IN THE LABOUR APPEAL COURT OF LESOTHO

HELD AT MASERU **LAC/CIV/04/11**

In the matter between:

SELLOANE MAHAMO APPELLANT

AND

NEDBANK LESOTHO LIMITED RESPONDENT

CORAM: HONOURABLE JUSTICE K.E. MOSITO AJ

ASSESSORS: MR MOFELEHETSI

MRS MOSEHLE

HEARD ON: 29TH JUNE 2011

DELIVERED ON: 04TH JULY 2011

SUMMARY

Appeal from Labour Court – Court found that the review was not an appeal in disguise but a review– Resignation – Juridical nature of – Post-resignation disciplinary hearing and dismissal of former employee- Entitlement to severance pay –Section 79 of Labour Code Order 1992 – Appeal allowed with costs.

JUDGEMENT

MOSITO AJ.

BACKGROUND

1. This is an appeal from the judgment of the Labour Court. The facts of this case are not complicated. The facts that led to the present appeal were that the appellant was an employee of the Respondent from 11 May 1992. She was suspended on the 10th March 2006, whilst investigations were being carried out into some alleged shortage of M4, 000-00. Initial investigations had shown that on the 8th March 2006, an inter-teller transaction between teller Motsoane and teller Manamathela was erroneously posted to Appellant. This meant that the Appellant ought to have had an imbalance as a result of the M4, 000-00 which was erroneously posted to her.
2. On or about 2 April 2006, the appellant resigned from her employ with the Respondent. On 4 April 2006, the Respondent wrote to appellant informing her that her resignation was not acceptable and called the appellant for a disciplinary hearing to be held on 10 April 2006. On or about the 10th of April 2006 the appellant lodged her referral with the Directorate of Dispute Prevention and Resolution (DDPR) claiming firstly constructive dismissal, secondly, 25years compensation and thirdly, severance pay.

PROCEEDINGS BEFORE THE DDPR (FIRST OCCASION)

3. The matter was subsequently heard by the arbitrator of the DDPR who on 5 June 2006 made an award that the appellant "resigned on her own accord" without giving any relief contemplated consequent upon the resignation. Or as pleaded in the referral form. The appellant then filed an application

for review on the basis that the arbitrator erred in failing to award her severance pay after holding that she was not dismissed but resigned on her own accord. The review application was granted and the matter was sent back to the arbitrator with a directive by the Labour Court that the arbitrator should pronounce himself on the "benefits" that she had prayed for having been held to have resigned on her own accord. The Labour Court further pointed out that the learned arbitrator ought to have determined whether the resignation was lawful (valid) or not and if it was valid what benefits appellant was entitled to. The Labour Court also specifically indicated in its ruling of 10 May 2008 that the matter should not start *de novo.*

4. The learned arbitrator had occasion to become seized with the matter and it appears from his award that the position taken by the appellant was that because the arbitrator had already determined that she had not been constructively dismissed but that she had resigned on her own accord, then the only issue to be determined by the arbitrator was whether the appellant was entitled to severance pay as prayed in the referral. It appears also that learned counsel for the appellant argued before the arbitrator that to address any other issue would amount to reopening the case which the court had specifically ordered should not start *de novo.*

5. The arbitrator was however of the view that to comply with the directive that the DDPR should determine whether the appellant's resignation was valid and if so what benefits were due to the appellant, the learned arbitrator had to determine whether "the dismissal was legal (valid) or

not, before determination of entitlement and payment of benefits"(underlining added).

6. The Respondent however argued that when the Labour Court perused the documents in the referral file, the court could have noticed that the appellant was served with notification of hearing which was held in her absence and that she was dismissed. Learned counsel for the Respondent argued before the arbitrator that this is why the arbitrator in the award made a conclusion that the Appellant resigned in order to avoid participation in the disciplinary hearing. It appears from the award that the contention on behalf of the Bank was that this was probably the reason for the learned Deputy President ordering investigation of the validity or otherwise of the resignation before the process of determining what benefits were due to appellant could commence. The learned arbitrator agreed with the argument by the Respondent and decided to go on to undertake an investigation into whether the appellant's resignation was valid or not. The learned arbitrator then went through what he called the chronology of events which led to "the main dispute, and proximity between the commitment [sic] of the offence and the filing of the so-called constructive dismissal which turned out to be voluntary resignation, and confession of guilt and resignation to support the view that the Appellant resigned to avoid the pending disciplinary action". Consequent to his investigations he decided as follows:

> "In view of my finding the applicant was not constructively dismissed but resigned on her own accord, and judging by chronology and proximity of

> events leading to this resignation, as tabled in the preceding paragraphs, the only probable inference that could be safely drawn is that she resigned with an intent to frustrate pending disciplinary action to run its full cause. My conclusion is therefore that the purpose of her resignation was an attempt to obstruct ends of justice.
>
> **AWARD**
> In the premise the resignation was not valid."

