

IN THE LABOUR COURT OF LESOTHO LC/31/09

HELD AT MASERU

IN THE MATTER BETWEEN

**LESOTHO WHOLESALERS, SHOPS
AND ALLIED WORKERS UNION
PAUL MOSA MOSUOE**

**1ST APPLICANT
2ND APPLICANT**

AND

**LEHLOHONOLO LELOTHA
SARAFINA 'MALIBOOANE SEFATSANE
MOHLAHLI MPHUTHI
THABO WILLIAM RAPULENG**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT**

RULING

Date : 13/10/09

***Interdict - Applicants lack locus standi to bring the
application rule discharged.***

1. In this application the applicants a union registered in terms of the Labour Code Order 1992 and one of the members of the executive committee, are seeking an order that other members of the committee be restrained from the service of the union:

***“pending investigation of the alleged offence committed
by the respondents namely dishonesty,
misrepresentation, fraud, misappropriation of union funds
and or embezzlement.”***

2. Although the notice of motion details a number of alleged infractions on the part of the members of the executive committee, the founding affidavit concentrated on one action namely; rendering service to none union members who are then

charged exorbitant fees styled consultation fee. The act complained of could, if proved, constitute fraud and misrepresentation in as much as the perpetrators will be impersonating legal practitioners when they are not.

3. A rule nisi granting an interdict was issued on the 16th September 2009, returnable on the 24th September. On the return date respondents caused to be filed their opposing affidavits in which they raised a point in limine based on four points of law.
4. Firstly, the respondents objected to the applicants' locus standi. Secondly, they raised a point of misjoinder, thirdly, failure to exhaust domestic remedies and fourthly, non-disclosure. The fifth point pertaining to the mode of service of the court order was abandoned.
5. Mr. Malefane on behalf of the respondents contended that the applicants have no locus standi to bring these proceedings without the authority of the executive committee of the union. This point is directly linked to the second point in limine namely; that the union can only properly be sued together with the executive committee and not the union sue the executive committee.
6. Mr. Mosuoee for the applicants referred to section 213 of the Labour Code Order 1992 and said it is the one that gives him the power to bring these proceedings. The section provides in part as follows:

"An interdict restraining unauthorized or unlawful expenditure of the funds of a trade union or employers organization maybe granted by the Labour Court on the application of one or more persons having a sufficient legal interest in the relief sought or of the Registrar, or of the Attorney General...."

7. Assuming the section empowers the 2nd applicant to institute these proceedings as he contends, it certainly does not authorize the 1st applicant i.e. LESAWU to bring these

- proceedings. If it was his understanding that even the union i.e. 1st applicant can sue the respondents under this section he is mistaken. The powers of the 1st applicant to sue ought to be found in its constitution which has not been relied upon at all by the 2nd applicant in bringing this application.
8. Even as regards the 2nd applicant himself, it is clear that reliance on section 213 was a desperate attempt in his part to find a provision that could clothe him with the locus standi to bring these proceedings. The section empowers a person with sufficient legal interest to seek an interdict to prevent “unauthorized or unlawful expenditure of the funds of a trade union.” This is not what the present application is about. As we have seen this application is about illegal charges being made to members of the public who are not members of the union.
 9. If that is the case, the union has no interest in the matter because the illegal fees are not being charged to its members. This is yet another reason why the point of lack of locus standi must succeed against the first applicant. It must also succeed against the 2nd applicant because the section he is seeking reliance on is not relevant for the type of application he has brought.
 10. That the alleged acts are, if proved valid illegal and can lend their perpetrators in jail, does not beg the question. The problem however, is that the applicants have not approached these alleged acts of illegal conduct being perpetrated in the goon name of the union properly in as much as they have hurried to court in terms of sections of the law that do not authorize them to institute proceedings of this nature.
 11. The success of the first point in limine renders the consideration of the other points an academic exercise. Save of course, to consider the issue raised by Mr. Mosuoie that the resolution of the respondents to defend these proceedings is defective in as much as they are interdicted from serving the union. Whatever the effect that interdict would have, it cannot by any stretch of logic be to the effect that the respondents are gagged and left helpless not to oppose the proceedings instituted against them.

12. The respondents have all the right to defend the proceedings and oppose the very interdict that the applicants have obtained against them. To do so they have the right to meet as the very executive committee under attack and to resolve as they did including to resolve to deny that the union has authorized the institution of the proceedings. Indeed ex facie the papers no proper authorization to bring the application on behalf of the union was obtained by Mr. Mosuoë. For these reasons that point cannot succeed. Accordingly, the rule is discharged and the application is dismissed.
13. I have pondered the issue of costs. I do not think it serves any useful purpose to impose costs in this type of application which clearly shows that there was good intention to arrest the ongoing rot within the union administration. For this reason I make no order as to costs.

THUS DONE AT MASERU THIS 1st DAY OF DECEMBER 2009

L. A. LETHOBANE
PRESIDENT

J. M. TAU
MEMBER

I CONCUR

R. MOTHEPU
MEMBER

I CONCUR

FOR APPLICANTS:
FOR RESPONDENT:

MR. MOSUOE
MR. MALEFANE