

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/0053/2022

In the matter between:-

HLALELE HLALELE

APPLICANT

AND

**PRINCIPAL SECRETARY MINISTRY OF PUBLIC
SERVICE**

1ST RESPONDENT

MINISTRY OF PUBLIC SERVICE

2ND RESPONDENT

**PRINCIPAL SECRETARY MINISTRY OF TOURISM,
ARTS AND CULTURE**

3RD RESPONDENT

THE ATTORNEY GENERAL

4TH RESPONDENT

Neutral Citation: Hlalele Hlaele v Principal Secretary – Ministry of Public Service and Others [2022] LSHC 190 CIV (15TH August, 2022)

JUDGMENT

Coram : Mahase J
Date of hearing : 14th February 2022
Date of Delivered : 15th August 2022

SUMMARY

The Rules of natural justice – Transfer – No prehearing procedure followed before applicant was served with the letter of transfer – Actions of administrators to comply with principles of natural justice unless the law provides otherwise.

ANNOTATIONS

CITED CASES:

- **South Africa Roads Board v. Johannesburg City Council 1991 (4) S.A. (Aid)**
- **Hokinyane v. Principal Secretary Ministry of Local Government and Chieftainship; CIV/APN/08/2009 (Unreported)**
- **Sebophe v. Compol, C. of A. (CIV) No. 6 of 2019**
- **‘Mamonyane Matebesi v. Director Immigration and Others C. of A. (CIV) No. 2 of 1996**
- **Mabaso and Others v. Principal Secretary Ministry of Public Service and Another:- CIV/APN/146/2021**
- **Kanono v. Principal Secretary Ministry of Foreign Affairs and Others, CIV/APN/149/2021 www.lesotholii.rog**
- **Matebesi v. Director of Immigration and Others, LAC, (1995-1999)**
- **Sekoai v. Judicial Service Commission and Others (2019) LSHC 12**

STATUTES

- **Public Service Regulations 2008**
- **Public Service Act 2005**
- **Legal Notice No. 32 of 2011 – Basic Conditions of Employment for Public Officers (BCE)**

BOOKS

- **Baxter L. Hoexter C – Administration Law 1984 – Juda Page 587**

[1] **Introduction**

The applicant is challenging the decision of the first up to the third respondents of transferring him from one government ministry to the other.

[2] **Factual background**

The applicant has been the Deputy Principal Secretary in the Ministry of Forestry and Land Reclamation (Ministry of Agriculture) from October 2020, up until the 9th February 2022 when he was transferred from there to the Ministry of Tourism with immediate effect.

[3] Applicant challenged this transfer firstly by writing a letter; annexure “HH3”. The said letter is in response to the second respondent’s letter informing him of his transfer. This has been written by the Principal Secretary, Adv. Mole Kumalo. Prior to that, in the year 2020, a similar letter was written to the applicant by the Ministry of Public Service. There is nothing on record indicating the response of the applicant to this letter.

[4] There is also not any record indicating whether or not the current Principal Secretary, Adv. M. Kumalo ever responded to the applicant’s letter dated the 9th February 2022. The applicant has since approached this Court on urgent basis seeking the prayers spelt out in the notice of motion. Of course prayer 1 (a) relates to dispensation with the Rules of Court due to urgency of the matter.

[5] In brief, he seeks in prayer 1(b) the stay of the decision of the first respondent to transfer him with immediate effect pending finalization of this application. In prayer 1 (c) he seeks that this Court should interdict the

respondents from effecting the transfer issued out by the first respondent pending finalization of this matter.

- [6] In prayer 2 he prays that this Court should declare the said transfer as being invalid, void and of no legal force and effect
- [7] In prayer 3, he asks this Court to set aside the said decision of the first respondent to transfer him. The applicant has approached this Court on urgent, ex parte basis. This was initially placed before my sister Banyane J who declined to hear counsel because she was engaged in an urgent application relating to a dispute over burial of a certain individual. The matter was accordingly, as per my sister Banyane's order placed before this Court (Mahase J) which was on call on the week beginning the 14th February 2022.
- [8] Parties were ultimately put to terms as to the filing of their respective pleadings.
- [9] Pleadings having been later closed both counsel filed their respective written submissions. It must be mentioned that all attempts by the parties to have the matter settled out of Court have failed.
- [10] The applicant's application for an interim order in respect of the notice of motion were granted; particularly in respect of prayers 1(a) (b) and (c).

