IN THE LABOUR COURT OF LESOTHO LC/79/06

HELD AT MASERU

IN THE MATTER BETWEEN

MOKHOBOTLELA NKUEBE APPLICANT

AND

METROPOLITAN LESOTHO LIMITED RESPONDENT

JUDGMENT

Dates : 11/11/08, 12/11/08, 13/08/09, 20 /10/09
Redundancy – Employee redeployed with reduced basic pay – Employee refused to accept reduced pay – Retrenchment – Employer failing to follow own procedure on notification and period that consultation should take – Redundancy – the respondent failed to consult applicant on the proposed phasing out of his position and to explain to him why his position became redundant – Offer of redeployment with reduced salary constitute change in the terms and conditions of employment of applicant – Where change to existing terms and conditions is envisaged it must not be unilateral, the employer is enjoined to obtain the consent of the employee – Retrenchment unfair – reinstatement ordered.

BACKGROUND

1. This case arises out of the dismissal of the applicant on the 7th July 2006 backdated to 19th June 2006. Both parties agree that the termination of the employment of the applicant followed the redundancy of his position of Provincial Marketing Strategist because of the restructuring of the management structure of the respondent.

2. Sometime in early 2006, the Managing Director of the respondent Mr. Tsoane Mphahlele produced a document styled "Proposed Business Case for the Restructuring of Metropolitan Lesotho." The document bears no date. It is however signed by the Managing Director and it is attached to the respondent's Answer as annexure "ML2". The document suggested that a study had been kicked off to look at the individual regional revenue generation and productiveness of each of the elements that will go into the retail side of the operations of the respondent.

3. The document identified challenges facing the respondent and sought to propose how to deal with those challenges. It pointed out that it had been resolved to address the cost element and to analyze the efficacy and effectiveness of the business process. The document further looked into the structure of the respondent and concluded that the structure did not allow sharper focus on credit life and employee benefits. It pointed out that one of the challenges facing the respondent was a change in the structure. It proposed the phasing out of applicant's position of Marketing Strategist and incorporating it into newly created divisions of Retail and Corporate.

STATEMENT OF CASE

4. In his Originating Application, applicant stated that sometime in late February 2006, he was called to the office of the Managing Director and shown a new organogram in the form of annexure "C" to the Originating Application. The structure still retained the position of Provincial Marketing Strategist, but introduced a new layer of management made of Retail and Corporate at the same level as Marketing Strategist. Applicant was invited to comment and he told the MD that since the structure introduced an extra layer of management positions, it defied the principle behind the intended rationalization which is to cut costs and to streamline the business in order to effect better focus.

5. Applicant stated that some two days later a meeting of the Executive Committee of which he was a part was called. The meeting was presented with a new organogram as in annexure "D" to the Originating Application. Annexure "D" had done away with the position of Provincial Marketing Strategist and introduced two new positions of Retail and Corporate. Applicant avers that he was astounded by the removal of his position from the structure which he was seeing for the first time in the meeting.

6. According to the statement of case the Executive Committee disapproved of the phasing out of the position of the applicant, because of its central role in the development of strategies and plans of the entire organization. They were however not successful and they settled for a compromise that it be incorporated into the new position of Head of Corporate. The new positions of Head of Retail and Corporate were advertised. Applicant applied and was shortlisted to attend an interview in Cape Town. He was however, unsuccessful.

7. Applicant was offered a new position of Regional Manager, purportedly on the same level as his previous position, but with lower basic salary. The applicant strongly objected to the reduction of his basic pay. His basic salary had been reduced from M26,400-00 per month to M16,000-00 per month. Meetings were held between applicant on the one hand and Head of Retail, Head of Corporate, and the Human Resources Manager on the other hand to try to convince applicant to accept the new package. Applicant did not agree.

