

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/212/2018

In the matter between:

MAKARABO SERA

APPLICANT

AND

**DIRECTOR OF REMUNARATIONS AND
BENEFITS-MINISTRY OF PUBLIC SERVICE**

1ST RESPONDENT

**THE PRINCIPA SECRETARY-MINISTRY OF
PUBLIC SERVICE**

2ND RESPONDENT

ACCOUNTANT GENERAL

3RD RESPONDENT

ATTONERY GENERAL

4TH RESPONDENT

Neutral citation: Makarabo Sera vs Director of Remunerations and Benefits-
Ministry of Public Service & 3 ors [2022] LSHC 170 Civ (10 August 2022)

JUDGEMENT

Coram : Hon. Mr. Justice T.E Monapathi
Date of Hearing : 9th August 2019
Date of judgement : 10th August 2022

SUMMARY

Variation of a contract can be effected or presumed despite a tenants refusal where a tenant refuses to accept his/her conditions but continues to occupy premises while aware of the Landlord`s contrary intention.

Annotations:

BOOKS:

The Law of Contract in South Africa 5th Edition- RH Christie

STATUTES

Basic Conditions of Employment for Public Officers No.43 of 2011

REPORTED CASES

Sebeko v CCMA (2001), 801 (LC)

South Africa

Raffles v Wichelhaus 2, Hurl & C. 906 (1864).

Wasmuth v Jacobs 1983 (3) SA 629 (SWA) 633D

[1] The Applicant approached this Honourable Court on an urgent basis for an

Order in the following terms:

1. Dispensing with the rules of this Honourable Court pertaining to modes and periods service due to urgency of this application.
2. A rule *nisi* be and is hereby issued returnable on the date and time to be determined by this Honourable Court calling upon the Respondents to show cause (if any) why:

(a) The 1st to 3rd Respondents shall not be interdicted from deducting from the Applicant's salary, an amount of **M897.00.00** for rentals pending finalization hereof.

- (b) The decision of the 1st – 3rd Respondents to deduct rentals amount of M897.00 from the Applicant's salary shall not be reviewed and /or set aside as irregular and /or unlawful.
- (c) The decision of the 1st -3rd Respondents to deduct M897.00 from the Applicant's salary shall not be declared unlawful.
- (d) The 1st to 3rd Respondents shall not be ordered to confirm to the Public Service Circular Notice No. 15 of 2007 in making deductions from the Applicant's monthly salary.
- (e) The 1st - 3rd Respondents shall not be ordered to reimburse the Applicants of all excess amounts unlawfully deducted from her monthly salary.

3. Costs of suit in the event of opposition.

4. Granting further and/or alternative relief.

5. That prayers 1 and 2(a) operate with immediate effect as interim court orders.

[2] For the sake of convenience, the parties will be referred to as they appear in the papers. The facts of this case are pretty much straight forward. The Applicant herein is a public officer who was allocated residential house on two occasions by Principal Secretary of Ministry of Public Service at the original rate of M897.00 per month. In her Notice of Motion, the Applicant seeks

for an order to have Respondents interdicted from deducting allegedly unlawful rentals of M897.00 from her monthly salary. This is opposed.

[3] The Applicant who is on Grade I was appointment permanently terms in terms of Basic Conditions of **Employment for Public Officers Legal Notice No.43. of 2011**. According to the latter Legal Notice, the Applicant is entitled to government houses/quarters for which she has applied and occupied house no 444 situated at Old Europa. In terms of Basic Conditions of Employment law, the Minister is entitled to revise government housing rentals. Upon taking possession, then Applicant contends that she was not furnished with a “tenanting agreement” as per requirement of the Basic Conditions of Employment for Public Officers’ law (*supra*).

[3] The Applicant’s case is that she signed the tenanting agreement of the first at house No. 12/5 and as such the terms of the house’s tenanting agreement should not be imposed upon her now that she occupies a different house in Old Europa. Furthermore, her case is that it has been stated that the Minister will revise government housing rentals from time to time and as such the Respondents have not shown structure or latest revision of

housing rentals. And consequently, the deductions “are therefore done without basis”. Alternatively, that the rentals that ought to be deducted from her salary should be in line with Public Service Circular No. 15 of 2007.

[4] Applicant submits that “if it is believed” that the rentals increased by 10% annually, then clearly there is something wrong because M897.00 has been deducted from her monthly salary since April 2017 and it is more than a year and the same amount continues to be deducted. Fundamentally, she continues to occupy the premises. Applicant therefore approached this Court because she felt that the deductions done on her salary are arbitrary and without basis since the Respondents have failed to put before court and/or specification/calculation entitling them to deduct such an arbitrary amount.

