LAC/CIV/A/06/08

IN THE LABOUR APPEAL COURT OF LESOTHO

HELD AT MASERU

In the matter between:

PHETHANG MPOTA APPELLANT

AND

STANDARD LESOTHO BANK RESPONDENT

CORAM: THE HONOURABLE MR JUSTICE K.E. MOSITO AJ.

ASSESSORS: Mr. M. Makhetha

Mr. L. Mofelehetsi

Heard on: 3RD AUGUST, 2009

Delivered on: 7TH AUGUST, 2009

SUMMARY

Appeal against judgment of the Labour Court – appellant having been retrenched and given notice – notice in terms of section 63 read with 64 and 66 of the Labour Code Order No. 24 of 1992 – money in lieu of notice having been given and therefore notice adequate.

Appellant having not prayed for an order that the dismissal is unfair – competence of court to grant orders not sought by parties – section 73 of the Labour Code only applicable where court found that the dismissal was unfair.

Condonation application – requirements thereof considered and applied – application for condonation dismissed with costs.

Appeal struck off with costs as condonation application could not succeed.

JUDGEMENT

MOSITO AJ

1. This is an appeal against the judgment of the Labour Court handed down by the deputy President of that court on the 18th day of May 2007. That was a judgment consequent upon an application by the present appellant in which the appellant claimed relief in the following terms:

    (i) Payment of salary for twelve (12) months as damages.
    (ii) Costs of suit.
    (iii) Further and/or alternative relief.

2. The facts that led to the institution of the application were that the parties had entered into a contract of employment on 5th August 1999. The appellant rose through the echelons of the respondent until he became a branch manager. He was subsequently promoted to a position of Area Service Centre Manager (ASCM) on February 2004. In December 2005, the appellant and some employees of the respondent were informed that there would be some staff retrenchment due to operational requirements of the respondent's bank. However, no further steps were taken by the respondent until the 22nd February 2006 when appellant was informed that he was going to be retrenched. Appellant was informed that *negotiations* for retrenchment would commence on the 1st day of March 2006. The purpose of the said negotiations was to reach "a mutual agreement on exit benefits".

3. It was in consequence of the said negotiations that appellant was dismissed purportedly in terms of section 66(1) © of the **Labour Code Order 1992**. The appellant complained thereafter that the retrenchment process undertaken in consequence of the rationalization process undertaken by the respondent was flawed in the following respects:

> *"(a)There were no negotiations to explore whether there are other options rather than retrenchment.*
> *(b) The retrenchment criteria was never discussed and agreed upon.*
> *(c) The principle of **Last in first out** was never followed.*
> *(d) The whole exercise took only a week. Annexure "C". Thus the so called **negotiation** was just a **"masquerade".***

4. For its part the respondent contended that the appellant had been informed prior to the 22nd day of February 2006 about the retrenchment. It contended that appellant was a senior member of management and was aware that the retrenchment exercise was underway. The respondent further disputed that the retrenchment process was flawed, and it contended that all possible options were explored and retrenchment was the last option. It also contended that the principle of LIFO (last in first out) could not be followed as appellant held a senior position. It contended that other forms of selection criteria were used. It indicated that the selection criterion used in the case of Appellant was one where certain posts were being phased out and suitable posts were advertised to match skills with the posts. It further contended that the negotiations were handled properly as per the requirements of the law. Respondent further pointed out that Appellant was informed that a new post was going to be advertised and he should indicate his intention to apply but he declined. Respondent further pointed out that the new position available at the respondent is not the same as the one that was held by the appellant. For the above reasons the respondent asked the court to dismiss the claim of the appellant with costs.

