LAC/CIV/A/04/06
LC60/05

IN THE LABOUR APPEAL COURT

In the matter between:-

NON-ACADEMIC WORKERS UNION (*NAWU)* APPELLANT

And

NATIONAL UNIVERSITY OF LESOTHO *(NUL)* RESPONDENT

Headnote

Labour Code Order 1992 – Contract – When concluded. Offer and acceptance – Need for clear and definite terms to the offeree. Onus – Consensus ad idem – Acceptance of terms must be communicated to the offeror.

When *an employer offers a salary package to employee, the* ***onus*** *is upon the employee to prove on a balance of probabilities that the offer was clear and definite and was accepted and that this acceptance was communicated to the employer.*

Where *an offer is made during a negotiation process, there must be clear unequivocal evidence that its acceptance then brought into existence a definite and enforceable contract.*

Where *there are two mutually destructive versions, before the court can find in favour of the party that bears the onus, it must be shown that that the respondent's version is false.*

Unfair labour practice *must be liberally defined to include not only apparent discrimination or differential treatment as in section 196 of the Labour Code but also any treatment that is unfair and inequitable in the particular circumstances of the case.*

JUDGMENT

CORAM : HON MR JUSTICE S.N. PEETE

PANELLISTS: MR MOTHEPU
MR MOFELEHETSI

DATE : 18TH SEPTEMBER, 2009.

PEETE J.:

[1] On the 29th September 2006 the Deputy President of the Labour Court (**Mrs. Khabo**) delivered a judgment the effect of which was to dismiss the application that had been lodged by appellant (the then applicant). In the main the Labour Court had ruled that the "*applicant failed to establish the existence of an undertaking by the respondent to implement the recommendations of the Commission in respect of their salary increase."*

[2] The Labour Court also found that no unfair labour practice had occurred because being of a different status to the academic staff, the applicant's members had not been discriminated against.

[3] In its Notice of Appeal, the appellant's Grounds of Appeal read in full thus:-

> *"KINDLY TAKE NOTICE THAT the above named Appellant hereby notes an appeal against the whole judgment of the Labour Court in case number LC 60/05 between the Non-Academic Workers' Union and the National University of Lesotho dated 29th September, 2006, to the Labour Appeal Court on the grounds set out in the annexure hereto. The Appellant reserves the right to file further grounds at appeal upon receipt of the complete record of proceedings."*
>
> *"1.*
>
> *The learned Deputy President of the Labour Court erred in her finding of fact that the* ***"people who testified on behalf of members of the Applicant neither made any allegation nor proved that the team that was mandated by management expressly indicated that they were being offered or promised the recommendations advanced in the report".***
>
> *Both PW1, ZACHARIA LIPHOTO and PW2, Gabriel Maama stated that the representatives of management made an express offer of the remuneration structure set out in Annexure 'C' to the origination Application and that offer was unequivocally accepted by the Appellant's (Applicants') representatives.*
>
> *2.*
>
> *The learned Deputy President of the Labour Court erred in her assessment of the evidence in that she confused the recommendations of the Salaries Review Commission of 1998 (approved in April, 2000), with the offer that Appellants contend was made to them in May, 2003.*

3.

> *The Learned Deputy President of the Court a quo in holding that the* ***"'Respondents' management cited financial constraints, as the reason behind their failure to implement the commission's recommendations in respect of salary increase to Applicant's members".***
>
> *The Respondent's case was not that it lacked funds, but that the Appellant's members had been given a salary raise of 8% in July 2003 in response to the query by Council in April, 2003 as to whether other staff of the University would be given a salary increase as had been done with the academic staff."*

[4] In her judgment, the learned Deputy President considered the evidence adduced in support of the application. She assessed the evidence of Zacharia Liphoto and Gabriel Liphoto which was substantially to the effect that Respondent's management had made an offer based upon the Commission's recommendations and that this offer had been accepted with an undertaking that the salary increase would be effected by July 2003; the Labour Court concluded that "*the applicant failed to establish the existence of an undertaking by the respondent to implement the recommendation of the commission in respect of their salary increase."* Parties do not appear to have been "*ad idem*" in contractual terms, so the court concluded, adding that:-

> *"…The applicant failed to prove a case a breach of contract. The presentation of the Report to the Unions appears to have been a consultative process which did not create a right*."