8. On the 5th June 2006, the Managing Director started to communicate with the applicant through emails. At 5.20 pm the MD sent applicant an email in which he besieged him to provide a formal response "to the offer of RM Lesotho Central by close of business Wednesday 7 June 2006." Applicant responded that in previous conversations with the MD he had "raised a number of issues which dealt directly with the legality and fairness of the package offered." Whilst appreciating that the matter had to be brought to conclusion he felt he deserved to get a written response to those issues.

9. The MD's response of even date was even more emphatic that he needs finality to the issue and that he needed a formal response to the offer. He went on to state:

> *"You raised the issue that under Lesotho law it is illegal for a redeployment to result in a lower salary from that which the deployee has been earning. My point is that in fact you will not be getting a lower salary, that the salary you earn is determined by you. If you set yourself a lower salary mentally, you will earn a lower salary. If you set yourself the task of managing the variables of production, conservation, good prospecting and managing with the weekly and daily and monthly controls for production and you push up the production, contain your lapses etc. you stand to earn far much more than the M26,400-00 in issue. It really is up to you. The one thing that the company will not do because it does not stand to do so logically is pay you a severance package and then rehire you on the basis of the new position."*

10. The applicant stood firm that he could not accept a reduced basic salary especially given that the company through the mouth of the MD had recognized that the applicant had performed his duties superlatively to use the MD's own words.

11. Early on Wednesday the 7th July, Mr. Justin Van den Hoven Group Executive: International Investments, who had all along been kept in the picture by being sent copies of all correspondence entered the fray. His remarks made it clear that the decision to abolish applicant's position was infact his decision. This is what he said in paragraph 2 of his email: "In Lesotho we introduced a new structure. The main purpose of this is to get a sharp focus on corporate business and to reduce cost on retail. I encouraged management in Lesotho to either cut out a layer of management or to reduce the number of regional managers."

12. Mr. Van den Hoven informed the applicant that he had endorsed the new structure because it would reduce the number of sales managers and as such save costs. He stated that given the cost of the bonuses paid to retail in the past 12 months, the four Regional Managers applicant included could "get a non-guaranteed portion of M12,000-00" in commission, which is one quarter of the overriding commission and productivity bonus paid to retail in 2005. He concluded by stating in no uncertain terms that:

> *"I stress again that we changed the structure and that your old position became redundant. However, the Regional Manager position offered to you is on par with your old job – a job grade 7. However the fixed salary component for Regional Managers are set well below that of other job grade 7's as they can earn substantial non-guaranteed income…. The choice is very simply you opt for retrenchment or if you believe that you can live up to the expectations that we have for the Regional Manager Lesotho Central you accept our offer – we will not revise this offer and it is definitely final."*

13. On the 10th June 2006 applicant was served with annexure "H" from the Managing Director. It invited him to a consultation meeting on the 14th June 2006, where applicant would be given the opportunity to make representations before a final decision is taken regarding the following:
    - "The offer – Regional Manager
    - Alternative strategies."

14. The meeting was between applicant on the one hand and the Managing Director, Gregory Beck from Group Industrial Relations and Mamello Phomane the HR Manager. At the conclusion of the meeting the representatives of management promised to go and consider applicant's suggestions and adjourned the meeting to the following day. When the meeting resumed on Thursday 15th June the panel informed applicant that it had been decided that the offer is reasonable as such it would not be revised to accommodate applicant's concerns. He was also informed that he was given until Monday 19th June

2006, to accept the package failing which, he would be retrenched with effect that same date.

