

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**CIV/APN/0321/2022**

In the matter between:

**POLICE CONSTABLE DUMA**

**APPLICANT**

and

**COMMISSIONER OF POLICE**

**1<sup>st</sup> RESPONDENT**

**HUMAN RESOURCE OFFICE**

**2<sup>nd</sup> RESPONDENT**

**THE ATTORNEY GENERAL**

**3<sup>rd</sup> RESPONDENT**

Neutral citation : Police Constable Duma v Commissioner of Police and 2 Others [2022] LSHC Civ 66 (14 March 2025)

**CORAM** : **KHABO J.,**  
**HEARD** : **17 APRIL 2024**  
**DELIVERED** : **14 MARCH 2025**

### **SUMMARY**

*Administrative Law - Judicial Review - Against the decision of the Commissioner of Police in which he dismissed the Applicant, a member of the Lesotho Mounted Police Service (LMPS) pursuant to Section 31 (1) (i) of the Police Service Act, 1998 - wherein he had prior to effecting the dismissal asked him to make written 'representations' against allegations of misconduct levelled against him - Applicant seeking the review and setting aside of the decision on the basis that written representations denied him an opportunity to cross - examine witnesses on whose statements the Commissioner relied for the decision as well as denying him an opportunity to give his evidence in defence - The court finds the Commissioner to have acted within the purview of the authority vested in him by the law and not to have exercised such authority arbitrarily, capriciously, irrationally, maliciously or disproportionately.*

## **ANNOTATIONS**

### **Statutes and subsidiary legislation**

Lesotho Mounted Police Service (Administration) (Amendment) Regulations, 2004

Police Service Act, 1998

### **Cases cited**

#### **Lesotho**

Lesotho Police Staff Association (LEPOSA) and 2 Others v The Commissioner of Police and 2 Others Constitutional Case No. 14/2020

Mamonyane Matebesi v Director of Immigration and 2 Others C of A (CIV) 2/96

Roma Taxi Association v Officer Commanding Roma Police and Others C of A (CIV) 20 of 2015 [2016] LSCA 6 (26 April 2016)

### **Other jurisdictions**

#### **South Africa**

Attorney - General, Eastern Cape v Blom 1988 (4) SA 645 (A)

Basson v Provincial Commissioner (Eastern Cape) Department of Correctional Services (2003) 24 ILJ 803 (LC)

Benjamin v University of Cape Town [2003] 12 BLLR 1209 (LC)

Commissioner of Customs and Excise v Container Logistics (Pty) Ltd: Commissioner of Customs and Excise v Rennies Group Ltd t/a Renifreight 1999 (3) SA 771 (SCA)

Du Preez v Truth and Reconciliation Commission 1997 (3) SA 204 (A)

S.A. Roads Board v Johannesburg City Council 1991 (4) SA 1 (A)

Sefularo v President of Bophuthatswana and Another 1994 (3) SA 80

### **United Kingdom**

Regina v Army Board of Defence Council, ex parte Anderson QBD 1991

## **JUDGMENT**

**KHABO J.,**

### **Introduction**

[1] This is an application for the review of the decision of the 1<sup>st</sup> Respondent, Commissioner of Police, to dismiss the Applicant from the Lesotho Mounted Police Service (LMPS). The Applicant was posted at Botha - Bothe Police Station when he was dismissed.

### **Circumstances surrounding the dispute**

[2] 1<sup>st</sup> Respondent's decision was prompted by a video circulating on various social media platforms of a Police Officer soliciting a bribe from a driver. The incident is purported to have occurred along Main North 1 (A1) public road between Ha Rampai and Community on 13<sup>th</sup> July 2022. Acting on the

strength of this video, the 1<sup>st</sup> Respondent took a decision on 30<sup>th</sup> September 2022 to dismiss the Applicant from the police service in terms of **Section 31 (1) (i) of the Police Service Act, 1998**.<sup>1</sup>

### **Applicant's case**

[3]The Applicant complains that he was neither afforded an opportunity to test the evidence the 1<sup>st</sup> Respondent relied on in dismissing him nor to lead evidence in his defence. He contended that this was the kind of case that could not be resolved on paper and that had he be given an opportunity for an oral hearing, he could have cross - examined persons whose statements were relied upon in the decision to dismiss him and presented his defence.