5. As indicated above, the learned Deputy President dismissed the appellant's application on the 18th day of May 2007.

6. On the 17th day of June 2008, the appellant filed a notice of appeal against the said decision on the following grounds:

> *"1. The retrenchment of appellant was not procedurally unfair under the circumstances, especially after finding that Appellant was not told in good time that he would be selected for retrenchment.*
> *2. That the moneys paid sufficiently compensated the appellant for prejudice he suffered for having been selected for retrenchment and after also finding that appellant was not told in good time that he would be selected for retrenchment.*
> *3. Appellant was not entitled to 12 months compensation because appellant obtained a job at Boliba Savings without assessing and awarding any compensation due to appellant at all".*

7. It was clear that the appellant was out of time in respect of filing the notice of appeal. On the 22nd day of September 2008, appellant filed an application for condonation for the late filing of the appeal. In his founding affidavit in support of the application for condonation, the appellant deposed that he was not able to lodge his appeal in time because after his unlawful retrenchment by the respondent, he was not employed for more than eight months, he further averred that he had huge liabilities to settle including his legal fees for instructing counsel at the Labour Court. He further averred that as a result of all this, he did not have enough money to lodge the appeal and instruct counsel, especially when the appeal involved extra heavy additional payment for preparation of the record. He averred that he had managed to

raise little funds from his meager salary at Boliba which was far below his salary and status and he needed to instruct counsel in the matter. He therefore averred that he was not in willful default and breach of the rules of this court.

8. Appellant went further to aver that he had high prospect of success for the reason that the Learned Deputy President had erred and/or misdirected herself in failing to award appellant compensation after finding that appellant had been unlawfully retrenched. The application was opposed by the respondent who vehemently denied the version of the appellant by indicating in essence that appellant was still employed at Boliba Cooperative and was therefore earning money. Respondent further averred that Boliba also issues loans (by which we understood respondent to mean that appellant should ask for a loan). Respondent further averred that appellant had received huge sums of money when he was retrenched which included leave days, pension fund benefits, notice pay and a fund retrenchment package. It further averred that appellant had no prospects of success in as much as he did not challenge the substantive fairness of his retrenchment. Respondent further complained that the delay is inordinate and charged that appeals to this court are to be filed within six weeks of the judgment of the Labour Court. It averred that in the present case appellant had delayed inordinately to the extent that it had even had to approach this court after a year.

9. Respondent further averred that it would be prejudiced if condonation is granted in that the respondent will have to reopen a case which it completed more than fifteen months ago and answer issues which were not challenged. It pointed out that on the other hand , appellant would not suffer any

prejudice if the condonation application is not granted because he continues to be employed at Boliba as he has been doing over the last one and half years. Respondent consequently contends that in any event, appellant had not established good cause for the excessive delay, prospects of success and further that in any event the matter is not of importance at all.

10. At the hearing of this matter on the 3rd day of August 2009, this court directed that the condonation application be argued together with the merits. This was duly done. The understanding and approach was that if there were no prospects of success or no requirements for condonation, and the application is dismissed, then there would be no need to go into the merits of this appeal as it would consequently have to be struck off. Both parties agreed to this approach. The parties further agreed that if the condonation succeeds, then the court will then proceed to determine the merits of the appeal.

11. The principles applying to the granting of condonation are well known and have been dealt with by various courts of law. One of the most comprehensive summaries of such principles can be found in the judgment of the Court of Appeal of Botswana in **Attorney-General v Manica Freight Services (Botswana) (Pty) Ltd [2005] 1 BLR 35** (C.A.)) at 42D-43B. In that case, the Court of Appeal of Botswana pointed out in respect of condonation application that:

> "It is, of course, well established that in order to succeed in an application such as the present the applicant must, by way of affidavit, set forth good and substantial reasons for the application, that is, reasons why the appeal was not timeously noted and also provide grounds of appeal which prima facie show good cause why

> the leave sought should be granted... *Solomon v The Attorney General* [1997] BLR 663, CA at p 664F-H).
>
> Condonation of a breach of the rules of court is granted not as of right but as an indulgence. It is accordingly necessary for an applicant for such condonation to show not merely that he has strong prospects of success on appeal but to give good reasons why he should receive such indulgence, that is, that he acted expeditiously when he discovered his delay and advance an acceptable explanation for the delay (see *State v Elias Moagi* 1974(1) BLR 37, CA at p 39; *Solomon v Attorney-General* (supra) at p 666D). There are, however, other factors which the court, in considering such an application, is also obliged to take into account. These are conveniently referred to and collected in Herbstein and Van Winsen: *The Civil Practice of the Supreme Court of South Africa* (4th Ed p 897-8. While applying to applications in South Africa, they are the same principles which are applicable in our law (see *CF Industries (Pty) Ltd v The Attorney-General and Another* [1997] BLR 657, CA).
>
> Those factors include not only the degree of non-compliance, the explanation for it, the prospects of success and the importance of the case but also the respondent's interest in the finality of his judgment, the question of prejudice to him, the convenience of the court and the avoidance of unnecessary delay in the administration of justice.
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> In *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at p 532(C-D, Holmes JA said the following:
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> 'Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are not prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interest in finality must not be overlooked.'

