IN THE LABOUR COURT OF LESOTHO

CASE NO LC 47/97

HELD AT MASERU

IN THE MATTER OF:

MAMOHLAKOLA LETSATSI (DULY Assisted by her husband)
APPLICANT

AND

J.D. GROUP LTD T/A SCORE 1 FURNISHERS **RESPONDENT**

JUDGMENT

The applicant herein was dismissed on the 15th August 1995, following a disciplinary hearing. She however, says she was verbally told of the dismissal. No dismissal letter was ever issued until this day she avers. She launched these proceedings on the 12th May 1997, approximately two years after the dismissal. In paragraph 3(h) of the Originating Application the applicant sought to make an application for condonation of her late filing of the Originating Application as follows:

> ***"Applicant submits that her claim after the prescribed time(sic) be condoned because from April 1996(sic) to March 1997 respondent's official refused and/or neglected to produce any letter of dismissal nor the record of proceedings."***

In their Answer the respondents took a point in limine that the matter is prescribed and that the applicant has failed to make a condonation application in terms of rule 30 of the rules of the court. At the first hearing on the 16th March 1999 counsels for the parties appeared before the late Mapetla ad hoc President as he then was and agreed that the matter be postponed to enable the applicant to formally answer the respondents' preliminary point. The matter was postponed to the 12th April 1999, when it was again postponed to enable Mr. Maieane for the applicant to file a proper condonation application. The matter was thereafter postponed on another two occasions it still being to enable applicant's counsel to file a condonation application in accordance with rule 30 of the Rules of the Court.

The condonation application was finally filed on the 30th March 2000. It was argued on the 4th December 2001. We must record that this application is referred to as a condonation application because that is what its front page styles it. Substantively it is no condonation application at all. It is infact a reply to the respondent's point in limine that the matter is prescribed. Both in the founding affidavit and in argument before court the applicant's contention is that prescription has

not started to run because she has not been given a letter of dismissal. She contends that prescription as contemplated by the law would start to run from the date she is served with the letter of dismissal.

The respondents contend that the applicant was issued with a letter of termination which was presented with the disciplinary action form and asked to sign the form which informed her that she is summarily dismissed but she refused to sign. Indeed Annexure "A" to the Originating Application is the Disciplinary Action Form referred to. The form shows that the action taken against the applicant is dismissal. At the bottom of the page is a space for the signatures of the chairman, the employee and the representative. Only the chairman has signed. On the space reserved for the signature of the employee is written by hand "did not want to sign." At the very end of the page the following minute is recorded; "employee's signature confirm that he/she has received this FORM whether or not he/she agrees with such action." Clearly therefore, the applicant has denied herself the chance to get the letter she alleges the respondent's officers have not given her.

In any event it is important to note that the Code speaks of a "written statement." (see section 69(1) of the Code). Nowhere does it refer to a letter. In our view that statement can take different forms including, the disciplinary action form the applicant refused to sign. Furthermore, it is significant that the applicant has annexed this form to her Originating Application. This conflicts with her averment that she has not been furnished with the letter and the record of disciplinary action. She has not even explained when and how she secured these records. We can as well conclude that she has had them for quite a while, but because she expected to be written a letter decided to wait until the letter is written. We find no basis in law or in contract for that expectation.

Assuming that it was true that the applicant had no written notification of the dismissal, it seems to us that even then that would be no excuse for the applicant to have not filed her claim timeously in terms of the law. Applicant admits that she was verbally informed that she was dismissed on the 15th August 1995. There is nothing either in the law or in her contract of employment to support the contention that the dismissal is not effective until a letter to that effect is issued. In our view the verbal information effectively terminated the contract and the prescription started to run from that day in terms of section 70(1) of the Code. Accordingly, we are in agreement with the respondents that this matter is time barred. The respondents' point in limine is therefore upheld. 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 : **MR KULUNDU**
FOR RESPONDENTS: **MR. MOLETE**