LAC/CIV/40/15

IN THE LABOUR APPEAL COURT OF LESOTHO

In the matter between

THUSO RABELE **APPELLANT**

And

CHAIRMAN OF THE DISCIPLINARY COMMITTEE: NUL **1ST RESPONDENT**

NATIONAL UNIVERSITY OF LESOTHO **2ND RESPONDENT**

EX TEMPORE JUDGMENT

Delivered on: 29 October 2015

[1] Appellant is employed as a lecturer in the Department of Statistics & Demography at the National University of Lesotho (the University).

[2] On 5 October 2012, he was suspended from the University on full pay pending the finalization of the disciplinary proceedings where he was being charged with misconduct.

[3] For some reason his disciplinary hearing did not proceed as scheduled on 24 October 2012, 18 January 2013 and 4 July 2013.

[4] Instead, on 3 July 2013, he was informed by letter that "due to unforeseen circumstances [his] disciplinary hearing had been postponed until further notice".

[5] More than a year later, on 4 September 2014, he was notified that his suspension was being uplifted, but was instructed to thereupon take all this accrued leave days. He thus went on vacation leave from 5 September 2014 to 18 April 2015.

[6] On 28 April 2015 he was advised that his suspension was being reinstated on full pay, pending finalisation of his disciplinary hearing initiated in October 2012.

[7] He was later served with an amended charge sheet and advised that his disciplinary, hearing would be held on 6 August 2015.

[8] On the hearing date his legal representative applied for the dismissal of all charges against him, on the ground that the University had taken an unduly long time to prosecute the case against him contrary to the provisions of its own Displinary Code and Procedure, which

prescribes that the disciplinary action taken by the University must be conducted within a reasonable time [clause 2.4, bullet point four].

[9] According to Appellant, the Chairman of the Disciplinary Committee ruled that the hearing should go on even though there had been an undue delay (through no fault of the employee) and the delay had negated the element of procedural fairness.

[10] Appellant was not satisfied with the Chairman's decision and lodged an urgent application with the Labour Court (LC/48/15) praying that:

> "(a) The disciplinary hearing against [him] scheduled for Friday 28 August be stayed pending finalization [of his application].
>
> (b) The [Chairman of the Disciplinary Committee] be ordered to dispatch the record of the proceedings of the disciplinary hearing against the [Appellant].
>
> (c) The disciplinary hearing against [him] for allegedly contravening the provisions of the [University'] staff disciplinary code sometime in the year 2012 or thereabout be permanently stayed.
>
> etc."

[11] The Respondents did not any opposing papers.

[12] Appellant has filed a minute showing that on 28 August 2015 his legal representative and those of Respondents appeared before the learned Acting President of the Labour Court Mrs. FM Khabo, sitting by herself without any assessors. She ruled as follows:

"The application for an interim relief is dismissed. The court does not have powers to stop the employer from holding disciplinary hearings against it employees which is sough as a permanent relief. We are therefore not in a position to grant the interim relief. BY ORDER OF COURT."

[13] On 2 September 2015 Appellant was advised by the University [this] pending disciplinary case has been re-scheduled to proceed on 24 September 2015 …at 9:am." Further "that the Vice Chancellor has stayed [his] suspension from the University for purposes of attending [his] disciplinary hearing and other matters pertaining to preparation for the disciplinary case."

[14] Appellant then lodged an application to this Court (in terms of Rule 12), request that his appeal against the decision of the Acting President of the Labour Court be heard urgently. The application was successful and I gave the necessary directions as to the future conduct of the appeal.

Grounds of Appeal

[15] Appellant is appealing on the grounds that the learned Acting President of the Labour Court erred and/or misdirected herself by –

(a) dismissing [his]application sitting alone in chambers without assessors as prescribed by the law;

(b) holding that the Labour Court does not have jurisdiction to grant interdicts.

[16] At the hearing the parties' representatives presented argument on both grounds of appeal.

Was the court *a quo* properly constituted?

[17] Respondents contend that "there is no rule or law that provides that the judge of the labour court should sit with assessors in urgent applications where only interim reliefs are sought like in the case of the applicant. Applicant is the one who requested, on urgent basis, that his application should be determined by the president of the Labour Court without assessors by seeking interim relief in chambers and the President of the Labour Court cannot be faulted in that regard."

[18] However, as Appellants' counsel has rightly pointed out, this type of scenario was considered and settled by this Court in the case of **Maboee Moeko v Maluti Mountain Brewery (Pty) Ltd**[1] in October 2012. In that instance an appeal was lodged against the decision of the then President of the Labour Court to dismiss an application for stay of execution in the absence of assessors. Mosito AJ (as he was then) ruled in no uncertain terms that, in terms of section 23(5) of the Labour Code Order[2] the Labour Court when hearing any matter referred to it under the Code, shall be constituted if it consists of the President or Deputy President and two assessors. He added that Rule 25(3) (a) of the Labour Court Rules 1994[3], which provides that "all interim and interlocutory matters before the court may be heard by the President in Chambers" has been overtaken by the amendment of section 23(5) of the Code in 2000, and has consequently been rendered *ultra vires* and as a result *pro non scripto*.

[1] LAC/CIV/A/08/11
[2] No. 24 of 1992 (as amended by Act 9 of 1997, Act 3 of 2000, Act 5 of 2006 and Act 1 of 2010)
[3] Legal Notice No.35 of 1994

[19] I respectfully endorse the learned Judge's interpretation of the legal position, even though I am of the view that the *status quo ante* placed the Labour Court in a better position to deliver an expeditious, but fair and efficient, resolution of labour disputes in the country.

[20] Doctrine of Precedent

Since this Court has status equivalent to that of the High Court and is statutorily bestowed with the power and authority to hear and determine reviews[4] and appeals[5] from all orders and judgments of the Labour Court, its judgments are naturally binding on that court, the subordinate courts and the Directorate for Dispute Prevention and Resolution.

[21] For these reasons we find that the ruling the Acting President of the Labour Court purported to make on 28 August 2015, sitting alone without assessors, should be deemed as though it was never made (*pro non scripto*) and of no force and effect. That being the case it is not necessary for us to consider the second ground of appeal as it has become moot.

Order

1. The appeal is upheld with costs.

2. The matter is remitted to the court *a quo* for proper consideration.

[4] Section 38A(1) (b) (i) of the Code
[5] Section 38A (1) (a) of the Code

KEKETSO MOAHLOLI, AJ
JUDGE OF THE LABOUR APPEAL COURT

I agree

R. MOTHEPU
ASSESSOR

I agree

M. THAKALEKOALA
ASSESSOR

Appearances

For Appellant: **Adv. L. Matee**

For Respondents: **Adv. LA Molati**