12. As was said by the Court of Appeal of Lesotho in **Commander of Lesotho Defence Force and Another C of a (CIV) NO.8/2007**, condonation should be sought as soon as non-compliance with a rule becomes apparent; a failure to do so could result in prejudice to a respondent. It is incumbent upon the

appellant to show sufficient cause for the granting of this application. In the matter of ***Motlatsi Adolph Mosaase v Rex LAC*****(2005-2006)206 at 208**, the Court of Appeal of Lesotho quoted with apparent approval the general principles applicable when considering an application for condonation as enunciated in ***Melane v Santam Insurance Co. Ltd.*** **1962 (4) SA 531 (A) at 532 C-F:**

> "In deciding whether sufficient cause has been shown, the basic principle is that the Court has discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are compatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective *conspectus* of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interest in finality must not be overlooked".

13. This approach has been consistent. (See for example,***National University of Lesotho v Thabane (C of A (CIV) No.3/2008); CGM Industrial (Proprietary) Limited v Adelfang Computing (Proprietary) Limited (C of A (CIV) No. 5/2008); Mokhotho v Learned Magistrate and Others (C of A (CRI) 10A/08); Tjatji v Sunshine Motors and Others (11/2006) [2007]; Motake v Moqhoai and Others (C of A (Civ) 5/2009))***. As was pointed in ***Melane v Santam Insurance Company Ltd*** (*supra*), it is settled law that an applicant for condonation must show "good cause". The factors that are

considered to establish whether "good cause" has been shown are the degree and extent of the delay, the explanation therefor, the prospects of success and the importance of the matter. These factors are interrelated and individually important, but the weight to be given to any one of them in any given case may vary. For instance, the importance of the matter and good prospects of success may tend to compensate for a long delay and a weak explanation. Prospects of success or *bona fide* defence on the other hand mean that all what needs to be determined is the likelihood or chance of success when the main case is heard. (See ***Saraiva Construction (PTY) Ltd v Zulu Electrical and Engineering Wholesalers (PTY) Ltd*** **1975 (1) SA 612 (D)** and ***Chetty v Law Society 1985 (2) SA at 765A-C.*** With regard to the explanation, such must cover the entire period in respect of which condonation is sought.

14. According to the leading cases on condonation, the Appellant had also to satisfy this Court that he enjoyed prospects of success in this appeal. It is established as a general rule that the stronger the explanation for the delay, the weaker the prospects need to be. ***Melane v Santam Insurance Co. Ltd*** *(supra);* NUM **v Council for Mineral Technology [1999] 3 BLLR 209 (LAC).** It was urged upon us that in his founding affidavit in support of condonation the appellant said too little about his prospects of success in the unfair dismissal dispute.

15. It is worth noting however that, exceptionally, the degree of non-compliance may be so gross and the explanation therefore so inadequate, that the court may be moved to refuse condonation, regardless of the prospects of success in the main proceeding (see e g **Ferreira v Ntshinpila**

1990 (4) SA 271 (A), at 281 J - 282 A and the cases there cited). Thus, from the examination of the case law above, it can safely be said that, the factors which the Court takes into consideration in assessing whether or not to grant condonation are: (a) the degree of lateness or non compliance with the prescribed time frame, (b) the explanation for the lateness or the failure to comply with time frames, (c) *bona fide* defence or prospects of success in the main case; (d) the importance of the case, (e) the respondent's interest in the finality of the judgement, (f) the convenience of the court; and (g) avoidance of unnecessary delay in the administration of justice. (See ***Foster v Stewart Scott Inc (1997) 18 ILJ 367 (LAC)***).However, these factors are not individually decisive but are interrelated and must be weighed against each other.

