

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 12/96

HELD AT MASERU

IN THE MATTER OF:

PASCALIS MOLAPI

APPLICANT

AND

METRO GROUP LTD

1ST RESPONDENT

MAPUTSOE FRASERS CASH & CARRY

2ND RESPONDENT

RULING

This is the third of a series of Court cases that the applicant initiated against his former employers for allegedly dismissing him unfairly on the 7th November 1990. The applicant first sued his employers in the High Court of Lesotho in 1992. It is not clear what relief he was seeking. In September 1994 he unconditionally withdrew the matter from the High Court. In November 1994 he re-launched the case before this Court which had then just commenced functioning in LC6/94.

In LC6/94 the respondent was cited as General Manager, METCASH LTD. The respondent successfully raised a defence that the applicant had sued the wrong party. The applicant had been employed as Manager of the Maputsoe branch of Frasers Cash and Carry; a subsidiary of Frasers Limited. It turned out that in the High Court proceedings the applicant had sued Frasers Cash and Carry which employed him. In reinstituting the proceedings before this Court, he without bothering to explain decided to sue the General Manager, METCASH LTD, a body which never employed him. Whilst this Court found in his favour that there was procedural irregularity in his dismissal, the Court nonetheless dismissed the application on the ground that a wrong party had been cited.

On the 9th January 1996, the applicant filed the present proceedings, this time suing Metro Group Ltd (METCASH) as 1st respondent and Maputsoe Frasers Cash and Carry as 2nd respondent. In the first place in LC6/94, the applicant had already sued the General Manager of METCASH and without doubt in a representative

capacity. At the hearing of that matter, respondent called the former General Manager and Managing Director of Frasers Cash and Carry, Mr. Stephanus Theunis Bekker. His evidence that the applicant was never employed by METCASH was never contradicted. The applicant himself could not explain why he was citing Frasers Cash and Carry interchangeably with METCASH. It seems to this Court that merely removing the General Manager and seeking to cite METCASH alone without its General Manager makes little or no significant difference. The evidence that he (applicant) was employed by Frasers Cash and Carry which though owned by METCASH after the latter took over Frasers Ltd, still remained an autonomous entity, was never controverted.

Furthermore at the hearing hereof, on the 8th January 1999, the parties reached agreement that before the merits can be addressed, the issue of prescription be disposed of first. It was agreed that the respondent shall file their heads of argument on prescription by not later than 22nd January 1999. The applicant's counsel was to do likewise by not later than 5th February 1999. On the basis of those written submissions the Court was to make its ruling. The respondent filed their heads on the 27th January 1999. These heads appear to have been served on applicant's attorney's office and received by M. Chalatsi on the same day. On the other hand the applicant never, until the date of this judgment filed any heads as ordered. This ruling has therefore, been made without the benefit of applicant's submissions on the question whether this matter is or is not time barred.

It appears that the applicant has again sought to base his claim on the Labour Code Order 1992 (the Code) despite his dismissal having occurred before the commencement of the Code. In his heads Mr. Buys, has correctly in our view, based his submissions on the prescription Act No.6 of 1861. He referred us to Section 5(c) thereof which provides that,

“No suit or action for the salary or wages of any merchant's clerk or other person employed in any merchants or dealer's store, counting house or shop shall be capable of being brought at anytime after the expiration of three years from the time when the cause of action in any such case as aforesaid first accrued.”

The applicant is seeking a declaration that his purported dismissal is null and void and payment of salary from the date of purported dismissal. The applicant was dismissed in November 1990. Herbststein & Van Winsen The Civil Practice of the Supreme Court of South Africa 4th Edition at p.410 and pp.423-424 relying on the ratio decidendi in Santam Insurance Co. Ltd. .v. Vilakazi 1967(1) SA 246(A) submits that irregular or defective summons does not interrupt prescription. Clearly the applicant's Originating Application was defective in so far as it had cited the wrong party as the respondent. It was by the applicant's own initiative that the High Court action was withdrawn. In our view the applicant cannot have it both ways. Accordingly we view the High Court summons as also not having

interrupted prescription of this matter. It is today October 1999. It has been entirely due to applicant's own mishandling of this matter that it has now taken ten years. Even if it were to be assumed that Frasers Cash and Carry is the proper entity to be sued, no doubt given the length of time since this matter arose, any claim against it is prescribed. It is our considered view that this matter is stale and it must be allowed to rest. Accordingly this application is dismissed. There is no order as to costs.

THUS DONE AT MASERU THIS 6TH DAY OF OCTOBER,
1999.

L.A LETHOBANE
PRESIDENT

A.T. KOLOBE
MEMBER

I AGREE

M. KANE
MEMBER

I AGREE

FOR APPLICANT :
FOR RESPONDENT:

MR BUYS
MR HLAOLI