

IN THE HIGH COURT OF LESOTHO

In the matter between:

KOPELI MOILOA

vs

WASA

JUDGMENT

On the 7th January, 1998, applicant (an employee of the Lesotho Water and Sewerage Authority) brought an application against his employer for a declaratory Order in the following terms:

1. Declaring the removal of applicant from the position of Head of Personnel to that of administrative manager null and void and of no force or effect.
2. Directing respondent to reinstate applicant to the position of Head of Personnel with respondent, with its concomitant benefits and

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allowances as detailed out in his contract of employment (Annexure "B").

3. Directing respondent to pay to applicant all arrears of housing allowance as from the date of the purported demotion to the date of judgment.
4. Directing respondents to pay the costs hereof.
5. Granting applicant such further and/or alternative relief as this Honourable Court deems meet.

Applicant has been an employee of the respondent since the 15th September, 1992, as Head of Personnel. On the 1st or 22nd October, 1992, the board of respondent gave applicant and other senior officers special allowances among which was included housing allowance. On the 27th November, 1996, applicant was charged with disciplinary offences, the gist of which was incompetence and lack of diligence in the performance of his duties. The disciplinary hearing commenced on 3rd December, 1996, and was concluded on the 18th December, 1996.

The disciplinary committee completed its work and reported to respondent's Board on the 15th January, 1998. The upshot of this was that

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applicant was "demoted to a non-decisive position with immediate effect". The decision of the Board was communicated to applicant on the 28th January, 1998. On the 29th January, 1998, applicant appealed to the Board by writing the notice of appeal to the Chairman of the Board, with copy to the Executive Secretary.

The crux of these proceedings is that applicant's appeal was not processed because it had not gone through the proper channels. By letter of 31st January, 1998, the acting chairman had written to applicant a letter which *inter alia* stated the following:-

"Please be advised that the substantive chairman is not in office presently, she is out of the country on official business. Your appeal will therefore be duly considered upon the return to office by the substantive chairman....

On a procedural matter, please take note that appeals should be channelled through the corporate secretary."

My understanding of the letter of the 31st January, 1997, was that the appeal would be considered as soon as the substantive Chairman of the Board returned. It never was until applicant wrote a reminder of 10th March, 1997. The Chairman of the Board wrote by letter of 17th March, 1997 (among other

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things) replied as follows:

“I am not aware of any appeal filed by you in the case where by you were demoted. while I am aware you wrote a letter to the Chairman in an attempt appeal, ... or did you?”

Nothing was done about this matter until November 1997. Applicant had been made aware (rightly or wrongly) that his appeal was since 17th March, 1997, being ignored by the chairman despite the promise by the acting chairman that it would receive attention when the chairman return to office. It was only on the 17th November, 1997, that this matter was taken by his attorney. Ultimately his attorney brought this application before this court by instituting these proceedings on the 7th January, 1998. Argument began before me on the 15th October, 1998, and was concluded on the 22nd October, 1998.

It is this delay that Mr. *Mohau*, Counsel for respondent criticises and asks this court not to exercise its power to make declarations in favour of applicant. This court at its discretion may make declaratory orders in terms of Section ____ of the *High Court Act* of 1978.

This Court (despite its unlimited jurisdiction) is not supposed to burden itself with matters that are within the jurisdiction of specialist tribunals such

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as the Labour Court. In such circumstances all this court concerns itself is to see that the empowering statute and regulations are followed and principles of natural justice are not breached. It is a principle of common law that this court is in charge of its own procedure. Section 6 of the *High Court Act* 1978 does not in any way remove this court's traditional power as a superior court to hear cases in which no other tribunal has jurisdiction.

It seems to me that as this is a matter of statutory interpretation and regulations made under it, nothing in the Labour Code can be interpreted as removing the courts jurisdiction. Yet the Labour Court has jurisdiction to deal with the merits of this case including those in which the merits are mixed with procedural issues. Section 24 of the *Labour Code* is broad enough to include the denial of the right of appeal that applicant has. See *Masiu v LADB* - CIV/APN/361/94 unreported.

There is nothing in the legislation that establishes the Lesotho Water and Sewerage Authority including the regulations that obliged the applicant to note his appeal through the corporate secretary or Chief Executive. Indeed I find it strange that the Chairman condescended to write to applicant direct when this should have been done by the corporate secretary (according to his reason). I observe applicant had given the Corporate Secretary a copy of his letter of appeal. Even if the Corporate Secretary had not been give a copy, that was not a good reason not to hear applicant's appeal.


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I am of the view that bureaucratic practice were applied in a manner calculated to deny applicant his statutory rights. Although I will not go as far as suggesting that there was *mala fides*, I am satisfied that there was a breach of the law. The acting secretary had informed applicant that his appeal would be heard, but it never was. I am not happy with the delay of applicant between march 1997 and January 19978 in taking action against respondent. Pending appeal, applicant should have not suffered prejudice. There is also the delay that is not the fault of the parties but which should have been avoided had respondent been reasonable.

The interests of justice oblige me to make the following Order:

- (a) It is declared that the Chairman of the Board of respondent erred in not hearing applicant's appeal that had been properly noted.
- (b) It is ordered that the appeal be heard within 30 days of this Order.
- (c) It is declared that applicant is entitled to the rights and privileges that he enjoyed as Head of Personnel between 7th January, 1997, and the date of hearing of the appeal.
- (d) Respondents are directed to pay costs.

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W.C.M. MAQUTU
JUDGE

28.10.98

For applicant : Mr. K.M. *Mosito*
For respondent : Mr. K. *Mohau*