7. It is clear from the findings of the learned arbitrator that, although he does not say so in so many words, if the resignation was invalid, it follows that the employer was entitled to proceed with disciplinary action against the employee for it means that the employee remained in the employ of the employer beyond the date of the purported resignation. That being the case it would mean that the disciplinary action that followed the purported termination of the contract by way of resignation would have the effect of divesting the employee of his/her entitlement to severance pay. Otherwise it would mean that the employer if the employee was entitled to resign prior to the purported dismissal would not have the power to exercise disciplinary authority on a person who has since resigned.
8. It follows in our view that in order to resolve the present case what had to be determined was whether firstly, it was competent of the employee to resign when there was a pending disciplinary action against her. Second if it was competent for the employee to so resign in the face of a pending disciplinary enquiry, whether the said enquiry if it is held, and the employee was thereafter fairly dismissed. Whether the dismissal had any effect on the employee's entitlement to severance pay. Put differently can an employee who is faced with a disciplinary action resign from his

employment? Is the employer whose employee is faced with disciplinary action and who has purported to resign decline to accept the resignation on the basis that the employee still has a pending disciplinary action? If the answer is in the affirmative, is the employer entitled to proceed with the disciplinary action against the employee notwithstanding that the employee has resigned? It seems to us that these are the issues for determination in the present case. Against the backdrop of the evidence as herein summarised, the learned arbitrator came to what in the circumstances was an irresistible conclusion namely, that the Appellant's resignation did not amount to constructive dismissal. He went on to say it was infact an intentional as opposed to a forced resignation due to unreasonableness of the employer.

PROCEEDINGS BEFORE THE LABOUR COURT (FIRST OCCASION)

9. The Appellant applied for the review of the award of the learned arbitrator. The grounds of review was that the learned arbitrator had erred in not making an award on payment of Appellant's severance pay and in holding that she had resigned on her own accord as opposed to being forced by unreasonable conduct of the employer.

10. The review was heard by Khabo DP on the 5th May 2009. Khabo DP upheld the contention and held that having found that Appellant resigned of her own accord, the arbitrator ought to have determined whether in the circumstances Appellant was entitled to severance pay. She went on to rule that in order to decide on Appellant's entitlement or non-entitlement to

severance pay, the arbitrator ought to first determine whether Appellant's resignation was lawful. She remitted the matter to the DDPR to enable the arbitrator to make the determination on the issues which the court had found he ought to have decided, but failed to do so.

PROCEEDINGS BEFORE THE DDPR (SECOND OCCASION)

11. On the 29th June the matter was heard by the DDPR per the instruction of Khabo DP. The Appellant was represented by her present attorneys of record. Mr. Sekonyela for the Appellant impressed on the arbitrator that since he had already decided that the Appellant resigned, the only issue that the arbitrator was called upon to decide was Appellant's entitlement to severance pay. He contended that the arbitrator should be guided by section 79 of the Labour Code Order 1992, which provides that an employee who has completed more than one year of continuous service is entitled to severance pay. He submitted that in terms of section 79 (2) it is only employees who are lawfully dismissed for misconduct who are not entitled to severance pay.

PROCEEDINGS BEFORE THE LABOUR COURT (SECOND OCCASION)

12. Appellant once again filed an application for the review of the award of the learned arbitrator. Appellant contended that the learned arbitrator erred and committed a mistake of law which materially affected her decision in:

    (a) The resignation of the applicant was not valid?

(b) Failing to award the severance pay to applicant notwithstanding the fact the law provides that severance pay shall not be payable ONLY where the employee has been **Dismissed For Misconduct** and **without finding that the applicant had been so dismissed for misconduct** at all.

(c) Reopening the matter contrary to court order.

