

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 7/99

HELD AT MASERU

IN THE MATTER OF:

THABANG KHOASE

APPLICANT

AND

CARE - LESOTHO

RESPONDENT

## JUDGMENT

**The applicant launched the present proceedings on the 30<sup>th</sup> March 1999. The proceedings followed the summary dismissal of the applicant from the employ of the respondent on the 18<sup>th</sup> February 1999. The applicant then filed the present application seeking an order in the following terms:**

- (a) An order declaring the summary dismissal of the applicant as null and void;**
- (b) Payment of the salary from the date of purported dismissal;**
- (c) Costs of suit;**
- (d) Further and/or alternative relief.**

The matter was heard on the 4<sup>th</sup>, 23<sup>rd</sup> and 30<sup>th</sup> July 2002. On the 30<sup>th</sup> the management panellist Mr. Kolobe failed to turn up and by agreement with counsels the matter was proceeded with in terms of Rule 25(2) of the Rules of the Court. At the close of the arguments judgment was reserved.

The facts are briefly that the applicant was dismissed by the respondent for allegedly abusing and misusing CARE's medical reimbursement policy. Sometime in January 1999 the applicant consulted Dr. Sello at Speedy complex. According to his evidence after the examination, Dr. Sello prescribed him medication for which he paid M550-00. He was issued a receipt for this amount and was also given a statement of account for the same amount. Dr. Sello allegedly told him that if his condition did not improve she would get him alternative medication in Bloemfontein.

In terms of CARE's medical aid scheme such expenses are reimbursable to an employee who has incurred them upon production of a receipt and a statement of account. On the 29<sup>th</sup> January the applicant duly applied for reimbursement of the expenses for which he was duly refunded. It is applicant's evidence that about three days later he was called by one of his seniors at work who said he should call Dr. Sello. When he called her she told him to come and collect another medication and pay for it. He allegedly told her that he had not yet finished the medication she had previously given him. She allegedly told him that she had already bought the medication so the applicant must come and fetch them. Applicant allegedly insisted he could not accept another medication before he finished that he was taking.

Applicant testifies further that he thereafter found himself being called by his seniors one by one telling him that Dr. Sello says he had not paid her. He in turn told them that he had paid. The management allegedly told him to go and pay in the interest of peace. One of the supervisors even lent him money so that he could go and pay but he took the money and told the supervisor he would not use it to pay the doctor because he did not owe her. When he refused to pay the Doctor he was dismissed from the employ of the respondent, he testified.

The respondent's version which was piloted by Dr. Sello herself is that when applicant got to her he told her that he worked for CARE LESOTHO which has a medical aid scheme. He said he did not have money for the consultation, but he would have money from the CARE scheme when it refunds him the costs of the consultation and the medication. He would then come back the same afternoon and pay. Since he could only be able to claim with a receipt he asked for a receipt as though he had paid the required amount. The Doctor says even though she knew it was unusual to issue a receipt without actual payment, she issued applicant with it, because she trusted him and the organisation which he said he worked for.

The applicant did not however, come back as promised, whereupon Doctor Sello phoned CARE to make them aware of the problem she had with their employee – applicant. She made several calls and was speaking to different people. She was later advised to write a letter which she did on the 4<sup>th</sup> March. The applicant eventually came but only paid M450-00 leaving a balance of M100-00 which is still owing to date. She denied ever talking to applicant directly on the phone. She further denied calling applicant to come and pick up another medication and added that she could not promise him another medication before check up. What she had said to the applicant was that when he finished the prescribed medication he should come for a check up.

One of the seniors whom Dr. Sello spoke to on the phone about the applicant, Mr. Ronald Malefetse testified. His testimony was that Doctor Sello whom he did not know, phoned and said he should talk to the applicant and tell him to come and pay her. He testified that he talked to the applicant who told him that he had consulted Doctor Sello and that there is money that he needed to go and pay. The Doctor phoned again still requesting him to tell Thabang (the applicant) to go and pay her. When he again talked to him about the money he was owing the Doctor, the applicant again agreed that he owed her. Mr. Malefetse testified that he urged him to go and pay.

Mr. Malefetse's evidence corroborates the answer of the respondent in this matter which has further been corroborated by the verifying affidavits of the Senior Administrator Mr. Makara, the Project Manager Mrs. Mary Myaya, the Country representative Mr. Steven

**Zodrow and that of the Event Manager – Mr. Malefetse himself. According to the answer as verified by the various affidavits, Dr. Sello phoned Mr. Makara to tell him that she had not been paid M550-00 by the applicant. Mr. Makara instructed the applicant to settle the account and he agreed. Mr. Makara received a second call from Dr. Sello some day(s) later complaining that she had still not been paid by the applicant. When Mr. Makara approached the applicant about Dr. Sello’s complaint he promised to immediately attend to the matter and settle the account.**

**On the 4<sup>th</sup> February Dr. Sello wrote Annexure “E” to the Answer, formally lodging a complaint against the applicant. The letter resulted in the Project Manager and the Country representative discussing the matter after which Mrs. Myaya the Project Manager discussed the matter with the applicant. The latter assured her that he had paid the sum of M490-00 to Dr. Sello. At the instruction of the Country Representative the Project Manager enquired from Dr. Sello if she had received the M490-00 allegedly paid by the applicant. She discovered that no such payment had been made.**

