IN THE LABOUR APPEAL COURT OF LESOTHO

LAC/CIV/APN/04/12

LAC/CIV/A/08/11

HELD AT MASERU

In the matter between:

MABOEE MOEKO APPELLANT

AND

MALUTI MOUNTAIN BREWERY (PTY) LTD RESPONDENT

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

ASSESSORS: MR. L. MATELA

MRS. M. MOSEHLE

Heard on: 10TH June, 2013

Delivered on: 28th June, 2013

SUMMARY

Application for interpretation of the Court's judgment – whether the Labour Appeal Court has jurisdiction to interpret its own judgments – Court finding that it has jurisdiction to interpret its own judgments.

Principles on the interpretation of judgments reiterated – Court finding on the basis of the principles as well as concessions by the parties that the judgment is clear and unambiguous.

Legal practitioners representing parties deposing to affidavits on behalf of the parties. – this practice being unwise and one that should be discouraged.

On the question of costs – there will be no order as to costs.

JUDGEMENT

MOSITO AJ

1. This is an application for an order in the following terms:

   (a) That the rules governing and regulating proceedings in this matter be dispensed with due to the urgency of this matter.

   (b) That the Honourable gives an interpretation and consequence of its judgment in **LAC/CIV/A/08/11**.

   (c) That the Honourable Court grants an order of costs de bonis propis.

   (d) That the Honourable Court grants any further or alternative relief it deems fit.

2. The present application is supported by a founding affidavit deposed to by Adv. Patsa Lawrence Mohapi. The facts leading to the present application are detailed out in that affidavit. There is a supporting affidavit by applicant in which the applicant merely deposes that he has read and understood the affidavit of Mr. Mohapi and confirms the contents thereof as far as they relate to the applicant.
3. In his founding affidavit, Mr. Mohapi deposes that he, in his capacity as the legal representative of the applicant, wrote a letter to the legal representatives of the respondents as a result of the judgment that this court handed down on 24 October 2012. Apparently, the essence of the letter was that regard being had to the judgment aforesaid, the applicant must resume its *[sic]* employment with the respondent. In that letter, Mr. Mohapi claimed salaries for the applicant 'for the period he was erroneously dismissed.'

4. It also emerges that the respondent reacted to the said letter through its legal representatives that the Court did not set aside the disciplinary hearing and as such, the applicant would not be reinstated. Mr. Mohapi then deposes that this clearly indicates that the parties are at variance regarding the interpretation of the judgment. He further avers that since the Court had indicated in its judgment that '[t]he decision of the President in terms of which he dismissed the Applicant's stay of execution is declared *pro non scipto* in as much as he was [not] duly constituted as the Labour Court when he made the said order, and the said decision is set aside', then this meant that the legal consequence of that pronouncement was to nullify the disciplinary hearing that was held in the light of the automatic stay. He further alleges that 'the holding of the stayed disciplinary hearing gave birth to a result that was null and void. Any consequence resulting from a legally stayed hearing is a nullity.'
5. The respondent on the other hand relies on an affidavit deposed to by Mrs. 'Mateboho Tohlang. Mrs. Tohlang deposes that she is an Attorney of record for the respondent and that therefore she is duly authorized to depose hereto and to oppose the application filed by the applicant on behalf of the respondent.
6. Mrs. Tohlang first raises the issue that there is no provision in either the **Labour Code (Amendment) Act** nor the **Labour Appeal Court Rules** entitling a party to approach the Labour Appeal to give an interpretation and consequence of a judgment it made. She further deposes that there is no need to give an interpretation to the order in question. She further avers that in the judgment, the decision of the President was declared

pro non scripto, and his decision was set aside. She concludes that the judgment was therefore clear and unambiguous in its effect.

