

**IN THE LABOUR COURT OF LESOTHO
CASE NO LC 74/00**

HELD AT MASERU

IN THE MATTER OF:

SETUNGOANA LETETE-LETSOELA

APPLICANT

AND

LESOTHO BANK

RESPONDENT

JUDGMENT

This is an application in which the applicant is seeking relief in the following terms:

- (a) Declaring applicant's dismissal unlawful and unfair.**
- (b) Reinstating applicant.**
- (c) Directing respondent to pay applicant arrears of salary from the date of the purported dismissal to the date of judgment.**
- (d) Directing respondent to pay back applicant's money regarding the interest of M10,000-00 she was directed to pay back by the respondent.**
- (e) Directing respondent to pay costs of this application.**
- (f) Granting applicant such further and/or alternative relief.**

At the hearing hereof Ms Mpopo for the applicant pointed out that they were abandoning prayers (b) and (d). Under prayer (f) they sought a new relief that the court directs the respondent to pay applicant her retrenchment package since as at the hearing of this matter the respondent had since been taken over by a new proprietor and all her telling colleagues had been retrenched.

The case arises out of the dismissal of the applicant on the 21st January 1999. The applicant challenged her dismissal in the High Court. On the 7th June 2000 the applicant issued an Originating Application in this court duly accompanied by an application for condonation of the late filing. At the hearing of this matter Mr. Matooane for the respondent indicated that he was not opposing the condonation application. Accordingly Ms Mpopo for the applicant moved that the application be granted as prayed and it was accordingly granted.

The applicants have not drawn the Originating Application strictly in the manner set out in the rules of the court. In compliance with rule 3(f) which requires that the Originating application must contain a clear and concise statement of the material facts on which the applicant relies, they have attached their entire High Court papers, which makes a fairly bulky record. However, reading through the record one comes out with about six grounds on which the applicant is seeking relief. These are found in the applicant's founding affidavit. However, at the hearing hereof the applicant gave oral testimony in which she relied on just one ground namely; that she was discriminated against in that she was not the only teller with the problem for which she was dismissed. Even in the closing arguments those other grounds were never alluded to. In the premises we can safely assume that they have been abandoned.

The applicant was a teller at the respondent bank. Starting around June 1997 she incurred a cash imbalance which she says she could not trace. In testimony she says the difference which she says was a surplus started at around M35,000-00. It accumulated until it reached M587,000-00 in September 1997. She testifies further that she was not the only person with a cash imbalance. The problem was common among all tellers due to the newly installed computer system, she testified.

This may or may not be so, but it appears that the applicant's imbalance in particular was disturbing. In August 1997, she was checked twice, first by her supervisor and then by the internal auditors. They all found a huge imbalance. This led the Branch Manager to set up a committee in September 1997, to investigate the applicant's difference. The committee finally submitted a report with not palatable news about the applicant. Key among the findings were that she had never once balanced her cash ever since she was a teller. Her surpluses disappeared mysteriously. She doctors figures as a result she cannot explain how her differences occurred. She keeps unprocessed vouchers for a long time without any reason why she did not process them. She is unreliable, untrustworthy, careless and negligent and that she is not loyal to her work. There are many more. The Team recommended her transfer from cash department and that she should be charged accordingly.

In October 1997, when she returned from leave, she was relieved of her normal telling duties in order to give her time to trace the difference she had accumulated. The applicant's attitude has always been that the difference is untraceable. It was her view that her difference was a surplus and it must according to procedure be transferred to surplus in tellers' cash account, but this was never done. This was however, not the view held by the Branch Manager. It was as a result of that disagreement that the Branch Manager refused request for the difference to be transferred into surplus in Tellers' Cash Account. He saw it as a shortage. He stated as much in his testimony before the disciplinary committee that he regarded

applicant's cash imbalance as a shortage. (see pages 14 and 17 of the record of the disciplinary hearing.)

The applicant called Mr. Sopeng who was the Regional Manager at the time and who chaired what was called Branch Sweep A Team. By agreement of counsels which was endorsed by the court in terms of rule 11(1)(e) of the Rules of the Court Mr. Sopeng submitted a written statement of his testimony which was handed in court by agreement of both counsels that it constitutes his conclusive and uncontroverted evidence. According to the statement the Management of the Bank established the A Team after it was realised that the bank was not balancing its books. The aim was that the Team goes around all the Branches, suspend all imbalances discovered and train tellers and branch supervisors in balancing their cash. After the completion of the assignment another Team would be established to investigate the suspended imbalances.

