

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 23/95

HELD AT MASERU

IN THE MATTER OF:

MOTHOBI KANE

APPLICANT

AND

LESOTHO BREWING COMPANY (PTY) LTD

RESPONDENT

## ***J U D G M E N T***

**This is an application in which the applicant challenges his dismissal by the Respondents on the 16th February, 1994 as unfair and unlawful and prays that this court should so find and reinstate him in his former position, together with an accompanying order for the payment of the applicant's salary from the date of his dismissal to the date of this judgment.**

**It appears to be common cause that the Respondents held a disciplinary hearing against the applicant which recommended his dismissal from the company. But the actual letter of dismissal which had to be communicated to him does not appear to have reached him as the person who had to deliver the letter to him still had it in his possession on the date of trial of this case.**

**Be that as it may, we are satisfied that the applicant did receive the communication that the disciplinary hearing had recommended his discharge and that he had been discharged from the company, otherwise there would be no point of his appealing against the decision of which he was not aware. Coming to the merits of the case, we think there is substance in the submission that this court is at large to rehear the disciplinary proceedings and determine whether the applicant was accorded the fairness he deserved. Counsel for the applicant submitted that reasons for the decision were not given and the evidence of the witnesses who testified on behalf of**

the applicant was not recorded. We are not in a position to know how the proceedings in the disciplinary hearing were conducted but we note from the evidence before us that there are discrepancies in the time keeping record presented to us.

At least on two occasions the applicant was recorded as being present and arriving at work very late even though he was on sick leave or absent for some reason known to the management. Perhaps the greatest flaw in this regard is that the person who actually made the entries in the time keeping record did not give evidence, let alone the fact that the time record which was presented to us was a photocopy which, in normal circumstances, can only be presented where the original had not been found after a diligent search.

Another big flaw is that the court was not presented with the articles of the company to determine whether Mr. Kleu was vested with powers under which he purported to act. In this regard Counsel for the applicant made it clear very early in his cross examination of Mr. Kleu that he challenged his authority to dismiss the applicant, because he did not have the resolution of the company authorising the Managing Director to delegate his powers of dismissal to him. We had hoped that since this was a contentious issue the Respondents would bring forth such evidence. And it is not for us to call for such evidence if the party concerned does not consider it necessary.

The law governing the companies and public bodies in the nature of Respondents is very clear, and in this instance I would refer to the case of Phomolo Seboka versus Lesotho Bank CIV/APN/227/91 (unreported) where on page 5 Maqutu J. has this to say:

*“Companies and public bodies which have an artificial persona are strictly governed by the constitutions, memoranda of Association and Statutes if they were found by some law. Anything not done in terms of their founding document can be deemed not to have happened at all. Hence that action is null and void. The brains, eyes, ears, mouth and hands of those bodies are their Board of Directors and Committees. Usually, matters of day to day administration, are delegated to a manager or management. That is why in K. Koatsa versus National University of Lesotho C of A (CIV) No.15 of 1986 and M. Khotle versus Attorney General C of A (CIV) No. 13 of 1992 the Court of Appeal speaks of nullity of dismissal. The reason is simply that artificial persona do not have any physical existence except as a body of rules which have to be complied with if the artificial persona has to remain in existence.”*

In our view the position of Mr. Kleu has been adequately explained but the court has not been favoured with the source from which he derived the authority on which he purported to act. In other words, once the authority of Mr. Kleu to dismiss applicant became an issue, the respondents should have availed this court of the resolution of the company bestowing on him the powers of dismissal.

The position of the Respondents is similar to all companies registered in this country and they must take their decisions according to the law. As was said by the High Court in Albert Lithebe Makhutla versus The Court President (Labour Court) and Lesotho Agricultural Development Bank CIV/APN/293/95 page 7-8 (unreported):

*“It has again and again been said in this court that statutory bodies and institutions merit the same treatment as companies and that as corporate bodies theirs is joint decisions in the form of resolutions so that where, as in this case, the Managing Director acts in pursuance of resolution he acts intra vires of his powers but where the act is not in pursuance of a resolution it is ultra vires.”*

Basing ourselves on the finding that the time record relating to the applicant is unreliable and the fact that the Director of Marotholi Beverages has not shown that he had a mandate to dismiss the applicant from his employment, we come to the conclusion that the applicant’s dismissal is unlawful.

THUS DONE AT MASERU ON THIS 16TH DAY OF JULY 1996.

L. S. MAPETLA  
ADHOC DEPUTY PRESIDENT

A. T. KOLOBE  
MEMBER

I CONCUR

A. KOUNG  
MEMBER

I CONCUR