at Mohale's hoek and Maseru (PHQ) respectively. During the years 2017 and 2018, they attended fully sponsored short course(s) in India, but they were not paid a 'training allowance'. They instituted these actions against the Commissioner of Police in 2019 seeking reliefs in the following terms;

1. Payment of M62 061.00 and M37 125.20 respectively being money for per diem owed to the plaintiff(s) for a study course in India.
2. Interest thereon at the rate of 18.5 per annum plus costs of suit.

**[2]** The crux of their case is that sometime in October 2017, they were, along with one other colleague L/Sgt Ngatane selected to undergo a short ITEC course in New Delhi, India. They allege that the necessary documentation was filled and submitted with the relevant department before their departure. The documentation was submitted for purposes of processing per-diem payment which the Commissioner of Police promised would be paid after their departure.

**[3]** They departed for India at the scheduled time. The monies were never deposited as promised until completion of their courses while Ngatane received his. Upon their return, they made inquiries about the non-payment from the Principal Secretary for the Ministry of Police and they were informed that their travel was not budgeted for hence the non-payment.

**[4]** They aver that during their stay in India, they incurred certain expenses for daily survival. They are of the view that their attendance of

the course(s) in India occurred within the scope of their employment and for this reason, they are entitled to the amounts claimed.

**[5]** Both actions are opposed by the defendants. They firstly deny that the plaintiffs were selected to undergo the said study, but conversely that they independently applied for the course(s) online. They deny making a promise to the plaintiffs for payment of any monies during their stay in India. They say they could not make such a promise simply because the plaintiffs were not on the year's study plan, and for this reason, the courses had not been budgeted for.

**[6]** They furthermore assert that the plaintiffs were apprised, prior to their departure that there was no budget for and that should they elect to undergo the course, they must do so with full knowledge that they would not receive any per diems upon their return and that the Commissioner allowed them in good faith to undergo the course since they had gotten admissions in the host country and the course was fully sponsored. It is the defendants' major contention that the plaintiffs applied for this course without consulting the Ministry to enquire about availability of funds to cater for subsistence allowances.

**[7]** The defendants do not dispute the fact that L/Sgt Ngatane was paid. The reason supplied for same is that he was on the Ministry's training plan for the financial year in question and his attendance had accordingly been budgeted for.

### **The Trial**

**[8]** Lance Sergeant Mohale testified that at the material time, he was stationed in Mohale's hoek. He told the Court that just before October 2017, he was notified about the course by the IT Department at Police headquarters. He was informed that he may apply if interested. He

accordingly applied and subsequently received an admission from NIIT University via email.

**[9]** He subsequently filled the necessary forms and submitted them to the IT office for endorsement by the Commissioner of Police. After endorsement, they were sent back to the University to which he was admitted. His visa was subsequently processed.

**[10]** He told the Court that the application process was guided by the Training office, in particular by Inspector Mokurutloane.

**10.1** He told the Court that he was given transport by the Assistant Commissioner of Police for the Southern Region both to process the visa and to proceed to the Airport.

**10.2** He testified further that before his departure, Lance Sergeant Ngatane called him to inform him that they have been advised by the IT Management to fill their per diem applications. He filled the form and left it with Ngatane who promised to deliver it to the relevant office.

**10.3** He testified further that the said Ngatane kept him updated, and he informed him that their claims were processed by one Pulane at the Ministry of Police.

**10.4** Whilst in India, Ngatane informed him that he had been paid and inquired whether he had received his money already. He never received any money until he came back home in January 2018. He says he used to communicate with COMPOL while in India who was delightful that they attended the course.

**[11]** Upon their return, they inquired about the delays on payment of their per diem, at the Ministry. He was told that there was no budget for their

subsistence allowance. He told the Court that senior Superintendent Ralethoko in the Human Resources Offices told them that officers should not be allowed to attend training if there are budgetary constraints.

**[12]** Upon approaching the Commissioner of Police, he referred them to the Ministry after confirming that Ngatane received his per diem. They met the deputy Principal Secretary who was shocked to hear about their non-payment. From there they were shifted from pillar to post until they resolved to approach the Court for intervention.