16. I turn then to what the Appellant have to satisfy this Court. As to the fact that he had delayed bringing this application for condonation for some three months after he had lately filed his notice of appeal, there was no explanation for the said delay at all. The Appellant's only explanation as contained in his affidavit in support of this application is that after the judgment he had no money with which to lodge the appeal because he was not employed for more than eight (8) months. He also says he had huge liabilities to settle, including legal fees. As a result of all these, he did not have enough money to lodge his appeal and instruct his counsel as well as prepare the record. Indeed this explanation is not convincing regard being had to the fact that appellant had just been paid huge sums of money inconsequence of his retrenchment. However no evidence is given in the founding affidavit regarding the other essentials of condonation. This facile and hopelessly inadequate statement cannot possibly constitute an

acceptable explanation for a delay of over a year in seeking to bring his appeal.

17. The appellant as indicated above contends that he has good prospects of success on a number of grounds. Firstly, it was submitted on behalf of the appellant that the Learned Deputy President erred by failing to award compensation in terms of section 73 of the **Labour Code Order 1992** after finding that the appellant was not told in good time or given enough notice before he was retrenched. It was contended on behalf of the appellant that appellant was indeed not given enough notice regarding retrenchment. The learned Counsel Mr Sekonyela argued that failure to give appellant enough notice resulted in procedural impropriety of the retrenchment process and thus made it unfair. He submitted that once the court finds that the appellant was not given enough notice which he was entitled to in terms of the law, that termination becomes a nullity. For this preposition he relied on the case of **Khotle v Attorney General LAC (1990-1994) 502 at 504 E-I** where the court of appeal of Lesotho held that while the notice was insufficient the purported dismissal was a nullity. He also relied on the judgment of this Court in **Tsotang Ntjebe and Others vs Lesotho Highlands Development Authority LAC/ CIV/A/12/2004** at pg 15 para 22 of the Judgment**.**

18. There can be no doubt that the above two cases constitute good authority for the legal position. The question however that has to be determined is whether there had been inadequate notice in the present case that would warrant the granting of the consequential reliefs contemplated by section 73 of the **Labour Code Order 1992.** Section 73 (1) of the **Labour Code Order** prescribes that reinstatement is the preferred remedy in cases of

unfair dismissals where the employee desires it. If the employee does not desire reinstatement or reinstatement is not practicable in all the circumstances of the case, then the next available remedy in terms of section 73 (2) of the Code is that of compensation. It is common cause that the appellant did not ask or did not desire reinstatement before the Labour Court. He only desired "damages" as appears in the prayers reflected in paragraph 1 above.

19. It is important to mention that as clearly appears in paragraph 1 above, there was no prayer for the Labour Court to find that the dismissal of the appellant was unfair. Section 73 (2) of the Labour Code provides as follows:

> **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.

20. It is clear from the above section that relief in terms of section 73 (2) is only available where the court has found a dismissal to be unfair. In the present case, there was no prayer for the Labour Court to find the dismissal unfair. It would be difficult therefore to determine how the Labour Court would then grant relief in terms of section 73 (2) when there was no prayer for finding the purported dismissal of the appellant unfair. In our view the Labour Court could not properly have granted what was not asked for. It follows therefore that the consequential relief flowing from the finding that the dismissal was unfair could equally not be competent in the circumstances of this case. Although the Labour Court may have been urged to find the dismissal unfair, it is clear that there was no way in which it could have granted such an order where such order was never asked for. The Court of Appeal and this court have on several occasions deprecated the practice in terms of which the courts grant orders that nobody has asked for. In several of its decisions the Court of Appeal has deprecated the practice of granting orders which are not sought for by the litigants. See for example **Nkuebe v. Attorney General and Others 2000 – 2004 LAC 295 at 301 B – D; Mophato oa Morija v. Lesotho Evangelical Church 2000 – 2004 LAC 354.** In the latter case the Court of Appeal of Lesotho (per Grosskopf JA) said the following at page 360:-

> "*The appellant's first ground of appeal was that the court a quo erred in making the above order when neither the appellant nor the respondent had asked for it. Counsel for the respondent, on the other hand, submitted that the court a quo was fully entitled to grant such an order since the notice of motion included a prayer for further and/or alternative relief.*
>
> *I do not agree. The relief which a court may grant a litigant in terms of such a prayer cannot in my view be*

