

C of A (CIV) 13 OF 1997

IN THE LESOTHO COURT OF APPEAL

In the matter between :

'MANKHASI MAHAO

APPELLANT

and

LESOTHO ELECTRICITY CORPORATION

RESPONDENT

Held at :
MASERU

Coram:
LEON, J. A.
VAN DEN HEEVER, J.A.
BECK, A.J.A

JUDGMENT

BECK, A.J.A.

On 13 November 1990 the appellant, who was employed by the respondent Corporation as a clerk, was informed that her contract of employment was terminated with immediate effect, but with one month's salary in lieu of notice and with other terminal benefits.

In May 1991 she launched, by way of notice of motion proceedings, an application for an order setting aside the termination of her contract of employment, for reinstatement to her former post, for payment of her salary with effect from 13 November 1990, and for the return to her of an electricity cable or for payment of its value of M652. As an alternative to her prayer for reinstatement she claimed damages for loss of income from 13 November 1990 until she would have reached retiring age.

With the exception of her claim for the return of an electricity cable or for payment of M652, which claim was granted with costs, all her other claims were dismissed, with no order as to costs. It is against the dismissal of those claims that this appeal is brought.

Before turning to the merits of the appeal I express surprise that neither in its opposing affidavits, nor even in argument in the Court a quo, did the respondent resist the claim for return of an electricity cable, or for payment of its value. That claim was founded by the appellant upon her averment that the cable in question, which had been installed by the respondent when the appellant wished an electrical connection to be made to the house in which she then resided, had been purchased by her from the respondent. A claim

of a proprietary right to such a cable appears however to be precluded by the provisions of section 43(2) of the Electricity Act, 1968, which reads:-

“43(2) The fact that a consumer has paid to the Corporation the cost, or a sum representing the cost, of providing any electrical line or has otherwise paid any sum to the Corporation to meet the capital cost or part of the capital cost of providing him with a supply of electricity shall not confer upon the consumer any right of property or ownership in any electrical plant or electrical fittings of the Corporation.”

Section 21 of the Act would also seem to preclude any claim for reimbursement of the cost of providing electric lines for the purpose of a temporary supply of electricity. That section reads:-

“21 Notwithstanding any other provision of this Act, where the Corporation provides a consumer with a supply of electricity for purposes which are reasonably determined by the Corporation to be temporary purposes, the consumer shall pay to the Corporation the whole cost of providing and removing the electric lines necessary for the purpose of the supply.”

Be that as it may, the claim relating to the cable was not, as I have said, put in issue in the Court a quo, and there is no cross-appeal against the order that was made by the Court a quo in regard to it.

Turning then to the matter of the termination of the appellant's contract of employment, the facts are as follows:- On 19 and 23 October 1990 two letters were addressed to the respondent Corporation by the owner and the tenant respectively of a house at Khubetsoana in Maseru complaining that the electricity supply to the house had been cut, allegedly at the instance of the appellant and because of a monetary dispute between the appellant and the owner of the house. The Corporation's Construction Engineer and the Corporation's Personnel Manager went to the house at Khubetsoana and found that the electric cable had been cut from the pole and investigations revealed that this had been done on 8 October, 1990, by one of the Corporation's electricians by the name of Motsotsoana.

Both the appellant and Motsotsoana were required to submit written reports to the Personnel Manager explaining their involvement in this unauthorised cutting of the electricity supply to the house in Khubetsoana. Their reports were brief. Motsotsoana wrote that "I went to Khubetsoana and disconnected electricity on the instructions of (the appellant) who said that the owner of the house had failed to pay her for the materials she used for installation." The appellant wrote "The people I had sent to Khubetsoana are those whom I had asked to close my account."

On 9 November 1990, two weeks after delivery of the above-mentioned written responses made by Motsotsoana and the appellant, they were both requested to attend a meeting in the Corporation's Boardroom with the Managing Director, the Personnel

Manager, the Construction Engineer and the Public Relations Officer. They duly attended the meeting and in each other's presence they were asked to explain how the electricity supply at Khubetsoana had come to be disconnected and the appellant herself states in her founding affidavit that each of them explained what had transpired. She says they were then told that a decision would be made "as regards the meeting" and that later that same day the Managing Director informed her that she had committed an offence by asking Motsotsoana to cut the electricity supply and that she must resign or be fired. She declined to tender her resignation and 4 days later, on 13 November 1990, she received a letter from the Personnel Manager informing her that "The Lesotho Electricity Corporation's management terminates your services with the Corporation with immediate effect."

The first contention raised by the appellant in her founding affidavit was that "my purported termination was null and void *ab initio* due to the fact that it was purportedly done by the Personnel Manager whereas my letter of appointment was signed by the General Manager and not the Personnel Manager."

The learned Judge a quo rejected this contention, and quite rightly so. Section 19.2 of the Corporation's Personnel Regulations, which governed the appellant's contract of employment, provides that:-

"Any disciplinary matters involving employees which may lead to dismissal of the employee will be investigated,

and the results of the investigations will be submitted to the Managing Director for his final decision. Implementation of penalties on breach of discipline will be the direct responsibility of the Managing Director or Deputy Managing Director.”

