**IN THE LABOUR COURT OF LESOTHO**

**CASE NO LC 35/00**

**HELD AT MASERU**

**IN THE MATTER OF:**

**CHABELI KHOMALI** **APPLICANT**

**AND**

**MASERU CITY COUNCIL** **RESPONDENT**

## JUDGMENT

This matter was finally disposed of by only two members in terms of Rule 25 (2) of the rules of this court after it became impracticable for the Honourable Member Mr. Kolobe to remain in attendance up to the end. This position was duly put to counsel on both sides who also agreed that the court constitutes itself in terms of Rule 25 (2) aforesaid.

The applicant herein first instituted this action in the High Court of Lesotho. It was later by order of court transferred to this court. At the time of the launching of the originating application the six months period within which claims for unfair dismissals must be presented to the Labour Court had already lapsed. Consequently the applicant applied for condonation of the late filing which was duly granted unopposed on the 17th May, 2002.

Following his dismissal from the respondent's employ the applicant filed an application as already said first in the High Court and later in this court

challenging his dismissal on the grounds that he was not dismissed by an appropriate authority and that he was not furnished with the reasons for dismissal. At a later stage the applicant amended his ground for relief by adding a new ground to the effect that the disciplinary committee was irregularly constituted in as much as the supervisor who laid the charges against him was also a member of the said committee.

In his originating application as amplified by his founding affidavit which he had made in support of the High Court application, the applicant avers that he was employed by the Minister of Home Affairs as such he can only be dismissed by the Minister. His dismissal is improper because he has been dismissed by the Town Clerk, he avers. In evidence the applicant changed all that and said in terms of Rule 4.4.8 of the Disciplinary Code it is the disciplinary committee that had the power to dismiss him. Applicant also sought to sneak in a new ground based on Rule 4.4.9 saying that the decision of the committee ought to be signed by all the memberss and made available to the employee and that this was not done by the disciplinary committee.

In cross-examination the applicant conceded that his story regarding the correct repository of power in respect of his dismissal has changed. He however, did not say why this was so and which of the two versions the court should believe. We are indeed at a loss because both versions have been deposed to under oath and they conflict materially. This is a clear demonstration that the applicant has embarked on a fishing expedition to found a case against the respondent. Under cross-examination the applicant conceded that he was employed by the Maseru City Council not the Minister. Accordingly , to the extent that he sought to argue that the right to dismiss him vested in the Minister because he is one who employed him, he (applicant) was clearly wrong.

As regards the contention that it was infact the disciplinary committee which had the power to dismiss and that its decision ought to have been signed by all the members, this was clearly a new case which the applicant was trying to build through the evidence. Authorities abound that parties must stand and fall by their pleadings. We were in this regard referred by Mr. Phafane in his Heads of Arguments to Beck's Theory and Principles of Pleadings in Civil Actions at p.32 and the Court of Appeal decision in NEC of the LNOC & Others .V. Paul Motlatsi Morolong C. of A. (CIV)

No. 26 of 2001 at p.12 (unreported). We are in full agreement with those authorities and we add that, if the applicant had an intention to change his story or indeed add new grounds for relief, he should have followed the procedures laid in the rules for amendment of pleadings.

The applicant further contended that he was not furnished with the reasons for dismissal. He testified that the letter of dismissal did not give him the reasons for the dismissal as it alleged and that he wrote to the Town Clerk to tell him so but he never got a reply. It is common cause that the applicant received his letter of dismissal on the 30th November, 1998. He was asked under cross-examination if he never received any document (s) or letter from the respondent after the 30th November, 1998. He was very categoric that he never received any document from respondent after that date. It was put to him that after he complained that the letter of dismissal had no reasons for dismissal, arrangements were made to deliver him those reasons but he still denied. He was shown the respondent's mail delivery register which was handed in as an exhibit, (Exhibit "ID1"). It showed that on the 3rd December the applicant received a document from the respondent which he had signed for. The applicant, while initially saying the signature looked like his, eventually said infact that was not his signature.

The respondent called the messenger who delivered mail, Teboho Shale. He testified that as a messenger he had a register which he used to deliver letters. Addressees signed their names in that register as proof of receipt of their letters. He was shown the register (exhibit "ID1") and he identified it as the register he used when he delivered letters. When he was shown the entry of 3rd December, 1998 against which the applicant had signed to acknowledge receipt, he commented that he recalls Mr. Khomari being served with the letter in his presence in the Personnel Office by the Personnel Manager who is since deceased. He testified that the applicant was shown that the letter had an attachment and he accepted it and even signed for it.

This evidence was criticized on two main grounds. Firstly, that even if the applicant may have signed for a document on the 3rd December, 1998 the register does not show what it was that he signed for. This is a valid critisism of the register's shortcoming, but not of the witness's testimony which actually makes it clear that it was a letter with an attachment that

applicant signed for. In short the testimony sheds light on the inadequacy of the register.

Secondly, it was contended that the register was an after thought because the respondents did not raise it as a defence in the High Court proceedings. In our view this would best be viewed as an oversight on the part of the respondents than as an after thought, if the totality of the respondent's case is taken into account. The respondent would have no reason to follow all the time consuming procedures for disciplinary action against the applicant, only to deny him the reasons for dismissing him. On the contrary the applicant would have all the reason to pretend that he did not get the reasons in the mistaken believe that that may be a basis for overturning the dismissal. We believe the respondents version that the applicant has been furnished with the reasons for his dismissal. Accordingly there are no basis for this court's intervention.

In terms of the amendment to the originating application, the applicant contends that his supervisor who had preferred charges against him was a judge in his own cause. In this regard the applicant relies on the record of the proceedings which shows that the applicant's supervisor was indeed a member of the disciplinary committee. The respondents strongly deny this and they called Mr. Tsele Chakela who was the applicant's supervisor to come and deny that he was a member of the disciplinary panel. He said he only went in to give evidence and was thereafter excused. He testified that it was a mistake that the report of the disciplinary committee reflects him as a member of the committee. He testified further that he became aware at the time of filing of the High Court papers that the report reflected him as a member of the committee, and that he talked to the people who were in the committee to rectify that, but by that time papers had already been filed in court. We are not persuaded by this evidence. It is too evasive to be true. The witness was quite clearly a member of the committee. If he was included by mistake, such a mistake could not have passed all the stages at the respondent's organisations right up to the level of the court. The respondents are clearly fabricating when they try to deny that Mr. Chakela was not a member of the committee that decided on applicant's fault.

That said, we are not persuaded that Mr. Chakela's membership of that committee in any way vitiated the fairness of the proceedings. On the contrary it is very much in accordance with the rules of the respondent that

he was part of that committee. (See Rule 6 of the Revised Disciplinary Policy and Code of 1996 of the Respondent). For this reasons there is no merit in the contention that Mr. Chakela's membership of the committee vitiated the proceedings. In the circumstances this application ought not to succeed. It is accordingly dismissed with costs.

**THUS DONE AT MASERU THIS 3rd DAY OF DECEMBER, 2002.**

**L.A LETHOBANE**
**PRESIDENT**

**M. MAKHETHA**
**MEMBER** **I CONCUR**

**FOR APPLICANT :** **MR MDA**
**FOR RESPONDENT:** **MR PHAFANE**