> *extended to relief which he has never asked for and which is not even remotely related to what he has asked for. It is equally clear that the order was not granted at the request of the respondent and it does not appear on what grounds the court a quo could order the respondent."*

22. Similarly, the Court of Appeal and this Court have more than once deprecated the practice of relying on issues which are not raised or pleaded by the parties to litigation. See for example **Frasers (Lesotho) Ltd vs Hata-Butle (Pty) Ltd LAC (1995 – 1999) 698; Sekhonyana and Another vs Standard Bank of Lesotho Ltd LAC (2000-2004) 197; Theko and Others v Morojele and Others LAC(2000-2004) 302; Attorney-General and Others v Tekateka and Others LAC (2000 – 2004) 367 at 373; Mota v Motokoa (2000 – 2004) 418 at 424. National Olympic Committee and Others vs Morolong LAC (2000 – 2004)449.**Although the **Khotle's** case was dealing with the common law position, the remarks made by the Court of Appeal in that case that once the notice is found to be insufficient, the purported dismissal is a nullity. It is clear that the court was dealing with a situation where a party had asked the court to find that the dismissal was unfair. In his present application the Appellant has, however, raised certain further arguments which he contends show that he has reasonable prospects of success on appeal. He relied on section 63 read with section 66 of the ***Labour Code Order No. 24 of 1992*** which, as far as relevant, provide respectively as follows:

> **63. Notice of termination**
>
> (1) For contracts without reference to limit of time, either party may terminate the contract upon giving the following notice:

> (a) where the employee has been continuously employed for one year or more, one month's notice;
>
> **66. Dismissal**
>
> (1) An employee shall not be dismissed, whether adequate notice is given or not, unless there is a valid reason for termination of employment, which reason is
> (a)…;
> (b) …; or
>
> (c) based on the operational requirements of the undertaking, establishment or service.

23. These two sections are inter-related and I shall consider them together. For the sake of completeness, in doing so, I shall add section 64(1) of the **Labour Code Order 1992** which provides as follows:

> **64. Payment in lieu of notice**
>
> (1) Without prejudice to section 67, the employer may pay an employee in lieu of providing notice of termination under section 63.
> In such cases, the employee shall be paid a sum equal to all wages and other remuneration that would have been owing to the employee up to the expiration of any notice of termination which may have already been given or which might then have been given.

24. The factual context within which appellant seeks to rely upon section 63 is that the appellant was given notice on the 21st February 2006 that he would be retrenched and that he was actually retrenched after about 8 days on the 10th day of March 2006. Under the circumstances it was submitted on behalf of the appellant that the termination of the appellant's contract was a nullity in law because it was less than one month as contemplated by section 63 quoted above.

25. On the face of it, and considered in isolation, the above contention seems to have considerable force. However, on closer scrutiny, it is clear that this contention cannot stand. In the first place as already indicated above, there was no attempt by the appellant to ask for the nullification of his dismissal. There was no prayer for the finding that his dismissal was unfair. The Labour Court could not therefore hold the dismissal to have been unfair without a clear prayer for it to do so. Secondly, it was common cause that the appellant was given money in lieu of notice for the month of April. That notice comprised basic salary and all fringe benefits attended to it. In our view this satisfied the requirements of section 63 read with section 66 and section 64 of the Labour Code Order 1992 as quoted above. It was therefore difficult to see how a party who had been given notice at the end of his contract, or money in lieu of notice could be said not to have been given notice simply because there had been an attempt to terminate his contract by the purported notice given on the 21st day of February and which saw him leave the employ of the respondent on the 10th day of March 2006. It is not the appellant's case that he was not paid for the month of March 2006; it is also not his case that he was not paid his salary for the month of February 2006. What seems to be his case is that because an insufficient notice was purportedly given on the 21st day of February 2006 that he should leave the employ of the respondent on the 10th day of March 2006, therefore his dismissal was effected thereby notwithstanding that he was given money in lieu in notice in respect of the month of April which is common cause that it was money in lieu of notice. In our view, there is merit in the contention that money in lieu of notice had the effect of curing the purported dismissal of appellant by the notice given on the 21st day of February 2006.