15. Applicant sought to refer a dispute concerning disagreement on the remuneration package to the DDPR. The referral was made on the 16/06/2006. On the 19th June the applicant filed an application with this court seeking an order interdicting the respondent from carrying out its threat to dismiss him pending the resolution of the dispute by the DDPR. The application was justified and competent in terms of section 228(1) of the Labour code (Amendment) Act 2000 (the Act) which provides:

> *"(1) Any party to a dispute that has been referred in terms of section 227 may apply to the Labour Court for urgent relief, including interim relief pending the resolution of a dispute by arbitration."*

16. The application was moved *ex parte* before Khabo DP on the 19th June. A rule nisi was issued returnable on the 7th July 2006, calling upon the respondent to show cause if any why;

> *"(a) The respondent should not be interdicted from terminating applicant's contract with respondent pending finalization hereof.*
> *"(b) Respondent shall not be interdicted from terminating the employment contract between the parties herein pending finalization of the trade dispute proceedings instituted before the DDPR."*

17. The referral was scheduled to proceed before the DDPR on the 3rd July 2007. It turned out during conciliation that the disagreement over remuneration arose as a result of the operational requirements of the respondent in as much as applicant's previous position had become redundant and he was dissatisfied with remuneration package of a new position offered. As a result the DDPR declined jurisdiction and issued a certificate referring the dispute to this court for adjudication.

18. On the return date counsel for both parties appeared before the president and reported that conciliation had failed and that the DDPR had declined jurisdiction and had referred the matter to this court for adjudication. This court discharged the rule since the dispute which it was granted pending its finalisation by the DDPR, had infact reached finality before the DDPR. For it to continue to operate, the rule had to satisfy the trite principle of an inderdict that no alternative adequate remedy was available to the applicant. (See National Union of Metalworkers of SA & Others .v. Hendor Mining Supplies (A division of Marschalk Beleggings (Pty) Ltd) (2003) 24 ILJ 2171 at 2177 J). This requirement was not satisfied and could not be satisfied, because the very institution of these proceedings is adequate alternative remedy available to the applicant; capable of remedying the situation after due process; unlike the interdict which had been granted without hearing the side of the respondent.

19. The respondent's Answer does not dispute the factual background. It simply stresses that the respondent was undergoing a restructuring and that the new structure it adopted rationalized better accountability with respect to functions and responsibilities. It denied that the applicant could have been surprised by the organogram because he was part and parcel of the restructuring process. It averred that sometime in March 2006, the Chief Executive, International came to Maseru to explain the rationale of the restructuring. It went on to state that:

> *"the business case for restructuring was subjected to a lot of scrutiny and indeed the Executive committee attempted to justify applicant's function but when it was explained the committee including applicant understood it."* (See paragraph 4 of the Answer).

EVIDENCE

20. It is common cause that following the discharge of the rule on the 7th July 2006, the applicant was called to the Managing Director's office where he was served with a letter of

termination. The letter informed him that his services were terminated with effect from the 19th June 2006. Even though applicant only pleaded procedural impropriety in his Originating Application, in his testimony he complained about the substantive fairness of his termination as well. Counsel for the respondent did not object accordingly the evidence was admitted.

21. Procedurally, the applicant contended that the respondent failed to follow its own "Policy and Procedure in case of Termination of Services for Operational Reasons." In particular he stated that respondent did not follow Phase 2 of the Policy which says "as far as possible (3) three calendar months should be allowed for consultation, reckoned from the date of first notification of the possibility of dismissal for operational reasons, until the date on which notice of dismissal is given." He testified that he was first told about the possibility of dismissal at the meeting of the 14/06/06 and this was formalized by letter dated 16/06/06. By the 7th July he was given a letter of termination which purported to terminate him on the 19th June 2006. On the substantive side applicant averred that he was never given a reason for the phasing out of his position. He testified that annexure "ML2" to the Answer gave rationale for restructuring, but said little about his own position other than simply saying it would be phased out.

22. Under cross-examination the applicant was asked and he conceded that the respondent was going through restructuring of its management in its operations in Lesotho during early 2006. He conceded further that they were told that it was as a result of economic realities even though according to him the previous year the company had got record profit. He was never contradicted on this.

