

IN THE LABOUR COURT OF LESOTHO

LC/135/95

HELD AT MASERU

IN THE MATTER OF:

MOLAHLOA OZIEL KALAWE

APPLICANT

AND

WORLD VISION INTERNATIONAL

RESPONDENT

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## ***JUDGMENT***

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**This is an action for unfair dismissal on the ground of failure to give a proper hearing.**

**The applicant Molahloa Oziel Kalawe was employed by World Vision International Lesotho on the 1st June 1987 as Operations Manager. On the 17th July 1995, applicant was suspended for three months on full pay pending investigations into financial irregularities relating to his office. The basis for the suspension was further explained as the apparent violation of World Vision International Policy Guidelines. The suspension was effected following World Vision Africa Regional Team Mission to Lesotho which came to review broad management problems including noted financial irregularities. The applicant was requested to surrender office keys and not to attend to any official duties of the organisation but was expected to make himself available during investigations if need arose to answer questions relating to the inquiry.**

**Applicant was by a letter of the 7th August 1995 requested to report to work on the 11th of the same month to meet with International Auditors together with his manager so that he could answer queries relating to his responsibilities as Operations Manager. In his response to the Manager by a letter dated the 9th August 1995, applicant amongst other things wanted his Manager to explain to him whether investigations in relation to his office were over and whether on the 11th August the explanation he would give would be part of the disciplinary proceedings against him. The Manager again responded in writing to applicant pointing out that the disciplinary action had not been taken, but that applicant's suspension**

from official duties was effected in order to enable the auditors to do their work in the projects which were under applicant's supervision as Operations Manager.

Applicant thereafter made himself available on the 11th August to the auditors where he was questioned about his duties as Operations Manager. Again he was requested to avail himself at the World Vision Office on Wednesday 30th August for a hearing in accordance with Labour Code Section 66(4). Section 66(4) obliges the employer to afford an employee a hearing at the time of dismissal. Indeed applicant made himself available on the day in question and appeared before a disciplinary committee purporting to give him a hearing in terms of the above mentioned section.

Applicant's contention is that there was no hearing because he was not given any charge before the date in question and therefore as he did not know the charges levelled against him he could not prepare his case, this being contrary to the rules of natural justice. Furthermore, counsel for applicant Mr. Mosito argued that in terms of Section 66(4) a hearing has to be given at the time of dismissal or prior to dismissal. According to him on the 30th August when applicant was called to answer before the disciplinary committee, the issue of his dismissal was a *fait accompli* because according to applicant's version he was told that management had already taken a decision to dismiss him. As he was already dismissed, therefore, there was nothing for him to answer hence the reason why when he was told of management's decision and requested to answer, he told the committee that he had nothing to say except to ask for his terminal benefits. Mr. Mosito cited the case of *LACTWU .v. Crayon Garments (Pty) Ltd LC/15/95* (unreported) in arguing about the effective date on which the applicant was dismissed and said that an applicant cannot be heard after a dismissal as this would be improper. Since applicant was dismissed before the meeting of the 30th of August 1995, what happened on the 30th could not be termed "*a hearing.*"

Counsel for respondent Ms. Tau, asked the Court in its consideration to look into the case as distinguishable from the *LACTWU .v. Crayon* case *supra* as dismissal in both cases took place under different circumstances. In the *LACTWU* case it was impossible for the employer to give a hearing before the dismissal was effected whereas in the present case, applicant was asked to appear before the committee for a hearing to show cause why management's decision to dismiss him could not be made final. Applicant refused to answer and therefore denied himself the opportunity to be heard.

The question for determination by the Court is whether applicant was accorded a fair hearing at the time of dismissal or at any time prior thereto. Counsel for applicant argued that neither a notice of the intended termination nor a proper authority to present his case was accorded to applicant before dismissal. Applicant furthermore told the court that on the 30th of August, when he was asked to appear before the committee he did not know the dispute between himself and the

respondent. According to him the questioning by the auditors was routine work and he was not at all worried about such questioning.

