IN THE LABOUR COURT OF LESOTHO

CASE NO LC 39/98

HELD AT MASERU

IN THE MATTER OF:

PUSELETSO LETUKA APPLICANT

AND

CENTRE FOR ACCOUNTING STUDIES RESPONDENT

JUDGMENT

The applicant herein was dismissed from the employ of the respondent on the 12th January 1998. On the 11th June 1998 she filed the present proceedings against the respondent institution. Pleadings were closed on the 19th August 1998 following respondent's filing of its Answer. The matter was set down for hearing on the 20th October 1999. On the day of the hearing counsels for the parties appeared before the President in chambers to request a postponement to enable them to negotiate a settlement. It would appear that negotiations were not successful because the matter was subsequently enrolled to be heard on the 31st March 2000. On that day the matter was by agreement postponed to 29th May 2000. On the 29th it was again postponed, this time sine die. However, the parties were able to obtain the 10th July 2000 as the next date when this matter could be heard. On that day the matter proceeded to a finish but judgment was reserved.

The applicant is challenging the substantive fairness of her dismissal. Counsels for the parties agreed at the hearing hereof that this matter need not be proceeded with on the basis of viva voce evidence. They agreed that in their view the court should be able to dispose of this matter on the papers. However, as it later turned out, there were many disputes of fact which necessitated that oral evidence be heard. Mr. Matooane had conceded that he would be willing to call witnesses to attest to the facts but this met with stern opposition from Mr. Mosito who contended that the

matter must proceed in terms of the agreement because his case would be prejudiced by a decision to call viva voce evidence as the Director has since left the country, and if they had known timeously that he would be required to testify appropriate arrangements would have been made.

It was Mr. Matooane's contention that the applicant had been dismissed for four reasons all of which he argued, were not sustainable. Indeed if one looks at Annexure "A" to the Originating Application, which is the record of the proceedings of the disciplinary enquiry, it is evident that the applicant had four charges to answer. These were that;

(a) The applicant had failed to meet the Director at appointed times after her return from the UK where she had been studying for a Master's Degree in Accounting and Finance.
(b) Circulating to staff members a letter she had written to the Director concerning her stand vis-à-vis the teaching of Financial Management course which she had been allocated by the Director to teach.
(c) The applicant attempted through underhand ways to have access to her personal file.
(d) The applicant refused to teach the course she had been allocated by the Director to teach.

A brief summary of the background facts will make the charges against the applicant clearer. The applicant was employed as a Lecturer by the respondent institution. In or around 1996 she went to Britain to pursue a Masters Degree programme through the financial assistance of the respondent. Upon her return, she was allocated to teach a Financial Management course which she declined. The Lecturer who was teaching that course was to swap courses with the applicant. In the absence of oral evidence, we assume it is fair to conclude that all the other charges arose in the cause of the disagreement over the teaching of the Financial Management course. They are as such secondary.

Regarding the charge of failing to meet the Director, at appointed times, Mr. Matooane contended that this issue was resolved prior to the hearing. It ought not to have been part of the charges the applicant had to answer, he argued. In support of his argument Mr. Matooane referred us to Annexure "C" to the Originating Application, which is the letter from the Director to the applicant in which the Director accepted applicant's retrospective leave form compensating for the days when she had not been at work. It is worth noting that this is the period during which the Director had set up meetings with the applicant, which the applicant failed to attend despite letters having been delivered at her home. (See the first paragraph of Annexure "C"). Quite correctly, Mr. Mosito for the respondent did not contest this point. We are accordingly in full agreement with Mr. Matooane that this issue was resolved amicably between the applicant and the Director. In the

absence of any further default on her part to attend scheduled meetings after 20th October 1997 (which is the date Annexure "C" was written), it was patently unfair to have resuscitated the issues which had been resolved and had a second bite at the cherry as it were, by again charging applicant with those actions which had been resolved.

On the second charge, Mr. Matooane argued that there was nothing wrong with applicant circulating the letter he wrote to the Director to other staff members. He averred that the other lecturers were already aware of the debate as they had attended the meeting at which the issue was discussed. He contended further that respondent being a tertiary institution, it should be amenable to persons filing complaints, in good faith, as the applicant did. He referred us to Section 66(3)(c) of the Labour Code Order 1992 (the Code), which provides that filing in good faith of a complaint or grievance shall not constitute a valid reason for dismissal.

