

CIV/APN/147/2000

IN THE HIGH COURT OF LESOTHO

In the matter between:

MOEKETSI KUTLO SEOTSANYANA

APPLICANT

and

**THE ATTORNEY GENERAL
THE MINISTER (FOR PASSPORT CONTROL)**

**1ST RESPONDENT
2ND RESPONDENT**

For the Applicant : Mr. M.K. Seotsanyana

For the Respondents: Mr. T.S. Putsoane

JUDGMENT

**Delivered by the Honourable Mr. Justice T. Monapathi
on the 13th day of July 2000**

The Applicant, an advocate of fifty three years of age, was holder of a Lesotho local passport no. M259170 which would expire on the 23rd August 2003. He sought a replacement passport in terms of section 13 of Lesotho Passports and Travel Documents Act No.15 of 1998. The reason was that all the pages or spaces

in the passport had been filled up with ink stamp impressions of the various endorsements which had been duly made on entry and exit from Lesotho. As a result it was used up but a still valid passport. The Applicant had to apply to a replacement document.

In order to be issued with a replacement passport a person has to apply in a prescribed form to the Director of Immigration (the Director) which Mankopane Mathibeli, (the Respondent's deponent) the Principal Immigration Officer said "is currently being used in respect of all applications for passports." Applicant must have been issued with such a form. That is why he objected to filling up certain sections of the form more especially the one which should be filled by a chief under whose jurisdiction an applicant is. About this sections the Applicant said: "..... inasmuch as they were intended to prove his citizenship they were superfluous unnecessary and unconstitutional" and inasmuch as Applicant still held his "government-issued declaration of citizenship, namely my own passport." I will come later and briefly to this question of citizenship.

The most important prayers in the Applicant's notice of motion were for the following:

- “(a)
- (b)
- (c) Finding and declaring the oral refusal by the government of Lesotho through its civil servants at passport-control at Teja-tejaneng on Monday 10th April, 2000 and at Maseru on Tuesday 11th April, 2000 to issue a new passport-book to cover travel outside Lesotho by applicant for the unexpired period of validity of passport no. M259710, that is, ending 23rd August, 2003 to be unconstitutional, unlawful and an oppressive denial of citizenship and its attendant

rights and privileges.

- (d) Consequently upon the declaration in (c) above, ordering the Attorney-General as chief legal adviser to the government to advise passport-control or office at Maseru to issue the said new passport-book to applicant forthwith.
- (e)
- (f)”

I would have wished to underplay this question of citizenship. But section 7(1) of Act No.15 of 1998 refer to persons to whom passports may be issued as “citizens of Lesotho for purposes of travelling in or out of Lesotho.” In paragraphs 10 and 11 the Applicant puts in summary form all that shows and proves that he was a lawful citizen of this kingdom and added:

“..... that any government thereof, however incompetent it may be, is in that possession of the truth of the matter”.

Indeed in the preceding paragraphs despite, the Respondents’ response thereto by denial of “personal knowledge” and applicant being “putt proof thereof”, several other facts are put in which in most probabilities indicated that the Applicant was indeed a citizen of Lesotho. This was however not entirely satisfactory in another respect. These facts and statements were however couched in such strong, prolix, verbose and at some places in plainly insolent language that it becomes inexplicable why Counsel of the Applicant’s seniority and of his formidable intelligence should have this tendency at all. (See paragraph 10 of the founding affidavit and most of the paragraphs in the replying affidavit.) (See also ROMA BOYS FC AND OTHERS v LESOTHO FOOTBALL ASSOCIATION AND OTHERS 1995-1996 LLR 456 at 470. The Applicant will almost always see no amount of rectitude in people with whom he disagrees. He says it with no holds barred. I agreed with my brother Ramodibedi J in ROMA BOYS FC case that this is most

disrespectful to other people. I would be kind to the Applicant and say that he must learn to moderate his language.

Still on the issue of citizenship, it may perhaps be that the applicable forms were primarily geared towards proving citizenship. And that there are various ways to prove one's citizenship one of which is one's previous passport as the Applicant submitted. I am sure that if these historical facts in the life of the Applicant were put before the officials of the Director he would even find that, they outweigh the supporting evidence of a chief in showing that the Applicant is actually a citizen of Lesotho. Here one would still speak of probabilities .