**[13]** Under cross-examination, it was suggested that he was not in the training plan and that he was not authorized to undergo the course. His response was that he was in the training plan hence he was informed to apply, secondly that the Commissioner's approval is sufficient or demonstrable of approval.

**[14]** Asked about the basis for the figure claimed i.e. M62 061.00, he said a certain Government circular contains the formulae for calculations.

**[15]** Ramatsoso Mopeli, the plaintiff in CIV/T/290/19 also testified. His testimony is materially similar to that of Tota Mohale save for differing duration of their courses. He testified that he was at the material time based at police headquarters (ICT office).

**15.1** He also told the Court that they were advised by the ICT office to apply for certain courses on the basis of a certain invitation which was reportedly received by the training office.

**15.2** He corroborated Mohale's story that their applications were endorsed by the Commissioner before they left for respective universities at which their training was offered.

**15.3** He says the Ministry provided him (through the training office) with transport to and from the airport. He says prior to his departure, he was assured by Inspector Mokorotloane in the training office that everything was in order and that a memo had been forwarded to the Ministry.

**15.4** He testified that whilst in India, Ngatane, with whom they attended a course at the same university told him that he received his per diem.

**15.5** He told the Court that he only applied for per-diem upon his return home. That he initially requested same verbally but was told to make a written request. He forwarded his request to the Human Resources Offices. They (with Mohale) were verbally told they would not receive the money. They resolved to escalate their complaint to the Ministry. They met the Deputy Principal who called Inspector Ramarikhoane in their presence and directed him to pay them. When payment was not forthcoming, they sought the ombudsman's intervention. The management never appeared before the ombudsman despite several requests to do so.

**[16]** Inspector Mokorotloane (retired) testified on behalf of the defendants. He told the Court that during his years in service, he was based in the training office. He told the Court that in 2017, he received an invitation from the commissioner's office for ITEC course offered abroad and officers were encouraged to apply for same online.

**16.1** He confirmed that the Commissioner authorised the plaintiffs to apply and proceed on these courses. That upon their return, they submitted their per-diem claims which regrettably were not paid. He agrees with the plaintiffs that for the reason that they were authorised to undergo the course by the Commissioner, they are entitled to be paid the amounts claimed in terms of the Public Service Regulations.

## **The parties' submissions**

**[17]** The plaintiff's counsel Adv. Mone relied on the Public Service Regulations of 2008, in particular, Regulation 65(1) to submit that any officer who proceeds on a fully sponsored short-term training course abroad shall be paid 10 percent of the country's per-diem to take care of incidental out of pocket expenses.

**[18]** He further referred the Court to Basic Conditions of employment of public officers supplement gazette No 43 of 2011 to submit that any officer who travels abroad on a study tour, conference or meeting, who spends the night away from his or her duty station shall be entitled to 10% of the country's per-diem if the course is sponsored by the host country or organisation.

**18.1** He submitted on the basis of these pieces of subsidiary legislation that the applicants are entitled to be paid the amounts claimed.

**[19]** Adv Tseuoa on behalf of the defendants argued that the spirit behind Regulation 65 was stated in **Molelekeng Foulo v PS Ministry of Forestry and Land Proclamation CIV/APN/191/2009** to be that;

"per diem allowance is designed to compensate the officer for any out of pocket expenses that he or she may have to incur while away on duty. It is not designed to be used as a means of getting a tax-free supplement to the officer's salary.

**19.1** Further that;

The Regulations have to be interpreted in the light of Principles of sense and equity and as such the Regulations are directory and not mandatory and should only be applied where these abovementioned principles can be achieved.



**[20]** He submitted on this basis that the amounts claimed by the plaintiffs are unreasonably huge and could not have been expended out of their pockets while on study in India. He contends that the amounts claimed are clearly intended to enrich the plaintiff and not to compensate them for any out of pocket expenses they may have incurred, and this is contrary to the spirit behind Regulation 65 and the Principles of sense and equity.

**[21]** He further relied on the Budget Speech for the fiscal year 2017/2018 at p17 in terms of which international travel was suspended during that period due to the Government's budgetary constraints.