[4] His grounds of review are in a nutshell, two - fold, namely,

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<sup>1</sup> Act No. 7 of 1998

(a) That he was not afforded an opportunity to cross - examine people who produced documents relied upon by the 1<sup>st</sup> Respondent in taking a decision to dismiss him; and

(b) That this denied him an opportunity to lead evidence in his defence.

[5] He approached this court to seek the review of the decision and for reinstatement to his position, prayers he couched in the following terms that:

(a) The decision of the 1<sup>st</sup> Respondent to dismiss him from the Lesotho Mounted Police Service be reviewed and set aside;

(b) Reinstatement to his post;

(c) Costs of suit; and

(d) Further and/or alternative relief as the Honourable Court may deem fit.

### **Respondents' case**

[6] This application is opposed. The 1<sup>st</sup> Respondent avers that he invoked the due process of the law as laid down in **Section 31 (1) (i)** read with **Section 1 (y)** in the schedule to the **Lesotho Mounted Police Service (Administration) (Amendment) Regulations, 2004**.<sup>2</sup> It is Respondents' case that the Applicant was properly dismissed from the police service for having committed a disciplinary offence by soliciting or accepting a bribe from a tourist named *Buks Kriel*.

[7] Respondents' Counsel argued that it was sufficient for the 1<sup>st</sup> Respondent to afford the Applicant an opportunity to make '*representations*' as required by **Section 31 (1) (i)** which provides that:

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<sup>2</sup> Legal Notice No. 95 of 2004



(1) *Notwithstanding the provisions of Part V, the Commissioner may, at any time, after giving the police officer concerned an opportunity to make representations:*

(i) *dismiss an officer who subverts good order, discipline or lawful authority and tends to bring the Police Service into disrepute.*

[8] *Part V of the Act sets out procedure to be followed where a Police Officer is charged with a disciplinary offence. The procedure essentially provides for a hearing prior to a dismissal for an alleged act of misconduct in respect of both senior and subordinate Police Officers.*

[9] However, where the Commissioner feels the misdemeanour complained of constitutes a subversion *‘to good order, discipline or lawful authority and tends to bring the Police Service into disrepute*, he may resort to **Section 31 (1) (i)** in terms of which a Police Officer may only be afforded an opportunity to make *‘representations’* not an oral hearing. These provisions, therefore, give the Commissioner an option

to either act in terms of **Section 31 (1) (i)** or **Part V** if he has to take disciplinary action against any Police Officer.

[10] It is Respondents' case that the 1<sup>st</sup> Respondent discharged his duties in line with the provisions of **Section 31 (1) (i)** and, therefore, finds this application misconceived and deserving to be dismissed with costs on a higher scale of attorney and client.

### **Judicial review**

[11] In determining whether the decision taken by the 1<sup>st</sup> Respondent is subject to judicial review, two questions arise, namely:

- (a) Whether the decision was sanctioned by law; and
- (b) Whether it followed the precepts of natural justice.

[12] The first enquiry is prompted by the principle enunciated in ***Commissioner of Customs and Excise v Container Logistics (Pty) Ltd: Commissioner of Customs and Excise v Rennies Group Ltd t/a Renifreight***<sup>3</sup> that the decision under consideration should have been in accordance with the behest of the empowering statute and the requirements of natural justice. The relevant principle of natural justice in the context of the current case is the ‘*right to be heard*’ (the *audi alteram partem* rule).

### **Applicant’s right to be afforded a hearing**

[13] The court stated in ***Sefularo v President of Bophuthatswana and Another***<sup>4</sup> that:

*The audi alteram partem rule is a principle of natural justice which promotes fairness by requiring persons exercising statutory powers which affect the rights or property of others to be afforded a hearing before the exercise of such powers. It has existed from antiquity*

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<sup>3</sup> 1999 (3) SA 771 (SCA) at 786 A

<sup>4</sup> 1994 (3) SA 80 at 82

*and is today the cornerstone of the administrative laws of all civilised countries.*

[14] Echoing these sentiments, the apex court stated in ***Mamonyane Matebesi v Director of Immigration and 2 Others***<sup>5</sup> that the *audi alteram partem* principle is a very important right “*rooted in the common law not only of Lesotho but of many other jurisdictions.*”