[5] The Court also found that the applicant's members had no legitimate expectation because the consultative process had created no right nor had any promise being made to implement the salary structure increases – regard being had to the financial constraints, a common understanding to all parties concerned.

[6] This being an appeal, this Court should not re-assess the evidence once more like a trial court which in law was a trier of fact – which heard the witnesses and assessed their demeanour and credibility.

[7] The court of appeal will only interfere with a finding of fact reached by a court *a quo* if it shown shall a trial court's conclusion was unsupported by the facts or was unreasonable or it is shown that the court failed to consider certain material facts or placed undue weight on certain facts.

[8] The evidence of applicant's witnesses taken cumulatively points more towards a consultative bargaining rather than a popular acceptance of a salary structure involving many non-academic salary notches infact ranging from a cleaning attendant to the Vice Chancellor! It is improbable that all affected members approved the proposed new salary structures.

[9] The meetings that were held between the representatives of the management and the applicant's members are crucial where the acceptance of the offer was made at these meetings.

[10] Notwithstanding that the agenda at these meeting was momentous, no minutes whatsoever were taken to record the important agreement of the day – nor was anything reduced to writing afterwards. What happened afterwards indicated not a concurrence of minds but a divergence of action and no visible fruits of agreement were anywhere in the offing.

[11] In law, it is the outward manifestations of the conduct of the parties from which the court can infer consensus of minds.

[12] Where there are two mutually destructive versions, it is important to determine upon whom the *onus* lies and before the court can decide in favour of the bearer of the *onus*, the respondent's version must be proved as false.[1]

[13] Is it possible that the alleged agreement over *Annexure "C"* was merely illusory and the respondent was considering it merely as a consultative overture towards the salary increases[2]?

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[1] **Wessels JA** in **National Employers Mutual General Insurance Association v Gany** – 1931 AD 187 at 189; **Hoffman** and **Zeffert - SA Law of Evidence** (4th Ed) page 527)

[2] See para 33 infra.

[14] Be that as it may, the appeal to this Court raises a mixed question of law and fact – that is, whether there was an offer by respondent (NUL) (of salary increase *Annexure "C")* and whether this offer was accepted by the applicant in May 2003 and communicated to respondent are simply questions of fact which (in the absence of a written agreement or undertaking) may only be gathered from the evidence of the witnesses called by the applicant and the respondent; and it a matter of law whether contract came into being.

[15] An important issue in these proceedings is that of *onus* – that is a burden of proof that rests upon the plaintiff or applicant who asserts. It is an age old principle of natural justice and of our common law that "*he who asserts must prove.*" **"*Semper necessitas probandi incumbit illi qui agit*" – Digest 22.3.21** (*Corpus Juris*)

[16] *In casu*, where a party alleges the existence of a contract in the sense that an offer was made to it by the other party and that it accepted the offer thus bringing into being an contract enforceable in law, it is for the party alleging such contract to discharge this *onus* on a balance of probabilities by adducing evidence (written or oral) showing that (a) the offer was made by the other party and that (b) it accepted the offer, and (c) that this acceptance was communicated to the offeror.

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[17] **Historical Background**

The respondent – **National University of Lesotho** – is a big tertiary institution situated at its main campus at the Roma Valley. Its main functions are academic training of students and it has a large academic and administrative staff to assist it discharge its functions under the University statutes and other Regulations.