When asked whether or not he was aware of the recommendations of the auditors he indicated that he was never told of such recommendations. Ms. Tau for respondent argued that on the 30th August applicant was informed of the recommendations made by the auditors and the decision arrived at by management based on those recommendations, being to terminate his services effectively from the 1st September 1995. “WVI” attached to the answer - being minutes of the 30th August were referred to whereby applicant was asked to respond on the given recommendations and the decision. According to the minutes of that day applicant is quoted as saying:

*“I have no objection against the recommendations and the decision done by the management, but, would want to hear about my terminal benefits.”*

In continuing to address the issue of failure to give proper notice which applicant challenged, counsel for respondent argued that from the time of his suspension applicant’s letter was very clear as to why he was being suspended. From that moment he became aware that there was a dispute between himself and the respondent. He was later called and questioned by auditors about his office and auditors thereafter made recommendations to management that he be dismissed and he was told of these recommendations and management’s decision and did not object.

Ms. Tau further argued that the applicant cannot be heard to say that he knew nothing about the recommendations of the auditors. When he was called for a hearing on the 30th August he therefore knew what the charges against him were because of an ongoing dispute he had with respondent relating to his office as Operations Manager.

According to respondent there was no need to formalise the charge against applicant as he already knew the charges against him. In support of this argument she quoted Baxter Administrative Law (1984) at p.542 where he says, “.....*fair hearing need not necessarily meet all the formal standard of proceedings adopted by the court of law..... the courts have refused to impose upon the administration the duty to hold trial type hearings where these are not prescribed by the statute.*”

Indeed the Court is in agreement with respondent’s counsel on this issue because the Labour Code does not provide any specific manner in which hearings are to be conducted but merely states the requirement to give a hearing to an employee prior to dismissal. It would be a different matter altogether if the rules of the organisation or collective agreement between the employer and a representative trade union or statute provided for trial type hearing where employees would have to be given a formal charge.

**This Court has also pronounced itself on this issue in the case of Maisaaka ‘Mote .v. Lesotho Flour Mills LC/59/95 (unreported) where the Court cited the decision in National Union of Mineworkers & Other .v. Driefontein Consolidated Ltd (1984) 5 ILJ at 145 where the court said “*it does not lie within the competence of this court to lay down rules of procedure which an employer should follow so that a dismissal will be fair. The performance of such a function would amount to blatant legislation.*”**

**Indeed as it was stipulated in the case of Maisaaka ‘Mote .v. Lesotho Flour Mills supra - “*The principles of natural justice are inherently flexible and have no fixed content. The fairness or otherwise of the procedure followed in any particular case will depend on the circumstances of the case.*”**

**The Court is in agreement with the arguments presented by the respondents in this matter from the beginning to the end. It is clear from the applicant’s letter of suspension dated 17th August that he was being suspended for financial irregularities relating to his office. The line of questioning by the auditors in their report which is attached to the answer clearly indicates that the investigations were in relation to financial irregularities in applicant’s office. When applicant was later asked to appear before the committee for a hearing on the 30th of August to answer under Section 66(4) he did not only know about the ongoing dispute he had with the respondents, but was further told of the recommendations of the auditors and the decision of management. The Court does not believe applicant’s story that he was not aware of the recommendations of the auditors. The minutes of the 30th of August which are attached to the answer clearly stipulate that applicant was told of the recommendations of the auditors. These minutes were never challenged by the applicant as not reflecting the true proceedings of the day. The Court is also in agreement with the respondents that applicant was given enough time to prepare his case because the case he met before the committee was not a new case altogether but was still in line with the questioning of the auditors and related to the reasons of his suspension. Furthermore he was told the recommendations of the auditors and decision of management and asked to give reasons why the decision could not be made final. In refusing to answer, he denied himself the opportunity to be heard.**

**Under the circumstances the Court comes to the conclusion that applicant’s dismissal was fair as he was accorded a proper hearing prior to dismissal as is required by the law. The application is therefore dismissed.**

THUS DONE IN MASERU ON THE 27TH DAY OF  
SEPTEMBER 1996.

S. LETELE  
MEMBER

L. A. LETHOBANE  
PRESIDENT

I CONCUR

M. KANE  
MEMBER

I CONCUR