**CIV/APN/297/2000**

# IN THE HIGH COURT OF LESOTHO

In the matter between:

**NATIONAL EXECUTIVE COMMITTEE OF CONSTRUCTION OF ALLIED WORKERS UNION OF LESOTHO** **APPLICANT**

and

**TŠELE MOEKO** **RESPONDENT**

## JUDGMENT

**For Applicants : Mr. T. Mahlakeng**

**For Respondent : Mr. T. Monyako**

**Delivered by the Honourable Mr. Justice T. Monapathi on the 9th day of September 2000**

In these proceedings urgent orders were sought by the two Applicants as can be seen from page two of the notice of motion. Therein a rule nisi was sought calling upon the Respondent to show cause if any why:

(a) Respondent shall not be ordered forthwith to refrain from remaining and visiting, and/or being at premises frequenting the offices of the Second applicant pending the determination of these proceedings.

(b) Respondent shall not be interdicted forthwith from unlawfully interfering with and/or dealing with the property of the Applicants pending the finalization of these proceedings.

(c) Respondent shall not be directed to refrain from unlawfully interfering with the officers and employers of the Applicants in the execution of their duties in any manner whatsoever pending the determination of these proceedings.

(d) Respondent shall not be ordered to pay the costs of this application.

(e) Applicants shall not be granted such further and/or alternative relief.

The position had been that when argument was first before Court on the 8th September 2000 there had been an interim order made by my brother Mofolo J substantially directing in terms as prayed for, subject to confirmation or discharge of the rule.

There was filed of record an answering affidavit the Respondent. It was that process which had had an annexed letter dated the 21st August 2000. This I have extensively commented on in my ruling of the 31st August 2000. I thereby granted the Respondent leave to have filed an additional/ supplementary affidavit in which he would speak about the circumstances of the writing of the letter and its contents in relation to the alleged resolution of the Central Committee of the Second Applicant. This was particularly to explain to the Court what transpired in the Central Committee meeting in connection reasons for what appeared to have been an intention to withdraw the proceedings before this Court.

Applicants' affidavit in support of the application has been a very brief one.

I need not go over it except to say amongst others that it spoke about a meeting at which this Respondent was suspended and that the meeting seems to have been premised on there being a need or attempt or procedurally to have the decision dealt with by the Central Committee. It noted that the Committee would decide whether to suspend or remove or do anything by way of ratification or disapproval of the decision taken by the National Executive Committee. More about it follows.

Right from the outset I was convinced that the Central Committee did sit and that it had to deal with the matter of the resolution (against the Respondent) of the National Executive Committee because it was tabled. However I am satisfied and it was unanswerable that the Central Committee ended up not dealing with the matter but reached a resolution that effectively side-stepped the matter.

I am also satisfied that there had been, as one of the matters that caused the Central Committee not to resolve the matter, the substance or contents of the letter dated the 17th August 2000 from Attorneys A.T. Monyako & Co. The terms of the letter were very clear. It was addressed to the Secretary of the Executive Committee of the Applicants. Its words were clear and it said:

> "We represent Tšele Moeko who received a notice to appear at IEMS on "19/08/00". He has passed this notice to us for attention and reply direct while preparing for attendance thereat, he brought to us an application in the High Court concerning him and the matters pertaining to the charge against him.
>
> In the circumstance our instruction is to request you as we hereby do by this letter to postpone the hearing pending the outcome of the matter in the High Court." (My underlining)

The above is not on all fours and even contradicts what had been urged to be common cause namely that the suspension was made pending a decision of the

Central Committee.

The situation as I find it, is an anomalous one in which a Central Committee which had an obligation to deal with the Respondent's suspension with all the necessary speed, was prevented from doing so by a letter from the Respondent's Attorneys, for the most spurious of reasons. I go on to say for the most nonsensical reason because whether the High Court was seized with the matter or not the Central Committee would still have to deal with the Respondent's suspension and charges against him. This was the understanding. Mr. Mahlakeng conceded as much that despite that there was no direct provisions in the Constitution stipulating the procedures following on or pending of the suspension, it appeared to have been the practice and tradition of the said Applicants which no one seemed to question, that the Central Committee would deal with the matter. It also made sense that there had to be a forum for reviewing suspensions which might after all have been irregularly arrived at or which might have no good reasons behind them.

I failed to see any grounds for opposing the application. Circumstances showed clearly that there was a suspension which was brought before the Central Committee as said hereinbefore. In addition there were so many things that I found to have been common cause. Firstly, the proceedings which resulted in the Respondent's suspension were brought by the National Executive Committee as I did find. This was unanswered by the Respondent in his answering affidavit. This was confirmed by the placing of such a suspension before the Central Committee.

