

IN THE LABOUR COURT OF LESOTHO

LC/11/08

HELD AT MASERU

IN THE MATTER BETWEEN:

LABOUR COMMISSIONER (OBO)

APPLICANT

AND

PUMARE NOVO (PTY) LTD

RESPONDENT

JUDGMENT

Date : 22/10/09

Workmen's Compensation Act 1977 - Power of the Labour Commissioner to sue in own name on behalf of persons seeking compensation under the Act - Section 14(3)(b) and 19(2) of the act prescribe who should bring such proceedings - Where the workman has died it is dependants of the workman, otherwise the workman himself or herself should bring the case to court - The Labour Commissioner requires authorization to act where he/she brings action on behalf of dependants of deceased workman - point in limine upheld and application dismissed.

1. This is an application for the condonation of the late filing of a claim under the workmen's compensation Act 1977 (the Act). The applicant is the Labour Commissioner acting on behalf of Khethang Shale pursuant to section 16(b) of the Labour Code Order 1992 (the Code) which provides:

"For the purpose of enforcing or administering the provisions of the code a labour officer may:

"(b) institute and carry on civil proceedings on behalf of any employee or the employee's family or representative, against any employer in respect of any matter or thing or cause of action arising in

connection with the employment of such employee or the termination of such employment.”

A labour officer is defined by the interpretation section of the code as meaning the Labour Commissioner. It follows that the powers vested in the labour officer by section 16(b) are in fact powers of the Labour Commissioner as well.

2. The respondent strongly opposed the condonation application as well as the main application. In doing so counsel for the respondent raised a number of preliminary points which he contended are sufficient to defeat the application. At the close of the hearing the court upheld the point in limine and dismissed the application, but reserved the reasons. These are now those reasons.
3. Firstly, Mr. Molapo for the respondent commented that the proceedings are irregular in that the application for condonation is not in accordance with Form LC4 of the Labour Court Rules 1994. He contended further that failure on the part of the applicant to follow Form LC4 which is prescribed by Rule 22(4) of the rules has led to a defect in the application in that, there is no prayer for the condonation being sought.
4. There is no doubt that the application for condonation has not followed Form LC4 to the letter. It is also clear that the application has been inelegantly drawn. The application has however, substantially complied with the Form LC4 in regard to content. Except for omitting to specify when the application is intended to be moved, the notice of application of the applicant contains all the requirements of Form LC 4. It specifically stipulates that “*...applicant intends to make application for condonation to the above Honourable Court.*” Inelegance aside, condonation has clearly been prayed for.
5. Counsel for the respondent argued further that Mr. Setlojoane who signed the originating application as well as the application for condonation has no *locus standi* in as

much as he is a government employee and as such is not authorized to practice, unless he does so under the auspices of the Attorney General. Mr. Molapo did not give us an authority for this proposition. Neither the Code nor the rules of the Labour Court make such a provision. Rule 26 merely requires that where a party to the proceedings is represented as stipulated in section 28 of the Code, that party must file a written authority for such representation. The Labour Commissioner has filed the written authority that the office will be represented by the Legal Division of the Department of Labour. It is common cause that at the time material to this application, Mr. Setlojoane was a member of staff of the legal division of the Department of Labour. Accordingly, we discern no fault as alleged by the respondent.

6. Counsel developed the point further that, Mr. Setlojoane ought to have been instructed by an attorney and that to the extend that he purported to represent the Labour Commissioner; that is irregular because only the Attorney General is capable of representing government and its departments in all proceedings in terms of Government Proceedings and Contracts Act 4 of 1965. Once again the argument is misconceived. There is no requirement in the law that establishes this court, that advocates that appear before it should hold brief from an attorney. Secondly, the Labour Commissioner is not required by the Code to act in accordance with the Government Proceedings and Contracts Act when he or she exercise powers vested in him or her by section 16(b) of the Code.
7. In any event an attempt to invoke Government Proceedings and Contracts Act, when exercising powers under the Code would be doomed to fail This would be so because the Labour Commissioner is not protecting Government interests when she exercises the powers *vested in her by section 16(b). The Code empowers her to act to protect private individual rights. The Attorney General cannot therefore be required to intervene in such proceedings. However it becomes a completely different matter when the Labour*

Commissioner exercise powers under the Code to protect Government interest, such as where the issue of work permits is involved. That is clearly a public interest issue and the provisions of the Government Proceedings and Contracts Act would apply.

8. Mr. Molapo for the respondent raised a further point that:
“The Labour Commissioner has no authority and or capacity to bring these proceedings in person on behalf of another party in as much as he is only an agent acting on behalf of Khethang Shale therefore it is unheard of that an agent will litigate as if such agent is the one who has an interest in suing in its own name.”

