IN THE LABOUR COURT OF LESOTHO

CASE NO LC 27/00

HELD AT MASERU

IN THE MATTER OF:

TANKISO SELLO APPLICANT

AND

LESOTHO BREWING CO. (PTY) LTD RESPONDENT

JUDGMENT

The applicant launched this case on the 3rd March 2000 challenging his retrenchment by the respondent company on the 3rd September 1999. The pleadings were closed and the matter was set down for the 2nd and 3rd October 2001. Mrs. Kotelo for the applicant had sought to have the matter postponed sine die at the end of the first of the two days scheduled for the hearing of the matter. This request was turned down and the matter had to proceed as scheduled on the 3rd October 2001 albeit at 2.30 pm. Before the start of the proceedings on the second day Mrs. Kotelo approached the President in chambers accompanied by Advocate Loubser and stated that she regrets having to withdraw as attorney of record for the applicant. She had already filed the Notice of withdrawal. The applicant then undertook to conduct the case on his own behalf.

At the close of the case for the respondent the parties proceeded to make closing arguments. At the close of the arguments the court made a ruling dismissing the application. The ruling was supported by brief reasons with a promise that the full reasons would follow later. These are now those reasons.

In papers filed of record the applicant challenges the retrenchment on three grounds. Firstly, applicant avers that the respondent rendered his position redundant contrary to its regulations in as much as the respondent terminated applicant who had a longer service and left behind some of its employees with shorter service. Secondly, he averred that his dismissal was effected whilst he was

on annual leave and lastly the letter terminating the applicant was signed by Mr. Marriot who was no longer Managing Director of the respondent. In his oral testimony the applicant added another ground for relief saying that he was dismissed without notification.

With regard to the first averrement namely, that the respondent did not apply LIFO principle in as much as applicant who had a longer service than those who were retained was retrenched, not a shred of evidence was presented to substantiate this claim. It therefore falls away for want of evidence. With regard to the notification the respondent called the Human resources Manager Ms Tente who testified that when the business of the respondent showed signs of decline a renewal Committee was established in which both the Management and the workforce were represented. This committee discussed several options on how to cut costs which included reduction of staff if need arose.

Sometime in July 1999 while the consultative process was going on the respondent's plant was sabotaged. As a result the committee had to debate whether it was advisable to notify the would be retrenchees of the impending retrenchment in advance. In the light of the experience of sabotaging the plant, the committee agreed that the workers should not be given advance notice of the retrenchment; instead they should be paid in lieu thereof. Thus the workers were paid one month salary in lieu of notice plus another one month's salary as ex gratia payment.

It is trite law that the retrenchment guidelines of which advance notice is one, are no more than what that word "guideline" mean. They are not rules of law which must be followed in all situations. In his article The New Guidelines (1985) 6 ILJ 127 Professor Cheadle states that:

> ***"These principles are not absolute rules of law – they are no more than cannons of good industrial relations practice, which change with circumstances... Should an employer deviate from the principles laid down, it will not mean that the employer necessarily acted unreasonably. All that will be required of the employer is to justify the deviation."***

In Gumede and Others .v. Richdens (Pty) Ltd t/a Richdens Foodliner (1984) 5 ILJ 84 at 91 B – C it was held that;

> ***"these guidelines need not necessarily be followed and are only guidelines, but to that extend, they are recommendable in order to promote sound labour relation."***

In NURAW .v. Frasers Lesotho Ltd LC5/00 (unreported) this court upheld the employer's deviation from the advance notice guidelines. The employer had explained that it feared to give workers notice of the retrenchment because in the past the workers had used that period of notice to destroy and steal company

property. We are satisfied that in hoc casu the respondent has satisfactorily explained why it was not possible to give the applicant and the rest of the retrenched workers the advance notice of the retrenchment.

The applicant contended further that his retrenchment was contrary to the regulations because it was effected whilst he was on annual leave. He relied on clause 2.13.5 of the respondent's Grievance and Disciplinary Procedure which provides that;

> ***"Notice of termination of employment may not be given whilst the employee is in an authorised annual or sick leave..."***

It is common cause that the applicant had applied for and was granted leave of absence from 30th August to the 3rd September 1999. He was due to return to work on Monday 6th September 1999. The letters of retrenchment were written and served on the retrenched workers at the close of business on Friday 3rd September 1999.

Since applicant was still on official leave on the 3rd September, he could not be served with his own. He was only served with the same on Monday 6th September 1999 when he arrived at work. The applicant argued that his termination was in contravention of the aforesaid clause 2.13.5. The rule clearly says "notice of termination" may not be given while an employee is on an authorised leave of absence. This is exactly what the respondent avoided doing namely; to serve applicant with the notice of termination while he was on leave. They waited for him to come back to work and only served him with the notice of termination on Monday 6th September 1999, this being his first day at work after leave. We are therefore, of the view that there is no contravention of the rules by the respondent and the applicant's contention in this regard is without merit.

Finally the applicant had pleaded in his Originating Application that his termination letter had been signed by Mr. Marriot who had ceased to be the Managing Director of the respondent, as such he had no power to sign the same. In its Answer the respondent denied this averrement and said that the letter like all others of the retrenched workers had been signed by Mr. Harris the Technical Director who as the Operating Board member had been empowered to sign such letters. In his evidence in chief applicant conceded that the letter had infact been signed by Mr. Harris. In cross examination the applicant admitted on more than one occasion that he had no problem with the fact that it was Mr. Harris who signed his letter of retrenchment. The only things which he said he had a problem with were that he was not notified in advance of the impending retrenchment, and that he was terminated whilst he was on leave contrary to the respondent's code. These are matters on which we have already made a finding.

In order to leave no stone unturned the respondent led the evidence of Ms Tente who testified that Operating Board members have been empowered to dismiss. She

handed in exhibit "B" which shows the categories of senior employees to whom the Managing Director had delegated his powers of dismissal and hiring. Operating Board members are at the top of that list. It was not disputed that Mr. Harris is infact an operating Board member. In the circumstances we found that given the concession made by the applicant and the testimony of Ms Tente there was no basis to interfere with Mr. Harris's power to sign the applicant's termination letter as he did. It was for these reasons that we found that there was no substance in the application and it was accordingly dismissed. No order as to costs was made.

THUS DONE AT MASERU THIS 31ST DAY OF OCTOBER, 2001.

L.A LETHOBANE
PRESIDENT

G.K. LIETA
MEMBER **I CONCUR**

M.S. MAKHASANE
MEMBER **I CONCUR**

FOR APPLICANT : **IN PERSON**
FOR RESPONDENT: **ADV. LOUBSER & ROBERTS**