

IN THE HIGH COURT OF LESOTHO

In the Application of :

MONYAKA AZAEL MAKHETHA

Applicant

v

1. G.A. MPHAKALASI }
2. LEHCO-OP }

Respondents

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S.
Cotran on the 28th day of March, 1983

The applicant seeks the following relief :-

- 1.(a) declaring the purported letter of dismissal, written by First Respondent to the applicant, null and void and of no legal effect as a result;
 - (b) reinstating the applicant in his post of Manager of Second Respondent until First Respondent has awarded the applicant the right of hearing;
 - (c) directing First Respondent to pay full emoluments accruing from the substantive post held by applicant, for the month of November and all other subsequent months until applicant's services with the Second Respondent are properly and lawfully terminated;
 - (d) restraining First Respondent from in any way interfering with the applicant in the ordinary course of his duties with Second Respondent;
 - (e) Costs of application.
2. Further and alternative relief to applicant, as to this Honourable Court may seem just."

The application was resisted by the respondents. The application was dismissed with costs on 1st March 1983. My reasons follow:

The applicant's case is that he was appointed as Manager of the production system of second respondent on 10th February 1982 on a probationary period of three months (see

/letter

letter annexure A to founding affidavit) during which period either party would be entitled to give one month's notice of termination to the other party without giving reasons. Upon confirmation to the "permanent establishment" and "in other respects" the applicant was to be governed by "orders rules and regulations of the company as in force from time to time".

The applicant's probationary period expired and the inference is that he was confirmed but on the 18th November 1982 he was summarily dismissed on the grounds of "fraud, theft, and disobedience of lawful orders". He was however, given his salary to date, his earned leave, and one month's salary in lieu of notice.

The applicant has produced no documentary evidence to show that the respondents have any "orders rules or regulations" regarding employees confirmed on the permanent establishment which the respondents failed to conform to.

The respondents in their opposing affidavit aver the applicant's services have been terminated in terms of s.15 of the Employment Act 1967 (No. 22 of 1967). Details of the applicant's transgressions were detailed in extenso.

We have one decision in Lesotho to the effect that where an employee plaintiff is able to establish that rules and regulations governing his employment give him a right to a hearing, that the employers have, in general, the duty to comply with their own regulations and rules. If not the plaintiff employee is entitled to damages if he does not wish to be reinstated. The quantum awarded, must, in the nature of things, vary from case to case. (Forrester v L.E.C. CIV/APN/59/77 dated 8th May 1978 - unreported - confirmed on appeal).

Under the common law barring a contractual term to this effect an employee is not entitled to reinstatement. Some statutory enactments, however, do provide for this remedy. The applicant was unable to show that he was subject to statute and were entitled to a "hearing".

The obligation to afford a "hearing" according to natural justice arises when there is an express or implied term in the contract or if a statutory enactment so require. The applicant quoted none either in his contract or by statute

/Grundling

Grundling v Beyers and others 1967(2) SA 131 at 141 D-E; and Moliea v Ncholu and LEC 1971-1973 LLR 14). The various categories of master and servant relationship can be found in Ridge v Baldwin 1963(2) All E.R. p.66 at 71 F-G,

This application is entirely misconceived and must be dismissed with costs. This is of course without prejudice to the applicant to sue for damages if he feels he has been wrongfully dismissed.

CHIEF JUSTICE
28th March, 1983

For Applicant : Mr. Khaue
For Respondents: Mr. Moilola