The letter of dismissal expressly stated, as indicated above, that “the Lesotho Electricity Corporation’s management terminates your services” (my emphasis). It is surely as plain as a pikestaff that the Personnel Manger was not writing to tell her that he had terminated her services. Clearly he was merely conveying to her a decision taken by management. In the Corporation’s opposing affidavits the Managing Director has confirmed that the decision to terminate her contract was taken by the proper authority and that the Personnel Manager did no more than merely communicate that decision to her. The Personnel Manager corroborated this in a supporting affidavit in which he testified that “the letter of dismissal was written by me on the instruction of the Managing Director.” These averments were not denied by the appellant in her replying affidavit in which all she had to say about them was “I wish to submit that it was irregular for my purported dismissal to be communicated by a Personnel Manager.” (Emphasis added). No reason was given for this assertion, nor indeed can any reason be given for it.

The only other contention advanced in the appellant's founding affidavit was that

“I was never given any opportunity of a fair hearing before any adverse decision could be made concerning myself. I further wish to submit that the rules of natural

justice were ignored by the Managing Director and/or the Corporation. I further wish to submit with respect that even the so-called proceedings and/or meeting was not conducted in a fair and just manner as required by the rules of natural justice.”

No factual averments whatsoever have been made by the appellant to support these submissions. That she was given opportunities of being heard, both in writing and orally, concerning her part in the unauthorised cutting of the electricity supply at Khubetsoana is not in dispute. Why and in what respects the hearings afforded her were not in her view fair, or how the rules of natural justice were in her view ignored by “the Managing Director and/or the Corporation”, or how the meeting of 9 November, 1990, was not in her view conducted in a fair and just manner, is all left unsaid. Nowhere has she said that the information given to management about the Khubetsoana incident was incorrect or incomplete; nor has she said that her conduct in relation to that incident should have been regarded as excusable, or as insufficient to merit termination of her contract.

The only suggestion of any perceived unfairness on the part of the respondent, in the mind of the appellant, lies in ~~is~~ a contention on her part that her dismissal was grounded upon an earlier brush that she had in July 1990 with the Personnel Manager, which had resulted in the Managing Director calling for her file and, on seeing her service record therein, writing a stern letter of warning to her to mend her ways. In his opposing affidavit however the Managing Director has denied that his decision to terminate her employment


was based on her history; it was based on the finding that, as he told the appellant, she had committed a criminal offence in terms of section 42(1) of the Electricity Act by causing, without lawful excuse, Motsotsoana to interfere with the connecting cable at the Khubetsoana house. The only reason therefore, that the appellant hinted at for her averments of unfair treatment became a disputed issue of fact which was not capable of resolution on the papers alone without the assistance of oral evidence and the appellant did not apply for oral evidence to be received. Moreover, in her notice of appeal the contention that her dismissal was based upon her earlier history, and not on her involvement in the Khubetsoana matter, was not raised as a ground of appeal.

Accordingly I am satisfied that the learned Judge a quo correctly dismissed the application for an order setting aside the decision to terminate the appellant's employment. Why he did not award costs to the successful respondent puzzles me. His judgment contains no reason for his decision to make no order as to costs in relation to this issue, which was the only issue that was disputed. However, there is no cross-appeal by the respondent against the costs order, so it must remain undisturbed.

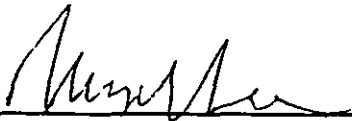
A final aspect of this matter that calls for comment is the fact that, as I indicated at the outset of this judgment, the notice of motion proceedings were only launched in May 1991, six months after her employment had been terminated. Reinstatement was one of the orders prayed for. No reason for the six months delay has been

given, but what is startling is that the application, which became ripe for hearing after 30 January 1992 when the appellant's replying affidavit was filed, only terminated in a judgment delivered in May 1997, which is 6½ years after the appellant's contract of employment was terminated. The record before us does not reveal on what date the matter was argued in the Court a quo, but delays of this magnitude, as I have said in relation to another matter that was heard at this session of the Court of Appeal (viz. Edwin Liau Rabele v Standard Chartered Bank Africa P.L.C. C of A (Civ) 30/97) bring the administration of justice into disrepute. Moreover they are fraught with the danger of causing serious and irremediable prejudice to one or more or all of the parties to such delayed litigation.

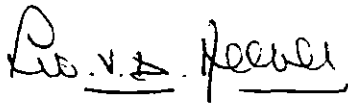
For the reasons I have given the appeal is dismissed with costs.



C. E. L. BECK
ACTING JUDGE OF APPEAL

I AGREE: 

R. N. LEON
JUDGE OF APPEAL



L. VAN DEN HEEVER
JUDGE OF APPEAL

Delivered at Maseru this 4th day of February, 1998.