Secondly, that the First Applicant held a meeting of the Second Applicant on the 5th August 2000 and furthermore the Respondent was in attendance. This again was not denied.

Thirdly, that the Respondent failed to account to the National Executive Committee when called upon to do so on certain charges or challenges. Instead he staged a walkout. This again was not answered.

Fourthly, that the National Executive Committee took a decision to suspend Respondent pending the hearing of proceedings by the Central Committee. This again was not denied.

I believed that the position as I found was that there has been a valid suspension of the Respondent pending a disciplinary proceedings. I was not persuaded that because this Respondent at some other time attended an arbitration award by Union (Second Applicant) it meant that his suspension could have been removed by implication or otherwise by the Central Committee. If that was so there should have been credible evidence before this Court that the suspension was removed even indirectly. I therefore rejected as baseless the submission that Respondents' attendance at the arbitration award showed that he was not suspended or his suspension was removed. This matter of the Respondent having been involved in an arbitration award as said above can clearly be characterized as irregular underhand and breach of the decisions of the Second Applicant due to wilful disobedience of the same.

The Respondent was invited by this Court on the 9th September 2000 to specifically deal with the problems of the alleged removal of the expulsion and the intention to remove the case from the High Court. See my ruling of the 31st August, 2000. In response to my directive of the 31st August 2000 the Respondent filed an additional affidavit. What he did most unfortunately was to execute an affidavit which dealt with so may irrelevancies and not about the circumstances of the letter TM "4". Not only that. He again made no comment about that letter.

It could have been a cardinal error in the beginning. It was a cardinal sin once it was repeated. There had been no comment either by reference or otherwise to the contents of the letter. The Respondent was intent on rambling from left right and centre. For instance he digressed in paragraph 4 to speak about missing property, handing over and finally that the matter before Court "..... has been brought not to a proper forum, as there appear to be a friction in the Union see Sec.24 of the Labour Code No.24 of 1992." I have never seen any response by a deponent bent on distraction and obfuscation of issues. I say so bearing in mind what my directive of the 31st August, 2000 to the Respondent had been.

On probabilities I did not find that anything stood in favour of the Respondent in seeking to indirectly remove his suspension. Neither was he able to fight the prayers in the notice of motion which were based on the suspension. It was because he did not have any good grounds.

I had one remark to make. It was in connection to the nature or behaviour of some officials of the Second Applicant which showed that they were complete strangers to the truth. I need not now point to specific document except that which was amply shown by Mr. Mahlakeng. It appeared that the President of the said Applicant was the chief culprit. He is in the habit of committing errors of getting involved in contradicting decisions which would amount to perjury if they were made under oath. He was seen to be in one document (contrary to Respondent's suspension) and in another document seeking to remove that suspension by telling a blatant untruth the National Executive Committee had not sat to decide the Respondents' suspension. Again he appended his signature to the letter of the 20th August 2000 which recorded that the Executive Committee had instructed Mr. Moeko (Respondent) to resume his duties (having been suspended) as if that had been the decision of the Central Committee. He went on to sign to the letter that

spoke about withdrawal of the case from the High Curt whereas the true position, as appeared in the said Attorneys letter of the 17th August 2000, was to postpone the proceedings of the Central Committee and not to withdraw the case.

In conclusion my understanding was that the suspension of the Respondent had been valid. Furthermore it was premised on a resolution of the National Executive Committee as aforesaid, there being a need to charge the Respondent or remove that suspension if the Central Committee saw fit to do so. My order was that the Respondent should be charged and brought before Committee within thirty (30) days if he was charged. The suspension would stand in the meantime. The suspension could only be effective if it was complied with hence the prayers in the notice of motion.

If suspensions are disregarded, as it is alleged Respondent did, there will be indiscipline, disorganisation and chaos in every association in this country. It is a good policy and is in pursuit of good order to be fostered that lawful orders or decisions of associations acting in their committees should not be flouted with impunity. I have found as proved serious circumstances and mischief on the part of the Respondent which call for the validation of the suspension and granting the prayers in the notice of motion. I do this with an award of costs to the Applicants.

I also issued out a warning. It was that Orders of the Court were to be obeyed and complied with. Be they temporary or final. I surely will not take it lightly that the Respondent is reputed to have gone against the interim order. He can be assured that proper action will be taken in appropriate circumstances. Prayers 1, 2 (a) (b) (c) and (d) of the notice of motion were granted.

T. MONAPATHI
JUDGE