

**IN THE HIGH COURT OF LESOTHO**

**Held at Maseru**

**CIV/T/507/2016**

In the matter between:

**TSIETSI MOKOKA**

**PLAINTIFF**

**AND**

**MINISTER OF POLICE**

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

**COMMISSIONER OF POLICE**

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

**ATTORNEY GENERAL**

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

Neutral Citation: Mokoka v Minister of Police & Others [2023] LSHC 31 Civ  
(13 February 2023)

**CORAM: S.P. SAKOANE CJ**

**HEARD: 22 NOVEMBER 2022**

**DELIVERED: 13 FEBRUARY 2023**

**SUMMARY**

Administrative Law – erroneous communication of promotion of police officer – correction of communication challenged as a demotion – whether Commissioner of Police promoted plaintiff in the first instance –

if so, whether the Commissioner committed a mistake which he can only correct by way of judicial self-review - Police Act No.7 of 1998, section 8; Police Service (Amendment) Regulations, 2014, regulation 4 (1).

## **ANNOTATIONS:**

### **CASES:**

#### **LESOTHO**

*Lesotho Hotels International (Pty) Ltd v. Minister of Tourism, Sports and Culture and Others* LAC (1995-99) 578

*Matebesi v Director of Immigration and Others* LAC (1995-1999) 616

#### **SOUTH AFRICA**

*Goliath v Medscheme (Pty) Ltd* [1996] 5 BLLR 603

### **STATUTES**

*Lesotho Mounted Police Service (Administration) Regulations, 2003*

*Lesotho Mounted Police Service (Administration) (Amendment) Regulations, 2014*

*Police Act No.7, 1998*

# JUDGMENT

SAKOANE CJ

## 1. INTRODUCTION

[1] These proceedings were brought on the 30<sup>th</sup> August, 2016. Plaintiff seeks to reverse what he alleges was his unlawful demotion after he had been promoted from the rank of Lance-Sergeant to Inspector. The defendants deny this and allege that the said promotion was to the rank of Sergeant and not that of Inspector. A pre-trial conference was held on the 09<sup>th</sup> May 2022, the minute of which reads as follows:

“PRESENT: Adv T. Letsie – for the plaintiff

Adv. T. Mohloki – for the defendants

1) FACTS THAT ARE COMMON CAUSE

- (i) That plaintiff and others received communication through DISPOL Mapola on the 8<sup>th</sup> May, 2016 that there is a message which listed promoted officers, but plaintiff was told that by mistake his name was omitted on (sic) that first message;
- (ii) That plaintiff received message that promotes him to the rank of an Inspector as rectification of the omission made on (sic) the first message;
- (iii) That plaintiff was verbally told by the **DISPOL (Mapola)** on the 9<sup>th</sup> May, 2016 that there is a directive to tell him that there was an error on the second message of stipulation of promotions and that he was promoted to the rank of Sergeant not Inspector;

2) DISPUTE

- (i) Legal effect of an “error” by the Commissioner of Police to have promoted plaintiff to the rank of an Inspector instead of Sergeant.”

## **Relief**

[2] The plaintiff seeks the following prayers:

- (a) *Declaration of his demotion from the rank of an Inspector to the rank of Sergeant to be unlawful and null and void;*
- (b) *His salary arrears from the date purported to be demoted be paid to the date of the decision of this Honourable Court;*
- (c) *Costs of suit.*
- (d) *Further and / or alternative relief.*

## **II. ISSUES**

[3] With all the factual issues being matters of common cause as illustrated above and agreed to by the parties during the pre-trial conference, Counsel agreed that they dispense with oral evidence and asked that the matter be decided on the basis of the contents of the pre-trial minute and annexures. Only two issues arise which are:

- 3.1 Whether the plaintiff was promoted to the rank of Inspector and thereafter demoted to the rank of Sergeant;
- 3.2 Whether the Commissioner of Police is precluded by law from correcting the erroneous “promotion” of the applicant, except by instituting self-review proceedings.

[4] **Plaintiff’s case**

On 07<sup>th</sup> May, 2016 the plaintiff met with the District Commissioner (DISPOL) *Motlatsi Mapola* who told him that he had been enlisted as part of the officers who would be promoted to the rank of Inspector. This

was even followed by both a written message and a radio message on the police frequency. However, *Mapola* later told him that his name had been omitted by mistake from the message. The message is annexure “**M1**”, which reads as:

“NR 1                     GC56     07 0836   DATE STAMP  
FROM: COMPOL HRO   LESOTHO MOUNTED POLICE SERVICE  
TO: DISPOLS, DDT AND H/UNITS   DISTRICT COMMISSIONER  
MO:DCPS,SACPS,ACPS,REGIPOLS,DT.O/CSALARIES AND RECORDS MASERU URBAN  
**2016-05-08 “SIGNATURE”**  
MASERU-LESOTHO

*CPHQ/R/6 07/05/16 It is hereby published for the information of all ranks that the Commissioner of Police have (sic) promoted the following police officers to the ranks of Inspectors, Sub-insp. Inspectors, Sergeants and Lance Sergeants respectively. They are listed in order of seniority and they are effective from today Saturday 07/05/16.*

DTOR;07 0919  
OPR: Nkikana.”

