

C OF A (CIV) NO.1 OF 1995

IN THE LESOTHO COURT OF APPEAL

In the matter between:

ALBERT LITHEBE MAKHUTLA

APPELLANT

AND

LESOTHO AGRICULTURAL DEVELOPMENT BANK

RESPONDENT

HELD AT:
MASERU

CORAM:

STEYN JA
BROWDE JA
LEON JA

J U D G M E N T

BROWDE JA

The appellant took up employment with the respondent on 6 December 1987 as a security guard. On the 19 November 1992 he was dismissed. The appellant thereupon instituted action in the Labour Court challenging the legality of his dismissal on the following grounds:-

- (i) That he was not given a hearing before the dismissal was effected.
- (ii) That his employment was terminated by a

person who had no authority to do so.

After consideration of the evidence both oral and as deposed to in the affidavits and annexures thereto filed on behalf of the parties, the appellant's application was dismissed by the Labour Court and costs were awarded against him.

The appellant then filed a notice of application dated 29 August 1995 in the High Court in which he asked that the decision of the Labour Court be reviewed and set aside. In accordance with the rules relating to review the rule nisi sought was also to include an order on the Labour Court to dispatch the record of the proceedings to the High Court for purpose of review within a specified time.

On the 1st September 1995 i.e. before the parties had even joined issue Mr Justice M. Lehohla in the presence of only the Appellant's Attorney gave what purports to be a judgment in the following terms:-

"Judgment

On the 4th September, 1995.

Court declines hearing of matter for lack of jurisdiction"

There follows the signature of the learned Judge. Apart from the surprisingly terse nature thereof the judgment gives no indication that the matter was argued before Lehohla J. nor, of course, are any reasons given for the decision.

It is against that decision that this appeal is brought.

As I see the position the questions for this Court to decide are (a) whether the High Court has jurisdiction to hear review proceedings brought in respect of a judgment of the Labour Court and (b) Whether the Application was in fact an application for review and not an appeal in disguise. The respondent's Counsel has submitted that Section 38 of the Labour Code, 1992 applies and that that section ousts the High Court's jurisdiction to consider review proceedings. Section 38 (1) reads as follows:-

"38. Awards, decisions final; notice

(1) An award or decision of the Court on any matter referred to it for its decision or on any matter otherwise falling within its sole jurisdiction shall be final and binding upon the parties thereto and on any parties affected thereby, and such award or decision shall not be the subject of an appeal in any proceedings or Court."

It will be readily observed that the section has no bearing on this matter since it deals specifically with appeals. It is a well established principle of our law that there is a strong presumption that the legislature does not intend to oust the jurisdiction of Courts of law and that a provision in a statute which is to be construed as ousting such jurisdiction must be clear and unambiguous in that regard. Interference with the High Court's jurisdiction can only be effected by express provision or by necessary implication and any provision which purports to limit the jurisdiction of the High Court will be strictly

construed. See Minister of Law & Order v Hurley 1986 (3) SA 568 (A) at 584 A-B, Lenz Township (Pty)Ltd v Lorentz N.O. 1961 (2) SA 450 (A) at 455B.

The inherent right of review which is vested in the High Court is well illustrated in the case of Photocircuit SA (Pty) Ltd v. De Klerk NO and De Swart No and others 1989 (4) SA 209. In his judgment in the Cape Provincial Division Friedman J (as he then was) said that despite the fact that the Labour Appeal Court had been empowered to review proceedings of the Industrial Court this did not deprive the Supreme Court of its inherent powers of review.

The High Court Act lays down in Section 2(1) that the High Court of Lesotho shall have "unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law in force in Lesotho" That certainly does not support the submission made on behalf of the respondents.

The Constitution in Section 119 (1) provides as follows:-

"119 (1) There shall be a High Court which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings and the power to review the decisions or proceedings of any subordinate or inferior court, court-martial, tribunal, board or officer exercising judicial, quasi-judicial or public administrative functions under any

law and such jurisdiction and powers as may be conferred on it by this Constitution or by or under any other law"

In my opinion this section puts beyond doubt that the High Court has the power to review a decision of the Labour Court whether that Court be a subordinate or inferior court properly so called or a tribunal exercising judicial or quasi-judicial functions.

The other issue raised by Ms Chimombe on behalf of the respondent is that the application brought before the Court a quo was really an appeal from the Labour Court's decision. She referred to points raised in the founding affidavit such as the alleged failure by the 2nd Respondent to give him a hearing before dismissing him; that he was not given an opportunity by his employer to prepare his defence; that he was dismissed by a person who had no authority to do so. All these matters were dealt with by the Labour Court, so Mrs Chimombe submitted, and therefore to raise them again could only be construed as an appeal. There seems to me to be substance in that submission. What is not characteristic of an appeal, however, is the allegation in the Appellant's founding affidavit that the judgment of the Labour Court went beyond the scope of the issues which, by agreement, it was called upon to decide and, perhaps more importantly, that the Labour Court found facts proved - and specific reference were made to the recital by the Court in its

judgment of what was referred to as "the saga that led to his dismissal" - without evidence of such facts having been led before the Labour Court. If that is so, and I make no comment thereon, then it was a misdirection and a procedural irregularity which were properly matter for review. This is in contradistinction to issues which are raised by way of appeal and which cannot legitimately be considered under the guise of a review application.

In my judgment therefore Lehohla J erred in holding that he had no jurisdiction to hear the review proceedings that were before him and that therefore the matter should be remitted to the High Court to enable that Court to consider the review application brought by the appellant. We wish to make it clear that when the matter is heard by the High Court its jurisdiction is limited to review the matters set forth at the foot of page 5 and the first paragraph of page 6 hereof.

In the result I would make the following order.

- (i) The appeal is upheld with costs.
- (ii) The matter is remitted to the High Court to enable that Court to hear and determine the review proceedings brought before it by the Appellant.

[Signature]
.....
BROWDE
JUDGE OF APPEAL

I agree and it is so ordered

[Signature]
.....
J.H. STEYN
JUDGE OF APPEAL

I agree

[Signature]
.....
R.N. LEON
JUDGE OF APPEAL

Dated at Maseru this 19th day of January, 1996.