

IN THE HIGH COURT OF LESOTHO

In the matter between

BAPCLAYS BANK INTERNATIONAL - Plaintiff

vs

BENJAMIN TSELISO RANGOANANA - Defendant

A RULING IN TERMS OF RULE 32 OF THE RULES
OF THE HIGH COURT

Delivered by the Hon Mr. Justice M. P Mofokeng
on the 27th day of February, 1986

This is a special case for adjudication in terms of
Rule 32 of the Rules of the High Court.

The facts agreed upon by both parties are as follows

- " 1. That the Defendant was employed by the Plaintiff in terms of the Articles of Agreement, a true copy of which is attached, hereto, marked "A".
2. That the Defendant was suspended from duties with the Plaintiff on the 10th day of July 1982 and on the 10th day of August 1982, was dismissed on one month's notice. A true copy of the letter of dismissal is attached hereto, marked "B".

Furthermore, the Plaintiff and the Defendant concur that for the period 10th July 1982 to the 10th August 1982, the Defendant's salary was paid and that on termination of his duties on the 10th August 1982, the Defendant was paid a payment of salary in lieu of one month's notice

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3. The Parties concur that the Plaintiff's claim as computed in the annexed Certificate signed by Peter Bolton, attached hereto, marked "C", constitutes the Plaintiff's entire claim, both secured and unsecured against the Defendant. A true copy of a Certificate signed by the Manager of the Maseru Branch of the Plaintiff, Mr. Peter Bolton, is attached, hereto, marked "C"
4. The Parties concur that in the event of this Honourable Court finding in favour of the Plaintiff on the Point of Law, then and in that event, Judgment is awarded in favour of the Plaintiff in the sum of M34,444.03 (Thirty-Four Thousand Four Hundred and Forty-Four Rand and Three Cents) together with costs of suit and interest calculated according to the Provisional Sentence Summons.
5. In the event of this Honourable Court deciding the Point of Law and Special Case in favour of the Defendant, then and in that event, the Plaintiff's claim as specified in paragraph 4 above is upheld, save and except that any damages which the Defendant may succeed in proving at a later hearing of this Honourable Court, will be set off against the said sum of M34,444.03 (Thirty-Four Thousand Four Hundred and Forty-Four Maloti and Three Lisente) and interest as aforesaid
6. In the event of this Honourable Court deciding the Point of Law in favour of the Defendant, then and in that event, the Plaintiff shall be precluded from executing its judgment until such time as this Honourable Court, at a later date, has determined the quantum of compensation as damages on the Defendant's counter-claim
7. The Parties acknowledge that the Unfair Labour Practices Tribunal made a finding, which finding

/was not .

was not upset on appeal, that the Defendant's dismissal constituted an unfair labour practice in terms of Section 61 of the Trade Union and Trade Disputes Law of 1964.

8. The Parties finally concur that in the event of this Honourable Court finding on the Point of Law in favour of the Defendant to the effect that he is entitled to compensation as damages exceeding salary in lieu of one month's notice, then and in that event, the calculation of interest in Annexure "C", hereto, will be on the basis of the capital amount owing as at the date of the Defendant's dismissal on the 10th day of August 1982 on staff rates from that date to date of repayment."

The present matter arose out of a case between the parties and it appeared as "Lesotho Union of Bank Employees (LUBE) (for Rangoanana) vs Barclays Bank, C of A. (CIV) No 14 of 1984) and Reference will also be made to the case of LESOTHO UNION OF BANK EMPLOYEES (LUBE) (for BAHLA KOANA MOLI KO) vs STANDARD BANK, C. of A. (CIV) No 15 of 1984

The decision in the Barclays Bank (referred to above) was stated as follows by Aaron, J A

" In the result

1. The appeal is allowed with costs, including costs in the High Court
- 2 The order made by the Tribunal as to reinstatement and compensation is set aside and the matter is remitted to the Tribunal for reconsideration in the light of the remarks made in the judgment in the Standard Bank case, and the order in that case reads exactly

/the same

the same except that the following words were omitted

" in the Standard Bank case."

One of the conclusions, very important at that, was that by Wentzel, J. A. who is recorded as having said

" The Tribunal is the appropriate body to decide these matters. We propose therefore to refer the matter back to the Tribunal to consider again the order it made, both as to compensation and as to reinstatement. Naturally the fact that appellant has succeeded must imply that the reconsideration by the Tribunal should not result in an order less favourable to Moliko, but the issues of whether reinstatement is still appropriate and if so whether M14,640,32 is then the appropriate monetary compensation, should be considered afresh, and if reinstatement is then held not to be appropriate the Tribunal should consider what sum for compensation is in that event fitting." (My underlining)

The Court put the matter in that way because in terms of the Trade Union and Trade Dispute (S 61(2)) it makes it possible for the Tribunal to order both reinstatement and compensation. The Court thought, and rightly so in my view, that the question of reinstatement be reconsidered afresh, if still appropriate, and, if not, proper monetary compensation be awarded instead. This is the normal approach in cases of this nature and one of the reasons being that it would be irksome to force the employer to take back his dismissed employee. There are a legion of cases which express this principle both in Lesotho and the Republic

In a number of these cases it will be observed that the parties are usually bound by a contract or agreement and

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that there is often a remaining period which still has to be completed. The damages will only be considered for the unexpired period precisely because the whole contract or agreement is not considered afresh as though it were a period which had not been completed.

The case before me is slightly different. Although there exists a contract between the parties, it is a monthly contract or agreement. In my view, therefore, when the Court of Appeal upheld the defendant's appeal it meant that his dismissal was wrong. The parties after that then reverted back to the terms of their agreement. The defendant is then employed on a monthly basis until matters are done properly. It will be appreciated that in this case the parties have no unexpired period to consider.

The point of law for adjudication to be considered by this Court, viz

" Is the Defendant entitled to compensation as damages in terms of the said Law in excess of the salary in lieu of one month's notice which he has already been paid?"

is answered in favour of the defendant because in my view, as long as his dismissal is wrong, he reverts back to the status a quo until he is lawfully dismissed. Therefore, in the eyes of the Law he is regarded as being employed. He is entitled to what he ought to have earned during that period less what he did earn outside his work while, though still employed, was nevertheless not paid.

In terms of the agreed facts the Order is made in terms of paragraphs 5, 6 and 8.

J U D G E
27th February, 1986

For the Plaintiff
For the Defendant

Mr. Harley
Mr. Matsau