

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 171/95

HELD AT MASERU

IN THE MATTER OF:

NATIONAL UNION OF RETAIL AND ALLIED WORKERS APPLICANT

AND

LADY J. COSMETICS

RESPONDENT

JUDGMENT

This is an application in which the applicant union is seeking relief in the following terms;

- “(a) *that the conduct of Lady J. management towards the workers is an act of unfair Labour practice as it contravenes Sections 66(3) (a) and (b), 168, 196(2) and 200.*
- “(b) *Declaring the purported “retrenchment” unfair and null and void in that it is being used to clothe in cloak of decency an evil and bad intention to victimize the workers for their Union membership.*
- “(c) *That the conduct of Lady J’s management towards the workers runs counter to the provisions of Lesotho’s constitution in so far as Freedom of Association is concerned and it further*

undermines the Order 1992 and the ILO has ratified.

provisions of section 168 of the Labour Code conventions 87 and 98 of which Lesotho

“(d) An order forbidding Lady J management from persecuting, harassing and dismissing the applicant’s members.

“(e) Further and / or alternative relief”.

This application is a sequel to the retrenchment of some of the employees of the respondent in January 1996, who the applicant union claim were their members. The proprietor of the respondent Mr. Ahmed averred in his supporting affidavit that out of a total of 30 employees four had been retrenched as a result of a downturn in his business. He averred further that he had used the last in first out principle.

The applicant union relied on the affidavit of Mrs Leanya whom it said was the chairlady of the branch committee. She further amplified her affidavit by giving viva voce evidence in Court. According to her testimony her woes started on Saturday 2nd December 1995, when she left her department to look for a drum on which she would climb in order to reach the shelves which were out of reach. The owner of the shop, Mr Ahmed, allegedly became furious and informed Mrs Leanya that she should not bring her shit union into her shop.

Later on one Shadrack who was not an employee of the shop but frequented it as he was a friend of Mr. Ahmed came in. He jokingly asked Mrs Leanya where she would be outing and the latter said she had no plans and would be happy if he could date her. Shadrack asked for money from the owner of the shop and he responded that he would not give him money to go and squander it with prostitutes. Mrs Leanya said she understood Mr. Ahmed to be referring to her as a prostitute.

Thereafter one ‘Matsepo had an altercation with a customer. She invited Mrs Leanya to note the point of their difference. Mr Ahmed asked ‘Matsepo whether she was telling Leanya because she was their union boss. According to Mrs Leanya all these incidents occurred on one day. She averred that she was no more allowed to operate her till as whenever she went to the machine to serve a customer one John, her supervisor, would rush to punch the machine before she could.

According to Mr. Ahmed on the other hand, he had called Mrs Leanya with one Lebohang with whom she had been talking, in the presence of John. The purpose of him calling them was to reprimand them for going up and down the aisle talking while customers were not being attended to. He denied ever making the remarks attributed to him about the union. Lebohang and John filed supporting affidavits in which they also deny the remarks attributed to Mr Ahmed. It is worth noting that Mrs Leanya’s evidence is not corroborated notwithstanding that she alleges

that the remarks were uttered in the shop where the other employees would be expected to have heard them. The court brought this fact to the attention of Mr. Ramochela at the start of the hearing and he still decided to rely only on the evidence of Mrs. Leanya who had already filed an affidavit anyway.

Regarding the allegation that she was referred to as a prostitute. Again Mr. Ahmed denies that this remark, which he concedes making was intended for the applicant. In his affidavit he avers that in any event Shadrack came into the shop two to three hours after his meeting with Mrs Leanya. On the other hand Mrs Leanya is of the view that the words were directed at her because they were uttered after she joked with Shadrack that he should date her.

Shadrack filed an affidavit in which he agreed that Ahmed did use the words ascribed to him but says he never understood those words to be referring to Mrs. Leanya. It appears that it was possible for Mrs. Leanya to deduce that the words were directed at her if they were spoken after the joke they had with Shadrack. What is however, inconceivable is how those words could be viewed as sexual harassment in terms of section 200 of the Code, or as denoting that the employer was anti-trade union membership. In the view of this Court such words if at all they were uttered towards the complainant, represent a simple case of crimen injuria which should have been reported to the appropriate law enforcement agency for appropriate action.

On the question of the anti-union remarks allegedly made by Mr Ahmed when 'Matsepo had called Mrs Leanya to alert her to the differences she ('Matsepo) was having with a customer, again Mrs Leanya's evidence is uncorroborated notwithstanding that she claims the two of them were shouting at each other. Even if it could be claimed that potential witnesses would fear to come forward because of fear of harassment by the employer, Mrs Leanya testified that many of her former co-workers have since been retrenched. She averred that 'Matsepo is also out of employment and is living somewhere in TY but she was not called to testify. In the view of this Court the applicant union has failed to prove that the management of the respondent is anti-trade union as alleged or that it is guilty of sexual harassment. There is no evidence to show that the management of the respondent has contravened either the constitution, the Labour Code or ILO conventions No. 87 and 98 in respect of the right to freedom of association. These claims are therefore dismissed as unfounded.

Mr. Ramochela contended further that the management of the respondent refused to deal with the union. Not an iota of evidence was adduced in support of this allegation. If anything annexure 1 to the respondent's answer, which is a letter

written by Mr. Ramochela to the management of the respondent proves to the contrary. The letter shows clearly that collaboration existed between the applicant union and the management of the respondent. It refers to a meeting held on the 6th of December 1995 and the agreements reached thereat. It concludes by stating Mr. Ramochela's hope that "*.... this is the beginning of productive relation that will be of mutual benefit to both parties.*" The finding to which we arrive is that even this claim is without merit.

Lastly it was the union's contention that the purported retrenchment was a cover for an evil intention to victimise the workers for their union membership. Reliance was made on the affidavit and oral evidence of Mrs Leanya in support of this claim. We have already made a finding that Mrs Leanya's evidence is uncorroborated and as such cannot be relied upon. Furthermore certain of the remarks allegedly made towards her cannot found a claim for persecution and harassment for trade union activities as there is no nexus between those remarks and her trade union activities. For instance, there is no necessary link between Ahmed's statement to Shadrack that he was going to "eat" his money with prostitutes and Mrs Leanya's trade union activities.

Assuming, however, that our finding on the evidence of Mrs Leanya is wrong and therefore that her version should be believed, the applicant union has still failed to prove its case. Both in her affidavit and in her oral evidence Mrs Leanya has testified that all the remarks and ill-treatment complained of occurred on the 2nd December 1995. However, Mrs Leanya and her colleagues had already been informed of their retrenchment on the 1st December 1995. In the premises the remarks allegedly made by Mr Ahmed on the 2nd December could not have influenced the retrenchment of the members of the applicant union as the decision to retrench them had already been taken and announced before the remarks were made. In our view therefore this application ought not to succeed and it is accordingly dismissed.

Costs shall be costs in the cause.

THUS DONE AT MASERU THIS 29TH DAY OF
APRIL, 1998.

L.A LETHOBANE
PRESIDENT

T. KEPA
MEMBER

I AGREE

P.K. LEROTHOLI
MEMBER

I AGREE

FOR APPLICANT : MR RAMOCHELA
FOR RESPONDENT : MR VAN TONDER