

IN THE LABOUR APPEAL COURT OF LESOTHO**HELD AT MASERU****LAC/REV/02/13****In the matter between:****'MAMAHLABANI MONICA THABA****APPLICANT****AND****THE TEACHING SERVICE COMMISSION****1ST RESPONDENT****ATTORNEY GENERAL****2ND RESPONDENT****LOTI PRIMARY SCHOOL****3RD RESPONDENT****SCHOOL BOARD LOTI PRIMARY SCHOOL****4TH RESPONDENT****CORAM: THE HONOURABLE MR JUSTICE K.E. MOSITO AJ.****ASSESSORS : MR L.O. MATELA****MRS L. RAMASHAMOLE****Heard on : 23 OCTOBER 2013****Delivered on : 7 NOVEMBER 2013****SUMMARY**

Application for condonation for the late filing of the review application challenging the dismissal of the applicant –applicant having failed to give satisfactory explanation for delay – no basis for jurisdiction of this court having been laid in the founding papers and the Labour Appeal Court having no original jurisdiction to hear the matter as a creature of statute. – Application for condonation dismissed with costs and application for Review being struck off the roll

JUDGMENT**MOSITO AJ**

1. INTRODUCTION

1.1 This is an application for an order in the following terms:

- “1(a) The applicant should not be granted condonation for the delay in the filing of this application;
- (b) The 1st respondent’s decision to remove applicant from office on the 22-01-2001 basing itself on section 53(3) of the Education Act 1995 should not be reviewed and corrected and set aside as invalid.
- (c) 1ST respondent should not deliver to the registrar and applicant any reasons it wishes to give, within fourteen (14) days of receipt hereof.
2. Respondents should not be directed to pay the costs hereof.
3. Applicant should not be granted such further and alternative relief this Honourable Court may deem fit.”

2. THE FACTS

2.1 The facts that underlie the present application are briefly that, applicant was employed as a teacher at Loti Primary School in 1984 and her salary was paid by the Lesotho Government. She worked as a teacher until 1997 when she was promoted to position of a principal. She avers that shortly after her promotion she started having health problems.

2.2 In October 2000, her health problems worsened and she had to see a medical doctor who gave her a certificate of incapacity to perform her duties for a period of three weeks. She avers that she forwarded the said certificate to the manager of her school and it was approved. When she recovered, she went back to her manager who told her to go back home and she complied. She avers that time went by without hearing from her manager. She went to enquire from the manager who told her that the Teaching Service Commission had removed her from service and that she

should go to the Teaching Service Commission to get the reasons for her removal.

2.3 She deposes that she took the matter to the Catholic Church Schools Secretary who wrote her a letter and advised her to approach St Monica's Mission which was in turn to attend to her grievance. When she got to St Monica's mission, a letter of complaints was shown to her which came from her school and which indicated that her school and her colleagues no longer required her services. She was not given a copy of the letter. She then went to the Teaching Service Department and on arrival she was told that the department had earlier written a letter removing her from office in terms of section 53(3) of the Education Act 1995. This came as a surprise to her as her manager had never told her anything except to give him time to settle things at work after the applicant's sick leave. She went to the Post Office but she could not get her letter until six months later, the letter removed her from office.

2.4 I must point out that the letter in question appears to have been written on 20 September 2001. Applicant felt unfairly treated by the manager (the priest) "and found him to be such [a cruel] individual". She however thought that there was nothing she could do as the Commission had exercised its powers endowed on it by the law. The applicant then "sought advice from several people and some lawyers in Butha Buthe district and my conviction that I had no remedy was confirmed". She goes on to say "my heart kept sore and I would keep repeating this ordeal to most people whenever they tell me their set stories until when in December 2012 I repeated it to one Mr Mejaro who works as a Labour Officer based in Maseru". She then deposes that Mr Mejaro did not have

advocate 'Nono's contacts at the time but he promised to get them which he did on 15 January 2013. It was on the same date that he called advocate 'Nono to enquire whether he could assist her and he informed her to see him at his office. She then interacted with him until after 28 January 2013.

3. PRINCIPLES APPLICABLE TO CONDONATION APPLICATIONS

3.1 Needless to say, the law on condonation is well settled in this jurisdiction namely; the applicant must explain the lateness of the institution of the proceedings; the inordinate delay; the prospects of success; the importance of the case and the likely prejudice to result as against the other party. These factors are not to be individually evaluated.

4. APPLICATION OF THE LAW TO THE FACTS

4.1 I must say the explanation for the inordinate delay in bringing the present application from 2001 to 2013 is simply one that cannot be justified by any stretch of imagination. What is clear is that there is a serious dearth of facts justifying the delay in taking up the matter with this court. In any event whether present or not, the prospects of success in this case are set to be based on a lack of a hearing of the applicant by the Commission before dismissing her. It is not clear why that notwithstanding, the applicant did not bring this case timeously.

4.2 In any event, as the respondents have correctly taken the point, it is not established in the founding affidavit as to why it is said that this court has jurisdiction to entertain this matter. The applicant contents herself with saying the court has jurisdiction to entertain the matter and yet there is nothing to indicate where such power emanates from. Even in his Heads

of Argument Mr 'Nono has a serious problem with indicating the basis of jurisdiction in this matter. I would consequently hold that this court has no jurisdiction to entertain this matter inasmuch as this court is a creature of statute and it has not been endowed with jurisdiction to entertain a matter of dismissal straight from a Government statutory body to this court.

5. CONCLUSION AND ORDER

5.1 In the result it is clear that absent jurisdiction, then the applicant would not have any prospects of success in this matter. Absent the satisfactory explanation for the inordinate delay as well as the clear absence of the prospects of success by reason of want of jurisdiction, this application cannot succeed. In the result, the following order is made:

1. The application for condonation is refused with costs.
2. The application for review is struck off the roll with costs.

5.2 This is an unanimous decision of the court.

DR K.E. MOSITO AJ.

Judge of the Labour Appeal Court

For the applicant : Advocate P.A. 'Nono

For the Respondent : Advocate M. Leokaoke