CIV/APN/435/95

IN THE HIGH COURT OF LESOTHO

In the matter between

LESOTHO BREWING CO. T/A MALUTI MOUNTAIN BREWERY — **APPLICANT**

and

LESOTHO LABOUR COURT PRESIDENT — **1ST RESPONDENT**

MIKE NKUATSANA — **2ND RESPONDENT**

JUDGMENT

Delivered by the Honourable Mr. Justice M.M. Ramodibedi

on the 5th day of August 1997.

On the 5th day of December 1995 the Applicant filed an urgent application with this Honourable Court seeking for an order in the following terms:-

"1. Dispensing with the ordinary Rules of this Honourable Court pertaining to the modes and the periods of service of process;

2. Directing and ordering that the Award of the Labour Court Case No. LC.47/95 be reviewed, corrected and set aside;

3. Directing the First Respondent to transmit the record of the proceedings and a copy of Judgement in the Labour Court Case No. LC47/95 to the Registrar of the above mentioned Honourable Court within fourteen (14) days of the receipt of service upon them of this process.

4. Directing Respondents to file their opposing papers if any, within seven (7) days of service upon them of the Court Order, Notice of this Application and Affidavit thereto.

5. Directing that the execution of Judgement of the Labour Court incase No. LC47/95 be stayed pending the finalisation of this Application;

6. A Rule Nisi be issued and returnable within seven (7) days of service calling upon the Respondents to show cause, if any, why:

a. The Award by the Labour Court in Case LC.47/95 shall not be reviewed, corrected and set aside;

b. The strict compliance with the Rules of this Honourable Court shall not be dispensed with;

c. Further and/or alternative relief shall not be granted.

7. That prayer 1,2,3,4, and 5 operate with immediate effect as an Interim Order;

8. Directing Respondents to pay costs hereof if they oppose this Application.

9. Granting Applicant further and/or alternative relief."

A Rule Nisi was duly granted as prayed on the same day and after several postponements and extensions of the Rule the matter was finally argued before me on 22nd May 1997.

A brief background leading to this application shows that in January 1994 the 2nd Respondent while an employee of the Applicant travelled to Swaziland either on official business according to Applicant's version or on a training course according to the 2nd Respondent. I do not think however that the exact nature of the trip matters for the purposes of the exercise before me. What matters is that the 2nd Respondent was admittedly given advance money by the Applicant and was "required to produce receipts for expenditure." There is no dispute about this.

The Applicant's version is that the advance money referred to above was "to cover the costs of the meeting." The 2nd Respondent however insists that the money was "an allowance." Once more I do not think however that anything turns on this minor difference in versions. Because of the 2nd Respondent's aforesaid admission that he was required to produce receipts for expenditure I am satisfied that the expenditure was accountable by the 2nd Respondent.

What then happened is that the 2nd Respondent bought himself, amongst others, a watch, a belt and a handbag. Again this is common cause. This episode led to a disciplinary charge being levelled against the 2nd Respondent on an allegation of "misappropriation of an allowance given to you whilst on training." The hearing thereof was conducted on the 28th March 1994 and it was presided over by one Mr. J. Steenberg who was Applicant's Production Manager. He sat with the Industrial relations Manager. One M. Tente who featured as Human Resources Representative acted as prosecutor. The 2nd Respondent appeared in person.

According to the record of proceedings Annexture "C" the 2nd Respondent was duly "read his rights and the charge." He is recorded as having indicated that he did not wish to have a representative and also that he had no witnesses. Most importantly the record shows that the 2nd Respondent then pleaded guilty and was accordingly found guilty as charged. He was then dismissed on one (1) month's notice. This was on the same day namely the 28th March 1994.

It is further significant that when asked if he wished to appeal against the decision the 2nd Respondent is recorded as having indicated that he did not wish to appeal. I shall return to this aspect later.

It was only Eight months later and apparently on the advice of the Department of Labour that the 2nd Respondent pursued his appeal purportedly within the Applicant's rules and procedures. As will appear later he was, however, clearly out of time. Incidentally the Labour Court falls directly under this Department. The "appeal" was dismissed in November 1994.

