

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 28/00

HELD AT MASERU

IN THE MATTER OF:

SETHO JOSEPH KHOELI

APPLICANT

AND

LEROTHOLI SEKHONYANA

RESPONDENT

JUDGMENT

Applicant herein approached this court for relief in the following terms:

- (a) Payment of M2,215-37 in respect of severance pay.**
- (b) Payment of M5,316-92 in respect of leave not taken.**
- (c) Payment of M1,476-91 in respect of overtime not paid.**

The applicant lodged his Originating Application on the 7th March 2000. The Originating application was posted to the respondent by registered mail in accordance with rule 4 of the Rules of the court. Moreover, the applicant's counsel caused the Originating application to be served on the respondent personally. According to the return of service filed with the court this was done on the 7th March 2000. In our view all indications are that the respondent did receive the Originating Application as is evidenced firstly by the personal service effected on him and secondly the fact that the registered letter sent to him by the Registrar never returned to show that it was unclaimed.

Notwithstanding his receipt of the Originating Application the respondent never filed an Answer in terms of rule 5 of the rules. Accordingly on the 18th July 2001 the applicant's attorneys applied for default judgment in terms of rule 14 of the rules. In terms of the messenger's return of service the application for judgment by default was served on the respondent personally on the 4th September 2001. The default judgment application was scheduled for hearing on the 25th October 2001. The notice of hearing was again sent to the respondent by post. However, on the

date of hearing neither the respondent nor his legal representatives were present. The court accordingly proceeded to hear the default judgment application.

It turned out that the reliefs sought by the applicant are not capable of being granted without the support of evidence. It then became necessary for the applicant to testify. It turned out that prior to issuing court summons the applicant's attorneys had attempted an amicable out of court settlement. In their attempts to resolve the dispute the respondent had offered to pay applicant some M2,160-00 in respect of severance pay and accrued leave. The applicant attached to the Originating Application the respondent's calculations of the amount as annexure "A". In his Originating application paragraph 11 thereof the applicant disputes these calculations and say the method used is unorthodox and not in accordance with the provisions of the Labour Code Order 1992. No evidence was led to support these remarks. However, looking at the figures it is evident that the method employed by respondent is far more beneficial to the applicant than that used by applicant's attorneys.

When it came to severance pay the applicant was asked when he joined the respondent as his employee. The applicant did not know. All he could say was that he had been in the employ of the respondent for four years although he does not know when he started. His Originating application says he started in August 1995 and was terminated in August 1999. While applicant was able to confirm the termination date in evidence, he could not do the same in respect of the starting date. In his calculations (annexure "A" to the Originating Application) the respondent says applicant started to work for him in March 1997 and confirms the year of termination. According to the respondent applicant had worked for him for two years. In his evidence the applicant did not dispute the respondent's suggested date of March 1997. He only said he worked for the respondent since the days of the respondent's late father, Chief E.R. Sekhonyana. Now even in March 1997 Chief Sekhonyana was still there. In the premises we think the applicant has failed to prove his alleged four years service. If anything the applicant has worked for the respondent for two years and this is confirmed by his employer.

With regard to leave the applicant testified that he never took leave in the years that he worked for the respondent. He however did not know how many days of leave he is owed. His counsel was of the view that he was entitled to two days per month thus making a total of twenty-four days per annum. This view could not however, be supported by either the code or the regulations of the respondent as indeed none were availed. In terms of section 120 of the Code, "an employee shall be entitled to one working day's holiday on full pay in respect of each month of continuous employment with the same employer." This makes a total of twelve days per annum. Given that we have already held that in our view applicant's period of service with the respondent is two years, it follows that if in the two years applicant never took leave he has a total of twenty four days to his credit. This much is

confirmed by the respondent in his calculations in annexure “A” of the Originating application.

Coming now to overtime and weekly rest. The applicant conceded when he was asked by one of the members of the court that he is an ardent churchgoer and that on Sundays he used to go to church. He could not specify how many hours of Sundays he worked after going to church. As regards overtime he made a general statement that he worked day and night. No particularity as to the starting hours and finishing hours in each day was furnished. Asked why he did not demand his overtime and worked weekly rest days when they were due at the end of each month they had been worked, he said his employer was always away on business. This is highly improbably. It cannot therefore, possibly be true that in the years that the applicant worked with the respondent they never had occasion to meet as he suggested. The view that we hold is that the applicant’s evidence is insufficient to sustain the claim he is making. Accordingly this claim cannot succeed. In the premises we order that the respondent pays applicant the sum M2,160-00 made up as follows: M960-00 in respect of the twenty four days leave and M1,200-00 as severance pay.

THUS DONE AT MASERU THIS 26TH DAY OF OCTOBER,
2001.

L.A LETHOBANE
PRESIDENT

A.T. KOLOBE
MEMBER

I CONCUR

P.K. LEROTHOLI
MEMBER

I CONCUR

FOR APPLICANT : MR. M. LICHABA
FOR RESPONDENT: