

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 43/00

HELD AT MASERU

IN THE MATTER OF:

MONICA RAMAROTHOLE

APPLICANT

AND

RURAL SELF-HELP DEVELOPMENT ASSOCIATION

RESPONDENT

JUDGMENT

This is a ruling on the point in limine raised by Mr. Mphalane for the respondent concerning prescription. The applicant in this matter is challenging her dismissal by the respondent association on the 16th September 1998. She is contending that the said dismissal was unfair.

The applicant launched proceedings challenging the dismissal in the High Court on the 8th September 1999; almost a year after her dismissal. On the 20th April 2000, the application was re-issued in this court without any explanation. In their answer the respondents raised a point in limine that the matter has prescribed in terms of section 70(1) of the Labour code Order 1992 which provides as follows:

“(1) A claim for unfair dismissal must be presented to the Labour Court within six months of the termination of the contract of employment of the employee concerned.”

Mr. Mphalane for the respondent contended that the applicant has not even made an application for the condonation of the late filing despite being so woefully out of time. He argued that section 70(1) is couched in mandatory terms as such the court should dismiss the application.

In response Mr. Mosito contended that the matter was first filed in the High Court which later transferred the matter to this court. Using the ratio decidendi in *Lesotho Wholesalers & Catering Workers Union & 33 Others .v. Metcash Lesotho Ltd and Another* LC44/99, he contended that since the matter was transferred and not withdrawn or dismissed by the High Court, this Court has become seized with the matter. He filed the Court Order evidencing that the matter was in fact transferred to this court by Monaphathi J on the 1st November 1999.

It is common cause that when the matter was first filed in the High Court it was already dismissally out of time. No condonation application had been made before the High Court as such the High Court had not condoned the late filing. Mr. Mosito's contention is that he did not apply for condonation because the six months time limit is only applicable to the Labour Court.

Section 25 of the Labour Code vests exclusive jurisdiction in the Labour Court on any matter provided for under the Code. It is common cause that in the High Court the applicant sought to have her dismissal declared unfair. This is a matter provided for under the Code to wit, section 66(2) of the code. It accordingly squarely fell under the jurisdiction of this court not the High Court. The High Court transferred it to this court because it was wrongly before it. For this reason the High Court cannot make this court to be seized with a matter that was irregularly before it; otherwise the wrong doer would be benefitting from his wrongdoing. It is only a matter which was properly and lawfully before the High Court which this court would become seized with once referred to it by the High Court. Furthermore as it was held in *Maluti Mountain Brewery .v. Lesotho Labour Court President and Another* CIV/APN/435/95 the Labour Court does not have jurisdiction to hear a claim that is presented outside the six months time limit unless it condones the late filing. Accordingly, the transfer of the case to this court does not have the effect of vesting the Labour Court with jurisdiction which it otherwise does not have in terms of the Code.

In *Tumo Lehloenya and 62 others .v. LTC* LC20/2000(unreported) this court noted that section 70(2) of the Code vests it with a discretion to condone late filing if it is satisfied that the interests of justice so demand. However, the discretion must be exercised judicially upon good cause shown. The court observed that "the applicants having not applied for condonation this court has no basis upon which to exercise the discretion vested in it by the Code."

The case of *Melane .v. Santam Insurance Co. Ltd* 1962 SA531(A) has always been relied upon by this court as providing factors to be considered in deciding cases of this nature. Those factors are the explanation for the delay, the degree of lateness, the prospects of success and the importance of the case. We have already shown that by virtue of there being no application for condonation the delay has not been explained. But even if it is assumed that the fact that the application first went to the High Court speaks for itself, it is trite law that defective summons do not

interrupt prescription. The fact that the applicants went to a wrong forum means their summons were defective in as much as they were excipiable. To add to this reason their approach to the High Court was itself already out of time.

There is no doubt that applicant's delay of two years is inordinate when weighed against the limit of six months which they have surpassed. Evidence having not been tendered the prospects of success can only be gleaned from the papers filed of record. Applicant claims to have not been given a hearing and yet she has attached annexure "F" which shows she was called to appear before a disciplinary enquiry on the 15th September 1998 to answer a charge of "gross misconduct." She has also attached annexure "g" which is her detailed written response to the charge. She has further attached annexure "H" which is the record of the proceedings. All these are clear evidence that a hearing was held. She complains further that she was not given a properly motivated charge. The correspondence which the applicant has attached starting with annexure "B" shows a detailed correspondence which went on between the applicant and the Managing Director on the issue which finally led to the laying of formal disciplinary charges. Given the nature of the correspondence the applicant was well informed what charge she was going to answer on the 15th September 1998. This is also corroborated by her own written submissions (annexure "g") which she prepared on the 11/09/98 which shows that she fully understood the charge preferred against her. Accordingly we are of the view that the applicant does not have prospects of success on the unfair dismissal claim. Given the time that lapsed before applicant approached the courts one is led to an irresistible inference that the case is not so important to her. It was most probably brought to court as an afterthought.

It is for the above reasons that we are of the view that the applicant's late filing should not be condoned. Accordingly the unfair dismissal claim, to wit prayers 5(1) and (2) of the Originating Application are dismissed. Parties can approach the Registrar for allocation of a date when the claim for terminal benefits can be heard.

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

L.A LETHOBANE
PRESIDENT

S. MAKHASANE

MEMBER

I AGREE

C.T. POOPA

MEMBER

I AGREE

FOR APPLICANT : MR MOSITO
FOR RESPONDENT: MR MPHALANE