

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 110/96

HELD AT MASERU

IN THE MATTER OF:

LABOUR COMMISSIONER

APPLICANT

AND

ANTHONY DE FREITAS

RESPONDENT

JUDGMENT

The Labour Commissioner is suing the respondent in terms of section 16(b) of the Labour Code Order 1992 (The Code) on behalf of one 'Mamoshe Lenka who was allegedly employed by the respondent on or around January 1990 until December 1994, when the said Mamoshe was allegedly verbally dismissed by the respondent. The Labour Commissioner's claim on behalf of 'Mamoshe stands as follows:

- (a) Payment of M540.00 in respect of wages for the months of November and December 1994.
- (b) Payment of M470.00 in lieu of one month's notice.
- (c) Payment of M1,346.68 in respect of weekly rest-days for the period January 1990 to June 1994.
- (d) Payment of M246.10 for Public holidays worked for the period January 1990 to June 1994.

The respondent did not file any answer until the times prescribed by the rules lapsed. The originating application had been sent to him by registered mail and there seemed to be no reason to doubt that the respondent had in fact received it. After the lapse of roughly four months Mrs. Matsoso for the applicant filed an

application for default judgment, the copy of which was served on the respondent personally on the 4th February 1997. The application was moved on the 30th July, 1997.

Since the respondent has chosen not to defend the action, in theory applicant's success should be as certain as day follows night. However, it is incumbent for the applicant not only to establish his or her locus standi, but also that of the person(s) against whom relief is being sought. As it can be seen from the papers the applicant has sued the respondent in his personal capacity and yet in paragraph 3 of his originating application he has alleged that the complainant was employed at respondent's shop known as Maluti Snack Bar situated at old Bus stop. No reason has been advanced why the respondent has been sued and not the Bar or why both of them have not been cited.

The onus rested on the applicant to establish who between the respondent and the Snack Bar was the employer of the complainant. Mrs Matsoso admitted that the Labour officer's investigations did not establish this important fact. In law proprietors are not personally liable for the liabilities of the companies which they own. Herein the respondent is being sued in his personal capacity for the company which he has since sold. This cannot be allowed. On the balance of probabilities the applicant has failed to show that the respondent was the person who employed the complainant and not the Snack Bar. In the circumstances this application ought not to succeed and it is accordingly dismissed.

THUS DONE AT MASERU THIS 31ST DAY OF JULY, 1997.

L.A. LETHOBANE
PRESIDENT

P.K. LEROTHOLI
MEMBER

I CONCUR

G.K. LIETA
MEMBER

I CONCUR

L.A LETHOBANE
PRESIDENT

M. KANE
MEMBER

I AGREE

K.G LIETA
MEMBER

I AGREE

FOR APPLICANT :
FOR RESPONDENT:

MR MOHAU
MS TAU