

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 64/99

HELD AT MASERU

IN THE MATTER OF:

LIMPHO TSOOANYANE

APPLICANT

AND

STANDARD BANK

RESPONDENT

JUDGMENT

In this application, the applicant is seeking that his dismissal be declared null and void and that he be reinstated in his position with payment of arrears of salary as if there was no dismissal. The grounds on which this relief is based are contained in paragraph 4 of the Originating Application and we will come back to them later in this judgment.

Evidence adduced shows that applicant was employed in the computer centre of the respondent bank as a senior clerk. On the 10th April 1999 and on the 17th May 1999 respectively, he presented cheques which are annexed to the supporting affidavit of Matsepo Koloko as annexures “SB1” and “SB2” to Matsepo Koloko who was the respondent’s foreign exchange teller. The cheques were accepted by the said Matsepo and paid. The cheques were crossed and marked “Not negotiable” and “Not transferable” and payable to the Clerk of the Court Maseru.

According to the uncontroverted evidence of DW1 Mahao Matete, the said cheques belonged to the lady by the name of Marethabile. The money was the maintenance proceeds payable to the said Marethabile by the South African mine where her husband worked. It was paid to her through the Clerk of Court in Maseru. When she failed to receive the cheques for several months, she went back to the mine which informed her that all the cheques had been sent and they were being encashed at the Standard Bank in Maseru. They gave her copies of “SB1” and “SB2” as proof. It was when she brought the two cheques to the attention of the bank that the bank learned that there had been payment of fraudulently obtained

cheques by its Maseru branch. Both the applicant and Matsepo were disciplined and dismissed.

The applicant has approached this court challenging the fairness of his dismissal on the grounds that;

- (a) He merely assisted the bearer of the cheques by confirming that he knows her.**
- (b) It was never proved that he acted in concert with the bearer to defraud the bank.**
- (c) It was never proved that he had the necessary intention to defraud the bank.**
- (d) There was nothing in evidence that the bank incurred any loss as a result of the misconduct.**

Testifying in support of his claim applicant stated that a lady by the name of Moliehi Mphafi brought the cheques to him saying that the owner thereof did not have an account with the bank. He avers that the lady works at the office of the Clerk of Court at the Magistrate Court. Since the lady was known to him, he testified, he explained to the teller serving her who she was and where she worked. From there applicant says he left everything with the teller and it is his case that it is the teller who should shoulder the blame.

As at the hearing of this case, the teller Matsepo Koloko had since passed away, the court was told. However, before her death she had made a sworn affidavit which was filed together with respondent's Answer. In that affidavit she has deposed that the applicant had come with the two cheques on the said dates claiming that they "....belonged to a brother of his who received cheques from the mine which he had sued...."(See paragraph 4 of the supporting affidavit). He had then asked her to cash them for him. Matsepo deposed further that the applicant had undertaken to her that he would take the responsibility if a problem arose. She said further that she had however, asked applicant to advise his brother to open an account with the bank where his cheques could be cashed.

Applicant's testimony is not at all convincing. The teller who helped him to encash the cheques has been consistent from the time when she was asked by DW1 who was her immediate supervisor to the time of testifying before the disciplinary enquiry that the applicant came with the cheques alone claiming to assist his brother. It is only himself (applicant) who has been taking refuge behind the elusive Moliehi who never appeared anywhere to assist applicant despite applicant himself being in trouble because he "assisted" her. We are of the view that Moliehi was manufactured by the applicant to lend credence to the defence that there was a bearer of the cheque whom applicant merely assisted by identifying.

The affidavit of Matsepo is clear that there was no third person in the presentation of the cheques. It was solely the applicant who presented the cheques. Indeed applicant admitted as much when he felt the pressure of cross-examination, that he infact is the one who presented the cheques to the teller. He said he thereafter gave the money to Moliehi. Now this cannot help the applicant's case. The cheque was presented by him not Moliehi. After all if he was serious about this he could have brought Moliehi to confirm that he gave her the money. On this score alone the respondent was entitled to take the harshest disciplinary measure possible against the applicant and that measure is dismissal.

That the applicant had no intention to defraud the bank is something that can be established by his bona fides in dealing with the cheques. The evidence before us and certainly before the respondent's disciplinary panel did not show that applicant's presentation of the cheques was bona fide. If that was so he would not have invented stories about a brother who has successfully sued a mine or Moliehi. Infact the cheques spoke for themselves. Payable to a non-natural person, crossed and not transferable. A person working in the bank cannot claim as applicant sought to have us believe that he does not know what a crossed cheque implies, more so when it is payable to an institution or office. Even if he has worked in the computer centre for the whole of his employment period in the bank we do not believe that he does not know how a cheque such as those he presented should be treated. The view that we hold is that the applicant had the requisite intention to defraud the bank and he did.

It was never necessary for the respondent to prove that he acted in concert. The fact is he presented the cheques and his culpability arises out of that. The bank does not need to prove loss for the applicant's misconduct to be actionable. The mere presentation of the cheque in the manner that he did is a serious misconduct that makes applicant an inappropriate employee in the banking business or any sector whose nature of business is centered on trust.

In evidence and argument applicant pursued a point that he was dismissed on the basis of a charge that was withdrawn. This argument must be arising out of improper reading of the charges preferred against the applicant. There were four charges laid against the applicant. Charges 3 and 4 duplicated each other in substance. But the wording was different. The respondent withdrew charge 3 so that only charge 4 remained. Applicant understood this to mean that both are withdrawn but this was not so. Accordingly, he was properly convicted of charge 4 which had remained. In the premises we find that there is no merit in this application and it is therefore dismissed. There is no order as to costs.

THUS DONE AT MASERU THIS 9TH DAY OF
AUGUST, 2001.

L.A LETHOBANE
PRESIDENT

C.T. POOPA
MEMBER

I AGREE

M.S. MAKHASANE
MEMBER

I AGREE

FOR APPLICANT : MS MAJENG - MPOPO
FOR RESPONDENT: MS SEPHOMOLO