[5] This message was followed by another one the following day referenced annexure “**M2**” which reads:

“NR                     GC115                     08 0615   DATE STAMP  
FROM: SACP SMSS   LESOTHO MOUNTED POLICE SERVICE  
TO: DISPOLS, DDT AND H/UNITS   DISTRICT COMMISSIONER  
MO:DCPS,SACPS,ACPS,REGIPOLS,DT.O/CSALARIES AND RECORDS MASERU URBAN  
**2016-05-08 “SIGNATURE”**  
MASERU-LESOTHO

*CPHQ/R/6 07/05/16 It is hereby published for the information of all ranks that the Commissioner of Police have (sic) promoted the following police officers to the ranks of Inspectors and Sergeants. They were omitted in the message from Compol HRO dated 07/05/2016, and they will assume their seniority within the prior list.*

***To the rank of Inspector***

1.        ***No-9297 Subinsp “mote Rural***
2.        ***No-9025 L/Sgt Mokoka Urban***

3. ...
4. ...
5. ...

*Dtod: 08 0747*

*Oper: Silase.”*

- [6] Plaintiff claims that roughly two days later himself and other police officers were summoned to the office of *Mapola* where he told them that there had been an error in their promotions and in actual fact plaintiff was promoted to the rank of Sergeant not Inspector.
- [7] Plaintiff avers that this conduct by the Commissioner was not only bad in law but was unprocedural in that it constitutes a demotion without being afforded a proper hearing. The Commissioner is also precluded by law, from correcting an erroneous decision except by way of judicial-review.

### **Defendant’s case**

- [8] In response, the defendants allege that the error was committed by an unnamed radio room personnel who mistakenly typed the second message and included plaintiff under the list of police officers being promoted to the rank of Inspector as opposed to the correct rank of Sergeant. Further that the office of the District Commissioner *Mapola* only served to convey information about the mistake and its rectification.

### III. DISCUSSION

#### **Police Act No.7 of 1998**

[9] Section 8 of the **Police Act, 1998** provides for the appointment and promotions of police officers. It reads as follows:

**“Appointment and promotions**

8. 1) *There shall be a Police Appointment and Promotion Board which shall be responsible for the appointment and promotion of senior officers, cadet officers, and such classes of civilians appointed under section 33 as the Commissioner may designate.*
- 2) *The members of the Board constituted under subsection (1) shall be the Commissioner, who shall be the chairman; a person nominated by the Police Authority and a person nominated by the Minister responsible for the Public Service.*
- 3) *The Commissioner shall, subject to regulations made under this Act, be responsible for the appointment, and promotion of police officers, other than cadet officers, to any rank below that of senior officer.*
- 4) *Any person appointed as a member of the Police Service shall serve a probationary period of two years, or such longer period as the Commissioner may direct, before his appointment is made permanent.*
- 5) *The Commissioner may appoint a police officer to act in a rank senior to his substantive rank, and where the period of such acting appointment exceeds 28 days such officer shall, during acting appointment, receive salary at the scale applicable to the senior rank at such incremental level as the Commissioner may determine.”*

#### **Police Service (Amendment) Regulations, 2014**

[10] Regulation 4 (1) of the **Police Service (Amendment) Regulation** sets out the ranks as follows:

- “The ranks of the Police Service shall be known as by the following designations-**
- a) Commissioner**
  - b) Deputy Commissioner**
  - c) Senior Assistant Commissioner**
  - d) Assistant Commissioner**

- e) Senior Superintendent'
- f) Superintendent
- g) Senior Inspector
- h) Inspector / Cadet Inspector
- i) Sub-Inspector
- j) Sergeant
- k) Lance Sergeant
- l) Police Constable."