[15] In determining whether the Appellant in the case was entitled to be heard before she could be dismissed, the court considered four principles<sup>6</sup> of which the directly relevant one to the current case is that:

(1) *Whenever a statute empowers a public official or body to do an act or give a decision prejudicially affecting an individual in her liberty or property or existing rights, unless the statute expressly or by implication indicates the contrary, that person is entitled to the application of the audi alteram partem principle (Attorney - General, Eastern Cape v Blom 1988 (4) SA*

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<sup>5</sup> C of A (CIV) 2/96 at p. 7

<sup>6</sup> Pp. 8 - 9

645 (A) at 661 A - B; S.A. Roads Board v Johannesburg City Council 1991

(4) SA 1 (A) at 10 J -11 B; Du Preez v Truth and Reconciliation

Commission 1997 (3) SA 204 (A) at 231.

[16] 1<sup>st</sup> Respondent's powers under **Section 31 (1) (i)** do not necessarily deny a Police Officer, alleged to have committed a misconduct, a hearing. The Section only affords such an officer an opportunity to make written '*representations.*' It clearly does not envisage a hearing in the sense of an oral hearing an opportunity to cross - examine witnesses could arise. The Section does not, therefore, oust the *audi* principle as such, but it provides it in the form prescribed by legislation, namely, by written '*representations.*'

[17] The Commissioner's powers under **Section 31 (1) (i)** were not disputed by the Applicant. He underscored in his papers that he appreciated the provisions of the **Section 31 (1) (i)**, but felt that the circumstances of his case dictated that he be treated under **Part V**, which provides for an oral hearing prior to a dismissal. This is an attack on the manner in which the 1<sup>st</sup>

Respondent exercised his administrative discretion whether to act under **Section 31 (1) (i)** or **Part V**.

[18] Courts are enjoined to review administrative action in a restrained manner, regard being had to the principle of separation of powers. According to **Roma Taxi Association v Officer Commanding Roma Police and Others**,<sup>7</sup> courts will only intervene in the exercise of administrative power where illegality, irrationality, procedural impropriety, or disproportionality is discerned against the repository of power.

[19] The court in **Basson v Provincial Commissioner (Eastern Cape) Department of Correctional Services**<sup>8</sup> cited with approval in **Benjamin v University of Cape Town**<sup>9</sup> held that administrative decisions “*shall only fall within the purview of judicial review and be set aside, where they are found to be patently arbitrary or capricious, objectively irrational or*

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<sup>7</sup> C of A (CIV) 20 of 2015 [2016] LSCA 6 (26 April 2016) at para. 32

<sup>8</sup> (2003) 24 ILJ 803 (LC) at 820 C - F

<sup>9</sup> [2003] 12 BLLR 1209 (LC) at p. 1224

*actuated by bias or malice or by other ulterior or improper motive.”*

## **Analysis**

[20] In his initial letter of representation dated 01<sup>st</sup> August 2022,<sup>10</sup> the Applicant raised a number of issues against allegations levelled against him, including that the person who appears in the picture is not him; that the photos were not clear as the person appearing therein was wearing a cap and a mask. The 1<sup>st</sup> Respondent reacted to this letter through his Human Resource Officer on 10<sup>th</sup> August 2022<sup>11</sup> attaching thereto copies of photos taken and printed from the complainant’s mobile phone on the date the incident was purported to have occurred.

[21] The Human Resource Officer stated therein that the photos were taken by the complainant’s phone between 0900 and

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<sup>10</sup> Annexure ‘PD 2’ to the notice of motion

<sup>11</sup> Annexure ‘PD 3’ to the notice of motion

1000 hrs on 13<sup>th</sup> July 2022. Further that WPC Nyepetsi who was on duty with the Applicant on the day as well as Inspector `Molaoa who was in charge of the operation positively identified people in the photos as Police Officers who were on the Road Traffic Check Point (RTCP) on the day in question.

[22] He further indicated that Inspector `Molaoa identified herself in the video footage and admitted that “*she was behind the colleague who was accepting the money (bribery).*” Written reports of both officers together with that of by OCPS - Supt Mohloboli were attached to the response. The Human Resource Officer offered the Applicant an opportunity to make any further ‘*representations*’ on why the Commissioner could not invoke the provisions of **Section 31 (1) (i)**.