7. Mrs. Tohlang further deposes that '[w]hereas the Applicant also want[s] an order in terms of which the consequence of the judgment needs to be explained, I respectfully submit that no Court will ever provide a party with legal advice as to his road forward. Basically, in this application, the Applicant wants the Honourable Court of Appeal to give directives to the parties as to their rights in consequence of the judgment handed down by the Court. I respectfully submit that to approach the Labour Court of Appeal *[sic]* with such a prayer, is simply not appropriate. On this basis alone, the application should be dismissed with costs.'
8. She further deposes that even if this Court were empowered or capable of determining the applicants request for legal advice, it is only the decision of the Deputy President that still stands. She avers that the respondent was entitled to interpret the situation as one in which it could proceed with the disciplinary proceedings.
9. Before turning to the issues raised by this application, I wish to record this Court's views *en passant* on the question of legal representatives of parties in litigation deposing to affidavits on behalf on their clients. As was pointed out by the Court of Appeal in **Letuka v Abubaker N.O and Others C OF A (CIV) NO.17/**12, where counsel becomes a witness to events which are pertinent to his client's case and which give rise to credibility issues, it is highly undesirable, if not improper for such counsel to continue to represent the client in the litigation. As the Court of Appeal pointed out, this growing tendency should be deprecated and

discouraged. In the case of ***Mokhethi v Matlole and Others, C OF A (CIV) NO. 03/2012***, para 15, **Howie JA** said:

> *"[15] . . . when advocates or attorneys make affidavits for use in judicial proceedings in which they are instructed to act they may run the risk of a conflict of interest between their duty to the client and their duty as officers of the court if they thereafter appear, or continue appearing, as counsel in the case. An affidavit affording formal proof of an uncontentious fact will probably occasion no such risk. Affidavits containing contentious allegations are quite another matter. Their position may be unavoidable because the facts are exclusively within the knowledge of the deponents. But then such deponents will face the unenviable, and undesirable, predicament of having to argue defensively of their own credibility and, very often, critically of the credibility of a colleague.*
>
> *[16] Counsel in a case, whether advocate or attorney, owes a duty to the court to present facts, and to argue the issues, with objective independence from the interests of the client. Accordingly, if counsel has to make an affidavit regarding disputed facts, subsequent withdrawal from the case may well be required so as to avoid acting in conflict with that duty."*

10. It is thus, unwise for legal representatives for parties to depose to affidavits on behalf of their clients that they are representing in a matter. The philosophy behind this word of caution is that it may happen that such legal practitioners may be called upon to testify in cases where there may be disputes of fact, especially in motion proceedings and then be conflicted. The Court of Appeal has warned

against this practice, and we only wish to join in by adding our own voice to that of the Court of Appeal on this subject.

11. The first question for determination, is whether this Court has jurisdiction to interpret its own judgments. Adv. P.J. Loubser for the respondent argues that there is no provision in either the **Labour Code (Amendment) Act** nor the **Labour Appeal Court Rules** entitling the Applicant to approach this Court in motion proceedings as a Court of first instance. He argues that the Court can only hear appeals and reviews from lower Courts. He further submits that there is no provision in either the **Labour Code (Amendment) Act** nor the **Labour Court Rules** entitling the Applicant to seek an interpretation and consequence of an earlier judgment of this Court. He further submits that on these grounds alone, the application should be dismissed with costs.

12. The learned counsel for the applicant, Adv. Mohapi concedes that there is no provision in the Labour Code and its amendments to the effect that the Labour Appeal Court has jurisdiction to interpret its own judgment. He however submits further that this court may assume jurisdiction to hear and determine this application. He argued further that it is a trite common law rule that a party, may on notice to the other party apply to the Court that made a judgment or order in a suit between such parties for that Court to interpret its judgment or order. He argues that this may be done where though the judgment may be *prima facie* unambiguous; it is ambiguous as between the parties. (See: **Hermstein and Van Winsen, the civil practice of the Superior Courts of South Africa, Third Edition, P 467.)**

13. It is correct that there is no provision in either the Rules or the Act constituting the Labour Appeal Court that the Court may interpret its

own judgments. However, in terms of Rule 19 (2) of the **Labour Appeal Court Rules 2002:**

> "The judge may give any directions that are considered just and expedient in matter of practice and procedure."

