

IN THE LABOUR COURT OF LESOTHO

LC/14/07

HELD AT MASERU

IN THE MATTER BETWEEN

LEBOHANG MOTHABENG

APPLICANT

AND

T AND T SECURITY SERVICES (PTY) LTD

RESPONDENT

JUDGMENT

Date of hearing : 02/08/07.

Retrenchment - onus is on the applicant to prove that he has been retrenched - Applicant refusing to confirm respondent's averement that it terminated him for redundancy - Applicant's own evidence not establishing unfair retrenchment - Application dismissed - no costs awarded.

1. The applicant was employed by the respondent on the 10th October 2004. On the 28th October 2006 he was terminated from employment. In consequence of that termination the applicant issued an originating application on the 18th March 2007, seeking relief as follows:
 - a) That the purported retrenchment of the 28th December 2006 be set aside and declared null and void.
 - (b) Respondent be ordered to compensate the applicant per Section 73 (2) of the Labour Code Order 1992.

- (c) Respondent be ordered to pay applicant notice and severance pay.
2. The applicant was duly represented by an official of Transport and security Workers Union (TSAWU), Mr. Mahlehle. The respondent on the other hand was represented by its Human Resources Manager Mr. Maseela. At the start of the proceedings Mr. Mahlehle was advised to choose whether he refuses to accept the repudiation of the contract of his client; in which case, he can rightly seek to challenge the propriety of the termination and claim for reinstatement or compensation in terms of Section 73 of the Code. If however he claims payment of notice and severance pay he is taken to be accepting the repudiation but seeking to be paid whatever benefits the law entitles him to.
 3. It was made clear that the applicant can claim one or the other of the two reliefs, but not both at the sametime. At best the other can be claimed in the alternative. However, since the alternative of payment of terminal benefits would fall outside the jurisdiction of the Labour Court it could not be made. Since applicant wanted his matter dealt with by this Court he chose to challenge the retrenchment.
 4. The applicant led evidence in which he told the Court that he had been unfairly dismissed without being given any reason. He testified that on the 28th December he was called to the office where he was verbally told by the Human Resources Manager that he was dismissed. He stated that he asked the Human Resources Manager if it was correct that he was dismissed in the absence of his Union. The Human Resources Manager answered that there was nothing wrong.
 5. The applicant averred that he then went to his Union to report. The Union wrote a letter dated 15th January 2007, in which it told the managing Director of the respondent that their member had been retrenched by the company in

breach of the provisions of the law. They however requested that their member be paid his terminal benefits. This letter was apparently never answered.

6. Under cross examination the applicant was asked if it was correct that on the 28th December 2006, he was called to the office. He said that was so and that at that meeting he was told to leave as he was dismissed and he had been retrenched. It was put to him that he was told at that meeting that the post that he was assigned at World Vision Mohale's Hoek was closing. He denied and said he infact never worked at World Vision Mohale's Hoek.
7. He was asked if it was correct that after his termination he lodged a referral at the DDPR claiming notice and severance pay. He said he did lodge a referral but he did not remember what he was claiming. It was further put to him that pursuant to that referral he was paid his notice and severance pay. He denied. He was shown DDPR receipts dated 05/04/07 and 07/05/07 for an amount of M840.80 each. Whilst he conceded getting the money he denied that it was for notice and severance pay.
8. The respondent called Silase Maliehe, the Senior Security Officer responsible for operations. He testified that on the 28th December he was advised as an Officer responsible for applicant among others, that a meeting would be held with the applicant at which he was expected to be present. He was told the reason for the meeting.
9. The witness testified that the meeting between the applicant and the Human Resources Manager was duly held and he attended the meeting. At that meeting the applicant was told that the post he was assigned at Mohale's Hoek World Vision was closing as such he was being terminated.
10. If regard is had to the evidence of the respondent both during cross-examination of the applicant and in chief through DW1 it is apparent that applicant's termination

was for reasons of redundancy. That would qualify as an operational requirement termination. However all that is vehemently denied by the applicant.

11. This leaves us with only the evidence of the applicant from which to deduce that he was retrenched as he alleges. Nothing in the evidence of the applicant support his claim that he was retrenched. Throughout his testimony he has painted a picture that he was unfairly dismissed without being given any reasons for that dismissal. The applicant is expected to adduce sufficient evidence for the court to conclude on a balance of probabilities that he was indeed unfairly retrenched as he alleges. He has dismally failed to do so. We cannot therefore agree that he has been retrenched, and if at all, unfairly so.
12. There is however a semblance of truth in the contention that a settlement was reached at the DDPR in terms of which applicant was paid his terminal benefits. This conclusion we deduce from a number of considerations.
 - (a) Terminal benefits would seem to be what the applicant and his Union have been looking for from the start. (See the Union's letter of 15/01/07).
 - (b) Applicant conceded under cross-examination that following his dismissal on 28th December 2006, he lodged a claim with the DDPR even though he has forgotten what he was claiming.
 - (c) Two DDPR receipts for M840.80 show he was paid twice subsequent to his dismissal. Even though these payments are not detailed what they are for, it is not far fetched to conclude that they were for notice and severance pay, regard being had to the fact that his notice of one month's pay would be equal to his severance pay of two weeks wages for each completed year of service. He had completed two years and his severance pay would be four weeks or one month's wages.

13. If settlement had been reached, obviously these proceedings would be *res judicata*. However, we are largely speculating as we do not have enough evidence. The long and short of this matter is that applicant's claim for alleged unfair retrenchment cannot succeed for the reasons advanced. the application is accordingly dismissed. There is no order as to costs.

THUS DONE AT MASERU THIS 9TH DAY OF AUGUST 2007

L. A. LETHOBANE
RRESIDENT

J. M. TAU
MEMBER

I CONCUR

M. MAKHETHA
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MR. MAHLEHLE OF TSAWU
MR MASEELA