23. Applicant agreed that as a member of the Executive he was one of the first people to know about the restructuring, but the first time he knew about it was when he was shown the new structure by the Managing Director. It was put to him that he and other members of the executive had several meetings with the Managing Director with a view to draw a new structure. He

agreed but said their proposals on how the new structure should be like were not taken. This is confirmed by paragraphs 4(e) of the Originating Application and 4 of the Answer. He was asked if it was not true that the Managing Director was taking their suggestions and communicating them to the Head Office in Johannesburg. He denied and said they learned that the structure was the brain child of Head International Mr. Van den Hoven and that it was a fait accompli. He was never contradicted on this version.

24. Asked to confirm that he knew in February that his position would be phased out, he confirmed, but added that they were told at that time that nobody would be dismissed. Asked if he knew why his position became redundant he said he was only given a conclusion that it was going to be redundant but no reason was given why it was made redundant. He stated that there was an explanation in respect of other position, but there was none provided with regard to his own. Asked if he was not party to the production of "ML2", he said he was not and that he first knew about it on the 29/03/06, when it was presented to staff.

25. The Managing Director Mr. Tsoane Mphahlele testified on behalf of the respondent that as a senior member of management and a member of the Executive committee, applicant was involved in the steps and procedures that were implemented to carry out the restructuring. He testified that it became clear from as early as February to all concerned, I suppose members of the Executive committee, that applicant's position was going to be redundant.

26. He testified that annexure "ML2" was put together by him and other officers of the company. We observe that the word "officers" is neutral in relation to which level/cadre of officers were involved. In particular it does not suggest that the applicant or the Executive Committee for that matter were involved. In his evidence under cross examination, applicant stated that he first knew "ML2" on the 29th March when it was presented to staff. He was never challenged on that. Neither

was it suggested to him that the Managing Director would contradict him and say he was infact party to its authorship.

27. Mr. Mphahlele testified further that in terms of "ML2" they wanted to make business more efficient and they considered which positions could be phased out. He testified that after it became clear that applicant's position would fall away, company rules bound them to reengage the applicant and redeploy him, failing which retrench him. He testified that when restructuring was carried out their main concern was not to retrench but to redeploy and only retrench if redeployment failed.

28. He testified that applicant was offered a redeployment. It was put to him that applicant says he was not given reasons for the redeployment. He responded that applicant is not telling the truth, because they engaged with him and applicant knew his position had disappeared. In fairness to the applicant this is not what he said. On the contrary what he said was that he was never told why his position was phased out and that evidence was not contradicted..

29. He was asked what they did about the applicant after his position disappeared and he failed in his bid for the positions of Head Retail and Head Corporate? He stated that they engaged with him and offered him the position of Regional Manager Central which he purported to accept, but did not sign the contract because he did not agree with the remuneration package.

30. The former Managing Director confirmed that he wrote several correspondence to the applicant requesting him to provide a formal response to the offer. He also confirmed that on the 16th June he gave applicant an ultimatum to accept the offer by 19th June 2006, and that for the first time he raised the option of retrenchment if the offer was not accepted. He testified further that they had been assigned with Gregory Beck to negotiate with the applicant and that when the applicant did not communicate his acceptance they concluded that he was not interested and decided to terminate his services after the rule

was discharged on the 7th July 2006. Asked why they did not consult with him prior to termination, the witness stated that no purpose would be served by the reopening of the consultation process as they had already done that.

31. Under cross examination it was put to him that the offer of the position of Regional Manager to the applicant was in fulfillment of Phase 1of the Policy on retrenchment. He disagreed and said it was a combination of Phase 1 and 2 and that that was always the intention. Asked if applicant knew that the two phases were combined he said he knew because he was part of the process and he had given him notice to that effect. Ironically this critical piece of evidence was not put to the applicant despite him having made it clear in his evidence in chief that Phase 2 was not followed. Clearly Mr. Mphahlele was fabricating as this should either have been put to the applicant in rebuttal of his testimony to the contrary, or at least emerged in Mr. Mphahlele's evidence in chief.