[11] In the ordinary course of things, a police officer should rise through the ranks. This is provided for in regulation 7(1) of the main regulations i.e. **Lesotho Mounted Police Service (Administration) Regulations, 2003** that reads as follows:

*"Unless the exigencies of the Police Service demand otherwise, promotion to a higher rank shall be from the substantive rank immediately junior to the higher rank, as set out in regulation 4."*

[12] The parties are on common ground that the first message of 7 May listed names of police officers who had been promoted to the rank of Inspector. The plaintiff's name does not feature in that list. This message was from "COMPOL HRO" which I understand to be an acronym for "Commissioner of Police Human Resource Office", The second message of 8 May came from "SACP SMSS" which I understand to be an acronym for "Senior Assistant Commissioner of Police Strategic Management Support Services". This is the message that informed the other relevant officers about an omission of the plaintiff's name from the list promotees to the rank of Inspector.



[13] *Motlatsi Mapola* says in his statement that on receipt of the 7 May message, he realised that the plaintiff's name did not feature in the list of promotees. He became unhappy because he is the one who had made a recommendation that the plaintiff be promoted for outstanding performance. He communicated his dissatisfaction telephonically to the office of Assistant Commissioner of Police (ACP) Administration. He was informed that an error was made and would be corrected. Indeed, he received the second message "rectifying" the error. But the next day (presumably 9 May), he got another "message that reverses the promotions of the plaintiff and others." He then summoned the plaintiff and other affected officers to his office and informed them about the message.

[14] What emerges from all this is that on 7 May the Commissioner's Human Resource Office communicated a list of officers the Commissioner had promoted. The plaintiff's name was not included. This means that the plaintiff was not promoted. Unhappy about this, District Commissioner *Mapola* (who is not even a Deputy Commissioner) took steps to have the plaintiff promoted and the list accordingly amended. He did not care to approach the Commissioner but instead talked to the Assistant Commissioner Administration. The second message purporting to correct the Commissioner's list came not from the Commissioner's office but a

different office of Senior Assistant Commissioner of Police Strategic Management Support Services (SACP SMMS).

[15] This message from SACP SMMS comes from an office which does not have any role in promotions. It is, therefore, irrelevant and incompetent to rectify mistakes made by the Commissioner in the exercise of his statutory powers under section 8 of the **Police Act, 1998**. It is the Commissioner himself who would rectify errors, if any, in the communication of the list of names of promoted police officers. This is because the Commissioner on the discharge of his function does not act mechanically but deliberately. As said in **Goliath**<sup>1</sup>:

*“Inevitably, in evaluating various potential candidates for certain position, the management of an organization must exercise discretion and form an impression of those candidates. Unavoidably this process is not a mechanical or mathematical one where a given result automatically and objectively flows from the available pieces of information. It is quite possible that the assessment made of the candidates and the resultant appointment will not always be the correct one. However, in the absence of gross unreasonableness, which leads the court to draw an inference of mala fide, this court should be hesitant to interfere with the exercise of management’s discretion.”*

Thus, the message of 8 May from SCP SMSS purporting to include the name of the applicant in the list issued by the Commissioner’s Human Resource Office is a nullity.

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<sup>1</sup> Goliath v Medscheme (Pty) Ltd [1996] 5 BLLR 603 at 609-610

[16] It follows that absent any error in the list of promotees issued by the office of the Commissioner on 7 May, there is nothing that the Commissioner is obliged to correct by way of self-review<sup>2</sup>. Neither is the plaintiff's claim of legitimate expectation to be promoted and the alleged demotion sustainable in law and fact.

[17] The last arrow in the plaintiff's quiver is the assertion of the *audi* principle (the right to be heard before being demoted). This assertion is misplaced. The *audi* principle applies in respect of decisions that result in loss of rights, liberty, property and status<sup>3</sup>. No loss of the types of rights is proven. On the contrary, the plaintiff's letter of demand dated 16 June 2016, asserts that he has been promoted to the rank of Sergeant. This is a rank above his erstwhile substantive rank of Lance-Sergeant. He has, thereby, not lost but rather gained in status. He did not suggest that he deserved to be promoted by skipping two ranks of Sergeant and Sub-Inspector. No experience, or extra-ordinary performance has been alleged and proved to warrant such accelerated promotion.

## **DISPOSITION**

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<sup>2</sup> Lesotho Hotels International (Pty) Ltd v. Minister of Tourism, Sports and Culture and Others LAC (1995-99) 578

<sup>3</sup> Matebesi v. Director of Immigration and Others LAC (1995-99) 616

[18] The plaintiff's case is limping. It could not be salvaged. It falls to be dismissed with costs.

**Order**

[19] In the result, the following order is issued:

1. The plaintiff's case is dismissed with costs.

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**S. P. SAKOANE**  
**CHIEF JUSTICE**

For the Plaintiff: *Adv. T. Letsie*

For the Defendants: *Adv. T. Mohloki*