But most importantly the Director has determined that there are ways of proving certain things (including citizenship) and there are ways of collecting information which the Director deems essential. This information may even have nothing to do with proof of citizenship or re-proving that one is a Mosotho as Applicant has variously styled the reason for the requirement. The Director runs a bureaucracy which must have an established routine because it accounts to the public. He has prescribed forms.

Then in above circumstances, is it not within the powers of the Director to prescribe requirements which he deems necessary to enable him to properly discharge his powers? Is it part of the bureaucratic game that a citizen must always have every explanation as to why administrative instruments such as forms are designed to elicit information from the citizen? And why in any or selected incidents should the citizen pick and choose suitable requirements? The questions are not too broad but are relevant and relate to the present situation wherein the Applicant takes the view that the requirement that his chief must fill a portion of an application is unnecessary. Before dwelling further on this question of filling of

forms there was one matter that the Applicant pursued most vigorously in his argument much against what I had expected. It had to do with the following.

The Applicant sought to persuade the Court that he had lost touch with and had no relationship with any chief. This included the chief of Masoeling Ha Patso in the district of Berea where he was born. The reason as he said was that he had effectively been a resident of the town of Maseru from as early as 1962. He said he was

“..... to date an urbanite and have never had to seek a service from a chief (morena ofe kapa ofe Maseru) in the town of Maseru, or indeed anywhere else. In consequence I do not have to be known to any chief or to know any for my citizenship to subsist -----” (vide paragraph 4 of founding affidavit).

I found it strange for the Applicant to say that he had no relationship to any chief. I would hesitate to believe so with respect to the Applicant. This was reinforced by my personal knowledge of the Applicant. And generally from my own knowledge of the life of our people in this country. I would similarly not believe so. This I would say despite Respondents unhelpful response to the said paragraph 4 that the contents thereof were not within the knowledge of the deponent and they put Applicant “to prove”.

I would add that whether any Mosotho has needed no service of any chief at any given time does not retract from the fact that a great majority of Basotho have at least a sentimental attachment to a chief in this country. It is more so when a person has been born at a place which he knew and has merely removed therefore by reason of schooling, working and stay in Maseru which is not even more than one hundred (100) kilometres from his place of birth. Such is the Applicant. That relationship with one’s chief however sentimental and attenuated it may be, it still

remains a fact very easy to presume than not. As such I took the Applicant's denial of relationship with his chief as a red herring if not a stratagem to avoid going about a task which the Applicant thought was inconvenient or onerous.

Indeed one need not be formally known to his chief. In my view it is an office of chief that seems to be a requirement in that form prescribed by the Director. So, if it was not the chief of Masoeling why was the Applicant not able to resort to one of the chiefs of Maseru if the meaning of jurisdiction of a chief is inclusive or is to be extended to mean the chief under whose jurisdiction a person resides? I however felt that as onerous as the requirement was that would not be a reason for dispensing with it. In my mind as long as the requirement for filling up the form remained as I decide, it would be a matter of discretion of the Director whether the whole of the form or some other part (including that of the chief) is to be dispensed with.

I would reiterate that for various reasons including those that may be given by the Director some parts of the application form may be dispensed with in deserving cases. As the Principal Immigration Officer has said an application form for a passport has to be accompanied by *inter alia* a birth certificate or affidavit of birth. This includes the part that has to be completed by a chief under whose jurisdiction an applicant is. I would not say that every such document must accompany an application as a matter of law "without exception." It surely cannot be pitched to level. If so it would negate that discretion that the Director has.

The reason why some degree of rigidity is necessary in complying with all requirements has been called for is to be found in what the Principal Immigration Officer said were compelling reasons. Firstly she said that despite possession of old passport it has still to be proved that an applicant was actually a citizen of Lesotho.

This insistence was found necessary because it was discovered that some people had in the past been granted passports when they in fact were not citizens of Lesotho, nor would they qualify for possession of any Lesotho passports. The strict requirement for support by chiefs to applicants in the prescribed forms was grounded on this problem.

The second reason why emphasis was put on the earnest filling up of forms was the following. After political disturbances of 1998 records of passport holders of the old type (such as Applicant's) of passports were burned down at the old immigration offices. This consequently made verification of the goodness or lawfulness of passports already held much difficult. The risk of wrongly issuing passport would be lessened by meticulous filling up of forms afresh.