[5] Against this background, the central issue that falls to be determined by this court is whether the amount of M897.00 rental deduction from Applicant’s salary is unlawful. The logical scenario can be presumed that ideally, the Applicant feels that she ought to pay no rental where she herself has not ventured or tendered on

officially to sign the second tenancy agreement. And yet she continues to occupy the premises as Applicant concedes having not signed a tenancing agreement in relation to the house in issue, that is which she continues to occupy.

[6] At its simplest level, if Applicant's story is to be believed, namely that the Respondents are not entitled to charge the said M897.00 as monthly rental, the definitive dividing line will simply be what law is in place as being 'within the ambit of the law'.

[10] Incidentally, Applicant submits in her replying affidavit that indeed the Basic Conditions of Employment for Public Officers stipulates that the rent shall increase annually" at the rate to be determined by the Minister from time to time" which is encapsulated in Public Service Circular No.15 of 2001 actually qualifies as a provision showing the interest of annual rental that is 10% to be increased and be effective from July 2007, as has been delegated to the Principal Secretary as vouched for in "MSI".

[11] Despite the clear legal position that the Applicant continues to be or is in fact the Principal Secretary's tenant, the Applicant most openly questions the landlord's ability to charge rental. That is obviously a mistaken attitude in the mind of the Applicant that

where she refuses to sign a tenancy agreement the Minister's and Principal Secretary 's right would thereby be waived. This Applicant's attitude is obviously fortified by this case of **Sebeko v CCMA (2001), 801 (LC)** where it is said that:

“an employer may not deduct amounts from salary of the or..... of an employee without employee's consent”.

[12] While the Respondent's refusal to offer Applicant a tenancy agreement has not been clearly demonstrated; this court concurs that the Principal Secretary has been clothed with powers to impose annual increments to Public servants use of government premises.

[13] According to the law of contract, every enforceable contract consists of an offer, acceptance, and consideration. The offer requires a manifestation of willingness to enter the bargain. Therefore, an offer requires some act that gives another person the power to create contractual relationship between the parties. For the special purpose of analysing transaction to decide whether an agreement has been reached and if so, where, and when the word “offer” has acquired some characteristics of a term of art. A

person is said to make an offer when he puts forward a proposal with the intention that by its mere acceptance without more, a contract should be formed. The intention, of course may be express or implied. **See The Law of Contract in South Africa 5th Edition by RH CHRITIE** page 29.

In *Wasmuth v Jacobs*¹ Levy J said:

“it is fundamental to the nature of any offer that it should be certain and definite in its terms. It must be firm, that is, made with intention that when it is accepted, it will bind the offeror.

[14] For acceptance, the general rule is that a contract invites acceptance in any manner and by means reasonable under circumstances, unless the language and circumstances clearly indicate otherwise. Meeting of the minds is a phrase in contract law used to describe the intentions of the parties forming the contract. It refers to the situation where there is a common understanding in the formation of the contract. **See Raffles v Wichelhaus 2, Hurl & C. 906 (1864).**

An unaccepted offer obviously cannot create a contract since it emanates from the offeror alone and the necessary agreement cannot be held to exist without some evidence of the state of mind

¹ 1983 (3) SA 629 (SWA) 633D

of the offeree. Hence the general rule that no contract can come into existence unless the offer is accepted. ***See Rodolph v Lyons***².

[15] In the present case, the amount of M897.00 which the Applicant is complaining about has been deducted from her salary as part of an agreement between Applicant and the Government. It is imperative to indicate that, when the Applicant was allocated a second house at Old Europa, the issue of tenancy agreement not being signed is not material here, what is important is that, after she was allocated the later house, she took occupation, and by her conduct, she was agreeing and accepting terms and conditions of the government. In other words, the evidence is clear that an offer was certain and definite; it was made with the intention that when it is accepted, it will bind both parties to the contract. It is therefore unacceptable for the Applicant to ask this Court to review the said terms and conditions of the Government. If the Applicant is unhappy with the conditions, she is at liberty to vacate the government house. (Emphasis underlined).

² 1930 TPD 85 91

[16] This Court therefore makes the following order:

- a) The application is dismissed.
- b) Costs of suit are awarded to the Respondents.

T.E. MONAPATHI

JUDGE

For Applicant : **Adv. Letomba (Noted by Adv Sakoane)**
For Respondents : **Adv. Makhoali**