CONCLUSION

32. The applicant's averrements that Phase 2 of the Policy of the respondent regarding consultation and notification was not followed is unassailable. DW1's attempt to rebut that by saying the two phases were rolled into one is clearly an after thought. The admitted facts show clearly that from the beginning there was no intention to terminate any of the staff that was to be affected by the restructuring exercise. Whatever consultations if any took place related to the redeployment and not retrenchment.

33. The respondent first raised the possibility of retrenchment after the meeting of the 15th June 2006. Even then retrenchment was not a definite route; it was only a possibility if the offer would not have been accepted by the 19th June 2006. It was only after the 19th June that Phase 2 relating to notification and consultation on the retrenchment would be relevant. In La Vita .v. Boymans Clothiers (Pty) Ltd. (2001) 22 ILJ 454 at 461D Francis AJ referred to a number of cases in support of a proposition that "it is now settled law that the duty to consult arises once the

possible need to retrench is finalised and before a final decision to retrench is reached."

34. In his testimony Mr. Mphahlele said there would be no purpose that would be served by reopening the consultation as they had done that already. We have already said this had not been done yet. Perhaps he was relying on the meeting of 14th – 15th June 2006, which he had styled a "Consultative Meeting." Quite clearly that could not be a consultation on retrenchment because at that time the parties were busy negotiating a package for the position of Regional Manager. Mr. Mphahlele said as much in his testimony under cross-examination, that at the meeting of the 14th June they went through the package and failed to agree. The meeting was adjourned to the 15th to enable representatives of management to go and consider applicant's proposals on the package. Uncontroverted evidence of the applicant is that the representatives of the respondent came back to report that the offer was reasonable as such it could not be revised. The meetings did not discuss retrenchment. (see also annexure "K" to the Originating Application.). Clearly therefore, the respondent is in breach of its own policy regarding notification to an affected employee about the intended retrenchment and the consultations that should follow.

35. It is common cause that following the discharge of the rule, the Managing Director issued applicant a letter of termination backdated to 19th June 2006. Mr. Thoahlane challenged him on the issue of backdating the letter of termination and enquired why he did not reopen the offer instead of hastily terminating the applicant. Clearly the retrospective termination was wrong and could only be a further evidence of respondent's haste in concluding the restructuring exercise. This was clearly a breach of policy which required a minimum of 3 months consultation from the date applicant was notified of intention to retrench him.

36. The respondent's Policy on retrenchment is based on section 189 and 198A of the South African Labour Relations Act. 1995 (see Clause 4 page 3 of the respondent's Policy and Procedure

on retrenchment.). The courts in South Africa have made it clear what level of compliance is expected of the employer in terms of section 189 procedure. It is not the law of this country; however, the respondent has set it as a standard that it undertakes to apply to its employees. It must therefore comply with it as it has created an expectation among its employees.

37. It will be recalled that when the restructuring was embarked upon, there was no intention to terminate any of the employees. Applicant's testimony was that he first knew that his own position was to be phased out at the Executive Committee Meeting where the Managing Director presented them with the proposed new structure. He reiterated his testimony to this effect even under cross-examination. No effort was made to rebut his testimony to this effect. Infact Mr. Mphahlele's testimony was simply that it became clear to all concerned from annexures "B", "C" and "D" which form part of "ML2" that applicant's position would be redundant. His answer to a question asked by Mr. Thoahlane why applicant's position was phased out was that it had become redundant.

38. That testimony did not answer applicant's contention that he was never informed how his own position was picked upon to be made redundant. Neither did it tell us that applicant was consulted prior to making his position redundant. The evidence of applicant was that the new structure was a product of Mr. Van den Hoven and that it was a fait accompli. He was not challenged on that score. If anything Mr. Van den Hoven's email to applicant confirmed it, when he said "I stress again that we changed the structure and that your old position became redundant." Later in the same email he stressed "we will not revise this offer and it is definitely final."