14. The above Rule falls into the same category as the usual provision that the Court may regulate its own procedure. The question of interpretation of judgments is a procedural question which must be undertaken subject to the common law Rules relating to the law on the interpretation of judgments. In my opinion Rule 19 of the Rules of Court confers wide powers upon the judge of this court to give procedural and practice directives.
15. The question of interpretation of judgments being a procedural question, is a matter that a judge of this Court may give directions upon should need arise. Put differently, the Court may in appropriate circumstances, and subject to the directions of a procedural nature, interpret its own judgment. The Court may decide to entertain an application to interpret its own judgment therefore. In our view, this Court has jurisdiction to interpret its own judgments.
16. On the issue whether we should interpret our present order or judgment that we have been called upon so to do, the law on this point is very clear in that once a matter has been finalised by a court, that court becomes *functus officio*. It has no authority to adjudicate on the matter again.
17. The only jurisdiction that a court has is to make incidental or consequential corrections. (See: **Mojalefa Rakometsi v Sello Rakometsi C OF A (CIV) NO. 54/2011**). The position was stated as

follows in the case of ***Kassim v Kassim* 1989 (3) ZLR 234(H) at p 242 C-D** where it was stated that:-

> "In general, the court will not recall, vary or add to its own judgment once it has made a final adjudication on the merits. The principle is stated in *Firestone South Africa (Pty) Ltd v Genticuro Ag* 1977 (4) SA 298 (A) at 306, where TROLLIP JA stated:
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> > 'The general principle, now well established in our law, is that, once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter, or supplement it. The reason is that it thereupon becomes *functus officio*: its jurisdiction in the case having been fully and finally exercised, its authority over the subject matter has ceased.'"
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> In *Firestone, supra*, at p 306 the court further stated that:-
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> > "The principal judgment or order may be supplemented in respect of accessory or consequential matters, for example, costs or interest on the judgment debt which the Court overlooked or inadvertently omitted to grant."
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> Further on at p. 307 C-G the court went on to say:-
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> > "The Court may correct a clerical, arithmetical or other error in its judgment or order so as to give effect to its true intention… The exception is confined to the mere correction of an error in expressing the judgment or order; it does not extend to altering its intended sense or substance."
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> In *West Rand Estates Ltd v New Zealand Insurance Co Ltd* 1926 AD 173 it was stated that:-

> "The Court can, however, declare and interpret its own order or sentence, and likewise correct the wording of it, by substituting more accurate or intelligent language so long as the sense and substance of the sentence are in no way affected by such correction; for to interpret or correct is held not to be equivalent to altering or amending a definitive sentence once pronounced."

18. The above principles were fully reaffirmed in ***Thompson v South African Broadcasting Corporation*** **2000 (1) SA 746 at pp 748 – 749**. See also generally ***Brightside Enterprises (Pvt) Ltd v Zimnat Insurance Co 2.*** **1998 (2) ZLR 229 (H) at p 231**.

19. In ***S v Wells*** **1990 (1) SA 816** the principles were stated as follows:-

> "According to the strict approach a judicial official is *functus officio* upon having pronounced his judgment which is a *sentential stricti juris* and as such incapable of alternation, correction, amendment or addition by him in any manner at all … A variant of this strict approach permits a judicial officer to effect linguistic or other minor corrections to his pronounced judgment without changing the substance thereof …
> The more enlightened approach, however, permits a judicial officer to change, amend or supplement his pronounced judgment, provided that the substance of his judgment is not affected thereby." (at pp 819 – 820)

20. In ***Parker v Parker & Ors*** **1985 (2) ZLR 79(H)** it was held that an order giving directions is not an incidental order and that a judge of the High Court cannot vary or alter an order of a judge of parallel jurisdiction, short of expanding on it (see at pp 84-85).

21. Bearing the above principles in mind, had both counsel not agreed that at least as far as they are aware and are able to read the judgment, the

judgment is so clear that it needs no interpretation, we would proceed to interpret the order or judgment.

22. We have fortunately been spared the need to go into that exercise. The concession by Mr. Mohapi for the applicant that as far as he is concerned, the judgment is clear and unambiguous, is an important and deserving one. Consequently, there is no need to interpret the judgment as it is clear and unambiguous. It means what it says.

23. On the question of costs, Mr. P. J. Loubser informed the Court that he would not insist on costs in respect of this application. This was gladly welcomed by Mr. Mohapi for the applicant. In all the circumstances, the following order is made:

    (a) The application is dismissed.

    (b) There will be no order as to costs.

24. This is a unanimous decision of the Court.

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K.E. MOSITO AJ.

Judge of the Labour Appeal Court

For the Applicant Adv. P.L. Mohapi

For the Respondent Adv. P.J. Loubser