Also advised against by Government was the previous practice of issuing of new passports to persons applying therefor on the basis of production of old passports. The issuing of a new passport on production of an old one was what Applicant apparently wanted. This filling up of forms afresh conduced to a safer and securer compilation of record of passport holders in the whole country. This I would have found to be the most persuasive reason. This would even justify encroaching or impinging on the extent of the Director's discretion in selected cases in which form would not be filled or where only partial filling of forms would be allowed. The Chief Immigration Officer conceded that the filling up of forms by individuals would entail a delay and was "simply not prejudicial". He said it was prejudicial but it was to be balanced against the interest of the nation which was against issuing passports to people who did not qualify. The new records would facilitate the introduction of machine readable passports which system was presently in vogue and was actually adopted in this country.

I did not see how the need for filling up fresh forms would be unjustified or excused by production of a used up passport on the basis of provisions of section 6 of Act No.15 of 1998. The section reads:

- “6. A passport shall contain the following information
- (a) full names and surname of bearer
 - (b) date and place of birth of bearer
 - (c) sex of bearer
 - (d) photograph of bearer
 - (e) signature of bearer
 - (f) date and place of issue
 - (g) expiry date of the passport
 - (h) signature of the person issuing the passport
 - (i) passport number and
 - (j) endorsements”

I thought the section prescribed as to what a regularly completed and executed passport document should contain as information or marks. The provision appears to be nowhere near a suggestion that an old passport (since it contains most of this information) is a substitute for filling up fresh forms. Indeed in the discretion of the Director this would be a time saving device. But he would normally not be inclined towards this short cut on the ground of the said compelling reason of the need to compile new records from the beginning.

It should be clear that I was not overly attracted to arguments like whether the chief's statement in the required form was the only way of proving one's citizenship or not. But I ended up deciding that any portion of the application form remained as important as other parts of the form unless in the discretion of the Director of Immigration that (of the chief's statement) part or other could be dispensed with.

I thought in the final analysis, as Mr. Putsoane for Respondents correctly submitted, the question which became uppermost was only one. It was whether or not there was anything wrong with the requirement to fill up fresh forms, which requirement the Director had determined and deemed necessary to enable the Department to properly discharge its powers. I agreed that in law:

“where an Act confers upon a person power to do or enforce the doing of an act or thing, all such powers shall be deemed to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.”

(Section 32(1) INTERPRETATION ACT 19 of 1977) See also *CENTRAL TENDER BOARD AND OTHERS v MOSIANE BUILDING CONSTRUCTION* (C of A (CIV) No.23/1999. It trenchantly meant that unless something unlawful or irregular was pointed out as having been done by the Director the presentation of forms could not be faulted, as a requirement for all applicants. Nor could it be criticized as a wrongful exercise of power by the Director.

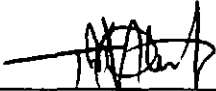
I accepted Respondents submission that although Applicant was intending to apply for a new passport to replace the old one, he was for all intents and purposes applying for a different type of a document i.e. a machine readable passport. He still had to apply in terms of section 9 of Act No.15 of 1998. The section requires production of a birth certificate, affidavit of birth and several other items. Some of these could be dispensed with by the Director in his discretion. Even if the Director can do that he can in no way be impeached for insisting on a procedure of filling up of forms which is key to granting of passport documents. In no way therefore can it be contended that production of old passport automatically qualifies an applicant for a new passport. Possession of a valid used passport would merely suggest a reasonable likelihood or expectation that the holder will be issued

with a new document.

The Principal Immigration Officer stated that pending the issuance of a new passport, an applicant could be issued (as it is the practice) with a temporary travel document in order to enable an applicant to travel. In that way the Applicant would not suffer any prejudice by following the procedure which has been put in place by the Director pending Applicant's application for a replacement passports. I respectfully agreed.

It was argued correctly in my view that in urging the Respondents to dispense with their procedure, without indication of likely prejudice, to the Applicant was engaged in misuse of Court process. In no way had it been demonstrated that there were any actions by the Respondents which were contrary to the law in discharge of their duties. It was submitted that in the circumstances the Court could not interfere with administrative action of the Respondents when they were acting in terms of the law and acting regularly. It could not even be said that there was a refusal to grant Applicant with a passport. In terms of set procedures Applicant had not applied for one. I agreed.

In the circumstances of this case none of the prayers were tenable. They had to be dismissed with costs. It was so ordered.



T. MONAPATHI
JUDGE