

CIV/APN/472/99  
CIV/APN/273/99

IN THE HIGH COURT OF LESOTHO

In the matter between:

BOFIHLA TIKOE MATSOSO  
JEREMIAH SEFATSA MAKHENE

APPLICANT  
APPLICANT

and

LESOTHO TOURIST BOARD (LTB)  
BOARD OF DIRECTORS (LTB)

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

For Applicants : Mr. K.T. Khauoe

For Respondents : Mr. T. Makeka

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monpathi  
on the 10<sup>th</sup> day of October 2000 (See last page)

These applications were consolidated. They were heard together in two stages. First, was two points-in-limine namely that there had been material disputes of fact which could not be decided at on affidavit. This point was

abandoned later by Mr. Makeka for Respondents.

The next point was that the matter fell the exclusive jurisdiction of the Labour Court established in terms of the Labour Code No. 24 of 1992. And that it mattered not that the main prayer in the notice of motion may have been seeking for a declaration that the purported dismissal of Applicants were null and void. That furthermore it did not matter that in paragraph 19 of Second Applicant's founding affidavit he said his case was "a proper case for review by this Honourable Court". The main prayer had remained what it was.

Mr. Khauoe had made a point that once matter was not strictly a matter of unfair dismissal then there was no need to argue about the High Court's jurisdiction because it was not ousted. It was as he submitted the High Court still reserved the right to deal with other dismissals other than those challenge to have been unfair.

Second was application for amendment of notice of motion. The application for amendment of the notice of motion has already been dismissed on the 11<sup>th</sup> September 2000. Counsel had already addressed to completion the points *in limine* and had even rejected the offer to address the Court in connection with the remarks of Mofolo J in CIV/APN/226/94 MOSEHLE v LESOTHO BANK, 16<sup>th</sup> March 1999. I had considered the judgment to be very instructive.

In the present matter dismissal of Applicants was being challenged. Respondents' Counsel contended that the matter was no more governed by common law but fell squarely within the Labour Code Order 1992. Under common law it would have been as governed by the law of master and servant which provides that if the contract is terminated that is the end of the matter. Even capriciously so. The issue of fairness does not arise. So that the dismissed servant had to resort to a claim for damages. In terms of the new statutory order of the Labour Code the issue of whether a dismissal was fair or not was a proper jurisdictional issue.

To add on to the introduction Mr. Makeka for Respondents contended that the personnel regulations "BTM 3" at section article 31 envisaged the termination of the service for amongst others "misconduct." This section when read with section 32 stipulates the terminal benefits that are due under the circumstances. Respondent contended that that those had been complied with. Applicants were offered that leave pay as well as their contribution to the Pension Fund. They did not accept.

Respondents pointed out that the dispute was a matter governed by the Labour Code 1992 and that is how the whole process was handled. They said the dismissal of the Applicants had been in accordance with section 66(I)(b) of the Labour Code which provides that the dismissal must be "connected with the conduct of the employee at the work place." In the Respondents understanding the Applicants were not challenging the substantive fairness of the dismissal

which meant that the Applicants were dismissed for a reason connected with the conduct of the work place.

Respondents submitted further to say that as the dismissals were being challenged for procedural unfairness it fell squarely within the jurisdiction of the Labour Court. Section 70(I) of the Code provides that the claim for unfair dismissal must be presented before the Labour Court. This section accorded with section 25(I) which provided that the jurisdiction of the Labour Court shall be exclusive as regards any matter provided for under the code including but not intend to trade disputes. No ordinary or subordinate Court should exercise its civil jurisdiction in regard to any matter provided for under the code.

Mr. Makeka submitted further that section 24(I)(j) provided that the Labour Court shall have power, authority and civil jurisdiction to determine whether an unfair dismissal has occurred and if so award an appropriate relief and that could be to declare the dismissal null and void, or to be unlawful if contrary to sections of the Labour Code, or rules of natural justice. He submitted correctly that the issue before this Court was that of dismissal which fell squarely within the four walls of the section.

Section 24(I) of the Code provided that the Labour Court shall interpret the terms of employment amongst others. These were matters raised in the Applicants second prayer of the notice of motion. These issues fell within the ambit of section 79 of the Code and as such “were not common law principles”.

In other words they were still to be determined by the Labour Court.

Section 24 I (b) was said to reinforce the purview of section 25 (a) (j) because it provides that the Labour Court shall have the power, authority and civil jurisdiction to determine any dispute arising of the terms of any contract or breach of any such terms and if so to award an appropriate relief. Applicants have challenged that the regulations and conditions of service which govern their relations as between employer and employees i.e. contractual terms and conditions were breached by the Respondent. See para 5, 8, 9 of the founding affidavit of First Applicant.

It is now trite law that the High Court should not interfere with matters that fall within the exclusive jurisdiction of the Labour Court which was designed and was more suited to handle issues of labour relations and handle the responsibility of discharging equity and fairness.. Mr. Makeka said that the choice of a President and acting President in terms of section 23 of the Code suggested a deliberate selection of qualified and experienced. This underlined the importance of the court as a specialized Court.

As earlier contended by the Counsel Respondents had acted in accordance with the Labour Code and the section 66(4) in particular which deals with dismissals connected with an employee's conduct and an employee's entitlement to defend himself against charges leading to dismissal. This was strictly in conformity with the common law principle of *aud alteram partem*. In this case

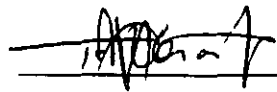
Applicants were charged and heard and were afforded an opportunity to defend themselves. They were found guilty on a balance of probabilities. On dissatisfaction it became matter properly to be entertained by the Labour Court.

I agreed with Mr. Makeka that the High Court and the Court of Appeal have previously addressed this issue of jurisdiction of the High Court on dismissal cases in LESOTHO CLOTHING AND ALLIED WORKERS UNION v GCM INDUSTRIAL (PTY) LTD CIV/APN/218/98 and the case of LESOTHO WHOLESALERS AND CATERING WORKERS UNION AND OTHERS v METCASH TRADING LTD AND OTHERS CIV/APN/38/99 Respondents accordingly finally submitted that the Applicants should have lodged their cases before the Labour Court. They have wrongly come to the High Court and were “literally” forum shopping which was frowned upon by the two highest Courts in the land as shown in the two cases just mentioned. The jurisdiction of the High Court was thus by operation of the Labour Code 1992 ousted in favour of the Labour Court and for reasons which I accepted and which ought to apply to the present claim. I accordingly decided that the point *in limine* about the High Court’s lack of jurisdiction succeeds.

I decided that the matter should be referred to the Labour Court unless a proper application for review is filed before the High Court. See MOSEHLE case (*supra*). That application for review when properly made will take into account the requirements of Rule 50 (about dispatch/production of record of

proceedings) unless there was condonation. There were various points of disagreement in the previous hearing about the production or status of the proceedings from the disciplinary hearing.

I emphasized that that application for amendment of the notice of motion by Applicants could only amount to an admission that the application (for a declaration) had originally been irregular. For the above reasons the application was dismissed with costs.

  
\_\_\_\_\_  
T. Monapathi  
Judge

Read by Peete J on 10<sup>th</sup> October 2000.