

**IN THE LABOUR COURT OF LESOTHO**

**CASE NO LC 20/01**

**CASE NO LC 21/01**

**HELD AT MASERU**

**IN THE MATTER OF:**

**LABOUR COMMISSIONER**

**APPLICANT**

**AND**

**FISH EAGLE SECURITY (PTY) LTD.**

**RESPONDENT**

**JUDGMENT**

**In these applications the Labour Commissioner sues in terms of section 16(b) of the Labour Code Order 1992 (the Code) which empowers him to carry on and institute civil proceedings on behalf of any employee. LC21/01 was first heard on the 11<sup>th</sup> March 2001 while LC20/01 was heard on the 30<sup>th</sup> January 2002. Both cases had at the close of the complainants' testimonies been postponed sine die. Both cases were rescheduled for hearing on the 1<sup>st</sup> October 2002. On that day it turned out that the learned Management Panellist Mr. Poopa was unable to attend. The court resolved to proceed in terms of rule 25(2) which**

permits the remaining members to finalize the case if they constitute the majority of the original panel.

It also turned out that the respondent and their legal representatives were not present. At 11.15am the court decided to proceed in terms of rule 16 of the rules which authorises the court to proceed with the hearing in the absence of a party who fails to attend court on the date set for the hearing of a matter.

The case of Tlali Taolana who is the complainant in LC20/01 is that he started to work for the respondent on the 6<sup>th</sup> of March 1999. He resigned on the 30<sup>th</sup> April 1999 after the respondent had failed to pay him for both of the two months that he had worked. He was subsequently paid M300-00 in May 1999 which he says was far less than what he was to get for the two months, given that he ought to have been paid at least M599-00 per month which was the reigning minimum wage for security guards at the time. Applicant accordingly claims M898-00 representing his two months salary less the M300-00 that he was paid in May 1999.

The case of Khabele Tsilo, complainant in LC21/01 is that he started to work for the respondent on the 16<sup>th</sup> January 1997 earning M540-00 per month. He was dismissed in April 1999 for unauthorised absence after being absent from work for a week, allegedly because he was sick. Complainant claims payment for leave which he says he never took, underpayments for four months as he says he was paid M540-00 instead of M559-00 statutory minimum. Complainant also claims payment for the month of March 1999 which he says he was not paid despite having worked for the month and one month's salary in lieu of notice.

Mr. Tsilo was asked under cross-examination by Mr. Monyako if he produced any proof of his illness when he returned to work. He said he did, but the medical certificate was taken away by one Tsemame who never considered it. He was asked if he informed his legal representative about this fact he said he did. It was then put to him, correctly in our view that the lawyer would have raised it in papers or even canvassed it in evidence. The view that we hold is that the complainant was fabricating when he said he produced proof of his illness to the employer. The truth is that he never informed his

employer about his alleged illness. Consequently the respondent was entitled to dismiss him without notice.

With regard to the underpayments the respondent's answer which was put to the witnesses during cross-examination is that each of the complainants signed an agreement at the time that he was employed that he would be paid M540-00 per month and he accepted it. This argument is negated by section 58(1) of the Code which provides:

*“If a contract between an employee to whom a wages order applies and his or her employer provides for the payment of a wage lower than the statutory minimum wage or does not provide for the conditions of employment prescribed in a wages order, it shall have effect as if the statutory minimum wage were substituted for that lower wage and as if the prescribed conditions of employment were inserted.”*

As for the other claims relating to leave in respect of Tlali Taolane; and the outstanding monthly salary for both complainants, they were not challenged by the respondent during cross-examination of the witnesses. It is however, worth noting that Tlali Taolane's claim is also inclusive of the first five days of March which he did not work, which is wrong. In the premises we award the complainants prayers as follows:

**Tlali Taolane**

The respondent shall pay the complainant the amount claimed less the five days of March that he did not work.

**Khabele Tsilo**

The complainant's prayers are granted as prayed with the exception of prayer (d) relating to notice which is refused.

All payments are to be made within 30 days of the making of this award.

THUS DONE AT MASERU THIS 2ND DAY OF OCTOBER,  
2002.

L.A LETHOBANE  
PRESIDENT

P.K. LEROTHOLI  
MEMBER

I AGREE

FOR APPLICANT :  
FOR RESPONDENTS:

MR HLALELE  
MR MONYAKO