- [11] It is noted that there is no specific prayer/relief sought by the applicant to the effect that pending finalization of this application, no other person should be appointed to have his position filled in the very Ministry of Forestry.
- [12] All of the applicant's prayers as spelt out in his notice of motion centre around his transfer, and on his challenging the fact that he was not afforded a hearing of any kind before a decision was made to have him transferred as indicated above.
- [13] This Court has since been informed that another Deputy Principal Secretary has been appointed and placed as such in that Ministry of Forestry.
- [14] The net effect of the above was to frustrate all efforts embarked upon by the applicant to have his transfer to another ministry stayed. There was indeed nothing to stop the respondents from appointing and replacing the applicant with another officer because from the very beginning, the Court, per my sister Banyane J had declined to grant prayer 1(b) in the interim.
- [15] As already indicated above, there is no specific prayer or relief sought by the applicant interdicting and or restraining the appointment of another Deputy Principal Secretary pending finalization of this application.
- [16] In essence, if indeed that is so, the Court is now dealing with an application in which the prayers sought will be academic even assuming that they could be granted. The reason being that there is no longer any need for the respondents to attend Court to oppose the application because in essence, they have already achieved and or they have had the desired effect of having

the applicant formally removed from Ministry of Tourism with immediate effect.

[17] Be that as it may, it is incumbent upon this Court to note that in effect the manner in which the first respondent has handled and dealt with this transfer of the applicant falls far too short of meeting the required elements of affording the affected party a fair hearing.

[18] In actual fact, to decide otherwise would be making mockery of the law because, as matter of common cause, the first respondent had the letter transferring the applicant delivered to the applicant on the very same day/date in which the transfer was to be effected. This transfer took effect with immediate effect.

[19] This negates the application of all known principles and the rational applicable and or behind the audi alterem partem principle. The admission by the respondents at sub paragraph 6.2 of the answering affidavit in annexure “MPS1” to the effect that; (I quote) :-

“ We accept that your client was not afforded sufficient notice. We have been instructed to inform you that your client has been given a period of five working days to enable him to do a proper hand over....” Does not assist in anyway to advance the case of the respondents.

[20] The writer of this letter has actually succeeded to divert the attention of the applicant away from the real situation which obtain on the very date that he wrote this letter; namely that as far back as the 11th February 2022, another

Deputy Principal Secretary had already been appointed and placed to the position that was held by the applicant.

[21] Now, as has already been alluded to above, this matter has been rendered academic by the actions of the respondents. As a result it serves no particular purpose for this Court to continue to deal with the issues for determination as spelt out in the written submissions filed on behalf of the applicant.

[22] Be that as it may, as a matter of common cause, the fact that the applicant was never given a hearing before he was served with the letter of transfer and therefore denied an opportunity and/or a right to make representations on this transfer remains unchallenged.

[23] It is trite that failure to observe natural justice before the decision is made will lead to invalidity.

[24] The Court of Appeal of Lesotho has dealt with this issue on numerous cases, one of which is that of **‘Mamonyane Matebesi v. Director of Immigration and Others, C. of A. (CIV) No. 2 of 1996** where it stated that: (I Quote)

“It is demanded by the principles of natural justice together with fundamental principles of fairness, that prior to the making of the final and potentially prejudicial decision the person whose rights are likely to be adversely affected by such decision should be given an opportunity to be heard before it is made”

- [25] Whilst the law is clear on this issue, in the instant case, it is undenied that the applicant was never afforded an opportunity to make representations on this rushed decision to have him transferred from one government ministry to another on the same position; the applicant has not at all indicated and/or demonstrated what prejudice he suffers as regards being transferred as was done.
- [26] This is not to say that it was proper, or fair that he has been denied an opportunity to make presentations on this issue. Clearly, it was unfair that he has been denied such an opportunity; and regard being heard to the above quoted case, that the respondents' failure to afford the applicant such an opportunity leads to invalidity.
- [27] Regrettably, the applicant's application has since been overtaken by events as already alluded to above. All that this Court can do is to make an order declaring this transfer as being unfair and invalid, void and of no legal effect and force.
- [28] As already indicated above, this Court cannot order for the reinstatement of the applicant to the position of Deputy Principal Secretary in the Ministry of Forestry, for the simple reason that, that post has since been filled by another Deputy Principal Secretary.
- [29] In the circumstances, only prayer 2 in the notice of motion is granted as prayed, with costs to the applicant.

Judge of the High Court

For Applicant: Adv. Lejakane

For Respondents: Adv. M. Moshoeshoe