

IN THE LABOUR COURT

CASE NO.LC/39/95

HELD AT MASERU

IN THE MATTER OF:

TSEBANG MOKETE

APPLICANT

AND

LESOTHO FLOUR MILLS

RESPONDENT

JUDGMENT

The applicant herein was dismissed by the respondent company following a disciplinary enquiry which found him guilty of fighting on the company premises and stabbing two co-workers with a knife in the incident. On the 14th January the respondent had organised a party for its employees. The fighting that resulted in the two workers sustaining stab wounds took place at the said party.

After the fighting the applicant was required by management to make a statement, which has been annexed to respondent's answer. The applicant gave oral evidence in court. We shall without admitting the truthfulness or otherwise of applicant's evidence summarise the background facts as stated by the applicant in his oral evidence. The applicant alleges that he was dancing with two ladies, when three men whose names he did not know at the time arrived and pulled away one of the ladies.

The applicant tried to inquire from the three why they did not approach the lady politely. The three responded by insulting the applicant and asking him what he thinks he can do with two women. The applicant allegedly decided to leave the dancing and went to the main gate, where buses were already waiting to deliver staff.

No explanation is given as to what happened to the three men, but applicant says that when he went out of the gate he heard somebody shout "be aware of a knife." He

further says that there were many people in the vicinity as it was 4.00 pm and people were preparing to go home. He says that when he turned around after hearing the warning he was stabbed on the head with a knife by one Teboho. He alleges that one Maime hit him with a stone. The applicant allegedly pulled out a knife and "scratched" one of the two on the face and the other on the neck.

At this stage applicant says he jumped into the bus because there were many people who were throwing stones at him. He says these people wanted to get into the bus through the windows but he kept them away with the knife. He acknowledged under cross-examination that when he jumped into the bus, there were people already sitting in the bus and these people ran away. He, however, says they were running away from the stones not him. He alleged further that there were two uniformed policemen who did not do anything, but three officers of the Criminal Investigation Division finally arrived and took him to the police station, where he was asked questions and his knife was confiscated. As for the two people who had allegedly been scratched and/or cut with the knife by the applicant, they had already been taken to hospital.

The applicant said that since he had sustained an injury on the head the police told him to go to hospital. In the statement made to management, the applicant went further to say that after explaining everything to the police, they gave him a medical form to be filled by the doctor. He also stated that he told the police that he was not taking any action against his assailants. However, in oral evidence before court he categorically stated that he was not given a medical form by the police and that he got it in hospital. When the applicant next reported for work he was suspended on full pay pending institution of disciplinary proceedings. The enquiry was duly held against all the people who were allegedly involved in the fight, but at the end only applicant was found guilty and dismissed.

The applicant does not deny that he is guilty of the offences with which he had been charged. He, however, challenges the fairness of his dismissal on the basis that he was treated differently from the other workers who were involved in the fight with him, because he is the only one who was dismissed. Mr. Mohau for the applicant contended that applicant's evidence that he was attacked by his co-workers, one of whom was also

armed with a knife is not rebutted.

The respondent's answer is that, it interviewed all the people who were allegedly involved in the fight. The interview established evidence of applicant having been armed with a knife and having injured other workers with it. The applicant himself admitted this fact. The respondent says, however, that it did not find evidence to support the alleged involvement of the other workers in the fight. It was therefore to *d*"difficult for management to dismiss the other co-workers alleged to have been involved in the fight." (see para C(iv) of respondent's answer).

It seems to the court that it is only logical for the respondent not to have dismissed the other employees if it did not have the basis on which to dismiss them. In our view, the applicant's evidence in which he implicates the other co-workers, even though it is not rebutted must be treated with caution, because it is not corroborated and it is the evidence of a person who has direct interest in the matter. Moreover, by applicant's own admission there were many people at the time that the fight allegedly started. The applicant was even warned by one of those people to be aware of a knife. Why would there be no second evidence showing that those co-workers did fight with the applicant and that one of them was armed with a knife? Why would applicant's knife be the only one noticed by those people?

Applicant's story from the point where he was allegedly insulted while dancing, to the point where he was allegedly warned to be aware of the knife, is so thin and incident free that it cannot possibly be true, or even if true, is not reflective of the whole truth.

This suspicion arises out of the consideration that the applicant and the people who allegedly fought with him had been at a party and had presumably been drinking. The applicant's lean and clean story does not reflect a party atmosphere.

