

LAC/A/09/2014

IN THE LABOUR APPEAL COURT OF LESOTHO

In the matter between

ROY NELSON

APPELLANT

AND

NKOTO MERIAM CHABANE

RESPONDENT

JUDGEMENT

CORAM : The Hon. Acting Justice Keketso Moahloli

ASSESSORS : Mr. R. Mothepu and
Mrs. P. Lebitsa

Date Appeal heard : 10 September 2014

Date Order issued : 10 September 2014

Date reasons delivered : 24 October 2014

SUMMARY

Appeal against decision of Labour Court to issue a warrant of detention to enforce payment of judgment sum against company director without first hearing his explanation for the default — Warrant set aside because such omission is, in terms of section 34 of Labour Code Order 1992, fatal — Failure to comply with prescribed requirement to accord a person a hearing is per se a ground for invalidity.

ANNOTATIONS

Cases:

Administrator, Natal & Another v Sibiya & Another 1992 (4) SA 532 (A)
Administrator, Transvaal & Others v Zenzile & Others 1991 (1) SA 21 (A)
Logbro Properties CC v Bedderson NO & Others 2003 (2) SA 460 (SCA)
Magingxa v National Commissioner, South African Police Service 2003 (4) SA 101 (Tk)
Minister of Safety and Security & Others v Vilakazi [2003] 3 All SA 95 (N)
Molapi v Metro Group Limited & Others [2006] LSLAC 12
Traube & Others v Administrator, Transvaal 1989 (1) SA 397 (W)
Yates v University of Bophuthatswana & Others 1994 (3) SA 815 (B)

Statutes:

Lesotho Labour Code Order 1992

Books:

Pete et al Civil Procedure: A practical Guide 2ed OUP 2011

MOAHLOLI AJ

BACKGROUND

- [1] In March 2014 the acting Deputy President of the Labour Court issued a warrant directing the police to arrest Roy and Chesry Nelson and hand them over to the prison authorities. The warrant also instructed the prison commander to detain the two for six months or until their company paid Nkoto Mariam Chabane the M280,000.00 it was ordered to pay her by the Labour Court in December 2013.
- [2] Roy Nelson appealed to this Court, asking it to overturn the acting Deputy President's decision because he did not give Roy an opportunity to explain why his company's failure to pay was not his fault, as required by the applicable law.
- [3] The Court heard the appeal on 10 September. It orally issued an Order declaring that the appeal was successful and that the warrant of detention was set aside. The Court undertook to give written reasons for its decision at a later stage. The reasons now follow:

SURVEY OF EVIDENCE

- [4] On 7 November 2013 this Court dismissed the appeal of Lesotho Express Delivery Services [LEDS] and ordered LEDS to pay Nkoto Mariam Chabane [Chabane] the amount awarded to her by DDPR arbitrator CT Thamae within 30 days of the date of the judgment.
- [5] On 6 December 2013 the Registrar of the Labour Court summoned Mark Nelson of LEDS to appear before the Court on 16th December 2013, in

terms of section 34 of the Labour Code Order 1992 [Exh 1]. It is worth noting that the summons advised the addressee that:-

- “1. An order of the Labour Court/award of the Directorate of Dispute Prevention and Resolution (tick as appropriate) was made against you/your company/ your association on
2. However, you have not complied with the said order/award as directed;
3. You are therefore summoned to appear before the President/Deputy President of the Labour Court 16/12/2013 at 0900hrs in the forenoon or so soon thereafter as they are able to see you to explain your failure to comply with the award/order aforesaid;
4. Kindly be informed that failure to attend may result in a warrant of detention being issued against you without any further reference to you;
5. Should the warrant be issued, you will be detained in prison for six (6) months or until the aforesaid order/award is complied with and thereafter for further periods of six months until payment is made;
6. You are free alone or through your personal legal representative who shall be your agent with power to make binding decisions on your behalf (sic).”

[6] This summons was subsequently abandoned when Mark Nelson could not be found.

[7] On 13 February 2014 a fresh summons was issued, this time to the Managing Director of LEDS, Chesray Nelson and Jackie Nelson (also of LEDS). They were instructed to appear before the court on 3 March 2014

[Exh 3]. The summons gave them the same advice as the addressee in paragraph 5 above.

[8] From the record of proceedings before the acting Deputy President of the Labour Court handed up during the argument [Exh 2] it would appear that it was established that Jackey Nelson had been wrongly summoned because he was not a director of LEDS. It was established rather that the rightful directors were Chesray Nelson and Roy Nelson.

[9] As a result on 18 March 2014 the acting Deputy President of the Labour Court purported to issue the warrant of detention of Roy Nelson and Chesray Nelson, which is the subject of this appeal [Exh 4].

GROUND FOR APPEAL

[10] Roy Nelson avers that the acting Deputy President erred and/or misdirected himself by issuing a warrant of detention against him-

- (a) without first giving him a hearing; and
- (b) though he had no jurisdiction to do so.

During the argument he confined himself to point (a).

ANALYSIS OF EVIDENCE AND ARGUMENT

[11] Central to this appeal is section 34 of the Labour Code Order 1992. It states that:

“Enforcement of payment

When the Court has given judgment against a party to pay any sum under a contract of employment or under the provisions of the Code and the party fails

to make any such payment within the time specified in such judgement, the President of the Court may, on the application of a party or a labour officer acting on behalf of any person to whom such sums are due, summon such party to appear before the President of the Court to answer why payment has not been made.

If such party fails to satisfy the President of the Court that the failure to make payment was due to no fault on his or her part, the President of the Court may order the party's detention in prison until the payments mentioned in the order are made or for a period of six months, whichever be the shorter period. The person entitled to enforce the judgment shall not be responsible for the expenses of such detention.”

[12] Now, one of the most basic and important rules of natural justice in our law is the *audi alteram partem* rule¹. Where the law prescribes that a party must be heard before a decision is taken it has to be followed². Failure to comply with such a requirement is by itself (and without reference to anything else) a ground for invalidity³.

[13] *In casu* there is no evidence that Roy Nelson was ever summonsed to appear before the acting Deputy President of the Labour Court as a prelude to the issuing of the warrant for his detention. The only two summonses placed before me are the ones referred to in paragraphs 5 and 7 above. In the circumstances the failure to accord Roy a hearing before

¹ Molapo v Metro Group Limited & Others at para 10

² Traube & Others v Administrator, Transvaal at 403D-E; Administrator, Transvaal & Others v Zenzile & Others at 37 C-F; Administrator, Natal & Another v Sibya & Another at 539D-E; Yates v University of Bophuthatswana & Others at 835F-836B; Logbro Properties CC v Bedderson No & Others at para 24; Magingxa v National Commissioner, South African Police Service at 113B-D. See also Pete et al at 329

³ Minister of Safety and Security & Others v Vilakazi at 101b-d

issuing the warrants, by that fact itself, invalidates the acting Deputy President's decision.

DISPOSITION

[14] In the result, the appeal succeeds and the following order is made:

1. The appeal is upheld with no order as to costs.
2. The warrant for the detention of Roy Nelson issued by the acting Deputy President of the Labour Court on 2014-03-18 under case No. LC/ENF/12/2013 is set aside.

[15] My assessors concur with this judgment.

KEKETSO MOAHLOLI AJ
JUDGE OF THE LABOUR APPEAL COURT

For Appellant : Adv PA 'Nono
For Respondent : No Appearance