IN THE LABOUR APPEAL COURT OF LESOTHO

HELD AT MASERU **LAC/APN/01/10**

In the matter between:

BOFIHLA MAKHALANE **APPLICANT**

AND

LETS'ENG DIAMONDS (PTY) LTD **1ST RESPONDENT**

GENERAL MANAGER- MR MORUTI MPHATS'OE **2ND RESPONDENT**

ASSISTANT GENERAL MANAGER – MR JOHN HOUGHTON **3RD RESPONDENT**

CHIEF EXECUTIVE OFFICER – MRS MAZVIVAMBA

MAHARASOA **4TH RESPONDENT**

CORAM: HONOURALE MR. K.E.MOSITO A.J.

ASSESSORS: MR. L. MOFELEHETSI

MR. D. TWALA

Heard: 02nd November 2010

Delivered: 12th November 2010

SUMMARY

Application for committal for contempt of court - Application for committal for contempt of court having not been filed in either the Labour Court or *Directorate of Dispute Prevention and Resolution – such application not pending before* the Labour Court or *Directorate of Dispute Prevention and Resolution – No application made before the Judge of the Labour Appeal Court a in chambers, on good cause shown, for a direction that a matter before the Labour Court or the Directorate of Dispute Prevention and Resolution be heard by the Court sitting as a court of first instance – Labour Appeal Court having no jurisdiction to hear the application dismissed with costs for want of jurisdiction*

JUDGMENT

MOSITO A.J:

1. This application was launched on an urgent, ex parte, basis on 1 April 2010. On the same day an interim order was obtained before my brother Peete J. The respondents were ordered to show cause on 19 April 2010 why they

should not be committed for contempt. Indeed had the applicant had his way, an order would have been made, *inter alia*, 'committing and punishing' the Respondents for contempt immediately. In other words they would be in goal now.

2. The application is opposed. The respondents have filed and served their opposing papers and have raised in *limine* two objections to this application, *viz,*: (a) this application was not urgent and there was no basis for moving it on an ex parte basis; (b) the applicant failed to disclose material facts in the founding affidavit.

3. When the matter was called before us on the 2nd day of November 2010, the Court raised *mero motu* the question whether it has jurisdiction to entertain the present application. This question was raised in the light of the provisions of section 38A (3) of the **Labour Code (Amendment) Act No. 3 of 2000** read with Rule 14 of the **Labour Appeal Court Rules 2002**. Section 38A (3) of the Act reads as follows:

> *"(3) Notwithstanding the provisions of subsection (1), the judge of the Labour Appeal Court may direct that any matter before the Labour Court or a matter referred to the Directorate for arbitration in terms of section 227 be heard by the Labour Appeal Court sitting as a court of first instance".*

4. Rule 14 of the **Labour Appeal Court Rules 2002** reads as follows:

> *"14. (1) (a) A party may apply to the Judge in chambers, on good cause shown, for a direction that a matter before the Labour Court or the Directorate of Dispute Prevention and Resolution be heard by the Court sitting as a court of first instance.*
>
> *(b) The application shall be made in writing, and served on the other parties.*
> *© If the application is opposed; the Judge shall hear the parties in chambers before giving a direction.*
> *(d) If the application is successful, the Judge shall give directions as to the future conduct of the matter*.
>
> *(2) Any party who is dissatisfied with the decision or order of the court sitting as a court of first instance may appeal to the Court of Appeal of Lesotho and the Court of Appeal Rules 1980 shall mutatis mutandis apply*."

5. The above question of jurisdiction was raised by this Court in the light of the fact that the present application was for the first time filed in this court and was not pending at the time in either the Labour Court or the Directorate of Dispute Prevention and Resolution. Furthermore, there had not been an application in terms of section 38A (3) as quoted above. In the circumstances the question became one as to whether the present application could competently be entertained by this Court when the above mentioned jurisdictional facts did not exist.

6. Mr. Makhalane (who appeared in person) was quick to concede the point, but he indicated that the matter had been referred to this Court by the High Court to be dealt with by this Court. My understanding of the reason for Mr. Makhalane's contention was that because the matter had been referred to this Court by the High Court, therefore this court was enjoined to entertain the matter. There are two short answers to this answer. First it is not correct that the matter was referred by the High Court to this Court. What emerged to be the source of confusion was that Mr. Makhalane appeared not to be aware that my brother Mr. Justice Peete before whom the interim order had been secured was sitting as a judge of this court not as a judge of the High Court. We are aware that to a lay person nothing turns on whether a judge is sitting as one of the two courts so long as that judge is known to be a judge of the High Court. Speaking for myself I am aware that because more often than not I sit in this court, many people tend to erroneously believe that I am a judge of the Labour Appeal Court and not of the High Court, and they become surprised when they see me sitting in the High Court as a judge of that Court. This was apparent from the answers given by Mr. Makhalane. He apparently did not understand that my brother Peete J who is a judge of the High Court is also a judge of this court. Thus when he saw him presiding over his case, he erroneously believed that the case was being considered by the High Court. The second answer is that indeed the order given by my brother Peete J clearly indicates that it was an order of this court and not of the High Court. Mr Makhalane sought to content that he would like the court to adjourn into chambers for the issue to be thrashed and resolved in chambers.

7. However, as Mr. Worker (who appeared for the respondents) correctly contended, there was no need for the court to adjourn into chambers to consider this legal issue because justice must not only be done, but must manifestly be seen to be done. In our view justice would be manifestly be seen to be done in open court where every member of the public would have access. This explains why our system of administration of justice requires that our courts remain open to the public except in very special circumstances which are not necessary to be gone into in this case.

8. In our view this court has no jurisdiction to entertain the present application because the application with which we were seized is neither pending in the Labour Court nor the Directorate of Dispute Prevention and Resolution (DDPR). Furthermore, no application has been made to a judge of this court in chambers for the matter to be heard by this court as a court of first instance in terms of Rule 14 above. For the sake of completeness, I must mention that the Labour Appeal Court could still entertain this matter if it was a matter of review of an administrative action taken in the performance of any function in terms of the Labour Code Amendment Act 2000 or any other labour law in terms of section 38A (1) (b) (iii) of the Act. The present is not such a case.

9. We consequently come to the conclusion that this court has no jurisdiction to entertain this application and the application should be dismissed with costs for want of jurisdiction. It is accordingly so ordered.

10. This is an unanimous decision of the court.

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K.E.MOSITO AJ

Judge of the Labour Appeal Court

For Applicant: In person

For respondents: Advocate HHT Worker