IN THE LABOUR COURT OF LESOTHO

CASE NO LC 16/97

HELD AT MASERU

IN THE MATTER OF:

LESOTHO CLOTHING AND ALLIED WORKERS UNION
APPLICANT

AND

QUICK SAVE SUPERMARKET RESPONDENT

JUDGMENT

The applicant union sued the respondent on behalf of two of its members Maphomolo Tsekema and Mampoi Lesoetsa. The two employees had been employed by the respondent as shop assistants. They were dismissed in January 1997 for allegedly holding meetings with union officials in the respondent shop during working hours without permission.

In an application for the reversal of the dismissal of the two union members, Mr. Makeka for the respondent raised a point in limine in which he disputed the locus standi of the applicant union on two grounds. Firstly, he argued that the applicant union is a union which in terms of its constitution organizes workers in the clothing sector and allied trades. It has no right to organise and consequently represent workers in the groceries retail business which is the business the respondent supermarket is engaged in.

Secondly,. Mr. MAKEKA contended that the dispute that eventually resulted in the dismissal of the two complainants was between the respondent and another union by the name of Lesotho Commercial Catering Food and Allied Workers Union (LECCAFAWU). This dispute, he further contended was even mediated by the office of the Labour Commissioner. The official who represented LECCAFAWU at the mediation namely, Mr. Likoti later resigned and joined the present applicant

(LECAWU). Mr. Makeka submitted that it was wrong for Mr. Likoti to leave LECCAFAWU with the complainants as the latter were members of LECCAFAWU not Mr. Likoti.

Mr. Billy argued that they organise respondent's workers because there is sale of clothing at the supermarket. He pointed out that the union's constitution permits it to organise in undertakings where there is sale of clothes. Since there was a factual dispute regarding the question whether clothes are sold at the respondent, the court adjourned in order to undertake an on the spot inspection of the respondent supermarket. Our observation was that there were umbrellas that were on sale and some second hand shoes. There were also two shawls, one in the manager's office and another in the middle of the shop but not on display. The opinion we formed was that though these shawls were in good condition, they were clearly not items for sale.

Clause 4.1.3 of the applicant's constitution defines allied industries as,

"meaning any process associated with manufacturing and sale of clothing..."

In our view, the issue to determine is whether the clothing items that we found on sale at the respondent supermarket would bring it (the supermarket) within the ambit of the union constitution's definition of allied industries. In our view it does not because, except for the two clothing items that we saw, there were no other clothes on sale. These clothes were clearly merely incidental to an otherwise mainly groceries retail business. They (the clothes) are therefore not a valid basis for finding the respondent as being engaged in a trade of sale of clothes. We are in good company in making the finding that we have made, for it was observed in the case of Food & Allied Workers Union .v. Wilmark (Pty) Ltd (1998) 19 ILJ 928 at 930; the case to which we were graciously referred by Mr. Makeka, that the test in determining whether an employer or employee was engaged in a particular kind of trade or industry was to consider the nature of the enterprise. This test is derived from the case of Rex .v. Sidersky 1927 TPD 109. (see also Food & Allied Workers Union .v. Ferucci t/a Rosendal Poultry Farm (1992) 13 ILJ 1271 at 1276).

Regarding the second argument, Mr. Billy did not deny that the dispute concerning the two complainants was between LECCAFAWU and the respondent. It is trite law that only a party with interest in a dispute may bring an action or be joined as co-plaintiff or applicant. Clearly therefore, only LECCAFAWU and/or the two dismissed workers has the locus standi to bring this action to court. LECAWU has no interest as it was never party to the dispute and as such cannot bring this action in its own name. In the circumstances we are of the view that the point in limine is well taken and such must be upheld. This case is therefore dismissed.

Costs shall be costs in the cause.

THUS DONE AT MASERU THIS 9TH DAY OF DECEMBER, 1998.

L.A LETHOBANE
PRESIDENT

P.K. LEROTHOLI
MEMBER **I AGREE**

K.G LIETA
MEMBER **I AGREE**

FOR APPLICANT : **MR BILLY**
FOR RESPONDENT: **MR MAKEKA**