Then on 31st March 1995 which was more than twelve months after the 2nd

Respondent's dismissal the latter filed an application with the Labour Court seeking for an order in the following terms:

"a) Condoning applicant (sic) late filing (if any) of this application.

b) Setting aside the purported dismissal of applicant by respondent.

c) Directing respondent to reinstate applicant with full pay from the date of dismissal including the bonuses and all other benefits.

d) Directing the respondent to pay interest at the rate of 11% per annum from the date of dismissal.

e) Directing the respondent to pay costs of this application."

After hearing submissions from Mr. Mpopo for the 2nd Respondent and Miss Tente for the Applicant the 1st Respondent set aside the dismissal of the 2nd Respondent as unfair and ordered the Applicant to compensate the latter as follows:-

"(i) Payment of monthly salary from the 8th November 1994, which was the day of the appeal hearing to the date of judgment.

(ii) Payment of six months salary as compensation.

(iii) All payments to be calculated at the rate of pay that applicant was earning at the time of his purported dismissal.

(iv) The above payments are to be made within thirty (30) days of the handing down of this judgment."

I should mention that the 1st Respondent's reasons for holding the 2nd Respondent's dismissal unfair were stated in his judgment as follows namely that:-

"(1) Applicant did not have a fair hearing because the chairman of the enquiry was also complainant and witness at the same time. The so-called disciplinary hearing on the 28th March 1994 is therefore declared a nullity.

(2) Applicant was charged with contravention of a non-existent or unclear rule. It is inconsistent with the principle of legality that a person be charged with contravention of an undeclared rule.

(3) No offence of the kind with which the applicant was charged exists under the respondent's disciplinary code. The offence was hatched by the complainant who also became judge in his own cause."

It is against the above mentioned background that the application before me has been brought. It is sought to persuade the Court that the dismissal of the 2nd Respondent by the Applicant was fair both substantively and procedurally and that on the contrary 1st Respondent's decision as aforesaid was based on misdirection

and pure speculation that the chairman of the disciplinary hearing was also complainant and witness at the same time as well as a judge in his own cause whereas there was no such evidence on record.

As will be shown later the 1st Respondent's award is also attacked on the grounds that it is uncalled for and unfair.

Mr. Mpopo submits that the Applicant has canvassed appellable grounds and wrongfully turned them into reviewable grounds. As an example he refers to paragraph 5 (a) of the Applicant's founding affidavit in which the latter states as follows:

> "The Labour Court President misdirected himself and erred in deciding that the disciplinary hearing conducted by Applicant was unfair allegedly because it was presided over by a person alleged to be chairman, complainant and witness all at the same time."

It is Mr. Mpopo's submission, if I understand him correctly, that the use of the word "misdirected" automatically categorises the matter as one of appeal and not review. I do not agree. In my view it all depends on the nature of the misdirection complained of in each particular case. Depending on the particular circumstances of a case a misdirection may well give rise to a ground for review.

In this regard I am mainly attracted by the remarks of Browde JA in Albert Lithebe Makhutla v Lesotho Agricultural Development Bank C of A (Civ) No.1 of 1995 (unreported) to the following effect:-

"What is not characteristic of an appeal, however, is the allegation in the Appellant's founding affidavit that the judgment of the Labour Court went beyond the scope of the issues which, by agreement, it was called upon to decide and perhaps more importantly, that the Labour Court found facts proved - and specific reference were made to the recital by the Court in its judgment of what was referred to as "the saga that led to his dismissal" - without evidence of such facts having been led before the Labour Court. If that is so, and I make no comment thereon, then it was a misdirection and a procedural irregularity which were properly matter for review" (my underlining).

The provisions of Section 38 (1) of the Labour Code Order 1992 must also be borne in mind in considering an application such as the one before me. That Section provides as follows :-

"38. Awards, decisions final; notice

(1) An award or decision of the Court on any matter referred to it for its decision or on any matter otherwise falling within its sole jurisdiction shall be final and binding upon the parties thereto and on any parties affected thereby, and such award or decision shall not be the subject of an appeal in any proceedings or court."

There is no doubt in my mind that this is a draconian section which can very often lead to untold injustice without any hope of an appeal to redress it. A review therefore remains the only remedy to an aggrieved litigant. Accordingly I consider

that the Court needs to adopt a liberal approach in favour of review application procedure as the only remedy to correct the decisions of the Labour Court in the interests of justice. In doing so the Court must mainly look to the substance of the complaint rather than to form or technicalities.

