

IN THE LABOUR COURT

CASE NO.LC/1/94

HELD AT MASERU

IN THE APPLICATION OF

*LESOTHO AMALGAMATED CLOTHING
& TEXTILE WORKERS UNION*

APPLICANT

AND

MALUTI LEATHER

RESPONDENT

A W A R D

Delivered by President of the Labour Court Mr. Lebereko Lethobane on Monday 31st October 1994.

In the afternoon of Friday 29th October 1994, the General Secretary of Lesotho Amalgamated Clothing and Textile Workers Union (LACTWU) approached this court in an urgent application requesting the court for an order in the following terms:

1. Dispensing with the Ordinary Rules pertaining to the modes of service due to the urgency of the matter.
2. Empowering applicant herein to serve the papers on the respondent and/or leaving them with whoever is on the premises of respondent.
3. Directing the messenger of this Honourable Court

and/or any person authorised by the Registrar of this Honourable Court to place under lock and key the business premises of the respondent situated at the Thetsane Industrial Estate pending finalisation of this application.

4. Directing the respondent to show cause if any why on the return date hereof, the property thus placed under lock and key and all other property of the respondent shall not be sold to realise money to pay its employees.
5. Directing the messenger of this Honourable Court to impound on sight vehicles Registration No. NKR 28477 (NISSAN), NPN 54704 (NISSAN), NPN 54704 (SIC) (TOYOTA STALLION) and NN 2555 (FORD SIERRA) which belong to the respondent pending finalisation hereof.
6. Directing respondent to pay applicants's (sic) members who were its employees their severance pay (those entitled), notice moneys and arrears of salary.
7. Granting applicant such further and/or alternative relief as this Honourable Court may deem fit.

The application was moved ex parte by Mr. Lebone on Monday 31st October 1994. Mr. Lebone prayed the court that paragraphs 3 and 5 of the Originating Application be granted as interim relief with immediate effect in terms of Rule 22 of the Labour Court Rules 1994. The application was heard by the President sitting alone pursuant to Rule 25(3)(a) of the Labour Court Rules, which provides in part that "*..... all interim*

and interlocutory matters before the court may be heard by the President in Chambers."

The ex parte application for interim relief was disallowed and the applicant advised to follow the normal procedure of filing a complaint as is outlined in the Rules. The reasons now follow.

The Labour Court is a creature of statute and as such can only exercise jurisdiction in respect of those matters it is explicitly empowered to adjudicate upon by the statute that creates it, namely the Labour Code Order No.24 of 1992. In that law the jurisdiction of the court is dealt with under Section 24. It is therefore, only those matters which are outlined under that section or which may be interpreted as implied thereunder in respect of which the court may exercise jurisdiction.

It should be noted that an ex parte application for interim relief is made possible by Rule 22 of the Rules. It, however, appears to me that it is only in respect of very few cases where such types of applications shall be allowed. The reason for this is basically because of the nature of cases arising out of employment relationship. Rule 25(3)(b) provides that:

"in granting interim or interlocutory relief the court or the president may make such order, as an interim or interlocutory order, as could be made under the code as a final order." (my emphasis).

Having gone through the matters over which the Labour Court has jurisdiction to hear and make final orders, there does not seem to be anywhere, where the court is empowered to order closure of business premises or to order that property be

impounded as security to honour the judgement of the court. Accordingly, the interim relief could not be granted as it would have been irregular because the court would have no jurisdiction to make a final order in respect of such a prayer under the code.

Applicant was advised to follow the prescribed mode of filing cases before the Labour Court. If he, however, still feels that there is urgency in the matter as a result of the alleged attempt by the employer to abscond and thus disappear without paying workers their terminal benefits, he may approach the High Court for interim relief pending finalisation of proceedings before this court.

L. A. LETHOBANE

PRESIDENT