The Branch Sweep A Team was duly established in February 1998. It went around the Branches. It did suspend tellers' imbalances "...in either deficiency or surplus in tellers cash as the case may be pending establishment of another team which would look for the differences." (see Sopeng's testimony before the disciplinary committee at p.17). According to the testimony of Mr. Mapesela, the Branch Manager at the Disciplinary Enquiry he was surprised to learn at the time of the Branch Sweep Team that the applicant was balancing. When he enquired from the applicant's supervisor he was informed that the chairman of the A Team had discovered the applicant's difference. When Mr. Mapesela called Mr. Sopeng to find out how the problem was resolved the latter "...revealed that Mrs. Letsoela had produced an Inter-Teller Voucher for M600,000-00 from her handbag and after assisting her to process this voucher she had no more imbalance in her cash." (P15 of the record of the disciplinary hearing). At the disciplinary hearing Mr. Sopeng confirmed that when he got to the applicant the latter gave him a voucher for M600,000-00 and said "....it could not go through because there was no sufficient cash in her cash drawer." (At page 17).

Mr. Sopeng went further to explain that he had created a vault which would facilitate the processing of the M600,000-00 which could not go through. He said further that he treated the M600,000-00 extra ordinarily because he had been given an impression that the teller's balance had erroneously been deleted from the server. What turned out to be the case was that the applicant had approached another teller so that they could create a fictitious Inter-Teller transaction which would imply that there had been exchange of cash between them when no cash actually changed hands. (see evidence of Khojane at p.7). She was charged with this misdemeanor and several others on the 22nd June 1998. There were infact fourteen charges preferred against her. She was found guilty on ten charges and acquitted on only four.

As we indicated earlier, in testimony before this court the applicant challenged only one charge and that is the one relating to the M600,000-00 imbalance. Her contention is that all other tellers' imbalances were suspended except hers. Furthermore no action was subsequently taken against them. This she contends amounts to discrimination.

We are in full agreement with Mr. Matooane's submission that the Branch Sweep A Team was not meant to be an end of the imbalances. Mr. Sopeng has said so in his statement handed in evidence as well as before the disciplinary enquiry. Another Team would still be set up to investigate the imbalances. But as it is abundantly clear from the record, the applicant is herself the cause of the problem she found herself in. Her imbalance was not suspended because she gave the A Team the impression that hers was a special problem of information that had been accidentally deleted. She was as a result found to be balancing. She was not charged with failing to explain the imbalance but with illegally, unprocedurally and fraudulently raising and processing fictitious inter-teller transactions for M600,000-00, "...to enable you to process your unprocessed debit vouchers."

At the hearing the applicant sought to show that it was normal to do the transaction she did. However, all the Managers from those constituting the panel to the Branch Manager and the Regional Manager were adamant that there cannot be inter-teller transaction which does not involve physical cash. In our view therefore, this was a misconduct and the applicant cannot complain when she is disciplined for it. For that matter it seems the fictitious transaction had only been done by her and not the others in the same boat as her. She cannot therefore, call that discrimination.

We have shown that the charges applicant faced were also as a result of the investigations committee's report that she should be disciplined. That report was made in January 1998 (see page 14 of Mapesela's testimony). There is no evidence that the A Team was intended to suspend even cases such as that of the applicant, which were already clearly ready to be proceeded with. In the absence of such evidence the view that we hold is that even before February 1998, when the A Team was established applicant's disciplining was already a foregone conclusion due to her apparent dishonesty. Finally the applicant faced so many charges all of which were serious. Even if we were wrong in the findings we have made, her success in this application would be academic in as much as she would not be capable of getting the reliefs sought in the light of those other charges on which she has been found guilty. In the premises we are of the view that this application ought not to succeed. It is accordingly dismissed. There is no order as to costs.

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

L.A LETHOBANE
PRESIDENT

C.T. POOPA
MEMBER

I AGREE

P.K. LEROTHOLI
MEMBER

I AGREE

FOR APPLICANT : MS MPOPO
FOR RESPONDENT: MR. MATOOANE