[23] The Applicant responded to the above letter by one dated 18<sup>th</sup> August, 2022<sup>12</sup> reiterating that he could not identify the person appearing in the video footage and further suggested that the picture could have been photoshopped. He denied all

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<sup>12</sup> Annexure ‘PD 4’ to the notice of motion



the allegations levelled against him and requested further that the 1<sup>st</sup> Respondent identify the specific location where the incident is purported to have occurred indicating that *Ha Rampai* and *Community* are two separate places. There was no further exchange of letters and the 1<sup>st</sup> Respondent served the Applicant with a letter of dismissal dated 30<sup>th</sup> September 2022, the subject of the current dispute

[24] The court had an opportunity to interrogate what constitutes a hearing in ***Regina v Army Board of Defence Council, ex parte Anderson***<sup>13</sup> a case in which members of the Armed Forces, who alleged discrimination, complained of not having access to Industrial Tribunals. Their only recourse was to lodge a complaint (*service complaint*) to be considered by the Army Board, an administrative forum.

[25] The discrimination complaint was dismissed by the Board and in applying for judicial review, the complainant, a member of

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<sup>13</sup> QBD 1991

the Armed Forces, challenged the procedure adopted in not holding an oral hearing. The court held per Taylor LJ., that:

*The hearing does not necessarily have to be an oral hearing in all cases. There is ample authority that decision - making bodies other than courts and bodies whose procedures are laid down by statute, are masters of their own procedure. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed and there is no rule that fairness always requires an oral hearing ...*

[26] It is this court's considered view that the Applicant was afforded an opportunity to present his defence in writing. Besides the letter of the 01<sup>st</sup> August 2022 he further wrote on 18<sup>th</sup> August 2022. In the opinion of this court, this afforded him an ample opportunity to raise any query in writing. The court, therefore, discerns no unreasonableness on the part of the 1<sup>st</sup> Respondent. It found the picture relied upon by the 1<sup>st</sup> Respondent, among others, clear such that anyone who knows the Applicant could positively identify him, despite the mask and the cap. The 1<sup>st</sup> Respondent did not only rely on that but

also on the written reports of Inspector `Molaoa, who was in charge of the Road Traffic Check Point, WPC Nyepetsi who was on duty with the Applicant as well as that of the Officer Commanding Botha Bothe Police Station, OCPS - Supt Mohloboli.

[27] In the initial letter from the Human Resource Officer dated 22<sup>nd</sup> July 2022<sup>14</sup> he had, *inter alia*, stated that after the purported incident, the Applicant was summoned by the Officer Commanding, Botha - Bothe Police Station (OCPS) and upon being questioned about the video footage, he admitted to having requested and accepted the bribe from a gentleman who was driving a white Toyota Land Cruiser bearing registration letters and numbers *KJ 52 WY GP*, and that he had tendered an apology to the then OCPS.

[28] It is important to note that the Applicant relied heavily on the constitutional case of ***Lesotho Police Staff Association (LEPOSA) and 2 Others v The Commissioner of Police and***

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<sup>14</sup> Para 3 of the letter

**2 Others**<sup>15</sup> particularly paras. 45 to 51 on his claim for a hearing and an opportunity to lead evidence in his defence. Circumstances of each case differ.

[29] In this case the court underscored the fact that Applicants were acting in their official and not personal capacity as members of *LEPOSA* when they engaged in the act they were accused of. It felt that in the circumstances of the case, Applicants ought to have been afforded an oral hearing.

[30] It did not condemn a written ‘*representations*,’ hence wrote at para. 45 that “*Parliament has not directed the shape or form of the opportunity. It has left it to the determination of the Commissioner.*” The very same case of ***ex parte Anderson*** (*supra*) which the court cited in the above constitutional case clearly states that a ‘*hearing does not necessarily have to be an oral hearing.*”

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<sup>15</sup> Constitutional Case No. 14/2020

## **ORDER**

[31] In the result, the court makes the following order:

The application is dismissed with costs.

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**F.M. KHABO**  
**JUDGE**

For the Applicant : Adv., Masasa T.V.

For the Respondents : Adv., Thakalekoala P.T.B.N assisted by  
Adv., Mochesane T.S.