IN THE LABOUR COURT OF LESOTHO

CASE NO LC 31/00

HELD AT MASERU

IN THE MATTER OF:

MAKHETHANG MOTJOLI AND 8 OTHERS APPLICANTS

AND

CENTRAL HOTEL RESPONDENT

JUDGMENT

In this matter there are nine applicants in all. They are represented by the National Union of Retail and Allied Workers (NURAW). They have applied for judgment to be entered against the respondent by default. The application for default was moved on their behalf by Mr. Thamae of NURAW and granted on Tuesday 11th September 2001. The reasons for the judgment were reserved. What now follows are those reasons.

The Originating Application in this matter was filed on the 20th October 2000. It was posted to the respondent by registered mail on the same day, in terms of rule 4 of the rules of this court. The respondent failed to file the Answer in terms of rule 5. As a result the applicant applied for judgment to be entered against the respondent by default. The Originating Application has not till this day been returned from the post office as is customary with registered mail if it is not delivered. We therefore, conclude that it has been received by the respondent. We accordingly granted the default judgment.

The applicants were employed in different capacities by the respondent hotel which is situated at Qacha's Nek. They were dismissed on the 31st July 2000 following the sub-letting of the hotel to a new company. At the hearing hereof only one applicant was present namely, Malesala Tlalane Makhetha. Two were reported to have since passed away namely, Masemoko Cekwane and Matieho Chabana. No explanation was advanced for the non-appearance of the others. The applicants are asking that:

(a) **Their dismissal on the 31st July 2000 be declared unfair.**
(b) Failure on the part of the respondent to pay their benefits be declared illegal and contrary to the provisions of the Labour Code Order 1992 (the Code).
(c) They be paid salary with effect from the date of dismissal to the date of judgment.
(d) Alternatively payment of compensation.

Two witnesses testified namely Malesala Makhetha and the union official who handled the dispute Mr. Tilo Letsie. The most relevant evidence, however, was that of Malesala. She testified that on the 31st July 2000 they had come to work as usual. At around 10.00 am the owner of the hotel whom she referred to as Malerato told them to remove their protective clothing (uniform) because it looked as though she was no longer going to continue with them. She told them to come back the following day to get reasons why she was no longer going to continue to work with them.

The following day they reported at the usual starting time. Malerato told them that she was no longer going to continue with them because, the hotel had been sub-let to a new operator who it turned out was not going to take the old staff over. She testified that they went to the District Labour Office which called Malerato and informed her to give them their terminal benefits. Malerato obliged by paying them salary for July and one month's salary in lieu of notice, she testified. The witness was clearly of the view that they were entitled to other monies which she said Malerato had not paid them.

The court asked her what those monies were. She said they were long service (severance pay), leave and underpayments. She said they had been told by the District Labour Office that they were owed those other monies. Asked how long she had worked for the respondent she said she had worked for seventeen (17) years. As we said Mr. Letsie's evidence was just not relevant. Mr. Thamae would not despite repeated warnings, accept the court's invitation that he considers calling the Qacha's Nek District Labour Officer who handled this case to come and shore up his case.

Now considering available evidence, it comes nowhere establishing that any of the applicants was underpaid, at all, or if ever, by how much and for how long. No minimum wage gazettes were availed to show what the obtaining minimum wage was at the material time, and no wages earned by the applicants were availed to enable the court to see the difference. As regards the leave, when the court asked her where she got it that she was entitled to be paid leave she said she got it from the

Labour Officers. Clearly therefore, the Labour Officer concerned ought to have been called to come and testify as to the individual applicants' leave. This is an issue on which the Labour Officer, after appropriate investigations would be quite competent to testify on as an officer entrusted with the administration of the labour legislation. The same would go with the alleged under-payments.

As regards severance pay, the individual applicants ought to have been present to attest to their entitlement to this payment. As it stands the court does not know their respective periods of service and how much each of them earned. This would be the basis on which the court would determine their entitlement to severance payment. Only Malesala who testified before us was able to satisfy this evidential requirement. The representative of the applicants handed in a paper of calculations of leaves, underpayments and severance pay. This paper was not handed in under oath and in any event it was a compilation of Mr. Letsie based on what he was told by the applicants. It could not therefore constitute evidence on which the court could come to an informed conclusion. All in all therefore, we came to the conclusion that there is no evidence before court to substantiate the eight applicants' claim to severance pay. Only Malerato has been able to satisfy us as to her entitlement thereto. As regards claims for leave and underpayments all nine have failed to prove their entitlement to them.

As regards their dismissal on the 31st July 2000, there is no doubt in our minds that the respondent failed to follow the guidelines for retrenchment. No consultation was made with the employees whatsoever and we have been favoured with no explanation why this guideline was not followed. With regard to notice we have taken note of the fact that the employees were paid in lieu of notice, but it is noteworthy that the notice anticipated in the guidelines is not the usual contractual or statutory notice. Again we have been given no reason why it was not possible to notify the affected employees in time about the planned sub-letting of the hotel and the possibility that their jobs might be on the line. In short not a single guideline was followed by the respondent and for this reason the retrenchment of the nine applicants on the 31st July 2000 amounted to an unfair dismissal.

The relief sought by the applicants is that they be paid salary from the date of dismissal to the date of judgment. It must be noted that substantively the applicants' dismissal is sustainable. They too do not challenge the validity of the explanation given to them that the hotel was being sub-let to a new operator. It is the procedural side which the respondents have failed to comply with. For this reason we think a token compensation will suffice.

In the premises we made the following award:

(a) The respondent shall pay each of the applicants' three months salary as compensation for their unfair dismissal less the one month's already paid as notice. In the case of the two applicants who have

pas-sed away payment shall be made to the Labour Commissioner in terms of section 78 of the Code.

(b) The respondent shall further pay Malesala Tlaleng Makhetha an amount of M5,338.46 as severance pay.

(c) No order as to costs was made.

THUS DONE AT MASERU THIS 12TH DAY OF SEPTEMBER, 2001.

L.A LETHOBANE
PRESIDENT

G.K. LIETA
MEMBER **I AGREE**

M.S. MAKHASANE
MEMBER **I AGREE**

FOR APPLICANTS: **MR THAMAE OF NURAW**
FOR RESPONDENT: **NO APPEARANCE**