

IN THE LABOUR COURT

CASE NO.LC/9/94

HELD AT MASERU

IN THE MATTER OF:

LABOUR COMMISSIONER

APPLICANT

AND

SHEPHE MATEKANE

RESPONDENT

JUDGMENT

This is an application lodged by the Labour Commissioner pursuant to Section 16 of the Labour Code Order 1992, on behalf of five alleged former employees of the respondent. The employees claim, inter alia, underpayments, notice pay, accrued leave and severance pay for those who qualify. All the five complainants gave oral evidence and were cross examined by Mr. Mafantiri for the respondent. The sixth witness was the Labour Officer who investigated the employees' claims.

At the start of the hearing of this matter, Mr. Mafantiri applied for the dismissal of the application on the grounds of non-joinder. He contended that the respondent was wrongly sued and that one Jeremia Mpaka ought to have been joined.

The application was vigorously opposed by Mr. Mohapi for the applicant, who pointed out that Mr. Mafantiri was infact raising what ought to be his defence on the merits, as a point in limine. The court was, however, unable to make a finding on whether Mpaka should be joined, because there was no evidence showing why he should or should not be joined.

All the five complainants speak with one voice with regard to who their employer was. They all say they were employed by the respondent. They go further to say that a lady by the name of Ntuba was the office clerk who entered their names in the register book. They were asked in cross-examination if they knew one Mpaka, only one said he had seen him around, another one said he had seen respondent's friends at the premises, who could have included Mpaka. They, however, denied that Mpaka was their employer.

The Labour Officer, Mrs Nkoko, testified that after receiving the complaint of the complainants, she called Mr. Matekane to the office. She went on to say that Mr. Matekane did come accompanied by Mr. Mpaka. She testified further that, Mr. Matekane told her in the presence of the complainants that the latter were not his employees. They were instead employed by Mr. Mpaka, whom he had brought along. The employees, however, continued to deny that Mpaka was their employer. Mrs. Nkoko further told the court that, Mr. Mpaka confirmed that he was the employer and that he was willing to pay the complainants. Mr. Mpaka, however, pointed out that he could only pay half of what was due to the complainants, because they had caused damage to his truck in 1992, but never compensated him for the damage. Despite the promise Mr. Mpaka never paid the employees until the case was referred to court.

At the close of the applicant's case, Mr. Mafantiri applied for absolution of the respondent on the ground that by applicant's own admission, as shown by the evidence of Mrs Nkoko, the respondent was not the employer of the complainants. Mr. Mohapi contended on the contrary that neither the principal legislation nor the rules of procedure give this court power to pronounce absolution from the instance. He contended that to do so would be ultra vires the powers of this court.

In terms of Section 68 of the Code and Rule 21 of the Rules, this court is empowered to make decisions and/or awards in respect of matters that come before it. As to what type of decision the court makes, it is a matter that the legislature has left to the court to determine on the basis of the evidence and submissions made before it. We do not therefore, think it was necessary for the legislature to detail the types of decisions that this court can make. Mr Mafantiri's submission amounts to asking the court to make a

finding on whether on the evidence before it, the applicant have a prima facie claim against the respondent which the latter can be called upon to answer.

From the evidence of Mrs. Nkoko, it is clear that the applicants have sued a wrong person. Mr. Mpaka has admitted before the investigating officer, Mrs. Nkoko that he was the employer of the complainants. He has further admitted that he is willing to pay whatever is owing to them, save that he will deduct the cost of the repairs of his truck which was damaged by the complainants. As to how Mpaka came to be the employer, when the complainants knew their employer as the respondent, is a point which the investigator should have established through her investigations. It is completely untenable that the applicant has decided to sue a person who has not only disclaimed liability, but has gone further to show them where to direct their claim. The absurdity is compounded by the fact that, the person to whom the applicants have been directed to lay their claim, has agreed that he is the right person to whom the claim should be directed. In the circumstances, the court agrees that the present respondent has no case to answer as he has been wrongly sued. The application is therefore dismissed.

THUS DONE AT MASERU THIS 15TH DAY OF NOVEMBER 1995

L. A. LETHOBANE

PRESIDENT

K. MOJAJE

MEMBER

I CONCUR

M. KANE

MEMBER

I CONCUR