

IN THE LABOUR COURT OF LESOTHO

CASE NO LC 88/00

HELD AT MASERU

IN THE MATTER OF:

KENEUOE MATSIELI & OTHERS

APPLICANT

AND

FAHHIDA CASH AND CARRY

RESPONDENT

JUDGMENT

The eight applicants launched these proceedings with the assistance of their union, National Union of Retail And Allied Workers (NURAW) on the 26th July 2000. They were seeking an order declaring that their dismissals are contrary to the Labour Code Order 1992 (the code) and that they be reinstated in their jobs. The grounds on which the applicants sought relief were that they had committed no misconducts and that they had not been afforded a hearing in terms of section 66 (4) of the code.

In their answer the respondents averred in answer to the allegations that “written reasons have been given and proper hearings were conducted on the conduct of the applicants”. At the hearing hereof only four applicants testified. The respondent led the evidence of the Personnel Manager. At the close of the trial, the court pronounced the judgement but reserved the full reasons for the judgement.

In the course of the pronouncement of the ruling, Mr. Putsoane, realizing that the judgement concerned only four applicants' rose to record that the judgement should cover all applicants because he had recorded that the evidence of the four complainants represented the rest of the applicants. The court rejected that intervention on two grounds. Firstly, the record that could be relied upon was only the written record as the Recorder who had taped the proceedings on the material date was not present, as such the tapes could not be located. The record of all the three Presiding Officers did not reflect any such averment being made by Mr. Putsoane. Secondly, even if he had said so we are of the view that all the witnesses had to be tested on whether they had in fact not been given a hearing and whether there were no reasons for their dismissal because the applicants had not been dismissed in identical circumstances. For that reason the present judgment concerns only the four applicants who gave evidence namely PW1 – Keneuoe Matsieli, PW2 – Teboho Rapula, PW3 – Moeketsi Molise and PW4 – Lichaba Moesa.

With the exception of PW4- Lichaba Moesa, the respondent admits that all the other three applicants were dismissed without being afforded an opportunity to defend themselves. The case of the respondent as put to the witnesses under cross-examination is that there were no accusations levelled against them as such there was no way in which they could be called upon to defend themselves. This also amounts to an admission that the three workers were dismissed for no fault on their part. Section 66 (1) of the Code provides that *“an employee shall not be dismissed, whether adequate notice is given or not, unless there is a valid reason for the termination of employment...”*.

The respondent had sought to show that the employees had not been dismissed but they were terminated in terms of Section 63 of the Code by affording them the requisite notices in terms of the law. This argument lost sight of Section 68 (a) of the Code which provides inter alia that dismissal includes *“termination of employment on the initiative of the employer”*. Accordingly the applicants' termination amounted to a dismissal which ought to have complied with Section 66 (1) and (4) in that there ought to have been a reason for it and it ought to have been preceded by a hearing. It follows therefore, that the dismissal of the three complainants was both substantively and procedural unfair.

As for the fourth applicant Lichaba Moesa he clearly showed in his evidence that not only was there a reason for his dismissal but he was also given a hearing before that dismissal by the Personnel Manager, Mr. Jonathan. The Personnel Manager also said as much in his testimony for the defence that while admitting that the other three were not heard, the fourth applicant was heard and he failed to clear himself of the allegation against him. There was accordingly no unfairness in the dismissal of PW4. In the circumstances the court ruled in favour of the three applicants namely Keneuoe Matsieli, Teboho Rapula and Moeketsi Molise while it dismissed Lichaba Moesa's application.

The applicants had sought reinstatement. It became apparent that the respondent clearly no longer liked to work with the applicants as it is shown by respondent's termination of their contracts without any reason. The respondent is a private company as such it would be inappropriate to impose the applicants on them if they no longer liked to work with them. However, the respondent must compensate the applicants in lieu of their desired reinstatement. In all the circumstances of this case we came to the conclusion that six months salary for each of the three successful applicants would adequately compensate them for the unfair dismissal. It is accordingly so ordered and payment must be made with thirty days from the date of this judgment. The cost were awarded to the applicants.

**THUS DONE AT MASERU THIS 29H DAY OF NOVEMBER,
2002.**

**L.A LETHOBANE
PRESIDENT**

C.T. POOPA

MEMBER

I CONCUR

P.K. LEROTHOLI

MEMBER

I CONCUR

FOR APPLICANTS :

MR. PUTSOANE

FOR RESPONDENT:

MR. CHOBOKOANE