IN THE LABOUR COURT OF LESOTHO

CASE NO LC 12/01

HELD AT MASERU

IN THE MATTER OF:

ALEXIS MOSALA APPLICANT

AND

MASERU SUN HOTEL RESPONDENT

JUDGMENT

The Originating Application herein was filed out of this court on the 5th February 2001. On the 12th February the respondent filed a request for further particulars and an Authority to represent. What is striking is that the respondent has typed the name of the applicant without providing the address at which the applicant can be contacted. The respondent's counsel also addressed a letter to the Registrar of this court complaining that the applicant has not complied with the rules of the court in that he has not supplied the address and postal address at which he can be contacted.

There is a note indicating that the applicant subsequently furnished the postal address to the Registrar. The note does not however specify when this was done. Following the supply of the further particulars, the applicant filed a request for default judgment on the 18th May 2001. This request was opposed by the respondent on the ground that they did not have the address at which to serve the applicant. The applicant sought to rely on the note he made to the Registrar furnishing his postal address, as evidence that the respondent subsequently got his postal address as such they should have been able to answer.

We are of the view that the request cannot succeed for four reasons. Firstly, there is no indication when the address was furnished to the Registrar. Secondly, there is no evidence that the Registrar passed on the address to the respondent. Even if she did pass it we do not know when it was passed on to them. Thirdly, furnishing of the

address to the Registrar is not service on the respondents. The applicant was obliged by the rules to furnish the rules on the respondents and this he did not do. Lastly, judging by the haste with which the respondent initially reacted to the applicant's Originating Application, which was just six days after the filing of the Originating Application; one is left in no doubt that it was the respondent's intention to defend this action. It would be most unfair to pass judgment by default in the fact of such clear readiness to defend which has only been hampered by the applicant's own failure to observe the rules. For these reasons we uphold the respondent's opposition to the application for default judgment and accordingly dismiss the applicant's request.

The parties held a pre-trial conference in chambers before the President where it turned out that the facts were largely common cause. The only issue that arose for determination was that whilst conceding committing the acts he was charged of the applicant was complaining that he was treated unfairly in that, he was discriminated against in the application of disciplinary penalty contrary to the rules, in as much as he was dismissed while the other employees who committed the same misconduct as himself were only given a warning. The applicant relied on the preamble to the personnel rules of the respondent, which though written in Sesotho may be loosely translated as follows:

> **"These rules have been published for the benefit of all workers. The intention is that <u>all</u> workers be treated alike without <u>discrimination</u> of any kind."**

The applicant averred that he committed the offence of taking for his own use the left over drinks, which had been given to guests as welcome drinks. He went further to say some three other employees also took those drinks although at different times from him. Of importance is the fact that the four workers did not commit the offence as a group. Each did what he did at his own time, the applicant submits.

When it came to disciplinary action, the applicant was charged with breach of company policy/procedure and misappropriation of company property. He was found guilty and was dismissed. He unsuccessfully appealed against the decision and subsequently launched the present proceeding. At the pre-trial conference the applicant conceded that one Albert Rampa who is since deceased was also dismissed. His complaint is based on two ladies one a cleaner and the other food and beverages assistant manageress, whom he alleged were given a warning. This the respondent admitted.

When one looks at the personnel rules which the applicant handed after the preamble there are two vertical columns. The left column lists various types of offences with the corresponding penalty appearing in column two on the right hand side. Rule 6 prescribes the following loosely translated offence:

> **"6 To steal the property of guests, the hotel, the staff and to take for own use lost and found property."**

The corresponding penalty in column two is "immediate dismissal." It will be recalled that the applicant had been charged among others with misappropriation of company property "in that you consumed beverages that were meant for hotel guests whilst on duty without the permission of hotel management." He was found guilty. According to the personnel regulations the appropriate penalty in that situation is dismissal. To this end the respondent has acted entirely within the rules and no unfairness was visited on the applicant as the penalty is the one anticipated by the rules.

Now applicant's contention is that the other two employees were not dismissed but were given warnings. Assuming that the applicant is right in saying they faced the same charges as those two other employees and the evidence presented was exactly the same and the presiding officer the same, it seems that failure to impose the penalty imposed by the rules would reflect on the presiding officer's integrity and bona fides. It would not in itself entitle the reversal of the otherwise appropriately imposed penalty on the applicant.

However, the applicant has not presented the evidence of the offences with which the other two workers were charged. He could only say that it was well known that those two workers had committed the same act as himself. The court acts on the basis of evidence not rumours and public gossip. The applicant sought to convince us that he got to know the offences with which the two workers were charged because it was his department which carried out the investigations. But even there it turned out that he was relying on hearsay as he was not the one who conducted the investigations. He was even at pains to say who told him, but it was clear that he was relying on what he had been told.

Even if the charges were the same, the court would need to know the content of the proceedings in all the disciplinary cases so as to know what evidence was led in each case and what the defenses of the accused were. All these were not available. Accordingly, we are of the view that the applicant has not been able to prove that he had been treated discriminately in as much as he has not proved that the two workers who were warned had been charged with misappropriation of company property like himself. He himself having acknowledged that he was not there when those workers allegedly stole the beverages he is not in a position to say that they committed the same misconduct as himself. This matter is accordingly dismissed and there is no order as to costs.

THUS DONE AT MASERU THIS 14TH DAY OF FEBRUARY, 2002.

L.A LETHOBANE
PRESIDENT

A.T. KOLOBE
MEMBER **I AGREE**

M. MAKHETHA
MEMBER **I AGREE**

FOR APPLICANT : **IN PERSONANE**
FOR RESPONDENT: **MS SEPHOMOLO**