

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 19/94

HELD AT MASERU

IN THE MATTER OF:

RATSEBE RATSEBE

APPLICANT

AND

MAHALA MOLAPO

RESPONDENT

J U D G M E N T

After the hearing of this matter on the 22nd February 1996 the court dismissed the application and reserved the reasons for judgment. The court found that the applicant in this matter had wrongly sued the respondent who was a supervisory employee and as such could not be held liable to applicant.

Applicant was employed in Hlotse, Leribe at a business complex comprising of a restaurant and a filling station. He was a petrol attendant at the petrol station. The complex was owned by one Mr. Patrick 'Mota jointly with his son, Mosiuoa 'Mota. The son was the effective manager of the businesses. He signed cheques, employed staff, dismissed them and generally determined their conditions of work.

The respondent was a supervisor. In his words, his work was to collect for safekeeping the business's daily collections, purchase stock, close the premises at close of business and be in charge of the safety of the business premises at night. He reported to the Manager any difficulties encountered including staff complaints.

In the opinion of the court Mr. Molapo was not an employer of the applicant. his position as supervisor did not render him answerable for the wrongs of the legal person that employed applicant. Instead the manager Mr. Mosiuoa 'Mota was the person who should have been cited in a representative capacity to answer for the company which was the employer of the applicant.

Applicant contended that he was told by Mosiuoa that the respondent was his manager. However, the responsibilities of the respondent vis-a-vis those of Mosiuoa clearly point to the latter as the manager. For instance, even when applicant was dismissed, he was dismissed by Mosiuoa not the respondent. When the applicant complained that he had not been paid his terminal benefits, the respondent referred him to Mosiuoa to state his complaint to him.

Assuming however that Mr. Molapo had to be the person to be cited, in a representative capacity, it seems to the court that he ought to have been cited with the company that employed the applicant as co-respondents. This joinder validates the proceedings even in a situation where subsequent to the institution of the proceedings, the representative ceases to be such. For instance as at the hearing of this matter Mr. Molapo was no longer employed by the company that employed applicant. He was terminated in September 1994. He therefore had no status to appear for and on behalf of that company. At the sametime, the company having not been cited, the whole proceedings are invalidated.

The court might still have exercised its discretion to allow applicant to join the company that employed him. This would however have been futile for the following reasons:

- (1) The prospects of applicant's success on the merits of his claim were almost nil.
- (2) By applicant's own admission, the filling station that employed him ran out of business around July 1993.

PROSPECTS OF SUCCESS

Applicant had three claims namely;

- (a) payment of overtime;
- (b) payment of rest days worked;
- (c) payment of arrears of underpaid salary representing the difference between what he was actually paid and the obtaining statutory minimum wage at the time.

It is common cause that applicant had no witnesses. The only evidence that he had was a letter of demand written by the Leribe District Labour Officer, dated 9th November 1993. From the every onset, the letter refers to the discussion between the District Labour Officer and the respondent. The Labour Officer goes further to conclude that applicant is owed a series of monies which he details in his letter. There is no evidence that the Labour Officer took the trouble of inspecting the employer's records to satisfy himself that the monies he alleges the applicant is owed

are authentic, in particular overtime claim and the claim relating to rest days. In the absence of inspection report some other credible evidence has to be adduced to confirm applicant's claim that he worked more than the legally stipulated hours per day and that he worked on rest days. In the absence of such evidence these claims are not sustainable.

On the issue of underpayments, the statutory minimum wage of that time for applicant was M281-49. He was paid M250-00 by his employer thus underpaying him by M31-49. According to applicant, when the District Labour Officer asked the respondent why applicant was being paid below the statutory minimum, he answered that it was because applicant was provided with accommodation and food by the employer. The District Labour Officer asked whether this was by arrangement with the applicant and respondent answered in the negative.

At the time that applicant was employed by 'Mota, the law (Legal Notice No.5 of 1978) permitted an employer to reduce the statutory minimum wage by 20% where he provided the employee with food and accommodation. This was a legal position of which applicant ought to have been aware. Alternatively if the Labour Officer himself had carried out his routine inspections as he ought to do, he would probably have known this arrangement and advised the applicant accordingly as he would have been legally empowered to do. It seems untenable to make the employer liable for the failure of the Labour Officer to perform his duty regarding inspections to satisfy himself that the minimum wage is being complied with and advise the parties according to law so as to enable them to make informed choices. As things stand now the employer had already spent on applicant and there is no way of making him liable because he did not give applicant chance to choose. Otherwise the employer will be placed in double jeopardy and that will not be fair.

Applicant stated that on or around August 1993, the filling station at which he worked was taken over by a company from Ficksburg. At the time of his termination in September 1993, he was already working with this new company. Applicant's claim however relates to the time he was employed by the filling station that closed down. It seems therefore that that company no longer exists. Accordingly therefore the application is dismissed.

THUS DONE AT MASERU THIS 6TH DAY OF MARCH 1996

L. A. LETHOBANE
PRESIDENT

A. KOUNG
MEMBER

I CONCUR

A. T. KOLOBE
MEMBER

I CONCUR

FOR APPLICANT
FOR RESPONDENT

IN PERSON
IN PERSON