(d) In failing to address and make an award and assessment of all the claims made by the applicant in her referral at all.

13. The Labour Court held that the learned arbitrator also agreed with him and found that the resignation was not valid, which meant it was ineffective. The Court further held that the effect of the finding that the resignation was not valid was to leave Appellant with what she certainly did not want to hear namely, that she is dismissed. The Labour Court held further that the contention that the arbitrator reopened the matter contrary to the court order was opposed by the Respondent's Human Resources Manager, who averred that the learned arbitrator acted within the confines of the ruling of Khabo DP. The Appellant did not take the argument any further or even attempt to show in what manner the matter was reopened. Accordingly, she was taken to accede to the Respondent's submission that the arbitrator did not reopen the matter as alleged or at all. The last contention was that the learned arbitrator failed to address and make an assessment of the claims the Appellant had made in her referral. In his answering affidavit the Human Resources Manager deposed that the arbitrator rightly did not address those claims because the order of Khabo DP specifically directed him to deal with the validity of the Appellant's resignation and her entitlement or otherwise to severance pay. He was indeed correct. Once again counsel for the Appellant did not take this issue

any further. The Labour Court held that it followed from what it had said that this review application ought not to succeed. It accordingly dismissed it with costs.

PROCEEDINGS BEFORE THE LABOUR APPEAL COURT

14. The Appellant then came to this court on appeal. When the matter commenced before us, the Appellant applied for condonation for the late filing of her appeal. She gave a number of explanations for her delay in noting the appeal which in essence were based on lack of funds to institute her proceedings. The Respondent informed the court that there was no merit in the reasons given because Appellant ought to have either approached the Labour Department where people are represented without a charge or the Legal Aid Department where clients are required to pay a minimum amount. However, the critical issue that both parties laid much emphasis on, was the question of prospects of success which the Appellant contended were good while respondent contended were non-existent. The parties however agreed that the case respecting condonation and the merits should be argued together with issues handled holistically. The principal emphasis was laid by the parties on the issues of prospects of success. It was then agreed that the condonation application be argued together with the merits so that the court may be able to assess the prospects of success. The court accepted this proposal and heard the issues holistically. The Appellant complained that the learned President erred and misdirected himself in:

> 1. Holding that the application for review was a clear appeal not a review.
> 2. Holding that the decision of the arbitrator was not reviewable where the said arbitrator:
>
> 2.1 Held that the resignation of the appellant was not valid after finding that the appellant resigned on **her own accord** thereby attempting to correct his own decision.
>
> 2.2 Failed to award the appellant severance pay (of M86, 800.00 as claimed in the referral) and to consider the law on severance payment at all to appellant notwithstanding the fact that the law provides that severance shall not be payable **ONLY** where the employee has been dismissed for Misconduct and without finding that the appellant had been so dismissed for misconduct in terms of the law.
>
> 2.3 Held that the arbitrator was correct in reopening the matter contrary to the order of court and without even giving the appellant the opportunity to address him on the issues.
>
> 2.4 Failed to consider the issue of severance pay which was before him at all and thereby failing to consider relevant issues".

Are these appeal or review grounds?

15. The Arbitrator decided the case on the legal basis that the Appellant's resignation was unlawful on the basis that the Appellant's resignation was a veiled attempt to avoid disciplinary action and that an employer is entitled to reject an employee's resignation. The Labour Court held that in its Answering Affidavit the Respondent contended correctly that the first and the second grounds of review mentioned above were a clear appeal as the Appellant is dissatisfied with the finding of the arbitrator. The Court then held that it entirely agreed that the complaint against the determination on

the invalidity of the resignation of Appellant is an appeal. The Court went further to point out that it is trite that an appeal against the determination of the arbitrator is not allowed.

16. Indeed in our law, only certain mistakes of law are reviewable. As stated in Baxter, ***Administrative Law*** (1984) at 469:

> "Reviewable errors of law have sometimes been referred to as 'jurisdictional facts', but in the case of discretionary powers it is more usual for such errors to be characterized as errors which distort the nature, or prevent the exercise, of that discretion which has been conferred."