**[22]** His further contention is that an arrangement existed (at the material time) between the Government of Lesotho and India in terms of which the latter would train police officers and as a host country should cater for all expenses. He asserts that this understanding forms the basis on which the plaintiffs were allowed to undertake the course in India despite the fact that they were not on the study plan for the relevant year.

### **Issues**

**[23]** The twin issues that arise for determination are narrow. They are whether the plaintiffs were authorized to attend the respective courses and whether they are entitled to the claimed amounts.

### **Discussion**

**[24]** To resolve these issues, it is necessary to refer in some detail to the provisions of the Public Service Act of 2005, Regulations made thereunder as well as policy guidelines on training and development with regards to the necessary steps to be followed before any officer may undertake a training course, authorization and budgetary issues and lastly payment of training allowances.

**[25]** Both parties relied Public Service Laws and advanced their interpretation of the relevant provisions. It is necessary to first address applicability of these laws to the matter under the radar.

**[26]** Section 3 of the Public Service Act of 2005 stipulates that the Act does not apply to offices specified in section 137(3) of the Constitution to the extent therein specified.

**26.1** Section 137(1) provides that;

Subject to the provisions of the constitution, the power to appoint persons to hold or in act in offices in the public service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

**26.2** Offices listed under section 137(3) include;

“(h)” the office of commander of the Defence Force and offices of members of the Defence Force, the office of Commissioner of Police and offices of the members of the police force .., the office of the Director of the National Security Service and offices of Members of the National Security Service, and the office of the Director of Prisons and offices of the Members of the Prison Service.

**26.3** It is intelligible in these provisions that the Public Service Act as well as the Regulations made thereunder are applicable to police officers save for matters of appointment, removal or disciplinary control.

**26.4** Having decided that the Act applies to police officers on the matter in question, I turn now to consider the relevant provisions as guidance towards determination of the issues.

**[27]** Section 10(2) (b) of the Public Service Act empowers the Minister of Public Service to make provision for inter alia;

Employment policy and any other policy that relates to human resources, including but not limited to promotions, training and development, public officers' relations, retirements, control and organization of ministries and departments.

**[28]** Section 29 empowers the Minister to make Regulations for general management of the Public Service.

**[29]** Pursuant to these empowering provisions, The Human Resources Management and Development Policy Manual approved by Cabinet on 01<sup>st</sup> November 2007 and the Public Service Regulations of 2008 came to live.

**[30]** The Human Resources manual facilitates for smooth implementation of the Public Service Act 2005, Public Service Regulations 2008 and other laws within the Public and serves as a point of reference for Heads of Departments, Line Managers, Human Resources Management and development practitioners throughout the public service.

**[31]** It covers a diverse range of policies, including recruitment and selection, training and development, employee relations and HIV/AIDS workplace policy. For purposes of the present matter, focus will be on training and development policy.

### **Training and Development Policy**

**[32]** This policy provides a systematic approach to management of training and development across the Public Service. The purpose of this policy is to provide and maintain clear guidelines that promote consistent decisions in the management of training and development.

**[33]** In terms of this policy, all public officers are eligible for training and development in accordance with the Public Service Regulations of 2008 and this policy. In pursuit of this policy, the Ministries / departments are required to;

- a) regularly and actively take steps, through appraisals, task and job analyses, recognizing gaps, and other appropriate means, to identify training and development needs for both individuals and groups of staff.
- b) within available resources, provide staff with opportunities to participate in training and development activities inside and outside the organization.

### **Training Needs Analysis**

**[34]** Every line Ministry is required in terms of this policy to undertake annual training needs assessments for all their departments, sections, units, teams and individual officers in order to determine priorities and to prepare training and development plans. And on the basis of these assessments, line Ministries will prepare training plans for submission to the ministry of the Public Service at the beginning of each financial year.

