

IN THE LABOUR COURT OF LESOTHO

**LAC/REV/153/05
LC/REV/436/06**

HELD AT MASERU

IN THE MATTER BETWEEN

LENKA MAPILOKO

APPLICANT

AND

PANNAR SEED LESOTHO (LTY)LTD

1ST RESPONDENT

RULING

1. The applicant was employed by the respondent company as its senior most employees in Lesotho. On the 22nd February 2006, he was disciplined for misappropriation of a substantial amount of money belonging to the respondent. The money he was accused of misappropriating amount to M190501.84.
2. The hearing was held in Grey town South Africa. Applicant pleaded gaily to al the charges including the alternative of negligence. He was duly found guilty and dismissed the same duty of hearing. On the 23rd January 2007, applicant issued on originating applicant out of the registry of this court.
3. Since it was almost a year since the applicant was dismissed he sought yon apply for condonation of the late filling of the originating application. His explanation seeing that he had referred the dispute to the district labour office sometime in September 2006, which incidentally was already outside the six months.
4. The grounds on which applicant sought relief were that, the applicant was dismissed without any reason seeing given. He averred further

that the person who sign his letter of dismissal had not stipulated his source of authority that empowered him to terminate his contract. Further before a disciplinary committee in Grey Town South Africa. He accordingly prayed that the hearing of the 22nd February 2006 be found procedurally unfair and the decision reached thereat be declared null and void.

5. It is common cause that at the start of the proceeding applicant did not motivate his application for condonation. He instead raises three issues. The first was that this court has the jurisdiction to deal with this matter. The second related to his representation as well as that the respondent
6. When the applicant first instituted these proceedings, he was represented by a former co- worker Mr. Bokang Lelimo. The issue of his representation by a former colleague came before Khabo DP on the 12th June 2007. khabo DP ruled that Mr. Lelimo was not envisaged by the section 28 of the Labour code order 19992 (the code) as a person who qualifies to represent litigants before this court.
7. In the proceeding in which I president the applicant sought to again raise this issue and said he still desired it be represented by Mr.Lelimo. I made it clear that issue having been previously dealt with and a ruling there on made, I will not reopen it. Issue of jurisdiction and the legal representation of the respondents.
8. Mr. mapiloko argued that this court has jurisdiction to deal with this court has jurisdiction deal with this matter because he is contending that there has been an unfair labour practice that has been visited on him. The court referred him to part xx section 196 -198 as amendment by sections 22 and 23 of the Labour Code (amendment) act 200 (the act)
9. These are the sections that define what constitutes an unfair labour practice in Lesotho Labour Law. In one case unfair Labour practice comes about as a result of an employer seeking to discriminate against union members in its employment police or benefit such an employer award to his employees. When the applicant saw this, he conceded that infact he is not complaining of any discrimination as a consequence of union membership.

10. The application contended further that he is not complaining about his dismissal. He submitted that he was only complaining about the act of taking him outsider Lesotho and there. With regard to representation he contended that there is no resolution authorizing respondent attorneys of record to defend these proceeding. He contended further that in terms of section 28(b) of the code a Lawyer can only be allowed in proceedings before the Labour Court if both parties are legally represented.
11. Mr. Malebanye for the respondent argued that the applicant is infact asking for a declaration that his dismissal is null and void. He contended further that applicant seek arrears of salary all issues that fall under the jurisdiction of the DDPR. He argued further that matter on which the Labour court has jurisdiction is outlined under 226(1) of the act and that the applicant's complaint does not fall hereunder.
12. With regard to resolution he submitted that the rules of this court do not require that the rules of this court do not require that a party should file a resolution. The rules he argued require the filing of the rules, he argued require the filing of an authority to represent which is what the respondent has done. He submitted that he is an aware that this court has previously made a ruling to the effect that refusal of a party's right to be represented in terms of that section interferes of with the party's. right to fair trial in terms of the constitution.
13. After hearing the submissions of the parties the court made a ruling which read as follows in term of section 226(1) the labour court haws exclusive jurisdiction to resolve the following disputes.
 - a. subject to subsection (2), the application or interpretation of any provision of the Labour Code or other Labour Law
 - b. an unfair labour practice
 - c. an unfair dismissal if the reason dismissal is:
 - i) For participation in a strike
 - ii) As a consequence of a lock out or

iii) Related to the operational requirements of the employer.

14. The question is whether the case of the applicant as outlined in his founding papers falls under any of the above provisions. In his submission, the applicant says his case is one of an unfair Labour practice. However when he was shown what constitute an unfair Labour Law he immediately conceded that his case is not one of an unfair labour practice.
15. The applicant contended that even if his case is not one of an unfair Labour practice it is not case of unfair dismissal either. This is surprising because in paragraph 10(1) of his originating application prays that the disciplinary hearing of 22/02/06 be declared procedurally unfair and the decision reached therein be declared null and avoid.
16. this is where the confusion arises its thing in the code authorises this court or the DDPR for that matter to declare a decision of an employer null and void , in other words a non-decision . (See Lucy Lerata & ors v. Scott Hospital).in terms of the code the consequential effect of finding and employer's conduct of proceedings unfair. Clearly therefore in terms of the code the case of the applicants or ought to be one of an alleged unfair dismissal.
17. pursuant to the section to the section queued above the applicant's case would fall to be determined by this court if the dismissal was for any of the reasons listed hereunder , it is clearly not and it must therefore be a case that falls to be determined by DDPR through conciliation and possible arbitration if conciliation fails.
18. It might have been inferred by some that may be the applicant sucks an interpretation of the Labour code in the light of the fact that he was disciplined outside Lesotho. the section which the jurisdiction of this court flows only empowers the court to interpret "*any provision of the labour code.*" applicant's complaint does not point to any provision of the code that calls for interpretation in the light of the treatment allegedly mateal out ton him. Clearly therefore his ease does not fall under section 226(1) (a) either.

19. It follows that in light of what we have said that this matter does not belong to this court, it will only serve academic purpose to decide issue of representation as the matter is no longer going to proceed before this court. It is sufficient to say we are entirely in agreement with the submission of advocate Malebanye in this regard. Filing of on resolution my assessors agree. See *Bushy Seotsanyana V Cash build LAC/REV/147/04* on representation see *Thamahane Rassekila V Telecom Lesotho (PTY) LC REV/06* the case therein cited. We accordingly rule that this court does not have the jurisdiction to deal with this matter as it is the matter that must be dealt with by the DDPR. The application is accordingly dismissed and there is no order as to costs.

THUS DONE AT MASERU THIS 25TH DAY OF JULY 2007

L. A. LETHOBANE
RRESIDENT

J. M. TAU
MEMBER

I CONCUR

M. MAKHETHA
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPOND4ENT

MR. LELLIMO
MR. MALEBANYE