17. Simila

rly, in **Hira and Another v Booysen and Another*,* 1992 (4) SA 69 (A),** the Court distinguished between an error of law "*on the merits*", which could not be reviewed and an error -"... which causes the decision-maker to fail to appreciate the nature of the discretion or power conferred upon him and as a result not to exercise the discretion or power or refuse to do so."(at p. 90D-E). The first difficulty was created by the order of the Labour Court which ordered the arbitrator to determine the lawfulness of the resignation as opposed to the fairness or otherwise of a dismissal. The **Labour Code (Amendment) Act** does not confer upon an arbitrator the power to determine the lawfulness of a resignation. The Arbitrator had no such powers. In purporting to determine the lawfulness or otherwise of a resignation, the Arbitrator clearly exercised a power not conferred upon him by the statute. The arbitrator failed to appreciate the nature of the discretion or power conferred upon him (which was to enquire into the

fairness or otherwise of a dismissal) and as a result not to exercise the discretion or power or refuse to do so. As a result he did not even enquire into fairness or otherwise of a dismissal, a jurisdictional fact necessary for determining the employee's entitlement to severance pay which was the issue before him.

The juridical nature of resignation

18. As was said in ***SALSTAFF obo Bezuidenhout v Metrorail*** **[2001] 9 BALR 926: '**[a] resignation is a unilateral act by which an employee signifies that the contract will end at his election after the notice period stipulated in the contract or by law. While formally speaking a contract of employment only ends on expiry of the notice period, the act of resignation being a unilateral act which cannot be withdrawn without the consent of the employer, is in fact the act that terminates the contract…The mere fact that the employee is contractually obliged to work for the required notice period if the employer requires him to do so does not alter the legal consequences of the resignation.' To be legally effective, a notice of intention to resign from employment and therefore to terminate the contract must be clear and unequivocal.(See **Kragga Kamma Estates CC and another v Flanagan_1995 (2) SA 367 (A) at 375 C**). The employee must evince a clear and unambiguous intention not to go on with the contract of employment, by words or conduct that would lead a reasonable person to believe that the employee harboured such an intention (see ***Council for Scientific & Industrial Research (CSIR) v Fijen*** **(1996) 17** ***ILJ*** **18 (AD), and** ***Fijen v Council***

***for Scientific & Industrial Research* (1994) 15 *ILJ* 759 (LAC**)). Notice of termination of employment given by an employee is a final unilateral act which once given cannot be withdrawn without the employer's consent (see ***Rustenburg Town Council v Minister of Labour & others* 1942 TPD 220; *Potgietersrus Hospital Board v Simons* 1943 TPD 269*, Du Toit v Sasko (Pty) Ltd* (1999) 20 *ILJ* 1253 (LC) and *African National Congress v Municipal Manager, George & others* (550/08) [2009] ZASCA 139 (17 November 2009) at para [11]**). In other words, it is not necessary for the employer to accept any resignation that is tendered by an employee or to concur in it, nor is the employer party entitled to refuse to accept a resignation or decline to act on it. (See ***Rosebank Television & Appliance Co (Pty) Ltd v Orbit Sales Corporation (Pty) Ltd* 1969 (1) SA 300 (T)**).

19. If a resignation to be valid only once it is accepted by an employer, the latter would in effect be entitled, by a simple stratagem of refusing to accept a tendered resignation, to require an employee to remain in employment against his or her will. This cannot be – it would reduce the employment relationship to a form of indentured labour. This is not to say that a resignation need not be communicated to the employer party to be effective – indeed, it must, at least in the absence of a contrary stipulation (***African National Congress v Municipal Manager, George & others* (*supra***)). A resignation is established by a subjective intention to terminate the employment relationship, and words or conduct by the employee that objectively viewed clearly and unambiguously evince that intention. (See **Sihlali v South African Broadcasting Corporation Ltd (2010) 31 ILJ 1477** (LC)). The Courts generally look for unambiguous, unequivocal words that

amount to a resignation- see, for example, ***Fijen v Council for Scientific & Industrial Research*** (*supra*) where the South African Labour Appeal Court stated that to resign, the employee had to 'act in such a way as to lead a reasonable person to the conclusion that he did not intend to fulfil his part of the contract.' (See also ***Southern v Franks Charlsely and Co*** **[1981] IRLR 278)**. In the Zimbabwean case of **A.C Controls (Pvt) Ltd v Midzi and Another (HC 2035/10) [2010] ZWHHC 73,** Uchena J remarked as follows:

