

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 128/96

HELD AT MASERU

IN THE MATTER OF:

MONAHENG I. MONAHENG

APPLICANT

AND

LESOTHO AGRICULTURAL DEVELOPMENT BANK

RESPONDENT

JUDGMENT

The applicant was employed by the respondent bank as its Maputsoe Branch Manager. On or around 23rd May 1993, he was dismissed for allegedly being guilty of converting bank funds into his personal use. The applicant lodged the present proceedings on the 6th December 1996, some three years and six months after his dismissal. The relief he is seeking is that his dismissal be set aside and that he *“be reinstated with payment of all his emoluments since March 1993 and other benefits in terms of his contract with the respondent.”*

On the 12th December 1996, the applicant lodged another application seeking condonation of his late filing of the main application. The reasons for the delay were contained in the supporting affidavit of the applicant which was filed with the main application on the 6th December 1996. The reason is contained in paragraphs 8 and 9 of the supporting affidavit. In those paragraphs applicant deposes that since his dismissal he has been going to the offices of the respondent bank hoping for an amicable settlement of the matter as he was promised by the Managing Director of the respondent. He deposes further that, *“it was on the basis of these empty promises and undertakings that I did not institute proceedings against the respondent then or soon thereafter.”*

It is common cause that the Labour Code Order 1992(the Code) commenced operation on the 1st April 1993. The applicant was however, dismissed on the 27th March 1993. His dismissal is therefore covered by the Employment Act 1967 as amended. Similarly, the prescription period provided by Section 70 of the Code cannot have retrospective application to this matter, for there is a general presumption in law against retrospective application of statutes unless specifically provided for.

It is further common cause that neither the Employment Act nor the Prescription Act No.6 of 1861 provided time limit within which persons seeking reinstatement were to bring their actions to court. It is however, now an established common law principle that in such cases the court will be guided by whether the delay was reasonable or not (see *Moholi Chaka .v. Lesotho Bank* LC163/95 at p.3).

The main contention of Mr. Maieane on behalf of the applicant is that, the applicant has shown good cause for the delay because he was misled by the respondent with empty promises of an amicable settlement. He contended that the time lapse was not unreasonable and that the applicant had prospects of success because the person who dismissed him had no authority to dismiss him.

We are not persuaded by the argument that the lapse of three and a half years before a litigant brings his action to Court is not unreasonable. On the contrary this is a patently unreasonable delay. The fact alone that the applicant has claimed in his originating application that he was dismissed by a person who had no authority does not make him to have a good case. Prospects of success must be obvious ex-facie the papers filed of record. There are no such obvious prospects in applicant's papers; this coupled with respondent's denial on affidavit that the Personnel Manager had not been authorised to dismiss the applicant. It is now an established principle of motion proceedings that where there is a dispute of fact in affidavits arising from respondent's denial of applicant's averment in his affidavit, the Court would adopt the respondent's version as the more probable version.

Applicant's explanation for his delay in bringing this proceedings to Court leaves much to be desired regarding his seriousness about this case. It is quite unlikely that a man of applicant's intelligence, regard being had to the position he occupied, would wait that long on "empty promises" as he has rightly stated in his supporting affidavit, before approaching the Courts of Law for relief. If it be true that this is what he did, then he clearly was not serious about prosecuting this case.

However, we find applicant's story highly improbable. Not only does he not mention when he went to the respondent's Managing Director, he also does not disclose how many times he went there as alleged. He also does not mention which other persons, he met on the occasions he allegedly visited the Managing Director,

who could support him. In short this is just a bare claim, which is not supported by necessary averments to corroborate applicant's story.

We are inclined to belief that, the reason advanced is a fabrication and that the decision to lodge these proceedings is after all an after thought. The applicant has all along not been interested in challenging his dismissal. He is only now belatedly trying his luck whether the Court would entertain this matter. This would be highly prejudicial to the respondent who has shown that seven of the eight potential witnesses are no longer within reach and that infact at least one has passed away. It would also be setting very dangerous precedent if the Court would agree to condone late filing, the explanation for which is so flimsy. We accordingly are of the view that the delay is unreasonably long and that the explanation is not satisfactory. The condonation application is therefore dismissed with costs.

THUS DATE AND DONE AT MASERU THIS 25TH DAY OF MARCH,
1998.

L.A LETHOBANE
PRESIDENT

J.M. KENA

MEMBER

I AGREE

A.T. KOLOBE

MEMBER

I AGREE

FOR APPLICANT :

MR MAIEANE

FOR RESPONDENT:

MRS CHIMOMBE