

IN THE HIGH COURT OF LESOTHO

In the matter between :

ATTORNEY GENERAL

APPLICANT

and

LESOTHO TEACHERS TRADE UNION  
THABANG KHOLUMO  
MAIEANE KHAKETLA  
MALIMABE MOTOPELA  
TLOTLISO MOTOLO

1ST RESPONDENT  
2ND RESPONDENT  
3RD RESPONDENT  
4TH RESPONDENT  
5TH RESPONDENT

J U D G M E N T

Delivered by the Honourable Chief Justice Mr. Justice  
J.L. Kheola on the 27th October, 1995.

This is an application for an order that a Rule Nisi issue calling upon respondents to show cause on a date to be determined by the Court why the following order shall not be made final:

1. Dispensing with the normal Rules relating to filing of applications and granting the applicant leave to bring this application as a matter of urgency.
2. (a) That the respondents including all members of 1st respondent shall not be restrained and or interdicted from congregating along the Constitution Road in the city of Maseru, in front of the buildings occupied by the Ministry of Education, Teaching Service Department, Examination Council, Planning Unit and Ministry of Education Headquarters or anywhere near, at or about the Ministry's Headquarters and the other mentioned offices or from congregating anywhere within 1km radius from the said

offices.

- (b) That the respondents including all members of 1st respondent shall not be restrained and or interdicted from shouting, singing obscene and insulting songs, and issuing threats directed at the officials of the Ministry of Education.
  - (c) That the respondents including all members of 1st respondent shall not be restrained and or interdicted from entering upon premises in the occupation and use of the said officials of the Ministry of Education and interfering with the peaceful and lawful discharge of their official functions.
  - (d) That the respondents including all members of 1st respondent shall not be restrained and or interdicted from entering the Ministry of Education without lawful authority or permission and destroying official property, documents, files, furniture and vandalising government property.
  - (e) That the respondents including all members of 1st respondent shall not be restrained and or interdicted from behaving and or conducting themselves in a manner likely to intimidate and annoy any officials of the Ministry so as to prevent them from discharging their official functions.
3. Directing the respondents to pay the costs of this application in their event of opposition.
  4. Granting applicant such further and/or alternative relief.
  5. That prayers 1, 2(a), (b), (c), (d) and (e) hereby operate with immediate effect as interim interdict.

This application was brought as an ex parte application with

a prayer that all prayers should operate with immediate effect as interim interdict.

The application was granted as prayed. To-day is the extended return day. At the hearing of this application, Mr. Phoofolo, attorney for the respondents, raised certain points of law in limine. The first point is that the jurisdiction of the High Court has been ousted by the Labour Code of 1992. Section 25 (1) of the Labour Code Order 1992 reads as follows:

"The jurisdiction of the Labour Court shall be exclusive as regards any matter provided for under the Code, including but not limited to trade disputes. No ordinary or subordinate court shall exercise its civil jurisdiction in regard to any matter provided for under the Code."

Mr. Phoofolo submitted that by the above section the jurisdiction of this court has been excluded to hear a matter provided for under the Labour Code.

On the other hand Mr. Letsie, counsel for the applicant, submitted that the High Court has unlimited jurisdiction in all civil and criminal matters within the Kingdom of Lesotho. I agree with that submission but that does not mean that matters which are exclusively within the jurisdiction of a subordinate court as provided by a statute can be brought to the High Court without compliance with section 6 of the High Court Act 1978. This section clearly indicates that there are certain matters which are excluded from the jurisdiction of the High Court despite the fact that it has unlimited jurisdiction in all civil

matters as well as criminal matters.

Section 25 (1) of the Labour Code Order goes further to say that no ordinary or subordinate court shall exercise its civil jurisdiction in regard to any matter under the code. It was submitted that the proper interpretation of "ordinary court" must include the High Court. For the purposes of this judgment I do not propose to deal with the proper interpretation of the words "ordinary court" which appear in the section. It seems to me that it is not necessary to interpret those words. What is necessary is to decide whether or not the present matter is one of those matters provided for under the Code which are within the exclusive jurisdiction of the Labour Court. If the answer is in the affirmative the present matter shall be excluded from the jurisdiction of the High Court.