Applicant admitted that when he entered the bus people who were already sitting in the bus ran out. His explanation that they were running away from the stones that were being thrown at him is highly improbable. In the first place, if stones were being thrown at him, while he was in the bus some destruction would have been caused to the

bus which would have forced management to take disciplinary action against the culprits. Surprisingly, however, the issue of stone throwing seems to be known to the applicant alone and yet there were many people around. In the second place, if stones were being thrown at the bus, as a result of which people resting in the bus had to run out, why are those people whose rest was disturbed by the stone throwers, not prepared to testify in support of applicant? Thirdly, if property was being destroyed as alleged by stone throwing, why would the police not apprehend the perpetrators and instead arrest only the applicant, who according to applicant's own evidence was a victim of an unprovoked attack by his co-workers? Fourthly, if the applicant was subjected to such a barbaric and unprovoked attack, why would he all of a sudden tell police that he was not taking action against his assailants?

In our view the answer to all the foregoing questions is that applicant's story is a fabrication. No such things as he alleges took place did occur in particular the alleged orchestrated attack on him. What is apparent is that the applicant himself attacked people. The people sitting in the bus must have run away from the applicant after he had stabbed two people and entered the bus still brandishing the weapon, which he admits he continued to use against people who wanted to get into the bus. The alleged attack must have been the reaction of the angry co-workers after their colleagues were stabbed.

In his evidence applicant said he scratched the two workers with the knife. It occurs to us that those people would not have been taken to hospital if they had been scratched as alleged. The applicant was clearly not giving the full truth of the extent of the injuries inflicted on the two workers. Applicant's conflicting reports regarding whether he was given a medical form by the police is further testimony that the suspicions we have about the truthfulness of his evidence are well founded. It is either the applicant was given a medical form or not. He would only be given that form if he was injured and it is untenable that the applicant can forget where he got the medical form from. The hospital never issues medical forms. They are only issued by the police. We are of the opinion that applicant's inconsistency is a clear sign that he is inundating the court with imagined stories.

It was submitted by Mr. Van Tonder for the respondent that the applicant had in fact been in possession of the knife contrary to the rule that employees must not be armed at parties arranged for staff by the employer. The applicant's attempt to explain his possession of the knife at work, and in particular on the day of the party is untenable. He says he bought the knife because he uses it for opening bran bags at work. When he was asked under cross-examination why he had taken it on the day of the party, because he was not on duty that day, he said it was unfortunate that he forgot it in his pocket. We agree with Mr. Van Tonder that, if the work that the applicant did required use of a knife, the respondent would have supplied it. The fact that this was applicant's own knife shows that his job did not require use of a knife. Furthermore, if the applicant had not intended to be in possession of the knife on the day in question, but forgot it, there were other measures that he could have taken to separate the knife from him at least during the party so that he remained within the four corners of the rules governing possession of weapons at such gatherings. For instance, he could have asked one of the senior staff to keep it for him, or even handed it to the security for safekeeping. There is also merit in Mr. Van Tonder's submission that in any event a knife can easily be felt by its weight if somebody carries it by mistake in his pocket. It is unlikely that applicant forgot it in his pocket as he alleges.

It is common cause that the applicant had the opportunity to appeal to the General Manager in terms of the rules. He, however, did not avail himself of that opportunity because he was allegedly informed that the General Manager already knew of his dismissal. This is no excuse for not exhausting the internal disciplinary procedure. This court has held before that as long as the person to whom the appeal lies has not been part of the initial enquiry, which recommended the decision against which the appellant is appealing, he is not precluded from presiding on the appeal merely because he may have heard in the corridors, or even been informed that an action is being taken against a particular employee. All that is necessary is that such a person must maintain an open mind which can be persuaded differently from the views held by the original enquiry. (see *Nthabiseng Moshabesha .v. Lesotho Bank LC/20/94 (unreported)*).

In the circumstances we are of the view that the respondent was correct to have not dismissed those other employees whom it had no evidence that they were involved in

fighting. This court is equally not satisfied on the evidence before it that there was fighting as alleged, as applicant's evidence is unreliable and has serious gaps that can only render it to be judged as nothing but lies. We are therefore, not convinced that there has been unequal treatment since available evidence only points to the applicant as the wrong doer. The application is therefore dismissed.

THUS DONE AT MASERU THIS 14TH DAY OF SEPTEMBER 1995

L. A. LETHOBANE

PRESIDENT

M. KANE

I CONCUR

MEMBER

A.T. KOLOBE

I CONCUR

MEMBER

FOR APPLICANT : MR. MOHAU

FOR RESPONDENT : MR. VAN TONDER