IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C of A (CIV) No.40/11

In the matter between:-

ISAAC MUYANJA **FIRST APPELLANT**

MORATE HIGH SCHOOL BOARD **SECOND APPELLANT**

MORATE HIGH SCHOOL **THIRD APPELLANT**

And

LABOUR COMMISSIONER
(OBO SAMUEL MOKHETHI) **RESPONDENT**

CORAM: RAMODIBEDI P
SCOTT JA
HURT JA

HEARD: 15 AUGUST 2012

DELIVERED: 3 SEPTEMBER 2012

SUMMARY

Labour Law – Settlements agreement as opposed to awards – Jurisdiction – Sections 226 (2) and 228 F of the Labour Code – Neither the Director of Disputes Prevention and Resolution (DDPR) nor the Labour Court has jurisdiction – The High Court on the other hand has review jurisdiction on the common law grounds – Appeal accordingly dismissed with costs.

JUDGMENT

RAMODIBEDI P

[1] The sole issue for determination in this appeal is whether the Labour Court, including the Director of Disputes Prevention and Resolution ("the DDPR"), has jurisdiction to adjudicate on settlement agreements as opposed to awards in terms of the Labour Code.

[2] The facts are fairly simple and may be stated briefly. In February 2003, the respondent was employed by the

third appellant school as a night watchman, earning a monthly salary of M400.00.

[3] In June 2007, the respondent testified against the first appellant, who was the principal of the third appellant school, in a certain dispute between the latter and one Mr Mpela. This apparently proved to be the respondent's downfall. The first appellant gave him three months notice of termination of his employment the very next month. At the expiry of the notice, the first appellant paid the respondent a sum of M1000.00 for his "services." It later occurred to the respondent that he had been short-changed. He had in fact been underpaid. He then approached the Labour office concerned as a result of which the first respondent offered him M4000.00, which he accepted. Thereafter, payment was effected by way of monthly instalments of M1000.00 each.

[4] After the last instalment, however, the respondent discovered that the sum of M4000.00 paid to him could not have been the amount of the underpayment owed to him. He then approached the DDPR on the matter. This resulted in conciliation/arbitration proceedings presided over by the latter on 4 August 2009. It is not disputed that the respondent was coerced into signing a settlement agreement, Annexure "B", in which it was stated that the second and third appellants would pay him the sum of M4000.00 "in full and final settlement of the dispute as referred to the DDPR in referral D0021/09".

[5] Against this background, the respondent launched an application in the High Court against the appellants for an order couched in the following terms:-

> *"1. (a) Declaring the settlement agreement signed by the Applicant and the Principal of MORATE HIGH SCHOOL before the conciliator/Arbitrator Mr. Edward R. Nko on the 4th day of August*

2009 at Teyateyaneng in the district of Berea null and void for contravention of the Labour Code Order 1992.

(b) Directing the 4th Respondent [the DDPR] herein to proceed with arbitration in referral D0021/09.

2. That respondents pay costs hereof in the event of opposition.

3. That the Applicant be granted further and or alternative relief this Honourable [Court] may deem fit."

[6] After hearing submissions in the matter the learned Judge a quo granted the application as prayed. The appellants are aggrieved by that decision.

[7] Now, the material sections insofar as the present dispute is concerned are undoubtedly sections 226 (2) and 228 F of the Labour Code (Amendment) Act 2000.

"226. (2) The following disputes of right shall be resolved by arbitration

(a) a dispute referred by agreement;

(b) A dispute concerning the application or interpretation of –
(i) a collective agreement;
(ii) a breach of contract of employment;
(iii) a wage order contemplated in section 51;

(c) a dispute concerning the underpayment or non-payment of any monies due under the provisions of this Act;

(d) an unfair dismissal for any reason other than a reason referred to in subsection (1) (c).

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228F Any party to a dispute who seeks to review any arbitration award issued under this Part shall apply to the Labour Appeal Court for an order setting aside the award."

[8] It is apparent, as it seems to me, that none of the foregoing sections gives either the DDPR or the Labour Court jurisdiction to determine disputed settlement agreements, as opposed to awards. It follows that the learned Judge was correct in adopting this view. Indeed, the learned Judge a quo does not stand alone in this approach. Thus, for example, in **Nouwens Carpets (Pty) Ltd v NUJW (1989) 10 ILJ 44**; **1989 (2) SA 363 (N)** the court correctly held, in my view, that a settlement agreement concluded at a conciliation board level had the effect of a contract and was not a piece of subordinate or

domestic legislation. That being the case, the Industrial Court had no jurisdiction to entertain the matter which arose from such an agreement.

[9] It is useful to observe that our own Labour Court has correctly adopted the same view in **CGM Garments v Directorate of Disputes Prevention And Resolution And Another (LAC/REV/38/04** in which the Court made the following apposite remarks:-

> *"it is settled law that ….. settlements agreement constitute extra –judicial compromise which a statutory body such as the DDPR with a specific mandate will lack the jurisdiction to entertain. This is not to suggest that parties are left without a remedy because there are ordinary courts of the land with wider mandate which can be approached for assistance."*

[10] It must be stressed that the High Court, as opposed to the DDPR or the Labour Court, retains the inherent review power under the common law to determine settlements agreements, as opposed to awards, on the well-known grounds of illegality, irrationality and procedural

impropriety as laid down in the seminal case of **Council of Civil Service Unions v Minister for the Civil Service [1985] AC 40 (HL).**

[11] In casu, the respondent's grounds for review were contained in an undated letter, annexure "NAP 23", which he addressed to the DDPR. It reads as follows:-

> *"THE DIRECTORATE OF DISPUTE PREVENTION*
>
> *AND RESOLUTION (C/O MR EDWARD R. NKO)*
>
> *TEBA COMPLEX, HLOTSE*
>
> *PRIVATE BAG C0005*
>
> *HLOTSE, LERIBE*
>
> *Sirs*
>
> ***SAMUEL MOKHETHI V ISAAC MUYANJA D 0021/09***
>
> *I refer to the above matter and advice (sic) that I revoke the settlement dated the 4th day of August 2009 and request that Respondent be called for arbitration in a date to be set by your honourable Office, for the following reasons:-*
>
> *(a) I signed the settlement under coercion of the conciliator.*
>
> *(b) My rights were never explained to me by the conciliator.*
>
> *(c) The conciliator did not give me [a] chance to put my side of the story before him.*

(d) The conciliator and the respondent used the language foreign to me in their communication.

(e) The conciliator failed to take into account the provisions of the Labour Code and the Conciliation and Arbitration Guidelines.

(f) The conciliator made no attempt to ensure that I understand the purported settlement agreement.

(g) I am not bound by the conciliation agreement.

Yours faithfully,

Samuel Mokhethi."

As can plainly be seen, these are typical common law review grounds reviewable by the High Court.

[12] It follows from these considerations that the appeal must fail. It is accordingly dismissed with costs.

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M.M. RAMODIBEDI
PRESIDENT OF THE COURT OF APPEAL

I agree:

D.G. SCOTT
JUSTICE OF APPEAL

I agree:

N.V. HURT
JUSTICE OF APPEAL

For the Appellant : Adv. P.S. Ntšene
For the Respondents : Adv. P.A. Nono