> I agree with Mr *Rubaya*'s submission that an employee's resignation unilaterally terminates the contract of employment. His submission is supported by the decision of this court in the case of *Muzengi* v *Standard Chartered Bank & Anor* **2000 (2) ZLR 137** (HC) where it was held that a letter of resignation constitutes a final act of termination by an employee, the effects of which he cannot avoid without the permission of the employer. This means once the employee tenders a letter of resignation to his employer, the contract of employment is terminated as the employer cannot refuse to accept his resignation, but can only agree to the employee's withdrawal of his resignation if he is inclined to doing so. The employer can however institute a claim for the damages he may suffer as a result of the employee's resignation without giving him adequate notice. See also the case of *Mudakureva* v *Grain Marketing Board* 1998 (1) ZLR 145 (SC) where the Supreme Court confirmed the finality of a letter of resignation pointing out that the employee could only have avoided it by proving that the employer forced him to resign, and thereby turning it into a constructive dismissal.

20. Coming closer home, in **Pekeche v Thabane and Others CIV/APN/259/98** Ramodibedi J(as he then was), ((and with whom Lehohla J (Now Chief

Justice) and Mofolo J concurred)) pointed out that "Mr. Matsau for the Respondents submits that resignation is a unilateral act and that no person may be forced to remain in employment against his will. This submission is sound in law having regard to the provisions of Section 9 of the Constitution of Lesotho subsection (2) of which expressly provides that no person shall be required to perform forced labour. It follows therefore that it is the constitutional right of any employee to tender his resignation at any time and leave the employer with the remedy of damages as the case may be."

21. It is clear therefore that these were reviewable errors of law that materially affected the Arbitrator's decision. In our view, this was a case of review not an appeal. On the bases then, the learned arbitrator committed a reviewable error of law that materially affected his decision which would justify intervention by the Labour Court.

FAILURE TO AWARD SEVERANCE PAY. If parties agree that one sign a full and final settlement, they cannot go to court on the basis of parole evidence rule and caveat supscritor rule. Then if that agreement was not made an order of court what become of the agreement? But u agreed, threatened to sign. U say u were constructively and unfairly dismissal. I made a grievance, ddpr has jurisdiction in the matter.

22. When the matter was argued before us, the learned counsel for the Appellant Mr. Sekonyela informed the court that the figure reflected as M86, 800.00 for severance pay was not the correct figure. He informed the court that the correct figure ought to have been M31, 272.00. This was also confirmed by advocate Setlojoane. It is however significant to note

that the issue before us did not revolve on the amount of severance pay but Appellant's entitlement to severance pay. Section 79 of the Labour Code which governs the entitlement of an employee to severance pay provides as follows:

> (1) An employee who has completed more than one year of continuous service with the same employer shall be entitled to receive, upon termination of his or her services, a severance payment equivalent to two weeks' wages for each completed year of continuous service with the employer.
> "(2) An employee who has been fairly dismissed for misconduct shall not be entitled to a severance payment"

23. The issue whether or not the employee is entitled to severance pay in line with the above provisions relates to the question whether the employee had been fairly or unfairly dismissed from employment. In our view if as it has turned out that the employee had committed the offence in issue and was clearly guilty of misconduct, she would not be entitled to severance pay. She could only be entitled to severance pay if the dismissal had been a nullity, notwithstanding that the employee would have committed the offence charged. In other words the fact that Appellant had admittedly committed the offence did not have any bearing on the issue whether the employer had the power to exercise power over her after she had resigned.

24. What was of relevance was whether even assuming she had committed the offence, it was competent for the erstwhile employer to proceed against her disciplinarily after she had resigned. If it was not competent for the erstwhile employer to proceed against her disciplinarily because she

had resigned, then nothing turns on whether or not the dismissal was fair or unfair because at the time of the employee's purported dismissal she was no longer in the employ of the employer. The erstwhile employer had no power in our law to discipline its erstwhile employee. The disciplinary power reposes in the employer so long as the employment relationship subsists between the parties.

