

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 16/96

HELD AT MASERU

IN THE MATTER OF:

POSHOLI MAPESHOANE

APPLICANT

AND

LESOTHO TELECOMMUNICATIONS CORPORATION

RESPONDENT

## JUDGMENT

Applicant herein was dismissed on the 2nd September 1993. He filed the present application on the 19th January 1996, some three years and four months after he was dismissed. In terms of Section 70(1) of the Code this application ought to have been filed within six months of the applicant's dismissal. In paragraph 5 of his Originating Application the applicant;

*"....seeks condonation for bringing this action out of time, and submits that whatever delay occurred was inadvertent as he was pursuing the appeal to the Managing Director."*

In seeking to develop his explanation for the delay, the applicant states in paragraph 3 of his Originating Application that he approached the office of the Human Resources Manager in order that he could appeal to the Managing Director to no avail, until he was informed that his file was missing. He goes further in paragraph 4 to state that he *"...waited for the file until today when he decided to bring this action to court since he realised that there will be further delay."*

Respondent on the other hand objected to the condonation application and argued in limine that the application was out of time. Mr. Van Tonder for the respondent submitted that the applicant's excuse is flimsy as such the court should find that no explanation has been given. He argued that the applicant has

not shown why it was necessary for him to have the file in order to draw his appeal because as evidenced by Annexure 4 to the Answer, he was finally still able to draw the appeal without the file. He contended that the court should follow the principle enunciated in *Mphausa .v. Multi Cleaning Services 1994(10) SALLR 60*, where it was held that if there is no satisfactory explanation for the delay, that should be the end of the matter and that there is no need to consider other factors like the prospects of success and the importance of the case.

The court is of the view that applicant's delay of three years is so inordinate that it requires thorough explanation if it is to be condoned. It is common cause that the appeal which the applicant alleges caused his delay was lodged on the 5th May 1994, eight months after the dismissal of the applicant. The applicant did not give any oral evidence. So the only explanation for this delay is that contained in his papers namely; that he approached the Human Resources Manager and was later told his file had disappeared. No attempt is made by applicant to specify when the Human Resources Manager was approached, or when applicant was told that his file had disappeared. Nowhere was this important fact alluded to in the letter of appeal. It emerges for the first time in court papers. Most importantly the applicant does not say how the absence of the file, if at all it is true it disappeared, affected the preparation of his appeal.

It is further applicant's submission that since May 1994 until January 1996, he was waiting for the outcome of the appeal. Mr. Van Tonder contended that applicant's appeal was dismissed as it had been filed out of time. There is, however, no evidence that the appeal was dismissed as alleged. What is clear however, is that applicant again waited for another one year and eight months before deciding to approach this court, an extremely long time for any one seriously desirous of prosecuting his appeal. The onus was on the applicant to follow up his appeal. There is no evidence that any follow up was made until nearly two years had lapsed; making a total of the lapse of three years.

In the view of the court the attitude of the applicant was a lax one, not consistent with that of a person operating under strict time limits. His allegation that he was delayed by the appeal is not satisfactory because the appeal itself was filed eight months out of time, without any explanation being given. In the circumstances the court is of the view that applicant's explanation for his delay is far from being satisfactory.

Mr. Putsoane argued that the applicant has good prospects of success. Mr. Van Tonder on the other hand argued that where the explanation is found to be unsatisfactory that should be the end of the matter and that there is no point in considering other factors like prospects of success. He relied on the *Mphausa* case *supra*. The court is bound by the time limits prescribed by Section 70(1) of the Code, in the same way as a litigant claiming unfair dismissal is. A party approaching the court after the time lapse prescribed by law is obliged first and foremost to explain his delay to the satisfaction of the court. Failing the explanation the court has no jurisdiction to hear the matter. If the explanation has been given then the court may go on to consider the prospects of success because as *Holmes J.A.* held in the case of *Melane .v. Santam Insurance Co. Ltd*

1962(4) SA531(A), notwithstanding everything else that may favour the applicant in a condonation application, there is no point of granting condonation where there are no prospects. We are in agreement with the decision in Mphausa's case that if a defaulting party has not satisfactorily explained his or her delay there is no point of considering whether he has prospects. In any event the court has already held that the delay of three years is inordinate. We are therefore of the view that this condonation application ought not to succeed and it is accordingly dismissed.

THUS DONE AT MASERU THIS 13TH DAY OF AUGUST  
1997

**L. A. LETHOBANE**  
**PRESIDENT**

**A. T. KOLOBE**  
**MEMBER**

**I CONCUR**

**J. M. KENA**  
**MEMBER**

**I CONCUR**

**FOR APPLICANT**  
**FOR RESPONDENT**

**:** **MR. PUTSOANE**  
**:** **MR. VAN TONDER**

**L.A LETHOBANE**  
**PRESIDENT**

**M. KANE**  
**MEMBER**

**I AGREE**

**K.G LIETA**  
**MEMBER**

**I AGREE**

**FOR APPLICANT :**  
**FOR RESPONDENT:**

**MR MOHAU**  
**MS TAU**