We would hasten to point out that, the respondent was not as such concerned with applicant's filing of a complaint. Its concern was the circulation of the letter outlining the complaint to other staff members. We were not referred to any law, rule or regulations that forbids the conduct the respondent is complaining about. Whether it was right or wrong for applicant to have circulated the letter as she did seems to us a question of perception and perhaps morality. To be able to arrive at definitive conclusion on this question we had to subjectively determine how the respondent felt about applicant's action of circulating the letter to her colleagues. That would certainly require that the Court hears the Director's evidence, which as we indicated, we were denied. Equally, it is a question of evidence whether tertiary institutions ought to be more permissive of the manner of lodging the complaint that the applicant adopted. In the circumstances we are unable to arrive at a finding on this issue.

On the issue of accessing the personal file through underground methods Mr. Matooane argued that the applicant breached no rule. He contended further that the applicant pointed out that she had previously had access to her file without any difficulty. It is common cause that the applicant vehemently denied using underhand means to have access to the file. She said she had "merely requested the acting Director for permission to see her file which permission had been denied." The applicant was not contradicted on the version she gave that she had only requested permission. Accordingly, we see no reason why a person should be charged for merely requesting to see her file. In the premises we agree with Mr. Matooane that this charge had no basis.

As we earlier indicated the real issue is that contained in the fourth charge namely; refusal to teach Financial Management course. Applicant's contention was that she was not yet confident to teach the course. Several meetings were held but to no avail. On the 21st October 1997 the Director wrote Annexure "D" to the Originating Application. In paragraph 2 thereof he stated;

> ***"With regard to your teaching on the Financial Management Course, as far as I am concerned this issue is closed. You have agreed to teach the course, and have expressed your reservations which I have noted."***

On the 3rd November 1997 applicant wrote Annexure "E" in which she repeated her earlier position that she is not yet confident to teach the course and that she needs time to prepare and lecture the course. It is common cause that even at the disciplinary hearing the applicant would not relent as she maintained her stand not to teach the course, as she was not yet competent.

At the hearing hereof Mr. Matooane contended that the applicant gave reasons for not accepting to teach the course which the disciplinary enquiry ought to have weighed. It is true that at the enquiry applicant listed some four reasons why she had said she could not teach the Financial Management course. In our view however, these reasons are what the Director in his letter of the 21st October 1997 (Annexure "C" to the Originating Application) call applicant's reservations which he says he has noted.

In the Labour Appeal Court case of National Trading Co. .v. Hiazo (1994) 15 ILJ 1304 at 1307 Mayburg J relying on past decisions as well as such celebrated authors as Brassey and Rycroft & Jordan had this to say at paragraphs E-G:

> ***"In terms of the contract of service the employee is subordinate to the will of the employer. He is obliged to obey the lawful commands, orders or instructions of the employer…. A refusal or failure to obey an employer's order may justify summary dismissal if the order was lawful and reasonable and the refusal or failure to obey was serious enough to warrant dismissal."***

In Slagment (Pty) Ltd .v. Building Construction & Allied Workers Union and Others (1994) 15 ILJ 979(A) the Appellate Division confirmed the dismissal of two members of the respondent union who had refused to work with a new supervisor and refused to carry out his instructions. Several attempts had been made to resolve the problem without success. In the end the appellant conducted disciplinary hearings against the two employees. They were found guilty and dismissed. In upholding the dismissal of the two employees Nicholas AJA had this to say at p. 989 paragraph H – I.

> ***"The employees had been guilty of sustained disobedience. They had deliberately set themselves on a collision course with management. They were insubordinate and insulting. Their conduct was such as to render a continuance of relationship of employer and employee impossible."***

Coming back to the facts of the case at hand. It seems to us that the Director's instruction to the applicant was lawful and reasonable. Indeed it was never the applicant's case that the instruction was unlawful or unreasonable. What was necessary was for the Director to consult with the applicant and the Director did. The moment the Director told the applicant that you (applicant) "…. have made your reservations, which I have noted," and as such I regard the issue as closed, he was leaving the applicant with a choice between two alternatives, compliance with the instruction or downright disobedience. The applicant's continued refusal to teach the course thereafter was as Nicholas AJA put it in the Slagment case supra rendering herself guilty of sustained disobedience, in the face of which the respondent could not be expected to sit back without taking any action. In the circumstances we find no substantive unfairness in the applicant's dismissal. The application is accordingly dismissed and costs shall be costs in the suit.

THUS DONE AT MASERU THIS 4TH DAY OF AUGUST, 2000.

L.A LETHOBANE
PRESIDENT

A.T. KOLOBE
MEMBER **I AGREE**

M. MAKHETHA
MEMBER **I AGREE**

FOR APPLICANT : **MR MATOOANE**
FOR RESPONDENT: **MR MOSITO**