In his heads of argument Mr. Molapo took the point further that the Labour Commissioner has wrongfully been joined in these proceedings because the office has no direct and substantial interest in as much as it is not the sanctity of the labour laws that is being protected, but an individual’s rights. He contended that it is that individual who ought to have filed these proceedings. He referred to the case of Matime & Others .v. Moruthoane & Another (1985 - 1989) LAC 198 at 199 where Schultz P, in upholding appellants’ appeal stated as follows:

“The first difficulty that I have with the original application by Moruthoane and Machefo is that it appears that the real potential applicant in this case was the church. That church was not cited as a party in the proceedings at all and there is no evidence that the two applicants acted with the authority of that church. Nor does it appear from the papers that the two applicants themselves had the right to bring these proceedings, which, among other things would have had the effect of thrusting the school in question upon the church, that church not having been a party.”

9. This is precisely the difficulty that we face with the present application. Mr. Shale who is the real applicant in these proceedings is not cited as such. Neither is there an authority that he has authorized the Labour Commissioner to

institute these proceedings on his behalf. In terms of section 14(3)(b) and 19(1) of the Act, to which we will revert later, that is wrong.

10. Counsel for the Labour Commissioner contended that the Labour Commissioner has instituted these proceedings in terms of section 16(b) of the Code. The provision relied upon by Counsel for the Labour Commissioner has an important preamble which says: *“For the purpose of enforcing or administering the provisions of the Code; a labour officer may institute and carry on civil proceedings on behalf of any employee.”* In these proceedings the Labour Commissioner is not enforcing or administering the provisions of the Code. It is the Workmen’s Compensation Act that is being enforced and it does not have an equivalent provision to section 16(b) of the Code. It is therefore wrong to extend section 16(b) of the Code to enforcement or administration of the act, simply because they are administered by the same authority.
11. Proceedings for recovery of claims under the act are governed by sections 14 and 19 of the Act. Section 14 deals with claims in respect of fatal accidents while section 19 deals with claims such as those of Mr. Khethang Shale Section 14 provides:
 - “(1) whenever an accident occurs which results in the death or absence of a workman from his employment for three days or more, or in any injury which would entitle him to compensation in terms of this act, notice in the prescribed form shall be given to the Labour Commissioner by the employer within three days of the accident coming to his notice.*
 - “(2) In the event of the death of a workman occurring after notice of accident has been sent under the provisions of sub-section (1), the employer shall inform the Labour Commissioner in writing of such death and of the date thereof.*

“(3) On the receipt of a notice under subsection (1) or (2) the Labour Commissioner may make such investigations as he may think fit, and if it appears to him that a claim for compensation may lie under this Act in respect of the death of the workman he shall take steps to:

(a) ascertain whether there are any dependants of the deceased workman and if so the degree of their dependency; and

(b) to inform such dependants if any, of the reported cause and circumstances of the death of the workman, and to ascertain whether such dependants intend to make a claim for compensation or wish a claim to be made on their behalf.” (emphasis added).

12. The highlighted phrase underscores the point we made earlier that the person who has direct interest is the one who should file a claim for compensation. Even if the Labour Commissioner were to be involved, he or she would have to first obtain the authority of the dependants that they have authorized him or her to launch the proceedings on their behalf. That does not mean the Labour Commissioner substituting the dependants as the applicant either. The dependant(s) themselves would still have to be cited as applicants.

13. Section 19(1) of the Act provides:

“(1) If an employer on whom notice of accident has been served under the provisions of section 13 does not within twenty one days after the receipt of the notice agree in writing with the workman as to the amount of compensation to be paid, the workman may, in the prescribed form and manner make an application to the court for the purpose of enforcing his claim to compensation.”

Subsection (2) empowers the court to call upon any government officer, or independent medical practitioner to give evidence if the court is of the opinion that such officer or practitioner may be able to assist the court.

14. Clearly therefore, in situations where the injured workman is still alive it is the workman himself or herself who must lodge the claim. The Labour Commissioner or officers under him or her may be called upon to give evidence if by virtue of the investigations carried out and any expert knowledge they may have, they are considered capable of assisting the court.
15. Nothing in the provisions cited affords the Labour commissioner the right to institute the proceedings in his name to the exclusion of the injured workman. For these reasons the point in limine regarding the lack of locus standi to bring these proceedings by the Labour Commissioner was upheld. Accordingly, the condonation application as well as the main application were dismissed. No order as to costs was made.

THUS DONE AT MASERU THIS 17TH DAY OF DECEMBER 2009.

**L.A. LETHOBANE
PRESIDENT**

**L. MATELA
MEMBER**

I CONCUR

**D. TWALA
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR RESPONDENT:**

**MS RUSSEL
MR. L. MOLAPO**