

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 54/98

HELD AT MASERU

IN THE MATTER OF:

MATSELISO MALUNGA

APPLICANT

AND

LESOTHO RED CROSS SOCIETY

RESPONDENT

JUDGMENT

This case involves the issue of termination of a contract of fixed duration before the expiry of the agreed term. At the hearing Mr. Masiphole for the applicant and Mr. Hlaoli for the respondent informed the Court that there is only one issue for determination of the Court namely; whether the applicant is entitled to payment of her salary for the remainder of the contract period which was interrupted by the premature termination.

Counsels further agreed on the summary of the facts which were common cause. These were that, the applicant was employed by the respondent on the 14th August 1997 for a fixed period of two years. Apart from the terms of the letter of appointment the applicant was "...in other respects...governed by the Staff Management Regulations 1996 of the Society." On the 30th June 1998, the respondent terminated applicant's service in terms of clause 10(g) of Staff Management Regulations 1996 which provides:

- "10 The Society may terminate an employee's service for any of the following reasons:*
- "(g) Retrenchment where the society is unable to meet the employee's remuneration."*

The applicant sought the advice of her lawyers, who threatened the society with legal action. In an effort to avert litigation, the two parties agreed to enter into

talks. On the 3rd November 1998 the Management of the respondent had a meeting with the applicant with a view to minimize the damage likely to be caused by her dismissal. In particular the Maseru Division of the respondent had lodged a plea on her behalf that she be reinstated. The Maseru Division undertook to subsidize her salary payment by providing a top up to the respondent. That meeting agreed that;

“now that the Maseru Division would top-up Miss Malunga’s salary which had led to her retrenchment, the society would gladly re-engage her on new conditions.

“1. New conditions would be drawn and put down in writing.

“2. Miss Malunga should return the following day i.e. 4th November 1998 to ... give an indication whether they were acceptable to her or not.”

It is common cause that the applicant refused the offer of re-engagement. She chose to hold the respondent to the fixed term contract which it had terminated. Under paragraph 6 of her Originating Application the applicant provides what is clearly the basis of her refusal to accept the termination of her contract lying down. She avers that;

“(a) it is not true that the Society has run out of funds.

“(b) The contract being of fixed duration cannot be terminated by either party without notice.

“(c) The unilateral termination of the contract is unfair and prejudicial to the applicant as she expected to be in respondent’s employment until April 1999.

“(d) Further the termination which was not preceded by a hearing contravenes the principles of natural justice.”

Under paragraph 7 of the Originating Application the applicant concludes by asking that “respondent be ordered to pay applicant the salary due to applicant from 1st July 1998 up to April 1999.” We propose to deal with these grounds chronologically.

It is worth noting that counsel for both sides agreed that there was no need for oral evidence as the point to be determined is one of law. The question whether it is true or not that the respondent had run out of funds is a factual one which can only be decided on evidence. The fact alone that the Society as an organization is still operational is not sufficient to draw an inference that the respondent still had funds with which to pay applicant’s salary.

The second point is that because the contract is one of fixed duration it cannot be terminated by either party without notice. We must hasten to point out that there is no such general rule either emanating under the common law or Labour Law Legislation of this country. Moreover it is factually incorrect that the contract

was terminated without notice. Paragraph two of the letter of termination which is annexed to the Originating application as Annexure “B1” clearly states that;

“you will serve the month of July as notice and you will be paid cash in lieu of any outstanding balance of leave as at 31st July 1998.”

The third ground concerned the alleged unilateral termination of the contract and the expectation to remain in employment until the end of the fixed term. Both in papers before this Court and in his address to the Court Mr. Masiphole for the applicant repeatedly used the words “unilateral termination.” When he was asked by the Court precisely what he meant by these words he decided to withdraw the use of the word “unilateral” and stated that he is happy with only saying the contract was terminated. The second aspect is that the termination was unfair and prejudicial to the applicant because “....she expected to be in respondent’s employment until April 1999.

There may well be merit in this submission. However, the letter of appointment informed the applicant that whilst she was being employed for a period of two years, her contract would “...in other respects be governed by the Staff Management Regulations 1996.” Regulation 10(g) of these regulations states that if the society is at any time unable to meet an employee’s salary it can terminate such an employee’s employment. Quite clearly therefore, the applicant’s fixed two year employment period was not an unqualified one such that she could expect to be in employment for the full duration of her fixed term. The expectation to be in employment until April 1999 therefore does not arise.

Lastly the applicant says the termination was not preceded by a hearing. It is significant that at the hearing counsel for the applicant did not canvass this point. Similarly the respondent’s counsel did not bother himself about it. We can therefore safely assume that the applicant abandoned that ground.

In submissions before the Court Mr. Masiphole relied heavily on the fact that since the contract was for a fixed period the respondent ought not to have terminated it. He referred the Court to section 62(3) which provides:

“(3) A contract for one period of fixed duration shall set forth its termination date. Such a contract shall, subject to the provisions of section 66 concerning dismissal, automatically terminate on that date and no notice of termination shall be required of either Party.” (emphasis added)

There is nothing preventing either party to terminate the contract before the expiry of the fixed period. However, the contract automatically terminates on the designated date if it had not been previously terminated before the end of the fixed

term. It is not necessary in our view to continue to consider some of the very weighty submissions made by Mr. Hlaoli on behalf of the respondent as the grounds we have so far considered overwhelmingly point to the fact that the applicant has not made out a case for the relief sought.

It is evident that the respondent was entitled to terminate the contract as it did as the regulations permitted it. As we stated the law does not prohibit fixed term contracts to be terminated before the expiry of the agreed term. There is therefore no basis for the applicant to claim as she has sought to do payment of salary for the remainder of the period that she had not served. In the premises this application ought not to succeed and it is accordingly dismissed with costs as this not the case covered by section 74(2) of the Labour Code Order 1992.

**THUS DONE AT MASERU THIS 11TH DAY OF
APRIL, 2000.**

**L.A LETHOBANE
PRESIDENT**

C.T. POOPA

MEMBER

I AGREE

P.K. LEROTHOLI

MEMBER

I AGREE

FOR APPLICANT : MR MASIPHOLE
FOR RESPONDENT: MR HLAOLI

Date of hearing: Monday 27th March
2000