CIV/APN/86/80

IN THE HIGH COURT OF LESOTHO

In the Application of :

SOLANUS TSIETSI MOKUBUNG Applicant

v

THE LESOTHO ELECTRICITY CORPORATION Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice T.S. Cotran on the 18th day of July 1980

On the 6th June 1980 a rule nisi was granted to Solanus Tsietsi Mokubung, hereinafter referred to as the applicant, calling upon the Lesotho Electricity Corporation, hereinafter referred to as the Corp, to show cause why they should not be ordered to restore electric power supply to the applicant's house and to interdict them from disconnecting such supply save for a lawful purpose. The Corp. was ordered to restore the power forthwith pending the return date which was extended from time to time. The application, which was resisted by the Corp, was finally argued before me on the 8th July 1980.

The facts are fairly straightforward. The applicant was at one time employed by the Corp. We do not know in what capacity and it really does not matter. Whilst so employed he was allowed to buy from the Corp petrol and materials on credit. In 1978 he was granted a loan to purchase a vehicle. He was to repay the loan by monthly instalments extending over a period of four years. That period has not yet of course elapsed. Deductions from his salary were made periodically with the result that all debts on his petrol and materials accounts were settled. When he left the employ of the Corp (we do not know exactly when) he was still owing them a sum of money on the vehicle loan. It is common cause that the applicant is still indebted to the Corp but the amount of debt due on the car loan is in dispute.

/The applicant

The applicant was also a consumer of power supplied by the Corp to his dwelling house in Lower Thamae. The papers show that the Corp did not have serious complaints about the applicant's account with regard to his power supply i.e. he appears to have settled his electricity bills more or less promptly.

It can be seen from Annexure C to the founding affidavit that on the 31st December 1979 (apparently after the applicant left the Corp's employ) that the Corp transferred the amount of what they thought was the outstanding loan on the applicant's vehicle, to his consumer account. The applicant says this was unlawful. Mr. Harley admits that this transfer was in fact effected by the Corp as alleged but submits it was done only "as matter of convenience". He denied that such "transfer" was unlawful. No doubt it was "convenient" to the Corp but certainly not to the applicant. I think it was both high handed and unlawful. I say so because the Corp was not then entitled to the full amount of the outstanding loan but only to the arrears of the instalments. This was not a hire-purchase agreement (see Annexures A & B) but a loan of money payable by instalments. It follows that if the applicant had defaulted he can be sued only for the amount actually due and unpaid. I am sure the Corp realised this because they sued the applicant in the magistrate's court and since the magistrate's court's jurisdiction is limited to R2,000, the action must have been one to recover the arrears of instalments due to date and still unpaid. By transferring the whole amount outstanding the Corp clearly were in breach of their contract with the applicant.

On or about the 30th May 1980 the Corp disconnected the supply of power to the applicant's house. He had apparently failed to pay his bill for consumption of power for the previous month of April. He went to the Corp office (I think this was probably the 31st May 1980) and gave them a cheque for M38.51 which he says included (and I have no reason to doubt his word) a "reconnection charge". The cheque was accepted by an officer of the Corp and power was restored on the same day. On the 2nd June 1980 the power supply was disconnected again. Mr. Moloney avers in his opposing affidavit that the "management" of the Corp did not authorise the reconnection on the 31st May. This may be true because a letter to the applicant dated 28th May 1980 (Annexure F) was on its way in the post informing him that power was disconnected "in accordance with s.31(1)(a)(ii) of the

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Electricity Act 1969". This provides:

> "31.(1) The Corporation may discontinue the supply of electricity -
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> (a) to a consumer who -
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> (i) fails to pay any sum due from him for electricity supplied to him by the Corporation under the provisions of this Act; or
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> (ii) fails to give any sum due from him to the Corporation under the provisions of this Act otherwise than for electricity supplied to him; or"

Mr. Harley submits that under s.5(1)(m) of the Act the Corp has power to advance loans to its employees. It is common cause, it was argued, that he was indebted to the Corp, and the exact amount is neither here nor there. The applicant, the argument continues, is also a consumer, and although as such he did not owe any debt for electricity supplied to him, his supply can nevertheless be disconnected under the subsection if he owes a debt in whatever manner that debt arose. (See paragraph 6(c) of the opposing affidavit of Mr. Moloney). Mr. Harley submits further that the subsection is clear and unambiguous and that there is no room for a restricted interpretation. In support of this contention he cited Forrest Construction (Pty)Ltd. v. L.E.C. (C. of A. (CIV) 2/79) and especially the Judgment of Rooney J in the Court a quo CIV/APN/79/79 - both unreported.