[18] It is common cause at the University that there exist three main unions registered under law – these are

(a) **SUSU** (for Senior administrative staff)
(b) **LUTARU** (for academic staff)
(c) **NAWU** (present appellant)

[19] During 1998 the National University of Lesotho became acutely aware of their rising cost of living and of the need to look into salary structures of University employees taking into account rising inflation and tax rates in Lesotho and of need to look into the competitiveness of the University salaries as compared to those of other universities in the SADC region. The respondent then established a Salaries Review Commission to investigate and submit recommendations to remedy the situation.

[20] The Salaries Review Commission duly completed its task and submitted a Report on the 31st March 2000. The Memorandum was addressed to the Vice Chancellor who is the Executive Academic/Administrative Head of the respondent.

[21] It is not in dispute that, as correctly stated by the applicant, "…the recommendation of the Commission had huge financial implication which the Respondent could not meet all at once and thus decided to implement them in three stages commonly referred to as *Cola 1*, *Cola 2* and *Cola 3* (*Cola* being "cost of living adjustment).

[22] Annexed is the *"Annexure C"* upon which the applicant anchors its case; this document is a salary structure which according to applicant was recommended by Commission, approved by University Council, offered by the respondent, accepted by the applicant – but which now which the Respondent is reneging and refusing to implement. This is the thrust of the applicant's case.

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[23] The applicant in its Originating Application before the Labour Court prayed for relief-

> *"Declaring that the Respondent has acted in breach of its undertaking to implement the salary increase for the Applicant's members in terms of Annexure "C".*

[24] The applicant's second prayer sought an order

> *"Declaring that the Respondent is guilty of* ***"unfair labour Practice****" in that it discriminated against the applicant's members when affecting a salary increase for its employees."*

[25] The Applicant alleged that on the 20th April 2003, the Respondent's Council had approved a salary increase for academic staff but had failed or refused to implement salary structure (*Annexure "C")* effecting substantial salary increase of applicant's members with effect from July 2003.

[26] The applicant laments that the "*straw that broke the camels' back*" came when in May 2005 the Respondent further and in clear discrimination and total disregard to applicant's members increased the salaries of its senior administrative staff "who had incidentally been grouped together with applicants members in *"Annexure C";* and this increase being made retrospective to July 2003.

[27] For all these, the applicant accuses the respondent of committing an "*unfair labour practice*" in that *"by increasing the salaries of its senior support staff to the exclusion of the applicant's members*."

[28] The two prayers will be treated **seriatim** beginning first with the allegation breach of contract.

[29] **Breach of contract**

Under our law before there can be a breach, existence contract must be established. A breach of contract occurs generally, when a party to the contract, without lawful excuse, fails to honour his/its obligations under the contract[3] e.g. by manifesting an unequivocal intention no longer to be bound by the contract[4].

[30] Where therefore, the applicant or plaintiff fails to establish the existence of the contract, there can be no breach without a subsisting contract. A repudiation as breach can also come through a denial of the existence of the contract[5] or a refusal to perform[6] or notification of inability to perform[7]. In pure law, repudiation constitutes a breach of contract being a violation of the fundamental obligation to honour an agreement. And what in fact the appellant was claiming before the Labour Court is specific performance of an agreement which it alleged was entered into in May 2003.

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[3] **Wille's Principles of South African Law** (8th Ed) p 505
[4] Ibid, p511
[5] **Mechanick v Bernstein** 1920 CPD; **Edengeorge (Pty) Ltd v Chamomu Property Investments** 1981 (3) SA 460 T

[6] **Denwill** – 1973 (2) SA 680; **Moodley** – 1990 (1) SA 427
[7] **Yodiaken** – 1914 TPD 254.

[31] Whether *in casu* the appellant (applicant in the court *a quo*) established the existence of a contract (agreement) between itself and the respondent is a question of fact regard being had to the evidence of witnesses called before the Labour Court.

[32] Whether there was a *consensus ad idem*[8] between the appellant and respondent was also a question principally one of fact and cannot be assumed or acceptance be imputed.

