

**IN THE LABOUR APPEAL COURT OF LESOTHO**

**HELD AT MASERU**

**LAC/REV/01/12**

In the matter between:

**MALUTI MOUNTAIN BREWERY**

**APPLICANT**

**AND**

**NTAHLI MATETE**

**1<sup>ST</sup> RESPONDENT**

**THE LABOUR COMMISSIONER**

**2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL**

**3<sup>RD</sup> RESPONDENT**

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

Heard on: 15<sup>TH</sup> JANUARY 2014

Delivered on: 15<sup>TH</sup> JANUARY 2014

**SUMMARY**

*Application for a certificate for leave to appeal to the Court of Appeal being made when the Labour Appeal Court was sitting as the court of first instance – such application not necessary.*

*Applicant applying for stay of execution – 1<sup>st</sup> respondent undertaking not to execute the judgment – court finding it not necessary to consider the application for stay in the circumstances.*

*Whether when considering an application for certificate for leave to appeal and stay of execution, it is necessary for the assessors to be present – there is no need for such attendance by the assessors as both the issue whether or not to grant a certificate to appeal to the Court of Appeal and stay of execution are basically issues of law.*

*Application for a certificate and stay of execution not determined and there being no order as to costs.*

## JUDGEMENT

### MOSITO AJ

1. The present application is a sequel to an application and judgment of this court handed down on 3 July 2013. That first application was filed on 10 May 2012 by the applicant before the Registrar of this court. In the original Notice of Motion, the applicant in that application sought an order directing the Labour Commissioner to dispatch to the Registrar of this court the record of proceedings (if any) that culminated in her issuing to the 1<sup>st</sup> respondent, an exemption certificate under section 79 (1) of the **Labour Code (Amendment ) Act of 1997**. The applicant in that main application further sought a review of the decision of the Labour Commissioner to exempt the 1<sup>st</sup> respondent from complying with the provisions of section 79 (1) of the **Labour Court Order 1992**.
2. The applicant in that main application further sought an order directing the 1<sup>st</sup> respondent to pay certain amounts being her severance pay entitlement, as well as costs. Later on 1 November 2012, the applicant in that main application amended the prayers in the Notice of Motion and sought an order in the following terms:
  1. Directing the 2<sup>nd</sup> Respondent to dispatch the record of proceedings (if any) that culminated in her issuing to the 1<sup>st</sup> Respondent, an exemption certificate under section 79 (9) of the Labour Code as amended;
  2. Calling upon the 2<sup>nd</sup> Responded to show cause (if any) why her decision to grant an exemption certificate to the 1<sup>st</sup> Respondent shall not be reviewed and set aside;
  3. Reviewing and setting aside as invalid, the 2<sup>nd</sup> respondent's decision of 8<sup>th</sup> October, 2007 to grant the 1<sup>st</sup> Respondent an exemption from

complying with the provisions of section 79 (1) of the Labour Code Order 1992;

4. Calling upon the 2<sup>nd</sup> respondent to show cause why her decision to grant an exemption certificate to the 1<sup>st</sup> respondent shall not be reviewed and set aside;
  5. Calling upon the 2<sup>nd</sup> Respondent to deliver to the Registrar within 14 days of service of this application, any reasons that she wishes to give;
  6. Directing the 1<sup>st</sup> respondent, and the other Respondents, only in the event of their opposition hereto, to pay the costs hereof.
  7. Granting the Applicant further and alternative relief.
3. In the present proceedings there are two applications before this Court.
- The first application was one for a certificate permitting the applicant to apply to the Court of Appeal against the judgment mentioned above.
- The second application related to stay of execution pending appeal.
4. At the hearing of the present applications, the court asked counsel for the parties whether, it was necessary for this court to grant a certificate enabling the applicant to appeal when the case before this court had been heard by this court sitting as court of first instance. Both counsel agreed that it was not necessary. I respectfully agree with them. In my opinion the applicant/appellant in this matter would have an automatic right of appeal to the court of appeal as this court was not sitting as an appellate court when it handed down its judgment appealed for.
5. The next question that the court put to the counsel was whether the judge of this court was entitled to sit alone or with assessors when considering a certificate application and the stay of execution of the judgment of this court regard being had to the fact that it seems the

issues involved are those that require the attention of the judge alone and not of the assessors. In this regard, both counsel were of the view that there is no need in applications for a certificate and for stay of execution for the judge to sit with assessors in considering such applications. Again I respectfully agree with the counsel on this subject. The reasoning being that when considering stay of execution and whether or not to grant a certificate, this court is concerned solely with questions of law. A certificate is only to be granted on questions of law while with stay of execution, the issues raised also revolve almost exclusively on questions of law in respect of which the assessors cannot outvote a judge sitting in such a matter.

6. The next issue with respect to the application for stay was that counsel for the 1<sup>st</sup> respondent, advocate Mohau KC informed the court that he undertakes not to execute the judgment of this court as it is clear that the present applicant intends to appeal to the Court of Appeal. Advocate P. Loubser for the applicant informed the court that he accepted the undertaking, and both counsel agreed that it was not necessary therefore for this court to make a determination on the stay of execution application.
7. Advocate Loubser however requested the court to direct the applicant to process its appeal in accordance with the Rules of Court of Appeal within fourteen (14) days hereof and that it would be desirable to ensure that the matter is finally disposed off by the Court of Appeal as soon as practicable. Advocate Mohau KC accepted this contention, and I accordingly accepted the same.
8. In the result, the following order is made:

- (a) It was not necessary for the applicant to make an application for a certificate granting it leave to appeal to the Court of Appeal.
- (b) Regard being had to the undertaking by Advocate Mohau KC that no endeavour would be made to execute the judgment of this court pending determination of the appeal by the Court of Appeal, this court accepts the undertaking and no order is made as to the stay of execution pending appeal.
- (c) The Applicant is directed to process its appeal in accordance with the Rules of the Court of Appeal within fourteen (14) days hereof
- (d) There will be no order as to costs in respect of both applications.

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K.E. MOSITO AJ.  
Judge of the Labour Appeal Court

For the Applicant Adv. P.J. Loubser

For the Respondent Adv. KK Mohau KC