39. Two things ought to be said about those statements of Mr. Van den Hoven. First, it is that it becomes clear that the decision to change the structure was his decision, as well as the package offered and that it was indeed a fait accompli. As a senior of Mr. Mphahlele he had imposed his authority on him to do what he wanted and not what Mr. Mphahlele as the managing Director of Lesotho operations deemed right. Indeed when it

was put to him under cross-examination that he retrenched applicant as a result of pressure from Mr. Van den Hoven, he replied that he was under pressure from Justin, but in the end the decision was his. Indeed it is clear that even the meeting of 14th June 2006, which purported to consult with applicant on the package, was simply going through motions as a firm decision had already been made by Justin on the 7th June that the offer was final.

40. The second comment is that the hardened attitude of Mr. Van den Hoven was poles apart from what the courts have pronounced ought to be the approach of an employer in a situation such as that which faced the respondent and the applicant. The remarks of Francis AJ in La Vita's case supra at p.461 I-J & A are instructive. This is what he said:

> *"where an employee's position is rendered redundant but it is not envisaged that he will be dismissed as a result, he is usually offered another position which invariably introduces a change in some terms and conditions such as a job content, working hours, remuneration and so forth. I am not persuaded that there is not a need to consult where positions are rendered redundant but dismissals are not contemplated. The duty to consult found in sec.189 should be extended to such situations for the simple reason that a change to terms and conditions must be consensual. An employee whose position is rendered redundant and whose terms and conditions are changed may not be interested in the changed position. Therefore, he cannot be forced to accept the position. The prohibition on changing terms and conditions of employment unilaterally means that where such a change has to occur it must be by agreement and full and proper consultation must have taken place."*

41. This is not what the respondent has done in casu. The change to applicant's terms and conditions was completely unilateral and not preceded by any consultation. The Labour Appeal Court of Lesotho deprecated such a conduct as well in Lesotho

Highlands Development Authority .v. Motumi Ralejoe LAC/CIV/A/03/2006 (unreported). It held at page 20 paragraph 24 of the typed judgment that:

> *"in employment law, an employer who is desirous of effecting changes to terms and conditions applicable to his employees is obliged to negotiate with the employees and obtain their consent. A unilateral change by the employer of the terms and conditions of employment is not permissible. (see Mazista Tiles (Pty) Ltd .v. National Union of Mineworkers & Others (2004) 25 ILJ 2156 at 2171 para 48).*

42. Both the applicant and the respondent in their answer say when the Executive Committee was presented with the new structure, they did not approve of the phasing out of the applicant's position. Their efforts to have it retained were rejected. This in our view is a further proof that "ML2" and the structure it suggested were not done with the staff of the respondent as Mr. Mphahlele suggested in his testimony. It was not a product of consultations with either the applicant or the Executive Committee. It was, as applicant suggested in his evidence, a fait accompli and all the applicant was required to do was to accept the offer of the new position together with the package. The intervention of Mr. Van den Hoven also reiterated the respondent's inflexibility and the fact that the change, unilateral as it was, was final. This was unfair (see La Vita's case at p.462 para 31 H.).

43. For the reasons canvassed above we find that the retrenchment of the applicant was substantively and procedurally unfair. The applicant has sought reinstatement to the position of Regional Manager which he stated in his Originating application as well as in evidence that immediately after the rule was discharged on the 7th July 2006, he signed acceptance of the package offered for it and handed it to the Human Resources Manager Mrs. Mamello Phomane.

44. The respondent in its Answer simply criticized applicant's choice of the Human Resources Manager as the officer to whom he delivered his formal acceptance of the offer. They questioned why the applicant did not inform the Managing Director when he served him with the letter of termination that he had since accepted the offer together with the package. In response to this, applicant said he gave the letter to Mrs. Phomane because the Managing Director had gone to court at the time.