As **Lord Russel of Killowan** once opined:-

"There are many cases in the books of what is called – "illusory contracts" – that is when parties may have thought that they were making a contract but failed to arrive at a definite bargain. It is a necessary requirement that an agreement in order to be binding must be sufficiently definite to enable the court to give it a practical meaning…."[9]

[33] Standing as a document, *Annexure C* explains itself as a *"Proposed Salary Structure*" for NUL Support Staff (excluding the academic Staff).

[8] This is evidenced by offer and acceptance
[9] **Scammel v Oustom** – [1941] 1 All ER 14 at 26

[34] The crucial question is whether the Respondent – a juristic person under the National University of Lesotho Act of 1974 (as amended) made a definite offer – an offer which was accepted by the appellant and whether the respondent under took in its offer to "implement the salary structure reflected in *Annexure "C"* with effect from July 2003.

[35] The answer to this question is to be determined through an assessment of the evidence of the appellants' witnesses before the Labour Court.

Law

[36] Under our common law, "*an offer is a proposal by one person of certain terms of performance*"[10]. For an offer to be capable of being turned into a contract by acceptance, it is necessary that the officer must contain definite terms of performance and that it must be made with the intention of being accepted by some other person (*animo contrahendi).*[11] A proposal made while the parties are in the process of negotiating and feeling their way towards a more precise and comprehensive agreement will usually not amount to a firm offer made *amino contrahendi.*[12] **Corbett JA** had this to say:-

"There is no doubt that where in the course of negotiating a contract the parties reach an agreement by offer and acceptance, the fact that there are still a number of outstanding matters material to the

[10] **Wille's Principles of South African Law** – page 413.
[11] **Wille's Principles of South African Law** (8th Ed)
[12] **Pitout** vs **North Cape Livestock Coop** 1977 (4) SA 842 A.

contract upon which the parties have not yet agreed may well prevent the agreement from having a contractual force".[13]

[37] Whether of course, the parties intend *ab initio* by their agreement to conclude a binding contract is a question of fact which can be deduced from the consensual conduct of the parties and subsequent acts like reducing agreement to writing. It is necessary to refer in this connection to the subsequent events concerning *Annexure C*. Simply looked at "*Annexure C*" is a chart depicting a range of salaries and proposed increases.

[38] It is not clear whether at the meeting in May 2003 all members of the Applicant unanimously had accepted each and all the graded increases. Indeed the crucial issue of consensus *ad idem contrahendi* boils down to the question of credibility. The main features of the alleged agreement are far from being clear and definite and it is quite probable that other issues were still outstanding beyond *Annexure C* which would have to be traversed and agreed upon before a comprehensive and binding contract could come into force.[14]

[39] Another factor that militates against inference of consensus is the subsequent vitriolic if not bitter relationship between applicant and respondent. It would be against basic tenets of law of contract and indeed of good public policy to *"impute"* a contractual relationship where none existed or was only in its embryonic formation.

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[13] **CGEE Alsthom Equipments v GKN Sankey** 1987 (1) SA 8 (AD) at 92 B-F
[14] **Blundel v Blom** 1950 (2) SA 627

[40] An inspection of *Annexure C* indicates that much skilful effort and knowhow was put in with the noble aim of also alleviating the meagre salaries of the applicants' members. The court empathises with them *in toto* in their plight.

[41] In an interesting case of **Pitout v North Cape Livestock Coop** – 1977 (4) SA 842 (a case involving sale of cattle and goats) **Corbett JA** considered:-

"whether an undertaking given during the course of uncompleted negotiations had a contractual force. Was the undertaking an offer made animo contrahendi which upon acceptance would give rise to an enforceable contract or was it merely a proposal made while the parties were in the process of negotiating and were feeling their way towards a more precise and comprehensive agreement? This is essentially a question to be decided upon the facts of the particular case" – at p 850 C-E. **Corbett JA** further went to stress that each case must depend on its own facts i.e. the particular acts and contract of the parties and the surrounding circumstances.

