

LAC/CIV/A/10/04

IN THE LABOUR APPEAL COURT OF LESOTHO  
HELD AT MASERU

In the matter between

VICTOR MOHOLOBELA

APPELLANT

AND

FRASERS LESOTHO (PTY)LTD

1<sup>ST</sup> RESPONDENT

LABOUR COURT PRESIDENT (AD HOC.)

2<sup>ND</sup> RESPONDENT

**CORAM:** HON. MR ACTING JUSTICE K.E. MOSITO

ASSESSORS: MR. M. MAKHETHA

MR. L.C. MOFELEHETSI

HEARD: 16<sup>TH</sup> OCTOBER 2007

DELIVERED: 19<sup>TH</sup> OCTOBER 2007

### **SUMMARY**

*Application for review of Labour Court decision – Applicant passing away while application pending – No substitution application – Parties applying that matter be dismissed.*

*Rule 13(b) of Labour Appeal Court Rules considered and applied – Maxim maxim interest republicae ut sit finis litum applied – Application dismissed.*

*Costs – No order as to costs.*

### **JUDGEMENT**

MOSITO AJ:

1. This case arose out of proceedings in the Labour Court before the late Deputy President (Acting), Mr. L. Mapetla. At all times material to the application, the Appellant was and had been an employee of the 1<sup>st</sup> Respondent since 1984, until he was dismissed from the employ of the said respondent in December 1996. In the Labour Court, the Appellant instituted proceedings challenging the fairness of his dismissal by and from the 1<sup>st</sup> Respondent.
2. The 1<sup>st</sup> respondent opposed the said application and the matter was heard by the said late Acting Deputy President of the Labour Court. The Court found in favour of the 1<sup>st</sup> respondent.
3. Judgment of the Labour Court was handed down in 1999. Applicant only instituted review proceedings in this Court on the 29<sup>th</sup> day of October 2004 against the judgment of the Labour Court. On the face of it, this was an unacceptably long delay. However, this was probably because this court was only assembled in 2004.
4. The matter was first set down for hearing in January 2007, but could not proceed because, it appeared that, there was no appearance for the Applicant as his Counsel had passed away, and secondly, there were rumours that Applicant had passed away. Mr. T. Makeka, applied for the dismissal of the application on the basis that, the application had been pending for too long. He also informed the Court that justice dictated that the application be dismissed as the 1<sup>st</sup> Respondent had been liquidated. He further informed the Court that, he had had that the Applicant had probably passed away. At that stage, the Court did not accede to the application as it considered that the dictates of justice required that both parties to the dispute be given an opportunity to appear before it and address this issue. This was so

because, Mr. Makeka was not very sure whether Applicant had indeed passed away.

5. Mr. Makeka had asked that the application be dismissed as there was not even an appearance for the Applicant. The basis of this contention was probably based on Rule 13(b) of the Labour Appeal Court Rules which provides in part as follows:

"If for no good reasons shown to the Court, the appellant fails to appear in person or through a representative on the date of hearing, the Court may....(b) dismiss the appeal."

6. According to *S v Isaacs 1968 (2) SA 184 (A) at 186B - E* and *S v Moshesh 1973 (3) SA 962 (A) at 963G - H*, a sub-rule couched in terms such as this, confers a discretion on the Court as to the appropriate order it should make, but ordinarily the appeal should be dismissed unless there are circumstances warranting the making of some other, less drastic order.(See *Gumede v Protea Assurance CO Ltd 1979 (2) SA 851 (A) p. 852*).In the present case, we declined to dismiss the application at that stage and decided to make a less drastic order postponing the matter, to give the Applicant a further chance to appear. We also considered that, counsel that had been handling the matter had passed away, and there was no certainty as to whether Applicant had passed away or not.
7. The matter appeared again on the Roll on the 16<sup>th</sup> day of October 2007.Mr. Makeka K.C. and Mr. Malefane for the 1<sup>st</sup> respondent and Applicant respectively, appeared before Court. They informed the Court that Applicant had passed away. Mr. Malefane further informed the Court that he had no instructions to prosecute the application as

applicant had passed. He also had no instructions from the family of the deceased, and there was no substitution application.

8. The Court realised that this case had indeed taken too long to resolve. It realized that this time, there was certainty that Applicant had passed away. It also bore in mind that, the continued postponement of this matter had to be balanced against the public policy consideration expressed in the maxim *interest reipublicae ut sit finis litum*. (See *Wright v Westelike Provinsie Kelders BPK 2001 (4) SA 1165 (C) at p.1176* ) Thus, even though a judgment may settle a private matter between private individuals, the act of judgment by a court is a public matter and the policy expressed in the maxim *interest reipublicae ut sit finis litum*, should be applied. (See *Wright v Westelike Provinsie Kelders BPK (supra)*). It follows that a further postponement of this matter would "make a mockery of the principle of *ut sit finis litum*". (*Abdurahman v Estate Abdurahman 1959 (1) SA 872 (C.) at 875G-H.*)
9. The Court had no option in the circumstances but to dismiss the application. The parties asked that there be no order as to costs. It is accordingly so ordered.
10. My Assessors agree.

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K.E.Mosito

Judge of the Labour Appeal Court

For Applicant : Mr. L. Malefane

For 1<sup>st</sup> Respondent: Mr. T. Makeka K.C.