

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 101/97

HELD AT MASERU

IN THE MATTER OF:

ISAAC SEMULI

APPLICANT

AND

SCORE FURNISHERS (MAPUTSOE)

RESPONDENT

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## JUDGMENT

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This matter was heard and dismissed on the 23rd February 1999. The reasons for the judgment were reserved and what follows are those reasons.

The applicant was dismissed on the 21st August 1995 after a disciplinary enquiry which had found him guilty of a misconduct. He lodged an appeal which was heard and dismissed on the 28th August 1995. The present matter was filled out of the Registry of this Court on the 4th December 1997; some two years and three months after the dismissal of the applicant.

In terms of Section 70(1) of the Labour Code Order 1992 (the Code) claims for unfair dismissal must be presented to court within six months of the occurrence of the event giving rise to the claim. Sub-section (2) empowers the Court to condone the "presentation of a claim outside the period prescribed in sub-section (1) above if satisfied that the interests of justice so demand."

Using the principles enunciated in *Melane .v. Santam Insurance Co. Ltd* 1962(4) SA 531(A), this Court has held that it can only be in a position to satisfy itself if the demands of justice justify condonation upon good cause shown by the defaulting party. (See *Khotso Sonopo .v. LC67/95* (unreported) and *Moholi Chaka .v. Lesotho Bank LC163/95* and *Mohau Takana .v. Lesotho Bank LC165/95* (both unreported). It is common cause that the applicant did not seek leave of the Court to condone his

late filing. The respondent raised a point in limine that the matter is prescribed and that no condonation application has been made by the applicant.

On the 10th February 1999, the applicant filed a formal condonation application which was opposed by the respondent. The application was moved on the date set down for the hearing of the main action. In his address to the Court Mr. Maieane conceded that the respondent's point in limine was well taken and said this was the reason why he was seeking to move an application for condonation of the late filing.

The application was supported by the applicant's affidavit in which he deposed that the matter was brought to court late because he had all along since his dismissal been trying to settle this matter amicably with the respondent.

These efforts culminated in a mediation by the Labour Department, which nevertheless failed to resolve the matter, the applicant deposed. This much the applicant had already alluded to in paragraph 4(e) of his Originating Application where he averred;

*“(e) It is upon the appeal outcome that the applicant approached the Labour Office for a relief. This was on the 23rd March 1996. Despite my endeavors it was only on the 6th May 1997 when negotiations took place between Management of respondent and the Labour Office.”*

It is common cause that in paragraph 5(e) of the Answer the respondent strenuously denies that there was protracted negotiations between them and the applicant. They aver instead that the matter was finalised on the 28th August 1995 when applicant's appeal was dismissed (see paragraph 5(d) of the Answer) and that the Labour Office called on them to enquire into and intervene in the matter about a year and a half later (see paragraph 5(e)).

According to applicant's own averrement in Paragraph 4(e) of his Originating Application, at the time that he approached the Labour Office for assistance on the 23rd March 1996, the six months prescribed by the Code had already expired. There is no explanation for this particular delay. As regards his alleged endeavors in between the 23rd March 1996 and the 6th May 1997 when the mediation meeting was convened, there is no evidence of any endeavors that were taken. Lastly, it is trite law that in motion proceedings, where no viva voce evidence is led, if the Court is faced with the word of the applicant against the word of the respondent the Court will follow the respondent's version. Accordingly, this Court upholds the respondent's denial that there was protected negotiations with the applicant which gave rise to the delay.

Condonation of the late filing is a discretion that the Court must exercise judicially upon consideration of the degree of lateness, the explanation for the delay, the prospects of success and the importance of the case. (See Melane's case supra).

Two years and three months is without doubt an inordinate delay. The applicant's explanation for his delay has already been rejected by the Court in favour of the respondent's version.

There are no prospects of success *ex facie* the papers before Court and no evidence was led to show that there are any such prospects. There is nothing to make this a case of any particular importance as to be treated differently from similar cases. In the premises the Court came to the conclusion that no good cause has been shown and that the matter must be allowed to rest as the time lapse is unreasonably long.

Costs shall be costs in the cause.

THUS DONE AT MASERU THIS 30TH DAY OF  
MARCH, 1999.

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

**P.K. LEROTHOLI**

**MEMBER**

**I AGREE**

**K.G LIETA**

**MEMBER**

**I AGREE**

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

**MR MAIEANE**  
**MR MOLETE**