26. To the extent that appellant's case is that he was entitled to be given one month's notice, or money in lieu of notice in terms of section 66 (1) © of the Labour Code Order 1992, it is clear that this was done and his case in this regard cannot succeed.

27. The Learned counsel for the appellant further submitted that the notice money did not compensate for the unlawfulness for insufficient notice. He contended that this is not correct in law because section 64 of the Labour Code on payment in lieu of notice presupposes the situation where termination is lawful and the employer has the discretion whether to allow the employee to serve notice or pay him in lieu thereof. He contended that once the termination is unlawful in the sense that it is inconsistent with the notice requirements contemplated by section 63 and 64 above then section 73 (2) of the Labour Code comes into play. His contention was further that once the termination is unlawful and the court finds that the dismissal is unfair for lack of adequate notice, the court is mandatorily enjoined to fix an amount of compensation accordingly.

28. Indeed the submissions regarding the effect of failure to give adequate notice as advanced by the learned counsel are correct, however, in the present case the facts are such that this contention would not find comfort therein because it is common cause that appellant was given money in lieu of notice in respect of the month of April. We may as well mention that over and above that money paid in respect of the month of April, appellant was also given

money in respect of the month of May. According to Mr. Macheli counsel for the respondent the money in respect of the month of May which did not include fringe benefits was given as part of retrenchment benefits. We are in agreement with this contention. We also agree with Mr. Macheli that the appellant was given adequate notice in the nature of money in lieu of notice as contemplated by section 64 quoted above.

29. The Learned counsel for the appellant Mr. Sekonyela further contended that another important issue which constitutes good prospects of success is that the Labour Court failed to find that the retrenchment was procedurally unfair even for lack of consultations notwithstanding that the court had found that *"the suddenness with which the respondents effected retrenchments sends shock waves."* The learned counsel further argued that in this case the respondent actually failed to carry out consultations in accordance with their own guidelines which they had set for themselves. He contended that the respondent had issued a workplace notice relating to the retrenchment and that the said retrenchment notice then became part of the employee's contract with the respondent and that the respondent was obliged to observe the content of the said notice. For this proposition the learned counsel relied on the judgment of this court in **Motumi Ralejoe vs Lesotho Highlands Development Authority LAC/CIV/A/03/2006 at para 26 at pg 21,** he also contended on the decision of this court in **Standard Bank Lesotho vs Lijane Morahanye LAC/CIV/A/06/08** at para 13, where this court held that an employer who sets an instrument for himself is bound by that instrument. He contended that the respondent cannot even argue that the alternative procedure adopted by the employer was just as good. For this proposition he

relied on the Ralejoe's case (supra) at page 17, Mr Sekonyela further contended that the respondent undertook to follow the Quotes of Good Practice No. 19-20 of the Codes of Good Practice, he contended that this was actually imported in to the appellant's contract of employment. He further argued that the employer undertook to follow the LIFO principle in the retrenchment process and to discuss the Exit Terms and that this were not discussed. Only exit benefits were discussed.

30. There may be merit in this submission however as indicated above, the appellant was the author of his own misfortune. He did not apply for an order declaring his dismissal unfair. The Labour Court had no basis to even consider granting an order declaring the dismissal unfair in the absence of such a prayer even if the Labour Court did discuss issues relating to the fairness or unfairness of the dismissal. It could not make an order in the absence of a prayer to that effect because the courts of law do not have jurisdiction to grant orders that nobody has asked for. We consequently find that in the light of the above discussions there would be no prospects of success in this matter. The Labour Court was not given an opportunity to decide whether or not it should grant an order relating to the fairness or otherwise of the dismissal. Even if it did consider such an issue in the circumstances of the present case, it could not in our view give such an order as nobody had asked for it.

31. It is clear from the foregoing discussions that there are simply no prospects of success in this appeal. As a result the application for condonation cannot

succeed. It is accordingly dismissed with costs; the appeal is accordingly struck off with costs.

32. My assessors agree.

K.E. MOSITO AJ.

Judge of the Labour Appeal Court

For the Appellant Advocate B. Sekonyela

For the Respondent Advocate T.D.Macheli