

**IN THE HIGH COURT OF LESOTHO**

In the matter between:

**LEUNA LECHESA**

**APPLICANT**

**v**

**LESOTHO ELECTRICITY CORPORATION  
THE MANAGING DIRECTOR - LEC**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

Delivered by the Honourable Mr Justice WCM Maqutu  
on the 28<sup>th</sup> day of September, 1999

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On the 28<sup>th</sup> September, 1999, this court granted an order in the following terms:

The decision of the managing director (2<sup>nd</sup> respondent) dismissing applicant from the employment of the Lesotho Electricity Corporation (1<sup>st</sup> respondent) is set aside as being *ultra vires*, and the decision of the three man committee confirming applicant's guilt and recommending the demotion of applicant is reinstated. Respondents are directed to pay costs.

(Reasons will follow later)

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### THESE ARE THE REASONS

On the 22<sup>nd</sup> January, 1999, applicant brought an application in which he claimed that his dismissal was null and void. There were also other ancillary prayers which the court did not grant.

Applicant had been found guilty of misconduct and the managing director of the Lesotho Electricity Corporation pursuant to the decision of the disciplinary committee dismissed applicant from his job. In the letter of dismissal, the managing director brought to the attention of applicant his right to appeal to a three man appeal committee. Applicant duly appealed. The three man appeal committee confirmed the finding of guilt for misconduct but directed that he be demoted.

The Lesotho Electricity Corporation is a statutory body which is governed by laws that established it. Its disciplinary regulations are binding on it and in essence are an implied part and parcel of the contract of employment for all its personnel. See *Lesotho Electricity Corporation v GL Matsoso* 1997-98 LLR & *Legal bulletin* 415 at 420 where Browde JA said:

"The appellant and respondent were bound by the agreement, to observe the rules, and since the appellant must be assumed to have deprived respondent of his right...the appellant breached the rules. Consequently the hearing was not a fair one."

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In this case, the complaint is about the arbitrary manner the managing director breached the rules after a disciplinary hearing. Rule 3.3 of the Lesotho Electricity Commission Disciplinary Procedure does not expressly or by implication give the managing director the power to review the decision of the three man appeal committee. Rule 3.3.6 refers to the outcome of the appeal as "the final decision". It seems to me that even the decision and sanction of the disciplinary enquiry under Rule 3.2 is a decision not a recommendation.

It became an insurmountable problem for respondent to justify the action of the managing director. It was argued for applicant that the managing director had no review or appellate power over the three man appeal committee. It was also argued that since the managing director had already dismissed applicant from employment, he was disqualified from dealing with the matter further after an appeal against his decision. He would so to speak be sitting in judgment over his own cause. *K Koatsa v National University of Lesotho* 1991-1992 LLR & Bulletin 163 was referred to as having stated that such conduct was unfair. At page 169 Mahomed JA had pointed out that:-

"A private employer exercising a right to terminate a pure master and servant contract is not, at common law, obliged to act fairly.... He can act arbitrarily, irrationally or capriciously. The official or officials of a public body...cannot act capriciously, arbitrarily or unfairly."

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In the case before me the disciplinary proceedings were proper, and they went on appeal in a regular and proper manner, and there they were finalised. In other words applicant got a fair and proper hearing. What is in issue is the powers of the managing director over disciplinary proceedings, and the fact that the managing director put himself in "a situation in which his impartiality might be called to question. *Motlatsi Melato v Maseru City Concil & Ano.* - CIV/APN/291/98 (unreported).

Cotran CJ in *Lesotho Evangelical Church v MB Nyabela* 1980(2) LLR 466 made to pertinent observation in disciplinary cases of this nature. They are particulars in point because in a church hierarchy and decision making bodies, it often happens that the same people sit at more than one level of church structures. Therefore:-

"Discipline...must be in conformity with the rules, such as there are, and the minimum requirements of the canons of natural justice must be observed,"—page 477.

Where a person has already taken a decision against a complainant, such a person is no more "an independent arbiter with an open mind to consider dispassionately as an administrator, what is in the best interests of the L.E.C."—*Lesotho Evangelical Church v Nyabela* at page 496.

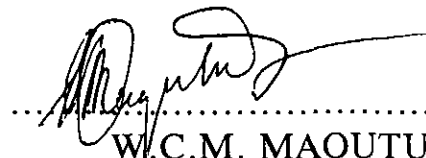
In conclusion I wish to point out that the wording of Rule 3·2 of the Lesotho Electricity Commission Disciplinary Procedure did not oblige the managing

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director to come into picture and terminate applicant's employment, in the way he did. He should have waited for the disciplinary machinery to run its full course and then communicate the "final decision" to applicant. The managing directors premature interference, which put him in a position of pre-judging the final outcome disciplinary proceedings was improper and *ultra vires* of his powers under the Disciplinary Procedure of the Lesotho Electricity Commission.

It is therefore not surprising that when the final outcome of the disciplinary proceeding against applicant turned out to be against the decision he had already made, the managing director attempted to overturn it contrary to the rules. This, as I have already stated, was *ultra vires* of the managing director.

It was for these reasons that I set aside the managing director's decision and reinstated that of the three man appeal committee.

  
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W.C.M. MAQUTU  
JUDGE

For applicant : Mr K Mosito  
For respondents : Mr Mohapi