

IN THE LABOUR COURT OF LESOTHO

**LC/8/94
LC/13/94**

HELD AT MASERU

IN THE APPLICATION OF:

GEORGE KOU

APPLICANT

AND

LABOUR COMMISSIONER

RESPONDENT

**(FOR BOLIBA MABUSA)
(LEHLOHONOLO MOTLOMELO)**

JUDGMENT

Applicant in these proceedings applied at the start of the hearing for condonation of his failure to abide by the rules of the court in filing the application for rescission of a default judgment entered in favour of the complainants. The request was granted.

It is common cause that on 17th November 1994 and 18th November 1994, the Labour Commissioner initiated civil proceedings pursuant to Section 16(b) of the Labour Code Order 1992, on behalf of Boliba Mabusa and Lehlohonolo Motlomelo respectively. These actions were registered as LC/8/94 and LC/13/94 in respect of Boliba Mabusa and Lehlohonolo Motlomelo respectively. Both processes were posted by registered mail in terms of the rules of court on the 22/11/1994.

Fourteen days permitted by the rules lapsed without applicant filing answers in both matters. On the 3rd January 1995, the respondent, (applicant in the original applications), filed requests for default judgment in both matters. The applications were moved jointly by Mr. Mohapi representing respondent on the 9th January 1995 and judgment was entered in favour of respondent by default on the same day. It is understood that applicant received the Court Order on 16th January 1995 (see paragraph 4 of applicant's founding affidavit).

On the 15th February, applicant initiated the present proceedings in terms of which he is moving the court for rescission of the default judgments granted on 9th January 1995. The application was moved on Friday 24th March 1995. Both Counsel, Mr. Mathe for the applicant and Mr. Mohapi for the respondent, addressed the court on whether it should or should not grant the application. However, both counsel agreed that since the rules of the court are silent on rescission, the cardinal issue that should first be determined by the court is whether it has power to rescind its decisions. The determination of that point will in turn determine the necessity or otherwise of considering the other arguments that counsels have submitted to the court.

Mr. Mathe contended that in terms of the principle laid down in the cases of *South African Technical Officers' Association .v. President of the Industrial Court* 1985(1) SA 597 at page 612 and *Marievale Consolidated Mines .v. President of the Industrial Court* 1986(2) SA 485 at page 499, the Labour Court is not a court of law. It is only a quasi-judicial body and as such normal rigid rules of court should not apply in its proceedings. He submitted that as a court of equity, the Labour Court should be guided by flexibility, reasonableness, justice and fairness as against strict legal rules that govern proceedings in ordinary courts. Consequently, he contended that the court should not, in the light of his submission, feel inhibited to entertain an application for rescission of its judgment by virtue of there being no provision for it in the rules.

While we agree that the Labour Court is a court of equity and that in discharging its functions it must not adhere strictly to the rules of procedure or be legalistic in its proceedings, this court has held in the past that as a creature of statute, the Labour

Court derives its powers within the four corners of the statute, that establish it. (See the decision of this court in *Indonesit Offiong Edem .v. Labour Commissioner and Another* LC/4/95 at page 5 (unreported)). It is common cause that the powers of this court are spelled out in the Labour Code Order 1992 and the Labour Court Rules 1994. In terms of the Interpretation Act 1977, Section 24 thereof, the rules are an integral part of the Act under which they were made. None of these two legislations say anything about the Court's power to rescind its own judgments.

Mr. Mathe however, has correctly argued that, it being a quasi-judicial body and not a court of law in the strict sense, the Labour Court must avoid being legalistic in its approach and try to be flexible. It has been held that *"the general principle is that once a court of law has duly pronounced a final judgment or order, it has itself no authority to correct, alter or supplement it. The court becomes functus officio and its jurisdiction in the case having been fully and finally exercised, its authority over the matter ceases."* (Per Strydom A. M. in *F. H. Harrington Steel Erectors (Pty) Ltd .v. Metal & Allied Workers Union* (1989) 10 ILJ 308 at pages 308-309). This principle is well supported by authorities such as Voet Commentarius 42. 1. 27 and a host of other Supreme Court and appellate Division decisions, which the learned member of the Industrial Court in the above case had occasion to refer to.

An argument which Mr. Mathe raises which was also raised by counsel in the Harrington Steel Erectors' case supra can be synthesized as being that the above principle only applies to courts of law and not to this court, because it is not a court of law, but a quasi-judicial administrative body. In deciding this point in Harrington Steel Erectors' case supra, Strydom A. M. on page 309 of the judgment said the following:

"Although said counsel is correct in arguing that the Industrial Court is not a court of law, nothing turns on this as the aforementioned general principle is also applicable in respect of administrative acts by administrative officials. Baxter Administrative Law 1984 at page 372 says the following in this regard:

On the other hand, where the interests of private individuals are affected we are entitled to rely upon decisions of public authorities and intolerable uncertainty would result if these could be reversed any moment. Thus when an administrative

official has made a decision which bears directly upon an individual's interests, it is said that the decisionmaker has discharged his office or is functus officio."

The principle in the above case has been upheld in an earlier decision of Ehlers P. and Bulbulia M. as they then were, in *Metal & Allied Workers Union & Others .v. Siemens Ltd* (1987) 8 ILJ 117 at page 121 paragraph 9 of the judgment, where they confirmed the principle that *".....once a court has duly pronounced a final judgment or order it has no authority to alter or supplement it."* The learned President and member went further to quote Herbstein & Van Winsen, The Civil Practice Of The Superior Courts In South Africa 3rd Ed. at page 467 where the learned author confirmed the rule by saying the following:

"While the court issuing an order may perhaps be approached to resolve an ambiguity in such an order, no evidence is admissible to contradict, amend or add to such order. This is a rule of law not merely a rule of evidence which can be waived by the parties. (Emphasis mine).

In my view therefore, Mr. Mathe's submission with regard to flexibility cannot be upheld in the instant matter, because we are here enjoined to follow what the law dictates. Equally Rule 27, regarding flexibility in applying the rules is superseded by the fact that the issue we are considering goes beyond the rules themselves in so far as it is a legal position that can only be varied to permit the discretion and flexibility being argued about, by an express statutory provision.

The position of this court which cannot alter, vary or rescind its own orders, should not be equated with that of the High Court which has inherent common law and constitutional powers to alter, rescind or supplement its own decisions. Labour Court decisions like those of other statutory courts and quasi-judicial bodies may only be varied or rescinded by a higher tribunal by way of appeal or review as the case may be.

We accordingly hold that this court has no power to rescind its decisions or orders. As observed earlier in this judgment, it is not necessary to deal with the other arguments submitted by counsel as this is sufficient to dispose of the matter.

THUS DONE AT MASERU THIS 29TH DAY OF MARCH, 1995.

L. A. LETHOBANE

PRESIDENT

MR. K. MOJAJE

I CONCUR

MEMBER

MR. M. KANE

I CONCUR

MEMBER