In my opinion this subsection is not plain and it is ambiguous. Though the section says "any" debt, it is followed by the words "under the provisions of this Act". It does not say "under any of the provisions of this Act". The Act contains many provisions in which a consumer may incur a debt apart from one relating to the supply of power. The word "any", in any event, need not necessarily mean any. A Statute which authorised "any" justice of the peace to try certain cases would not authorise a Justice to try any such cases out of the territorial limits of his own jurisdiction, (1 Hawk Pleas of the Crown c.65, s.45; The Peerless 1841 1 QB 153), or any in which he had a disqualifying interest or bias R. v. Cheltenhan 1841 1 QB 467) or any which he was incapacitated from hearing by any general principle of law (Bonham's case and Lawson v. Reynolds 1904 1 Ch 718). Still less would it authorise a justice to hear any such cases by another course of proceeding than that established by law (Re Guerin(1888) 53 JP 468). The Debtors Act 1869 empowering "any" inferior Court

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to commit for default of payment of a debt in pursuance of an order or Judgment of "that or any other competent Court" does not authorise such a court to commit unless the debtor was subject to its general jurisdiction by residence or business (Re Ives(1886) 16 Q.B.D. 665 - and see generally Maxwell on Interpretation of Statutes 11th Edition pp 79 and 80 and other cases cited in footnotes 9-13). Furthermore who decides (if there is a dispute) that a debt is due? Did the Legislature intend to give dictatorial powers to the Corp to declare unilaterally and arbitrarily that they are owed a debt and disconnect the supply? The Corp was established, according to the preamble of the Act, to exercise and perform functions relating to the "generation transmission distribution and supply of electricity; for the inspection and testing of electrical plant and the safe use of electricity; and for purposes ancillary thereto". The granting of a loan to an employee is not "ancillary" to the Corp's functions. I agree that it is within, or ancillary to, their statutory powers, but the "debt" that is envisaged by the subsection is a debt owed to the Corp in connection with its functions as defined in s.4 of the Act and not with its powers as defined in s.5. If it was otherwise the legislator would have drafted the subsection as follows : "fails to give any sum due from him otherwise than under the provisions of this Act." The words "under the provisions of this Act" mean those provisions, other than the obligation to supply power, that arise from the Corp's principal objects. The Forrest Construction case was about a debt owed to the Corporation in connection with the supply of equipment, material, and labour etc.., that was provided for electrical installations at the Palace when under construction and was totally different situation. It was not a debt incurred for a purpose outside the principal functions of the Corporation. S.31(1)(a)(ii) can be invoked only in respect of those debts due to the Corp from a consumer for electrical works such as for example charges for meters, mains, switches, inspections, digging of trenches, laying of pipes or service lines or cables, electric fittings etc.. Furthermore a debt is due only when a Court of law decides it is due or is otherwise admitted by the consumer either expressly or by necessary implication. Giving the subsection a wide meaning a number of possibilities could arise that would bring a shudder down the Judicial spine.

It is my opinion therefore that a limitation must be placed

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on the construction of this subsection of the Act. Lord Herschell in Cox v. Hakes (1890) 15 App. Cases 506, 529(quoted by Craies on Statute Law 7th Edition p.177) is reported to have said:

> "It cannot, I think, be denied that, for the purpose of construing any enactment, it is right to look, not only at the provision immediately under construction, but at any others found in connection with it which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation. Words, however general, must therefore be understood as used with reference to the subject-matter in the mind of the legislature and limited to that subject-matter."

The same principle has been admirably summarised in Maxwell on Interpretation of Statutes (supra, pp 78 and 79) in the following words :

> "Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effects or consequences which would result from it, for they often point out the real meaning of the words. There are certain objects which the legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided. It is not infrequently necessary, therefore, to limit the effect of the words contained in an enactment (especially general words), and sometimes to depart, not only from their primary and literal meaning, but also from the rules of grammatical construction in cases where it seems highly improbable that the words in their wide primary or grammatical meaning actually express the real intention of the legislature. It is regarded as more reasonable to hold that the legislature expressed its intention in a slovenly manner, than that a meaning should be given to them which could not have been intended.
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> One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness, and to give any such effect to general words, simply because they have a meaning that would lead thereto when used in either their widest, their usual or their natural sense, would be to give them a meaning other than that which was

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> "actually intended. General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects of the Act. It would be "perfectly monstrous"(per Lord Halsbury in Leach v. R. 1912 A.C. 305) to construe the general words of the Act so as to alter the previous policy of the law. In construing the words of an Act of Parliament we are justified in assuming the legislature did not intend to go against the ordinary rules of law, unless the laguage they have used obliges the court to come to the conclusion that they did so intend."

In the result the rule is confirmed with costs to applicant. It goes without saying however that the Corp may exercise their power to disconnect if the applicant fails to pay his bills for supply (or other electrical works performed by them other than supply) after this Judgment.

T S Futon

CHIEF JUSTICE
18th July, 1980

For Applicant: Adv. Monapathi

For Respondent: Mr. Harley