[42] Reverting to the facts *in casu* it is quite clear that since 1998 the University Council had raised grave concerns over the then prevailing cost of living and the current salaries of staff at the University. The establishment of the Salaries Review Commission was a concrete step towards improving the lot of the academic and non-academic staff.

[43] In some 2000 the *Salaries Review Commission* tabled its Report before the Vice Chancellor therein making specific recommendations one of which is *Annexure "C"*. The question that immediately arises is whether *Annexure "C"* was approved by the supreme body of the Respondent the University Council or whether *Annexure "C"* was presented merely as a proposal to the applicant as part of a consultative process which had its aim the comprehensive salary structure for applicant's members. It is most unfortunate that no minutes of the meeting or meetings where *Annexure C* was discussed were produced. The *onus* however is upon the applicant to show that the persons who made the offer were duly mandated to make the offer and to give an undertaking and that its acceptance by applicant was communicated to respondent.

[44] The ascertainment of the probable intention of the parties is complicated by the fact that the respondent denies ever making an offer or giving an undertaking to implement the *Annexure "C"* by July 2003. If – assuming an offer was made and undertaking were given – what were the acts and conduct of the respondent and applicant after the meetings especially after July 2003? Was everything left very much in the air? Were any steps taken to reduce thing to writing to iron out the agreement? All what prevailed afterwards sadly seems to be an atmosphere of certainty and prevarications.

Acceptance of an offer

[45] Acceptance on the other hand is an assent by the person to whom the offer is made to be bound by the terms contained in the offer. This acceptance "**must be communicated**"[15] to the offeror and until it has been so communicated, no contract is constituted.[16]

> *"...an acceptance of an offer made ought to be notified to the person who makes the offer, in order that the two minds may come together."*

[46] There is not a *scintilla* of evidence that the acceptance – if any – was formally communicated to the management i.e. the Vice Chancellor and/or the University Council. This was a fatal aspect of the applicant's case in proving the existence of the contract; in the absence of supportive evidence, this communication could not be assumed to have occurred.

[47] One would justifiably assume that at meetings whereat important and crucial matters such as of salaries are discussed, proper minutes would usually be recorded and kept with all due seriousness to evidence all that transpires at the meetings. *In casu,* meeting was held rather casually and informally and *Annexure "C"* was tabled to those present

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[15] **Wille's Principles of South African Law**, page 412-3; **Fern Gold Mining v Tobias** – (1980) 3 SAR 134; **Ficksburg Transport v Rautenbach** – 1988 (1) SA 318 **Amcoal Collieries Ltd v Trustes** – 1990 (1) SA 1 at see also **Seeff Commercial and Industrial Properties v Silberman** – 2001 (3) SA 952 SCA

[16] Per **Bowen LJ** in **Carlill v Carbolic Smoke Ball** – [1893] 1 QB 256 (CA) at 268 **Rose v Alpha Sescretaries** – 1948 (1) SA 454

and was allegedly accepted by the NAWU and rejected by SUSU. How could the definite terms of the agreement be ascertained if they were later sought to be enforced? That is the query.

[48] The court's mind was further troubled by the undisputed facts that AW2 Mr. Maama acted in dual capacity – as agent of the Vice Chancellor presenting the offer and as president of Applicant. It has been held that whilst an offer and acceptance may come through a single person, the court should scrutinize such person's evidence carefully to distinguish between statements of fact capable of objective assessment and subjective views as to the matter at issue and secondly possible conflict of interest and bias.[17]

[49] Clarity and definiteness of terms of agreement are important principles in the law of contract and it is upon those terms as agreed that each party is held to account (*consensus ad idem*) under the contract. The court enforces an agreement and not the will of one party over the other. That is the rationale![18]