**[35]** There are various types of training covered in this policy. Relevant to the present matter is the formal training and development dealt with under 6.2 of the policy within which short term training is classified. Importantly, the policy provides that; *based on development needs identified by training needs assessment, performance appraisals, and / or assessment reports, and subject to availability of resources, management will facilitate either short-term or long-term training.*

**[36]** Short-term training is defined as training of a duration of one (1) day and up to, but not exceeding six (6) months. It provides further that a public officer who undergoes a short-term course will earn fully salary during short-term training. Importantly, where tuition, accommodation,

meals and fares are provided by the host country or organization, an officer will be eligible for payment of 10% of subsistence allowance rate applicable to that country to cover incidental expenses.

**[37]** The policy also addresses the issue of Training and Development Budget. It requires ministries;

- a) To compile annual training budgets for short-term training, supported by detailed justification including the need and value to be added by proposed training interventions.
- b) To prepare training budget estimates which shall include tuition / consultancy or registration fees, fares, accommodation, meals and incidental expenses.

**[38]** For short-term training, ministries are required to budget for short courses in accordance with the Ministry's training plan.

**[39]** For purposes of monitoring training needs and development, ministries / departments are required to submit training plans to the Ministry of Public Service at the beginning of every financial year.

### **The Public Service Regulations**

**[40]** The policy rhymes with the Public Service Regulations.(see Regulation 93 which also sets out the purpose or objective of Training and Development and Regulation 94 which mandates all ministries, departments and agencies to undertake training needs assessment to determine their priorities and prepare their training and development plans).

**[41]** Regulation 94(2) provides that no training or development programme other than that appears in the Ministry's annual training plan shall be allowed or ordered except with a written approval of the Head of Department and the concurrence of the relevant Minister.

**[42]** Regulation 99(1) deals with sponsored programmes. It provides that: an officer shall not accept a scholarship award or an invitation to attend a seminar or training course outside Lesotho or at a non-governmental institution within Lesotho without the approval of the Head of the department of the relevant Ministry, department or agency and concurrence of the relevant Minister.

**42.1** Regulation 99(2) provides;

Except where an officer is selected and nominated by the Government for a scholarship or invitation under sub regulation (1), an officer who wishes to apply for a scholarship or attend a training course shall make an application which shall be approved by the Minister responsible for his or her Ministry.

**42.2** A Head of Department is defined under section 2 of the Act to mean the Principal Secretary responsible for a Ministry.

**[43]** My reading of these provisions reveals the following salient points (relevant in this matter); a) training and development must be managed. In this connection, all Ministries and departments are obliged to submit training plans after a thorough needs assessment; b) all types of training (short term courses included) must be budgeted for in accordance with the Ministry's Training Plan; c) Facilitation of short-term courses is subject to availability of resources; d) officers are prohibited from accepting invitations to attend a training courses without the approval of the Head of Department.

### **Was the plaintiff's journey to India approved?**

**[44]** Having set out the relevant provisions and my interpretation of same, I turn to consider the question whether the plaintiff's attendance of the course was in compliance with these provisions. According to the defendants, the plaintiffs were not in the training plan hence there was no budget to cater for any expenses they would incur. Although neither party

placed evidence in the form of a list of officers in the training plan for the period under review, Regulation 94(2) that no training or development programme other than that appears in the Ministry's annual training plan shall be allowed or ordered except with a written approval of the Head of Department and the concurrence of the relevant Minister. This must be read with Regulation 99(1) which proscribes an officer from accepting an invitation to attend a seminar or training course outside Lesotho or at a non-governmental institution within Lesotho without the approval of the Head of the department of the relevant Ministry, department or agency and concurrence of the relevant Minister.

**[45]** The plaintiffs' claims must therefore be determined solely on the basis of whether their attendance was legally compliant, that is to say, whether they were authorised by the Head of Department to attend the courses abroad.

**[46]** It is indisputable from the testimony of the plaintiffs and the retired training officer that the Commissioner of Police authorized their departure to India. However, the Law is clear that the Principal Secretary of the Ministry under which they fall (subject to concurrence of the relevant Minister) is the ultimate decision maker. This explains why the Commissioner addressed the following correspondence to the Principal Secretary on 20<sup>th</sup> December 2017. I reproduce it in relevant parts.

Re; ITEC training-certificate course in Linux Administration India

The above subject matter bears reference.

