

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 76/00

HELD AT MASERU

IN THE MATTER OF:

JONASE JONASE

APPLICANT

AND

SECURITY LESOTHO (PTY) LTD.

RESPONDENT

JUDGMENT

Counsels in this matter were informed by the President before the start of the proceedings that it was not possible to have the full panel because the scheduled panellist had taken ill and those who could stand in for him had prior commitments as they were unaware that they might be required to attend. The rules are silent on what should happen in such a situation namely; where there is an incomplete panel right from the start of a case. All parties were desirous to proceed as opposed to the postponement of the matter to another day. Counsels agreed that the court should proceed, incomplete as it were and we were all of the view that where the rules are silent mutual agreement of counsels with the concurrence of the court should suffice. This was the basis upon which we proceeded with an incomplete panel.

This is a case in which the applicant sues his former employer for unfair dismissal. The applicant was dismissed on the 16th June 1999 on the grounds that he was sickly. On the 3rd May 1996 whilst in the course of work guarding a gate at the Katse Junior Camp the applicant was hit with a stone in the head by an unknown assailant. He was hospitalised for more than a month and was assessed as permanently incapacitated by the medical doctor.

After his discharge from hospital he was given another fifty days off by the doctor, at the end of which he returned to work. The respondent says whilst it is true that applicant continued to be employed after the incident he (applicant) "...was no longer performing the sort of tasks he had been employed to execute." The

respondents say they retained him so that they could process his terminal benefits. On the 16th September 1999, the respondent terminated the applicant's contract and paid off his terminal benefits.

The applicant launched these proceedings on the 15th November 2000 challenging the fairness of the termination of his contract on the grounds that he was not afforded a hearing. Furthermore, there was no medical evidence that his condition had deteriorated to the point where he could no longer perform the duties he had been assigned since the injury. The respondent on the other hand was saying it had terminated the applicant on account of operational reasons as such no pre-dismissal hearing was necessary, but the applicant was duly consulted and informed of the situation.

The issue for the determination of the court is crystal clear and that is, was the applicant entitled to a hearing in terms of section 66(4) of the Labour Code Order 1992 (the Code)? It is however, important that before getting into the merits the court examines whether it has the jurisdiction to deal with those merits. In terms of section 70(1) of the Code "a claim for unfair dismissal must be presented to the Labour Court within six months of the termination of the contract of employment..." In casu the applicant was dismissed on the 16th June 1999 and he brought his claim to court on the 15th November 2000. This was one year and five months after the termination of the contract of the applicant.

In terms of section 70(2) of the Code the court may allow presentation of a case outside the six months time limit if it is satisfied that the interests of justice so demand. In the case of *Khotso Sonopo .v. LTC LC67/95* (unreported) this court laid the principle that to enable it to exercise the discretion vested in it by section 70(2) of the Code judicially, a party which is in default must show good cause. This principle has been followed in several other decisions of this court.

The applicant herein duly filed an application for condonation of the late filing in terms of rule 30 of the Rules of the Court, supported by a founding affidavit. The application was scheduled to be heard on the 7th July 2000 at 9.30 am. However, on that day Messrs Mosito and Sefako agreed that the matter be postponed to a date to be arranged with the Registrar. It was never again set down. Even on the day of the hearing of the main application, parties went straight into the merits and nothing was said about the application to condone the late filing. This only came to the attention of the court at the time of the writing of this judgment.

We are live to the fact that this is a court of equity. But that equity must be evenly applied to the parties before the court. An application cannot be granted by the court unless the court has been moved to grant it. In casu we considered whether the two counsels could be called to address the court on this application. This gives rise to a possible legitimate claim of unfair advantage. The applicant is *litis dominus* and as such is under the obligation to put before the court all relevant

material to support his case. Where he has failed to do so whether as a result of negligence, oversight or anything, the respondent is entitled to judgment. To do as we initially pondered namely; recall counsels for further addresses, may quite correctly be interpreted as giving a party who has failed to make out a case in the first place an unfair advantage to the prejudice of the party who would be entitled to judgment in the circumstances. We do not believe that that would be equitable.

It is now trite law that where the Labour Court has not exercised its discretion to condone the late filing of an Originating Application, the court does not have the jurisdiction to deal with that case. (see the judgment of Ramodibedi J in Lesotho Brewing co. .v. Lesotho Labour Court President CIV/APN/435/95 at p.22). In casu the court has not and could not exercise its discretion to condone the late filing for the reasons hereinbefore mentioned. It goes without saying therefore, that the court lacks the jurisdiction to entertain the merits of this case in as much as the Originating Application was presented outside the six months prescribed by section 70(1) of the Code. This application is therefore dismissed on the grounds of lack of jurisdiction. There is no order as to costs.

THUS DONE AT MASERU THIS 13TH DAY OF
DECEMBER, 2001.

L.A LETHOBANE
PRESIDENT

A.T. KOLOBE
MEMBER

I AGREE

FOR APPLICANT : MR NTLHOKI
FOR RESPONDENT: MR. KULUNDU