I turn then to consider whether there is any evidence on record that the chairman of the disciplinary enquiry namely Mr. Steenberg was complainant and witness at the same time as well as a judge in his own cause.

I should mention straight away that what I find rather disturbing in this case is that the Labour Court did not hear any oral evidence in the matter nor were there any affidavits filed at all. The Labour Court appears to have relied on the submission of Counsel and apparently made conclusions of credibility drawn from such submissions that Mr. Steenberg was both complainant, witness and judge in his own cause. I consider that this is totally unacceptable and that the Labour Court should have heard evidence either oral or by affidavit before coming to the conclusions it made. In my judgment a decision which is based on no evidence altogether is certainly reviewable.

Section 17 (2) (3) of the Labour Court Rules provides as follows :-

"17 (1) .....

(2) The Court shall conduct the hearing of an originating application or appeal in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall,

so far as appears to it appropriate, seek to avoid formality in its proceedings and, subject to the provisions of section 29(3) of the Code, it shall not be bound by the rules of evidence in proceedings before courts of law.

(3) At the hearing of an originating application a party shall be entitled to appear, to be represented, to give evidence, to call witnesses, to question any witness and to address the Court."

Nor does this Court find that there is any justification for the following remarks made by the Labour Court in its judgment:

"The unwanted result of making an interested party chairman of proceedings in which he has interest is that as Mr. Steenberg did, he ends up giving evidence against the accused employee from the chair. Thus in his letter of dismissal, Mr. Steenberg further accuses the applicant of having ....."not make me aware of your purchase at the time that you asked me to sign your expense claim..." According to the record of the proceedings this factor was taken as an aggravating factor which influenced the imposition of the penalty of dismissal."

Well as I read the record of proceedings Annexture "C" there is absolutely no evidence indicating that Mr. Steenberg was an interested party and that he gave evidence "from the chair" at the disciplinary hearing at all. As earlier stated the 2nd Respondent pleaded guilty and was thus found guilty on his own plea. Accordingly there cannot be any question of prejudice suffered by him for that matter. I am not

surprised therefore that prejudice was neither alleged nor argued before me at all. Indeed the Labour Court itself states as follows on page 4 of its judgment:

> "The Applicant had wrongly used the funds given for a specific purpose."

This is precisely what the Applicant pleaded guilty to. In my judgment the key word in a case such as this is prejudice. The Court will not grant relief where even though there is an irregularity a litigant has not suffered prejudice thereby. This is so because the underlying principle is that the Court is disinterested in academic situations. See Rajah & Rajah (Pty) Ltd. v Ventersdorp Municipality 1961 (4) S.A. 402 (A) at 408.

This Court also feels that the said "letter of dismissal" referred to by the Labour Court needs to be placed in its proper context namely that it was written after the disciplinary hearing in question had already been conducted and after the 2nd Respondent had already been dismissed in terms of Annexture "C". I consider therefore that the letter was no more than an attempt to place the dismissal on record. The letter in question is Annexture "D" and it reads:

> "28 March 1994
>
> MR. M. NKUATSANA,
> P.O. BOX 764
> MASERU 100
>
> Dear Mike,

You have been found guilty of "misappropriation of an allowance given to you whilst on training" in the hearing against you this morning.

You have spent M360.00 on personal luxury items i.e. a watch, handbag and belt without my authority. Your explanation that you weren't aware of the company rules in this regard is not valid. You did not make me aware of your purchase at the time that you asked me to sign your expense claim nor did you clear it with me a week later when the Acting Human Resources Manager put out a memo about the subject of expanses on Business trips (refer to memo attached).

In my capacity as Loss Control Manager you should always set the perfect example. As custodian of company rules and regulations your conduct must be beyond reproach in all respects, (refer to letter dated 30th July, 1993 by myself) Management feels that you have violated this trust and therefore the sanction for this offence is dismissal with 1 (one) month's notice.

Regards,

J.L. STEENBERG
Production Manager

cc: Managing Director
Acting Human Resources Manager
Industrial Relations Manager." (My underlining).

