

**IN THE LABOUR COURT OF LESOTHO**

**CASE NO LC 87/96**

**LC 17/2000**

**HELD AT MASERU**

**IN THE MATTER OF:**

**MABOTE MPELE**

**APPLICANT**

**AND**

**LHPC & 5 OTHERS**

**RESPONDENTS**

**THABO TJAMELA**

**APPLICANT**

**AND**

**LESOTHO BREWING CO.**

**RESPONDENT**

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**JUDGMENT**

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The two matters, though covered in one judgment were heard separately. Ms Sephomolo appeared for the respondents in both of them. As it can be seen from the registered number of the Mpele case, the originating application therein was filed in 1996 in July. Pleadings were closed on the 2<sup>nd</sup> August 1996, following the respondents filing of their Answer.

Thereafter there is no effort on record made by the applicant to have this matter set down. On the 3<sup>rd</sup> April 1998, the Registrar of this Court wrote to applicant's counsel asking him to "liaise with respondent's counsel and arrange to have this

matter set down for hearing as a matter of urgency....” No response was forthcoming from the applicant or his counsel.

On the 18<sup>th</sup> January 2000 the Registrar again wrote to applicant’s counsel asking him to meet with the Registrar’s office to have the matter allocated a date of hearing. Neither the applicant nor his counsel complied. The Court finally, acting in terms of the powers vested in the President by rule 12(1) of the rules of the court, allocated Tuesday 22/02/2000 as the date for the hearing of the Originating Application. The hearing was scheduled for 0900 hours. When it came to 1000 hours with still no sign of either the applicant or his counsel the Court decided to proceed with the hearing.

As would have been expected, Ms Sephomolo who represented the respondents applied that the Originating application be dismissed in terms of rule 16 of the rules of the court which provides:

*“ If a party shall fail to appear and to be represented at the time and place fixed for the hearing of an Originating Application or appeal or application, the court may, if that party is an applicant or appellant, dismiss the Originating Application, appeal or application or, in any case proceed to hear and dispose of the matter in the absence of that party, or may adjourn the hearing to a later date.”*

The use of the word “may” clearly denotes that the Court has a discretion which must be exercised judicially. In our view all attempts were made to notify applicant through his counsel that this matter must be set down and disposed of. It appears from the record that not even an acknowledgement of receipt of the reminders was made. This is a case where the Court must balance the interest of all involved in particular the respondent, who has attended Court. This is very clearly a case of an applicant who has lost interest in his own case. There is no reason why respondent should be made to suffer any further anxiety. In the premises the respondent’s application that the Originating Application be dismissed was upheld with costs, regard being had that this was not a case of an unfair dismissal but one where applicant was challenging his alleged resignation.

In the Tjamela case the applicant had filed the Originating application outside the six months time limit prescribed by Section 70(1) of the Labour Code. He accordingly filed an application for condonation of late filing in accordance with Section 70 (2) of the Code read with rule 30(1) of the rules. Section 70(2) provides:

*“70(2) The Labour Court may allow presentation of a claim outside the period prescribed in sub section (1) above if satisfied that the interests of justice so demand.”*

Rule 30(1) in turn provides as follows:

*“30(1) An applicant seeking condonation of the late filing of an Originating Application claiming unfair dismissal shall present, or deliver by Registered post, such application to the Registrar and the respondent named therein and also a written application for such condonation...” giving not less than fourteen days notice thereof to the said respondent, or as the Court or President may direct.”*

The condonation application was presented to the Registrar together with the Originating application on the 4<sup>th</sup> February 2000. On the same day the processes were served by one Ramochela on the respondent. She or he duly filed a return of service to this effect. In the condonation application the applicant had stipulated that the condonation application would be made on the 22<sup>nd</sup> February 2000 at 0830 hours. However, on the said date and at the said time there was no sign of either the applicant or his counsel.

When the time came to 10.15 hours with neither the applicant nor his counsel in attendance the Court convened. Ms Sephomolo who represented the respondents moved that the application be dismissed in default of appearance by the applicant in terms of rule 16 of the rules of the Court. The applicant is already in default for which he is seeking the indulgence of the Court that it be condoned. Instead of being remorseful for the delay, the applicant adds insult to injury by not attending Court to explain his delay and why it must be condoned. No Court properly advised would tolerate such lax attitude. Respondent’s application is therefore, upheld and the application for condonation is dismissed with costs.

THUS DONE AT MASERU THIS 22ND DAY OF  
FEBRUARY, 2000.

**L.A LETHOBANE**

**PRESIDENT****G.K. LIETA****MEMBER****I AGREE****M. KANE****MEMBER****I AGREE****FOR APPLICANT : NO APPEARANCE****FOR RESPONDENT: MS SEPHOMOLO**