

IN THE LABOUR APPEL COURT OF LESOTHO

HELD AT MASERU

LAC/REV/75/2004

In the matter between:-

**LESOTHO NATIONAL OLYMPIC COMMITTEE** APPLICANT

And

**MPEPUOA MOKOTELI  
DIRECTORATE OF DISPUTE  
PREVENTION AND RESOLUTION**

1<sup>ST</sup> RESPONDENT

2<sup>ND</sup> RESPONDENT

**JUDGMENT**

**CORAM** : HON. MR JUSTICE S.N. PEETE

**ASSESSORS:** Mr. C.R. Mothepu  
Mr. P.K. Lerotholi

**DATE** : 16<sup>TH</sup> JUNE, 2005

1. The majority of the Court – that is the Judge and two assessors have decided as follows:-

The present application for review is principally on matters of fact. Whilst it is common cause that the respondent was dismissed by the President of the applicant on the 23<sup>rd</sup> January 2004, it was a question of fact whether before she so dismissed the respondent, the President had consulted the rest of the Committee as required under clause 15.1.12 of the applicant's Constitution. Indeed the President herself was not even called to give evidence thus evidence on "**concurrence**" and "**consultation**" is acutely insufficient– and this could only come from the President herself.

The arbitrator misdirected himself in regarding the issue of quorum as being paramount.

2. Whilst the arbitrator – as a trier of fact – could be correct in concluding that the respondent was "*incompetent*", having heard evidence in that regard and hence liable to be dismissed by her employer in terms of section 66 1 (a) – (re: incapacity) or 66 (1) (b) – (defrauding the applicant) – of the Labour Code 1992, the award clearly shows that the arbitrator did not at all apply his mind to the issue of practicability before ordering reinstatement without much further ado. [see Section 73 of the Labour Code.]
3. We have purposely refrained from giving a fully reasoned judgment because that would risk pre-emption of issue to be canvassed at the re-hearing of this matter.
4. We order that the matter be re-heard by another arbitrator to inquire fully into the unfairness (substantive or procedural) of the respondent's dismissal and if held unfair, to inquire into the

question of practicability of re-instatement in terms of section 73 of the Code.

5. Applicant and respondent are free to engage counsel at the said hearing.

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JUDGE OF LABOUR APPEAL COURT

Assessor:

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Assessor:

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For Applicant : **Ms L. Sephomolo**

For 1<sup>st</sup> Respondent: **Mr. H. Phoofolo**