In my view what Mr. Steenberg stated in his letter Annexture "D" after the dismissal in question cannot justifiably be said to have amounted to giving evidence by him leading to the dismissal itself. In the same breath I find that the Labour Court's view that Mr. Steenberg's reference in his letter Annexture "D" to the effect that the 2nd Respondent did not make him aware of his purchase at the time of the signing of the expense claim and that this was "taken as an aggravating factor which influenced the imposition of the penalty of dismissal" is not supported by any evidence on record. Nor has this Court been able to find any evidence on record to

the effect that Mr. Steenberg was the complainant as alleged by the Labour Court.

I find that the Labour Court grossly and irregularly misdirected itself by relying on mere gut feeling and pure speculation in this regard. It is thus guilty of a gross irregularity. See Lucy Lerata and 26 others v Scott Hospital C of A (Civ) No. 38 of 1995 (unreported).

In any event even if I am wrong in the view that I take of the matter, I consider that administrative tribunals are perfectly entitled to avail themselves of particular facts within their own observation. In this regard the remarks of Rose Innes: Judicial Review of Administrative Tribunals in South Africa at p 165 are apposite to the case before me. The Learned Author states thereat:

> "The duty of disclosure is of great importance to a just decision of administrative matters, for administrative tribunals are not limited in the way courts of law are by the ordinary rules of evidence, and may obtain, rely and act upon information from various sources other than the evidence or statements made before the tribunal. They may avail themselves of particular facts within their own observation and expert knowledge, which is much wider than the strictly circumscribed sphere of judicial notice or knowledge, and they may have regard to the information independently obtained from outside sources or a private source, whether as evidence aliunde by persons not before the tribunal or as evidence obtained in other proceedings. ------ For an administrative tribunal to act upon information thus obtained is not in itself an irregularity."

In my view it is of great significance that none of the allegations attributed to Mr. Steenberg have in any event been placed in dispute by the 2nd Respondent in this matter. Once more the debate in this regard can only be of an academic nature which this Court is not interested in.

It is significant that the Applicant's "Disciplinary and grievance procedures" empower the worker's supervisor to conduct a disciplinary enquiry. I consider therefore that Mr. Steenberg properly presided over the disciplinary enquiry against the 2nd Respondent as the latter's supervisor.

I turn next to deal with the Applicant's complaint based on the actual award itself. In this regard the Applicant states as follows in paragraph 5(I)(2) of the founding affidavit of Roger Smith:-

> "The 2nd Respondent does not seem to have done anything to minimise his "losses" (damages). In fact the Court President is silent about his (sic) important factor, hence my contention that the compensation is disproportionately excessive taking the circumstances and factors of the case into account." (My underlining).

The Applicant continues in the same vein in paragraph 5(m) of Roger Smith's founding affidavit and registers its complaint and review ground as follows:-

> "Even if the Court President felt sympathy for the 2nd Respondent, he could have awarded his normal terminal benefits as compensation. An invocation of Section 73© (sic) of the Labour Code which was not canvassed during the trial and which would have given the present

Applicant an opportunity of rebuttal is uncalled for and unfair. It is interesting to note that this very section however provides that in assessing the amount of compensation account shall also be taken of whether there has been any breach of contract by either party (2nd Applicant has used company money to but (sic) for himself a belt, handbag and a watch) and whether the employee has failed to take such steps as may be reasonable to mitigate his or her losses. As I stated before the Court President is very silent on this crucial issue" (my underlining).

It is significant that the 2nd Respondent has not denied these damaging allegations at all in his opposing affidavit. I proceed therefore on the basis of the correctness of those allegations and in doing so it is also necessary to bear in mind Section 73 of the Labour Code Order 1992 which reads thus:-

"73 **Remedies**

(1) If the Labour Court holds the dismissal to be unfair, it shall, if the employee so wishes, order the reinstatement of the employee in his or her job without loss of remuneration, seniority or other entitlements or benefits which the employee would have received had there been no dismissal. The Court shall not make such an order if it considers reinstatement of the employee to be impracticable in light of the circumstances.

(2) If the Court decides that it is impracticable in light of the

> circumstances for the employer to reinstate the employee in employment, or if the employee does not wish reinstatement, the Court shall fix an amount of compensation to be awarded to the employee in lieu of reinstatement. The amount of compensation awarded by the Labour Court shall be such amount as the court considers just and equitable in all circumstances of the case. In assessing the amount of compensation to be paid, account shall also be taken of whether there has been any breach of contract by either party and whether the employee has failed to take such steps as may be reasonable to mitigate his or her losses."