Evidence of Applicant

[50] The evidence of Mr. Liphoto and of Mr. Maama is to the effect that the then Vice Chancellor of the University Mr. Mothibe sent them to NAWU and SUSU to show them *Annexure C*. Accompanying then

[17] **Joel Melamed and Hurwitz v Cleveland Estates** 1984 (3) SA 155 (A); **Samcor Manuafacturer vs Berger** – 200 (3) SA 454.
[18] See generally **Wille's Principles of South African law; JH Christie** – Law of Contract in South Africa.

were Mr. Mahosi – Director of Human Resource and Ms Nthati Mokotimi – Corporate Secretary. (Registrar)

Ques : *So did you ultimately meet with those administrative bodies of these Unions?*

Ans : *Yes …we ultimately meet (Mr. Liphoto) with these two unions.*

Ques : *Then what happened?*

Ans : *In our meeting members of NAWU accepted the document but the SUSU members requested that they wanted to back to their constituency with that document.*

Mr Maama – the President of NAWU - also stated that NAWU accepted the document *"Annexure C"*.

Conclusion

[51] Nowhere does Mr. Liphoto or Mr Maama state that the acceptance of NAWU was ever communicated to Mr. Mothibe or to the Council.

[52] The *onus* is upon the appellant to establish that the contract existed. In view of all the circumstances and for reasons stated above, I am not persuaded that – in the absence of intrinsic proof – that there is a

preponderance of probability in applicant's favour that an enforceable contract existed.

Whereas all the evidence adduced and considered by the Labour Court while showing that *Annexure "C"* was tabled before applicant's members and was probably approved, it is equally susceptible of the interpretation that the undertaking was proffered not as an offer with the intention of concluding there and then a final contract but merely as a proposal in the course of negotiations which if successful would no doubt have led to an amicable conclusion of a final contract.

[53] In our view the existence or other wise of the contract between the applicant and the respondent could have been settled beyond doubt by the evidence of *Mr. Mothibe* who being the then Vice Chancellor could either have explained whether *Annexure C* was a mere proposal and not an offer or whether it was an offer which upon acceptance brought into existence a binding contract. He could have explained or elucidated sensibly what follow-up action was taken place to implement the contract, if any; he could also have shown whether at all the respondent – with a change of heart when transformation was jettisoned – reneged from the agreement.

[54] In the absence of a written contract, the failure to call *Mr. Mothibe* – by either party who was all time available and a willing witness indeed had a strong bearing on this case.

[55] In considering whether any adverse inference can be made, from the failure to call an available witness the court must first determine the incidence of the *onus*[19] In *casu*, the *onus* rested throughout upon the applicant to prove the existence of the contract on a balance of probabilities. . **Watermeyer CJ** once stated:-

> *…it is true that if a party fails to place the evidence of a witness who is available and able to elucidate the facts, before the trial court, this failure leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him. ... But the inference is only a proper one if the evidence is available and if it would elucidate the facts.*

[56] In **Gleneagles Farm Diary v Schoombee**[20] **- Van den Heever JA** went as far as to say at p 840 that where either party could have called a witness, failure to do so operates against the party on whom the *onus* rests, rather than against the other party.

[57] Mr. Liphoto was in fact a messenger of *Mr. Mothibe* and it is a big question whether he also was mandated to accept as an offeror or if at all he thereafter communicated the acceptance to the offeror.

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[19] **Brand v Minister of Justice & Another** – 1959 (4) SA 712
[20] 1949 (1) SA 830 AD (Afrikaans)

[58] We are not all convinced, full and due regard being had to all facts and circumstances of this case, that the applicant had discharged the onus resting on it to show on a balance of probabilities that an offer and accepted were made and acceptance communicated to the respondent bringing into existence an enforceable contract.

Discrimination

[59] The conclusion above does however not affect the consideration of the prayer on "*unfair labour practice*" – i.e. whether the respondent discriminated against the applicant's members while it increased salaries of the academic staff (to stem an alleged brain drain) and of SUSU. Different considerations apply because discrimination invokes a moral judgment over certain interests.

