LAC/A/ 07/2008

IN THE LABOUR APPEAL COURT **LC/REV/42/2006**

HELD AT MASERU

In the matter between:

ISLAMIC ENGLISH MEDIUM SCHOOL **APPELLANT**

AND

'MATLATLAOE MASAKALE **1ST RESPONDENT**

DIRECTORATE OF DISPUTE PREVENTION

AND RESOLUTION **2ND RESPONDENT**

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

ASSESSORS: Mr. R. L. Mothepu

Mrs. M. E. Thakalekoala

Heard on: 4th August 2009

Delivered on: 7th August 2009

SUMMARY

Appeal from Decisions of the Labour Court against the Court's refusal to entertain Appellant's review application – Appellant appealing against the decision of the Labour Court on issues not raised and argued before the Labour Court. – Such practice not acceptable -Appeal dismissed with costs

JUDGMENT

MOSITO AJ

1. This appeal arises out of the judgement of the Labour court dismissing the appellant's application for review on the award of the Directorate of Dispute Prevention and resolution (DDPR). The challenge before the Labour court was that the DDPR failed to address itself to the issue of the date on which the 1st respondent was employed by the Appellant herein which APPEARS on her alleged contract. The contention went on to point out that the DDPR had given an award which was based on the wrong premise that the 1st respondent had been employed by appellant for a period of three years and awarded severance pay for that period.

2. The grounds of appeal were that, firstly the Labour Court erred in not finding that 1st respondent had deserted her employment and that she was only employed for one year. Secondly that the Labour Court misdirected itself in refusing the application for review and misapplied the law regarding rescission. Thirdly, that the award granted, particularly the sum total in respect of the award on salary and severance pay was not supported by the evidence. Lastly, it was complained that the labour court had acted irregularly by placing much emphasis on technicalities that not all the requirements of rescission had been satisfied.

3. We will assume that the ground outlined in 2 above are arguable. However,the difficulty that first has to be passed, is whether the present appellant can raise the above issues before this Court for the first time when,

the basis of its case before the Labour Court was as outlined in paragraph 1 above and not the issues now raised before us.

4. This Court has more than once, in line with the Court of Appeal decisions such as those in **Frasers (Lesotho) Ltd vs Hata-Butle (Pty) Ltd 1995 – 1999 LAC 698; Sekhonyana and Another vs Standard Bank of Lesotho Ltd 2000-2004 LAC 197; Theko and Others v Morojele and Others 2000-2004 LAC 302; Attorney-General and Others v Tekateka and Others 2000 – 2004 LAC 367 at 373; Mota v Motokoa 2000 – 2004 LAC 418 at 424. National Olympic Committee and Others vs Morolong 2000 - 2004 LAC 449;** deprecated the practice of relying on issues which are not raised or pleaded by the parties to litigation. See for example In the present case, the Appellant had not in the Labour Court, pleaded the issue of the failure by the DDPR to consider the other essentials of rescission which was sought to be relied upon in the case in argument before us.
5. In several of its decisions the Court of Appeal and this Court have 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 this Court (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."*

6. It is clear from the above decisions, and with all due credit to Mr. Koto for the appellant who conceded this point, that the appellant cannot raise these issues for the first time on appeal before us. The Labour Court was not given an opportunity to decide the issues that the appellant sought to argue before us. Even if the Labour Court commented on those issues in its judgement, they had not been raised in the pleadings in the application for review. It is clear therefore that this appeal cannot succeed. It is accordingly dismissed with costs.
7. My assessors agree.

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K. E. MOSITO AJ.

Judge of the Labour Appeal Court

For the Appellant Advocate M. Koto and P.C. Ntshihlele

For the Respondent Advocate B. Sekonyela