As I read this section the award fixed by the Labour Court is not an arbitrary one but is one premised on just and equitable considerations in which both parties must certainly be heard. It was wrong and grossly irregular and unfair for the Labour Court therefore to merely consider the point of view of the employee (2nd Respondent) while totally ignoring that of the employer (Applicant).

In the same breath I find that by being "silent" on the question whether the 2nd Respondent failed to take such steps as may be reasonable to mitigate his losses the Labour Court wrongfully disregarded the express provisions of Section 73 (2) of the Labour Code 1992 and thus committed gross irregularity.

The Labour Court's finding that the 2nd Respondent was charged with contravention of a "non existent or unclear rule" is also attacked on the ground that it amounts to a misdirection in total disregard to Applicant's Disciplinary Code and

the 1980 conditions of Employment of staff. Section 10 of the latter provides in part as follows:-

> "10. Expenses whilst on Company Business.
>
> All reasonable expenses incurred by an employee whilst on company business are paid for on submission of a claim form to which must be attached the necessary supporting documents. Employees must pay for all expenses whilst on the trip and claim on return to their place of domicile."

I have underlined the words "reasonable expenses" to indicate my view that an employee is not given a free hand in the use of Applicant's funds whilst on the latter's business trip. The expenses that such an employee incurs must be reasonable and obviously have a bearing to the Applicant's own interests. They must certainly not be of a luxurious nature as is the case here.

Section 3.2 of the Applicant's Disciplinary Code on the other hand clearly shows that "unauthorised use of company property or funds...." is a very serious offence punishable by dismissal.

Accordingly I find that the Applicant's complaint in this regard is well taken and that once more the Labour Court seriously misdirected itself and is thus guilty of a gross irregularity.

The Applicant's next complaint is contained in paragraph 5(i)(1) of the founding affidavit of Roger Smith in the following words:-

"i The Court President states that the penalty we imposed is disproportionate to the offence. In our view it was not, but be that as it may the Award itself is oblivious of the following factors which should have been taken into account.

1. The 2nd Respondent was dismissed in March 1994. First he refused to take an appeal which was available to him. Secondly even though the Labour Court did not exist, Courts of law were there. So the October 1994 beign (sic) the date of establishment of the Labour Court has no bearing or relevance here, particularly as he did not lodge his case before that Court in October or November 1994 anyway. Thirdly, 2nd Respondent only resorted to the Labour Department nine months later in November 1994, which followed immediately by the hearing of his appeal (see annexure E). Even then he only lodged his case in March 1995, which was exactly a year after dismissal and five months after the appeal. The case itself was only heard in September, 1995. None of these delays were at the instance of the Applicant, so why should Applicant be penalised so to pay for these. Fourthly, whatever faults that may have been there at Mr. Streenberg's (sic) the appeal rectified them as it was presided over by different people who cannot be said to the prosecutors and witness all at once."

Significantly the 2nd Respondent has not denied these material allegations.

I accept therefore that the delay in bringing the matter to finality was not caused by the Applicant. In my view the 2nd Respondent must shoulder the blame for such delay. That being the case I find that the Labour Court's award was most unfair to the Applicant Company which was punished for the delay which was not of its own making to the extent that it was unreasonably made to pay 2nd Respondent's monthly salary "from the 8th November 1994, which was the day of the appeal hearing to the date of judgment" plus an additional "payment of six months salary as compensation." In other words the 2nd Respondent was wrongfully allowed to benefit from his own dilatoriness in delaying to prosecute his matter to finality. This at the expense of the Applicant and to its prejudice. In this regard I have attached due weight to the unchallenged fact that the 2nd Respondent "refused to take an appeal which was available to him."

In terms of Section 1.3.3.1 of the Applicant's Disciplinary Code an employee has three (3) days within which to notify the Applicant Company of his intention to appeal. That Section reads thus :-

> "1.3.3.1 Should the worker be dissatisfied with the outcome of disciplinary proceedings, he shall, within three (3) days thereof, notify the company in writing of his intention to appeal and the reasons thereof."

In my calculation the three (3) days within which to note an appeal expired on 31st March 1994 yet the 2nd Respondent simply did nothing about it until November 1994. Surely the Applicant was entitled to expect that the matter had been finalised and closed.