25. In the present case, Appellant purported to resign from her employment with immediate effect on the 3rd April 2006. The Respondent responded on the 4th April indicating that the bank still considered Appellant as an employee until her disciplinary case had been finalised. On the same day the bank served Appellant with disciplinary charges accusing her of gross dishonesty and/or theft in that she took M4,000-00 of the bank for her personal use. The hearing was scheduled to take place on the 10th April 2006. It was however postponed to 13th April. A lot of correspondence was exchanged between Appellant and the Human Resources Manager concerning her purported resignation. In one of such correspondence dated 11th April 2006, the Appellant made it clear that she would not attend the hearing scheduled for the 13th April 2006, because she was no longer an employee. True to her word, the Appellant did not attend the hearing which proceeded in her absence. She was found guilty and dismissed.

EFFECT OF POST-RESIGNATION DISCIPLINARY ACTION

26. As it usually happens in other jurisdictions under the Sun, what happened in the present case is similar to what transpired in the following three cases

from the Kingdom of Swaziland, namely: **Simon Dludlu v Emalangeni Foods Industries (IC Case No. 47/2004; GRAHAM RUDOLPH v MANANGA COLLEGE NO. 94/2007** and **NANA MDLULI** v **CONCO SWAZILAND LIMITED CASE NO. 12/2004.** In **Simon Dludlu v Emalangeni Foods Industries (IC Case No. 47/2004 ,** the President of the Industrial Court of Swaziland P. R. Dunseith, remarked in paragraphs 15 -15.2 that:

> "Resignation is a unilateral act which brings about termination of the employment relationship without requiring acceptance...Whilst the Respondent took every effort to ensure that the disciplinary hearing was procedurally fair, its efforts were unnecessary because the employment contract had already been terminated by the Applicant himself on 20th October 2000. The question whether the termination of the Applicant's services was fair and reasonable does not arise in circumstances where the Applicant has resigned and no case for constructive dismissal has been pleaded or established."

27. We respectfully agree with the above observations and we adopt them in this case. In **Pekeche v Thabane and Others CIV/APN/259/98,** having regard to the provisions of Section 9 of the Constitution of Lesotho subsection (2) of which expressly provides that no person shall be required to perform forced labour, in would be inappropriate to hold otherwise. As the High Court of Lesotho sitting as the Court of Disputed Returns correctly pointed out, it follows that it is the constitutional right of any employee to tender his resignation at any time and leave the employer with the remedy of damages as the case may be. As correctly pointed out by Adv Sekonyela

for the Appellant, this principle would seem to be reinforced by section 76 of the **Labour Code Act 1992** which provides that:

> **76. Accrued rights of parties on termination**
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> (1) The termination of any contract under the provisions of this Part shall be without prejudice to any accrued rights or liabilities of either party under the said contract at the date of termination.

28. A termination of a contract, particularly a contract of employment has important consequences for the reciprocal rights and duties of the parties. We have to emphasise that it is the constitutional right of any employee to tender his resignation at any time and leave the employer with the remedy of damages as the case may be.

CONCLUSION

29. This court considers in the light of the aforegoing discussions that there were prospects of success in this case. Since the various factors necessary for condonation do not have to be compatmentalised, we in our opinion feel that in the light of the discussions above condonation should be granted. We accordingly grant the condonation application.

30. It is apparent that there was a clear misdirection on the part of the DDPR consequent upon the instruction by the Labour Court that the DDPR should consider the lawfulness or validity of the resignation and the benefits due, which is not what section 73 confers upon the DDPR to consider. The section requires the DDPR to consider the fairness or otherwise of the dismissal and the relief in the nature either of reinstatement or compensation. The DDPR did not consider these issues and in so doing it

misdirected itself. Similarly the Labour Court erred in declining to intervene in a case in which the DDPR had misdirected itself by not exercising the powers conferred upon it by section 73 but, by considering issues that have not been conferred upon it. The Labour Court ought to have reviewed the decision of the DDPR on account of this error of law which materially affected the DDPR's decision. The Labour Court therefore erred in declining to intervene in a case of an error of law that materially affected the decision of the DDPR. Indeed the Appellant having resigned prior to the purported disciplinary action that was undertaken after she had resigned, the purported dismissal was of no consequence and Appellant still remained entitled to severance pay. We therefore uphold the appeal with costs. Appellant is to be paid severance pay in the sum reflected in paragraph 22 of this judgment.

31. This is a unanimous decision of the Court.

K.E.MOSITO AJ

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Judge of the Labour Appeal Court

For Appellants: Adv. B. Sekonyela

For Respondent: Adv. P.J Setlojoane