**On Friday 5<sup>th</sup> February 1999 the Project Manager gave the applicant an ultimatum instructing him to pay the sum of M550-00 to Dr. Sello by Monday 8<sup>th</sup> February and warned him of severe consequences that would follow if the instruction is not heeded. On Monday 9<sup>th</sup> February Mrs. Myaya met with applicant to discuss the payment of the account. The applicant asked for further time until Tuesday 9<sup>th</sup> at 4.00pm to settle the account. On the 10<sup>th</sup> the applicant said he had settled the account when he was asked by Mrs. Myaya. But when Mrs. Myaya enquired from Dr. Sello she found that the applicant had only paid M450-00. On the 11<sup>th</sup> February the Country Representative held a meeting with applicant and the Project Manager at which he told applicant that due to the dishonest nature of his recent conduct in regard to the settlement of the medical account and the fact that he lied to his superiors he was summarily being dismissed from the services of the respondent.**

**A cursory look at the evidence clearly shows where the truth lies between the two versions. If anything the applicant’s version is a clear fabrication, while the respondents’ version is consistent and is in many**

respects corroborated by the applicant's conduct. Firstly, when she was asked whether she knew the applicant, Dr. Sello recalled the events involving the applicant, but she said she did not know him and she could not even say if he was present in court. The applicant himself said he was visiting Dr. Sello's surgery for the first time. The applicant proffered no possible explanation why this total stranger would want to implicate him in a manner that would clearly lead in him losing his job.

Dr. Sello impressed us as an honest and straightforward witness. She was honest enough to admit that applicant later paid her M450-00 and that he never paid the balance of M100-00 which she said she has written off. On the contrary the applicant's story is clearly coloured with lies, and inconsistencies. He says he was first called by the Senior Administrator. According to his evidence the Senior Administrator only said he should call Dr. Sello. Now Dr. Sello denies ever telephonically talking to the applicant and we have no reason to disbelieve her in this regard. The Senior Administrator's version which we believe is that he asked the applicant about the money owing to Dr. Sello's surgery. This version is corroborated by implication by the next level of applicant's testimony when he says, thereafter he was called by his seniors one by one enquiring about Dr. Sello's money. This clearly shows that Mr. Makara had asked him about the money owing to Dr. Sello as opposed to saying he should phone her. Indeed he agreed under cross-examination that Mr. Makara, Mr. Malefetse and Mrs. Myaya approached him asking him about Dr. Sello's money.

His version that Dr. Sello had said he should go and fetch new medication and pay for it does not seem to have been advanced to any of the seniors who asked him about the money. His own testimony is silent about whether he told any of those seniors about this anomaly. Indeed none of them mention it. Quite clearly it is a newly manufactured story which was intended to mislead this court. Dr. Sello's explanation that she would never call applicant to come and get another medication without having been to a check-up is consistent with good sense and ethical medical approach. Applicant's version on the other hand directly conflicts with elementary medical practice that a Doctor does not prescribe medication to a patient that they have not examined. As further proof of his untruthfulness, when he was asked

**under corss-examination to confirm his testimony that he said Dr. Sello said he should go and collect another medication he denied and said she only said he must go and pay for it. He had infact said it on at least two occasions in his evidence in chief that Dr. Sello had said to him on the phone that he should come and fetch medication.**

**The evidence of all the seniors that the applicant admits had asked him about Dr. Sello's money is that he admitted owing the money and even promised to settle the account. Even if it may be said their testimony was not tested by cross-examination in as much as the court is relying on their affidavits, that of Mr. Ronald Malefetse was oral and he was not shaken in the slightest on his testimony that the applicant admitted owing the Doctor some money. This evidence of Mr. Malefetse is made more reliable by the fact that he was the one who advanced applicant with M650-00 so that he could resolve his financial difficulties including the settlement of Dr. Sello's account. Such a witness would have no reason to lie about the applicant having gone out of his way to try to help him to solve the financial problem he was facing.**

**In his Originating Application the applicant had raised the contention that his dismissal was unfair because the respondent had relied on the uncorroborated evidence of Dr. Sello. This contention cannot hold water because the accepted evidence before the court is that when he was asked by the members of management about the money, the applicant admitted he knew about it. On a number of other occasions he even lied that he had paid it when he had either not paid at all (as it was the case on 5<sup>th</sup> February 1999 when he purported to have paid M490-00) or he had only paid part of the money i.e. M450-00 which was paid only around the 10<sup>th</sup> March 1999. Accordingly, the respondent relied on applicant's own admission and untruthfulness as well.**

**The applicant's further contention was that he was not given an opportunity to be heard. Applicant never advanced any testimony in chief to support this claim. However, he was asked by Mr. Malebanye during cross-examination if management confronted him about the money allegedly owed by him to Dr. Sello he agreed they did. He was further asked if having been told what Doctor Sello's complaint was, he was afforded the opportunity to state his side of the story. His answer was a category, "yes, and I stated my side." The contention that**

applicant was not afforded an opportunity to defend himself is therefore a baseless afterthought.

Finally, Mr. Thabane for the applicant contended that applicant's summary dismissal is contrary to the Code because the Code does not provide for summary dismissal. The rule is that what is not prohibited is, allowed unless it clearly offends good morals, and reason. Accordingly, this argument must fall away. In the premises this matter falls to be dismissed and it is accordingly dismissed with costs.

THUS DONE AT MASERU THIS 10TH DAY OF OCTOBER,  
2002.

**L.A LETHOBANE**  
**IPRESIDENT**

**M. MAKHETHA**  
**MEMBER**

**I AGREE**

**FOR APPLICANT :**  
**FOR RESPONDENT:**

**MR THABANE**  
**MR MALEBANYE**