In order to answer the question in the preceding paragraph one has to look at certain sections of the Labour Code Order, 1992.

Sections 229, 230, 231 and 233 are relevant to the present issue. The first three sections deal with strikes and lock-outs. They prescribe the procedures to be followed before a strike is declared and what an unlawful strike is and punishment for such unlawful strike.

Section 233 (1), (2) and (3) read as follows:

- (1) Subject to section 230, it shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or amalgamation thereof, in contemplation or furtherance of a trade dispute, to be present at or near a place where a person works or carries on business or happens to be if they are present merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.
- (2) It shall be unlawful for one or more persons (whether acting on their own behalf or on behalf of a trade union or of an individual employer or amalgamation thereof even when they may be acting in contemplation or furtherance of a trade dispute) to be present at or near a place where a person works or carries on business or happens to be for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working if they act in such manner as to be likely to intimidate any reasonable person in that place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace.
- (3) It shall be unlawful for one or more persons acting on their own behalf or on behalf of a trade union or of an individual employer or amalgamation thereof, in contemplation or furtherance of a trade dispute, to be present, in a menacing or threatening manner at or near a house or place where a person resides for the purpose of obtaining or communicating information, or of persuading or inducing any person to work or abstain from working.

It is common cause that on or about the 15th day of August, 1995 the first respondent declared a strike by its members. On the 12th day of October, 1995 when this application was instituted the strike was still going on. It is also common cause that there is a case pending in the Labour Court relating to the strike. However the issues in that case are different

from those involved in the present case.

In the view that I take picketing is part and parcel of a strike. However, only peaceful picketing is allowed in terms of section 233 of the Labour Code Order 1992. The important words in subsection (1) are "to be present at or near a place where a person works or carries on business or happens to be if they are present merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working."

According to the words quoted above it is clear that lawful picketing must be carried on where a person works or where he carries on business or where he happens to be. The respondents do not work at the headquarters of the Ministry of Education. They do not carry on their business there. The words "happens to be" are not easy to interpret. If my interpretation is correct they mean that if a person who is on strike finds himself at any place by chance, he is entitled to picket there. That interpretation does not make any sense. Be that as it may that is the interpretation I place on those words. If my interpretation is correct the respondents had a right to picket anywhere they happened to be. On the 22nd September, 1994 the 1st respondent and the Government of Lesotho (represented by the Ministries of Public Service, Finance and Education) entered into an agreement concerning the Teachers' Salary Structure. (See Annexure TKG "1" to the founding affidavit). This means that the Ministry of Education has a valid contract with the 1st

respondent. When the Ministry of Education breached the contract and stopped paying the salaries agreed upon, it seems to me that the respondents were entitled to go to the headquarters of the Ministry of Education for purposes of a peaceful picketing interns of section 233 of the Labour Code Order 1992. That is the place of work of the Ministry of Education where the respondents are entitled to picket in a peaceful manner.

Mr. Letsie, counsel for the applicant, submitted that what the respondents were doing at the headquarters of the Ministry of Education was not picketing but unlawful acts. I do not agree with that submission. The respondents were probably picketing in an unlawful way or intimidating the employees of the Ministry of Education in breach of section 234 of the Labour Code Order 1992. I have used the word "probably" because I do not want to make a finding; I am only trying to show whether this court has jurisdiction in this matter.

As I have said above the 1st respondent had declared a strike by its members and the picketing was part and parcel of that strike. If what the respondents did at the headquarters of the Ministry of Education was not a peaceful picketing and amounted to intimidation or was likely to cause a breach of peace, all their actions are covered by sections 233, 234 as well as sections 24 (f) and 25 (1) of the Code.

I come to the conclusion that this application is within the exclusive jurisdiction of the Labour Court and that it can only

be instituted in this court if there was compliance with the provisions of section 6 of the High Court Act 1978.

In the result the rule is discharged with costs.

J.L. Kheola  
CHIEF JUSTICE

27th October, 1995