45. Under cross-examination it was put to Mr. Mphahlele that while he was at court on the 7th applicant was at work where he handed the letter of acceptance to the Human Resources Manager, he said he could not deny. He went on to state that he enquired from Mrs. Phomane and she said she did not get a signed contract from the applicant. Now this is hearsay evidence at its worst. No reason was advanced why the Human Resources Manager could not be called to come and testify about what she knows about the acceptance allegedly handed to her by the applicant. It was put to Mr. Mphahlele that even if in the Answer the respondent has not denied that the letter of acceptance was handed to the Human Resources Manager. He conceded.

46. Counsel for the respondent sought to argue that as of the 7th July 2006, when the applicant purported to accept the offer, there was no more offer to accept as the last day for him to have exercised the option was the 19th June 2006. That argument cannot be correct for the simple reason that the 19th June was not the deadline for the offer to remain open failing which it was to be considered closed. It was a deadline to accept the offer failing which retrenchment would be considered. If the intention was the former namely, to close the position from further considerations of acceptance, the letter of the 16th June 2006 would have said so.

47. Even assuming the letter indirectly rendered the offer no longer open for acceptance, that ultimatum could no longer operate in the face of the interdict which applicant obtained on the 19th June 2006. This explains why the respondent could not effect the termination on the 19th June. The issues relating to the offer and the package remained pending and open until the referral of the dispute to the DDPR was resolved and the urgent application filed with this court finalized. Indeed, the order sought was that respondent be interdicted from acting in terms of the letter of 16th June until the DDPR referral and the application filed in this court were finalised.

48. In the premises, we find no reason why we should not accept applicant's version that at the time he was retrospectively terminated, he had accepted the offer of Regional Manager Central despite having been treated unfairly in the road leading to the offer of the new position. The respondent simply stated in paragraph 19 of the Answer that it opposes the prayer for reinstatement, but advanced no reasons for opposing it. Neither did the witness for the respondent testify to any impracticability of the desired reinstatement.

49. Section 73(1) of the Code enjoins this court to order reinstatement if it holds the dismissal to be unfair and the employee wishes to be reinstated, unless the court considers reinstatement of the employee to be impracticable. The court cannot make a determination of the practicability or otherwise of reinstatement on the basis of speculation or gut feeling. The court must be guided by evidence. In the absence of evidence pointing to impracticability the court must order reinstatement. (see Pascalis Molapi .v. Metcash Ltd Maseru LAC/CIV/R/9/03 (unreported) pp 12 – 15 of the typed judgment).

50. Given that applicant was outrightly treated unfairly from the start which has rendered his dismissal substantively unfair, he might if he had so prayed have been entitled to reinstatement to the newly offered position on the salary package of his previous position. This was in most likelihood going to be the case because the change in his terms and conditions was very much unilateral. This court is however enjoined to give him what he

has prayed for and not more. (see Phethang Mpota .v. Standard Lesotho Bank LAC/CIV/A/06/08 (unreported) at p.13 paragraph 20 of the typed judgment.). In the circumstances it is ordered as follows:

(i) Retrenchment of applicant on 7th July 2006 with effect from 19th June 2006 was procedurally and substantively unfair.

(ii) The respondent is ordered to reinstate applicant to the position of Regional Manager Central retrospectively to the date of acceptance of the package offered for the post i.e. 7th July 2006 without loss of remuneration, seniority or other entitlements or benefits.

(iii) The respondent shall pay applicant salary he would have earned from the position from 7th July 2006 to the date of reinstatement less the mitigated losses of M31,000-00 which applicant said he received as Director's fees amounting to M2,000-00 and Project Management fees of M24,000-00.

(iv) There is no order as to costs.

THUS DONE AT MASERU THIS 1st DAY OF DECEMBER, 2009.

L. A. LETHOBANE
PRESIDENT

L. MOFELEHETSI — I CONCUR
MEMBER

M. MAKHETHA — I CONCUR
MEMBER

FOR APPLICANT: — ADV. THOAHLANE
FOR RESPONDENT: — ADV. FISCHER