Which leads me to the aspect of condonation. Section 70 of the Labour Code Order 1992 reads as follows:-

"70. Time-limit

(1) A claim for unfair dismissal must be presented to the Labour Court within six months of the termination of the contract of employment of the employee concerned.

(2) The Labour Court may allow presentation of a claim outside the period prescribed in subsection (1) above if satisfied that the interests of justice so demand."

The Labour Court tried to go around this section in the following words appearing in its judgment:

"At the start of the hearing Mr. Mpopo for the applicant applied for condonation of the applicant's late filing of the present application because he had sought the intervention of the Labour Commissioner and the case had subsequently been referred back so that the local remedies could be exhausted. It is common cause that the respondent did not object to the application, thus leading the court to conclude that they did not see it as unfair to them if the condonation is granted. In any event we are satisfied that the applicant had not just sat back and not pursued the claim. He lodged the complaint with the lawful structure for the settlement of labour disputes namely; the Labour Department. As a result of the appeal to the Department of Labour,

the respondent reopened the enquiry for an appeal hearing in terms of the respondent's own rules of procedure, as late as November 1994. We are of the view that all these actions suspended the running of the prescription period. We thus come to the conclusion that when the case was lodged in March 1995, it had not yet prescribed. There is therefore no need for condonation."

It is clear to me therefore that the Labour Court did not grant condonation because it felt there was no need for condonation. The question that arises therefore is whether the Labour Court was justified in law in adopting this approach.

Firstly there can be no doubt about the fact that 2nd Respondent's claim for unfair dismissal expired six months after his dismissal in terms of Section 70 of the Labour Code Order 1992. In my calculation the date of such expiry was the 31st September 1994. What this means therefore is that on the 31st March 1995 when the 2nd Respondent launched his application before the Labour Court the claim for unfair dismissal had long prescribed and it was thus necessary for the Labour Court to exercise its discretion in terms of Section 70(2) whether or not to allow presentation of the claim in the "interests of justice."

It must be borne in mind that the discretion given to the Labour Court in terms of Section 70(2) is not an arbitrary one. Such discretion must be exercised judicially upon a consideration of all the relevant facts and in fairness to both sides. The Labour Court must be "satisfied" on the facts of a particular case that "the interests of justice" demand condonation. This the Labour Court failed to do.

In dealing with condonation Holmes JA stated the following remarks with

which I respectfully agree in United Plant Hire (Pty) Ltd v Hills and Others 1976 (1) S.A. 717 AD at 720:

> "It is well settled that, in considering applications for condonation, the Court has a discretion, to be exercised judicially upon a consideration of all of the facts; and that in essence it is a question of fairness to both sides. In this enquiry, relevant considerations may include the degree of non-compliance with the Rules, the explanation therefore, the prospects of success on appeal, the importance of the case, the respondent's interest in the finality of his judgment, the convenience of the Court, and the avoidance of unnecessary delay in the administration of justice. The list is not exhaustive.
>
> These factors are not individually decisive but are interrelated and must be weighed one against the other; thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong."

As I read Section 70(2) of the Labour Code Order 1992 I am of the firm view that the jurisdiction of the Labour Court in a case where a claim for unfair dismissal has prescribed only arises from that Court actually granting condonation if satisfied that the interests of justice so demand. Conversely if no condonation is granted then the Labour Court has no jurisdiction in the matter.

Accordingly I consider that by failing to expressly grant condonation in the matter the Labour Court denied itself jurisdiction in the matter and thus committed a gross irregularity by entertaining the matter in the absence of such jurisdiction.

Lastly Mr. Mpopo has argued that there was no urgency in the matter. I do not agree. The 2nd Respondent had obviously obtained judgment which he could execute at any time. I consider therefore that the Applicant was fully justified in applying for stay of execution as a matter of urgency.

In the result I am satisfied that the Applicant has made out a case for the relief sought in the Notice of Motion.

Accordingly the Rule is confirmed and the application granted as prayed in terms of prayer 6(a) of the Notice of Motion with costs against the 2nd Respondent only.

M.M. Ramodibedi
JUDGE
5/8/97

For Applicant: Mr. Makeka
For 2nd Respondent: Mr. Mpopo