Please note and be informed that the Commissioner of Police will release No 49924 P/C Mopeli to attend the above-mentioned course under ITEC/SCAAP program of the Ministry of External Government of India effective from 08/01/2018 to 03/03/2018.

Therefore, authority for him to attend is requested. Attached herewith kindly receive an invitation letter.

Regards

(sign)

H. MOLIBELI (COMMISSIONER OF POLICE)

**[47]** It should be noted that the plaintiffs presented no such authorization before this Court. The defendants are therefore correct in arguing that the plaintiffs' undertaking of the journey was not authorized. It is obvious to me that the plaintiffs accepted the invitation without approval of the repository of power thus their departure was done contrary to the quoted provisions.

**[48]** It follows in my view that whatever promise made to them by either the Commissioner (assuming he indeed promised they would be paid during their stay in India or upon their return) or the Training Officer cannot assist their case nor cannot give rise to legitimate expectation as it was not given by the Head of Department, who in terms of the Law is authorized to approve the undertaking of any training.

**48.1** In order for an expectation to be legitimate, it is trite that; a) the representation underlying the expectation must be clear, unambiguous and devoid of relevant qualification; b) the expectation must be reasonable; c) the representation must have been indeed by the decision-maker; d) the representation must be one which was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate. See **Otubanjo v Director of Immigration and Another LAC (2005-2006) at 336 at 341 B-D**

**[49]** I also comment on the plaintiff's reliance on the 2011 government notice, which in my view is inapplicable to the facts of this matter for the reason that we are not dealing here with study tours, a conference or meeting abroad. Even if we were, authorisation of the intended trip by the head of department is indispensable. In **Crown v Ntaote C of A (CRI) No13/09**, the process of payment of subsistence allowance per the "LMPS guidelines for application of subsistence allowance", is elucidated. It is as follows;



“the claiming officer initiates a subsistence allowance application which is taken up by the LMPS training office, employing a two-page form headed “application for international travel” and divided into part A, B, C and D... part A comprises a request addressed to the Principal Secretary of Home Affairs and Public Safety to authorize attendance at the international event to which the officer has been invited. Part B is completed by the training office and gives details of the officer, the event and the reasons for his or her attendance. The form, with the invitation, then goes to the LMPS Accounts Section. An official of that section determines the rate of allowance in the light of the terms of the invitation and fills in the monetary details in part C. the form is then sent to the LMPS Financial Controller who ascertains whether funds are available. If they are, the necessary confirmation is recorded in part D, above the signature of the Police Paymaster. The form then goes back to the Training Officer. It is accompanied by information as to the amount for which authorisation is to be sought. Details of the payee, the amount and the dates of the journey are recorded in a register and the return of the form to the Training Office is signed for. The form is then taken to the Commissioner of Police for his / her recommendation. If it is granted, the document is presented to the Principal Secretary for approval. If that is given, the final endorsement required is that of the Minister.

**[50]** It is undeniable that any international trip; be it a study tour, meeting, conference or short course has financial implications. It is for this reason that attendance of training courses must be budgeted for and undertaken subject to availability of resources. The law and policy are clear that before undertaking any training programme abroad (whether it appears on the ministry’s annual training plan or not), approval of the Head of Department/ chief accounting officer must be obtained after all processes have been followed and availability of funds ascertained. On the facts of this matter this does not seem to have been done. The Commissioner does not have a final say on matters of training courses, but must after giving his blessing, transmit his recommendation to the Head of Department for endorsement.

## **Conclusion**

**[51]** Having considered the evidence placed before court, I conclude that the plaintiffs failed to discharge the onus of establishing that they obtained the necessary authorization of the Head of Department before their departure. Save for the bald assertion(s) that everything was in order prior their departure, they have not put forward evidence that they accepted the invitations from New Delhi with the approval of the principal secretary in compliance with regulation 99(1). Failure to do so renders their claims dismissible in my view. Their entitlement to payment is dependent on authorisation. This is because no valid claim should legally flow from an unauthorised journey. Both claims must therefore fail.

## **Order**

**[52]** In the result both claims are dismissed but there will be no order of costs.

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**P. BANYANE  
JUDGE**

For Applicant: Advocate Mone

For Defendants: Advocate Tseuo