[60] Discrimination is outlawed by our **Constitution of Lesotho**. *Section 18* (1) reads:-

> *"Subject to the provisions of subsections (4) and (5), no law shall make any provision that is discrimination either of itself or in its effect."*

Discrimination is defined as-

> *"….affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or <u>other status</u> whereby persons of*

one such description are subjected to disabilities or restrictions to which persons of another such description are not subject or are accorded privileges or advantages which are not accorded to persons of another such description.[21]

[61] Part XV of the **Labour Code Order No.24 of 1992** provides for **Unfair Labour Practices**; and *section 196 (1*) of the **Order** reads:

Discrimination against union members and officials.

"196. (1) Any person who discriminates, as respects the employment or conditions of employment which he or she offers to another person, because that person is a member, officer or trustee of a trade union shall commit an unfair labour practice."

[62] The three main Unions, earlier mentioned, have been lawfully registered under the laws of Lesotho; they have also been recognized officially by the University government.

I am of the firm view that even though the vital interests of each union differ from those of others, for example academic and professional interests are not the same as those purely technical or administrative, there exists a fundamental interest common to all and that is the economic fact that costs of living affects all staff indiscriminately.

[63] Taking all circumstances of this case into consideration, I have not been persuaded that NAWU received a fair deal, indeed it received a rather raw deal in that whereas the University Council had initially

[21] Section 18 (3) of the Constitution

inquired "*what was being done*" to alleviate the lot of other members of University staff (NAWU included) the Council had also been assured that "*something was being done*". This was an assurance that in my view raised a legitimate expectation that beyond *Cola 3* the salary structure of NAWU would be reviewed. I hold that an unfair labour practice was committed by the Respondent in ignoring the plight of NAWU whilst other unions like LUTARU and SUSU had more butter on their increased slices. It is irrelevant that characters, interests be they academic or social of these unions are naturally not the same.

[64] I am of the view that, unlike the Labour Court (a quo), the description of *"unfair labour practice"* here should not to be given a restrictive meaning but rather should liberally include any labour practice that is intrinsically unfair or unequitable. "*Fair*" means treating people equally, equitably, and justly and indeed Labour Court as a *court of equity* had jurisdiction to determine the fairness of labour practice *in casu – Section 24 (1) (h)* of the **Labour Code Order 1992**; see also **Labour Code** (**Codes of Good Practice) Government Notice No.4 of 2003** – see *Practice No.51*.

[65] Before concluding this judgment, the should note that tranquility and stability necessary to the conducive academic climate at the University of Lesotho can only be attained if the working conditions of the University administrators and all academic and non-academic personnel are favourable and "decent". All staff at the University must

receive parity and equitable treatment which is not steeped and embroiled in recrimination and vitriol.

[66] The transformation process that transpired during this time had brought along with it new and drastic staff re-classifications and nomenclatures and these were not sanctioned under National University of Lesotho Act statutes. Obviously this obfuscated and discombobulated the infrastructural systems at the university. This also precipitated a possibly unintended differential treatment when Annexure C was founded and structured upon the newly created infrastructures.

[67] In terms of *section 202 (2)* of **Labour Code Order** the Court makes the following order:-

Order: *The Respondent within 90 days should in collaboration with representatives of the applicant take such steps towards reviewing the salary structure affecting applicant's members along the proposals in the Annexure "C" exhibited in these proceedings.*

- *A full Report to be presented to this Court at the end of the 90 day period.*

[68] Each party to bear own costs.

S.N. PEETE
JUDGE – LABOUR APPEAL COURT

I agree : _____
MR. L.C. MOFELEHETSI
PANELLIST

I agree : _____
MR M. MOTHEPU
PANELLIST

For Appellant : **Mr. Mohau**
For respondent : **Mr. Moiloa**

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