

**IN THE LABOUR COURT OF LESOTHO**

**LC/REV/126/07**

**A0444/07**

**HELD AT MASERU**

**IN THE MATTER BETWEEN**

**FANG YANG SUPERMARKET**

**APPLICANT**

**AND**

**MALESHOANE MOQHALI  
DDPR**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

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## **JUDGMENT**

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*Date : 07/05/09*

*Reasons for judgment reserved. Review – The applicant failed to raise reviewable irregularities. The arbitrator correctly relied on evidence presented at Arbitration Award confirmed.*

1. After hearing this matter the Court dismissed the review application but reserved the reasons for its decision. These now are those reasons. The 1<sup>st</sup> respondent was employed by the applicant company as a cashier. According to her evidence before the 2<sup>nd</sup> respondent, on the 4<sup>th</sup> December 2006, she proceeded on maternity leave. She averred further that she was paid her maternity leave benefits and by agreement with the employer she was to report back to work on the 2<sup>nd</sup> April 2007.
2. From the document attached to the 1<sup>st</sup> respondent's opposing affidavit which was authored by the representative of the applicant Mr. Kimane it is clear that on proceeding on maternity leave, 1<sup>st</sup> respondent was paid for days worked, bonus pay two months maternity pay and a month's salary. From her testimony especially under cross examination it is apparent that

- whilst on leave, the 1<sup>st</sup> respondent received another month's salary. This made a total of four months pay that she got plus bonus and the four days worked in December.
3. 1<sup>st</sup> respondent testified further that when she had gone to collect the salary which she got while on leave, they even reminded each other with her boss that her date of return to work is the 2<sup>nd</sup> April 2007. She testified that to her surprise when she reported to work as agreed on the 2<sup>nd</sup> April, the employer one Mr. He Xie Ming told her that there was no more work for her. She averred that she had not done anything wrong as she was fresh from maternity leave. She testified that she asked for a letter of dismissal but it was not issued.
  4. The applicant on the other hand testified that the 1<sup>st</sup> respondent was dismissed on the 4<sup>th</sup> December 2006, and paid all her benefits including maternity leave. The respondent sought to show that when the 1<sup>st</sup> respondent reported back at their store on the 2<sup>nd</sup> April 2007, she had come to plead for leniency and to be taken back as an employee.
  5. The representative of the employer testified that he was the one who conducted the disciplinary hearing against the 1<sup>st</sup> respondent for theft that occurred on the 27<sup>th</sup> November 2006. He told the arbitrator that a boy who was being served by the 1<sup>st</sup> respondent bought a packet of cigarettes but got out with extra two boxes. The boy was caught and taken to the Police.
  6. The boy was duly charged with theft, but the court found that his act was childish mischief and released him. However, on their return from court He Xue Ming instructed him to charge 1<sup>st</sup> respondent with dishonesty, which he did. He testified that 1<sup>st</sup> respondent admitted guilt and was dismissed. Asked to produce prove of the charges he preferred against 1<sup>st</sup> respondent he said he did not have them.
  7. After analyzing the evidence on both sides the learned arbitrator found that 1<sup>st</sup> respondent was not dismissed on the 4<sup>th</sup> December 2006, but was allowed to proceed on maternity leave as she had testified. She found further that, the agreement with

her employer was that she would return on the 2<sup>nd</sup> April 2007, which gave her a longer leave than the statutory leave period of six weeks. She found further that 1<sup>st</sup> respondent was unfairly dismissed when she sought to report back to work on the 2<sup>nd</sup> April 2007. Finally the learned arbitrator ordered that 1<sup>st</sup> respondent be paid M9,960-00 representing 12 months compensation for unfair dismissal and M2,451-69 for working on her weekly rest days.

8. The employer applied for the review of that award. The grounds of review were the following:
  - (a) The learned arbitrator awarded 1<sup>st</sup> respondent a ridiculous amount as compensation.
  - (b) It is impossible for the employee not to take her off days for the whole period of her employment. In any event the employee was paid accordingly for working on her rest days.
  - (c) The arbitrator rejected the evidence of the employer that the 1<sup>st</sup> respondent was dismissed on the 4<sup>th</sup> December 2006.
9. Quite clearly the so-called grounds of review are grounds of appeal in as much as they show that the applicant is unhappy with the outcome and not the method of the arbitration proceedings. The court asked Mr. Kimane for the applicant what exactly he meant by saying the compensation awarded is ridiculous. He immediately retracted the word "ridiculous" and conceded that the arbitrator was at large to award the compensation he awarded because the employer had made the mistake of not telling the 1<sup>st</sup> respondent that when she was paid on the 4<sup>th</sup> December 2006, she was actually being paid off and that she was being terminated.
10. He referred to the document that he wrote on the 4<sup>th</sup> December that tabulated the monies that 1<sup>st</sup> respondent was going to be paid. He admitted that the document had the weakness of not telling the 1<sup>st</sup> respondent that she was being terminated. This concession will apply with equal force to the complaint that the learned arbitrator rejected the employer's evidence that the 1<sup>st</sup> respondent was dismissed on the 4<sup>th</sup> December 2006. The

document relied on to prove the so-called termination is the same one which Mr. Kimane correctly admitted that it does not say anything about termination.

11. If anything, the document actually says the 1<sup>st</sup> respondent proceeded on maternity leave on the 4<sup>th</sup> December and was duly paid for that leave. One cannot be on leave and at the same time be dismissed. It is one or the other not both. To show that she was on leave, the employer paid her for the other two months over and above the two months maternity leave pay. The learned arbitrator clearly made a finding which was consistent with the evidence before him when he said the 1<sup>st</sup> respondent proceeded on maternity leave on 4<sup>th</sup> December 2006 and was surprisingly terminated without any reason on the 2<sup>nd</sup> April 2007 when she returned from leave.
12. On the contention that it is impossible that the 1<sup>st</sup> respondent could have never taken days off for the entire period of her employment, the representative of the applicant was again not raising a reviewable irregularity. From the record the 1<sup>st</sup> respondent presented evidence of the weekly rest days when she was on duty. The representative of the applicant did nothing to challenge that evidence under cross-examination or to controvert it in his own evidence. The learned arbitrator cannot therefore be faulted for relying on it and finding in favour of the 1<sup>st</sup> respondent.
13. Mr. Kimane contended that the 1<sup>st</sup> respondent was duly paid at double her normal rate of pay for the rest days that she was required to work as she alleged. The court enquired from him, whether he produced evidence at arbitration that showed that 1<sup>st</sup> respondent was paid as he alleged. He said he did not because the employer did not have the records but that was a verbal agreement. Even assuming that a verbal agreement was made, no evidence of it was produced at the arbitration for the learned arbitrator to assess it. The employer was not called to attest to the so-called verbal agreement.

14. After hearing both sides in this matter, we came to the conclusion that the learned arbitrator has not committed any irregularity that warrants the interference of this court. In the circumstances the award of the learned arbitrator is confirmed and the review application is dismissed. There is no order as to costs.

THUS DONE AT MASERU THIS 19<sup>th</sup> DAY OF MAY 2009

**L. A. LETHOBANE**  
**PRESIDENT**

**M. MAKHETHA**  
**MEMBER**

**I CONCUR**

**M. THAKALEKOALA**  
**MEMBER**

**I CONCUR**

**FOR APPLICANT:**

**MR. KIMANE OF EMPLOYEES’  
RELATIONS SERVICES**

**FOR RESPONDENT:**

**MISS KHALANE OF LABOUR**