

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CONST/CASE NO.6/2022

In the matter between:

LESOTHO PUBLIC SERVICE ASSOCIATION APPLICANT	1ST
LESOTHO TEACHERS TRADE UNION APPLICANT	2ND
LESOTHO PRINCIPALS ASSOCIATION APPLICANT	3RD

AND

COMMISSIONER OF POLICE RESPONDENT	1ST
MINISTER OF POLICE RESPONDENT	2ND
SPEAKER OF NATIONAL ASSEMBLY RESPONDENT	3RD
LEADER OF THE HOUSE OF NATIONAL ASSEMBLY RESPONDENT	4TH
MINISTER OF FINANCE RESPONDENT	5TH
MINISTER OF LAW AND CONSTITUTIONAL AFFAIRS RESPONDENT	6TH

MINISTER OF PUBLIC SERVICE RESPONDENT	7TH
PRINCIPAL SECRETARY MINISTRY OF PUBLIC SERVICE RESPONDENT	8TH
ATTORNEY GENERAL RESPONDENT	9TH

Neutral Citation: Lesotho Public Service Association & 2 ors v Commissioner of Police & 8 Ors (No.1) [2022] LSHC 95 Const (2 May 2022)

RULING

Coram	:	Hon. Mr. Justice E.F.M.Makara
Heard	:	29 March 2022
Delivered	:	2 May 2022

MAKARA J.

Introduction

[1] The determination is sequel to the application brought before this court seeking for an order in these terms:

- (a) The 3rd, 4th and 5th respondents shall not be interdicted from reading and or facilitating the passing of the Appropriation Bill for 2022/23 budget pending finalization.
- (b) The 3rd, 4th and 5th respondent shall not be ordered to hear the applicants before finalization of the said appropriation bill pending finalization of this application.
- (c) Regulation 2 of Public (Covid - 19) (Risk Determination and Mitigation Measure) No 5 Amendment Demonstrations shall not be declared discriminatory and unconstitutional.

- (d) The decision of the 1st respondent declining permission for the applicants to present their petitions to the 3rd, 4th and 5th respondents shall not be reviewed corrected and set aside.
 - (e) The decision of the 3rd, 4th, 5th, 7th, 8th, 9th and 10th to refuse to hear the applicants herewith shall not be declared violation of right to *audi alterum partem rule* unconstitutional and violation of human rights and
 - (f) Why the 1st respondent shall be directed to issue the applicants herewith the permission to present their petition to the respondents.
2. Prayer 1 (a) and (b) operate with immediate effect as interim orders pending finalization of this application.
 3. Respondents shall not be ordered to pay costs of this Application.
 4. Applicants shall not be granted further and alternative relief.

[2] In essence the application was founded upon a search for a dispensation for the 2nd and 3rd Respondent to be joined in the proceedings and that the passing of the Appropriation Bill be stayed in obedience pending the determination of this case. On the first day of the appearance of the counsel, before the court they advised that they have agreed that the 2nd and 3rd Respondents be joined into the proceedings and proposed that this be made an order of Court. This notwithstanding, the Court declined to allow LEPOSA (1st Respondent) to participate in the envisaged campaign upon the reason that this would undermine the foundational role of its members which is to provide security and safety to the public. This includes their obligation to ascertain these aspects *inter alia* during public processions. The

regimen of the police laws in particular section 24 of the Police Act¹ which reads:

It shall be the duty of every person attested as a police officer to serve the person of Lesotho in that office, diligently, impartially and, with due regard to the Constitution to:

- a) Preserve the peace and maintain law and order;
 - b) Prevent all offences against persons or property;
 - c) Detect offences apprehend offenders and bring them to justice;
- And, while he holds that office, to the best of his skill and knowledge, discharge all the duties of that office faithfully according to the law.

2) The Police Authority may authorized the Commissioner to issue to police officers such arms as he may prescribe and a police officer shall for the performance of his duties be entitled to carry any arms so issued.

[3] Furthermore, Section 3 of Public Meetings and Processions Act² which is mostly relevant to the subject at hand, compliments the Police Act in these terms:

Any person who wishes to hold a public meeting or procession in an area that is an urban area shall, at least 24 hours before the holding of that meeting or procession, give a written notice to the police officer in command of police in the area where the meeting or procession is to take place.

[4] In that turn of the proceedings, the counsel agreed that the 2nd and 3rd Respondent could embark on their intended demonstration.

[5] It is of paramount significance to be recorded that one of the dimensions at the commencement of the preliminary hearing, was, a consensus between the counsel that it would be judicially wise for the Court to initially adopt the intention which would

¹ No.7 of 1998

² No. 2 of 1993

assist in diffusing or reducing the possible adverse consequences without in any manner, whatsoever, prejudicially compromising the interests of the Respondents. The deliberations on the subject culminated into a realization that the interests of the parties would best be achieved through the holding of the negotiations between them. It was in the same vein agreed that this should be reinforced with the exploration of all the relevant avenues towards a constitutive settlement. Thus, the Court made an order in terms of which it directs the parties to do so.

[6] Subsequently, the counsel advised the Court that they would appraise it about the progress in the negotiations. On the day scheduled for that, the Counsel for the Respondents contended that the case which forms the substratum of the negotiations has fallen apart since the Bill has been passed and the date set for the procession has also passed. He, however, assured the Court that the pending negotiations are still relevant. On that note, he stated that the negotiations are now being presided over by the Deputy Prime Minister. The Counsel for the Applicants confirmed that process.

[7] It transpired from the deliberations before the Court that the two counsel differ irreconcilably on the significance of the fact that the Appropriation Bill has passed and on the fact that this applies to the day intended for the procession. It was maintained for the Applicants that the agreement for the exploration of the

avenues for the settlement renders the case still of the moment and that in the circumstances, the Bill could also be amended to accommodate the interests of the parties.

[8] The Court recognized that the parties had agreed that there be negotiations for the amicable resolution of the impasse. This was made within the context of the pending case. It is precisely on that account that they were directed to give the Court a report on the progress of the deliberation towards the settlement. The understanding is that the arrangement was concluded between the parties in good faith without giving any one of them a technical advantage. This was so because they both recognized the wisdom in the contemplated negotiations.

[9] In the premises, the Court determines that it would be judicially wise and practical to grant the postponement sought for a period of one month and that in the event of any meaningful progress, the counsel should report that to the Court. This would, understandably determine the way forward.

**E.F.M. MAKARA
JUDGE**

For Applicants : Adv. B. Sekonyela inst. By K.D. Mabudu & Co.

For Respondent : Adv. M. Moshoeshe from Attorney General's office