

IN THE LABOUR COURT OF LESOTHO

LC/49/05

HELD AT MASERU

IN THE MATTER BETWEEN

**LABOUR COMMISSIONER (OBO)
PHEELLO LEPEKOLA**

APPLICANT

AND

LESOTHO ELECTRICITY CORPORATION

RESPONDENT

JUDGMENT

Date:28/09/2010

Reasons for judgment reserved. Workmen's Compensation – Condonation of late referral of a claim – Supporting Affidavit not sworn under oath before a commissioner of Oaths – such constitute a non-affidavit in law and application was dismissed.

1. The complainant Pheello Lepekola was employed by a company called Roshcon (Pty) Ltd which was contracted by the respondent to do some electrical works in the country. On the 9th August 2002 he injured his right index finger whilst operating the safety locks that hold the drill boom steady.
2. On the 15th August 2002, the employer duly reported the accident to the Labour Commissioner in terms of the law. On the 12th September the Doctor who treated the complainant assessed his permanent incapacity at 4%. On the 11th November 2002, the Workmen's compensation Office calculated the compensation payable to the complainant at M1,944-00. Roshcon was duly informed of the compensation payable.
3. In April 2005, the legal officer of the Labour Department wrote

to the Chief Executive of the respondent demanding payment of compensation due to Pheello from them, because they could not trace Roshcon which was an employer of the complainant. In June 2005, the Labour Department filed an application for the condonation of the late filing of the claim for compensation on behalf of the complainant. The affidavit supporting the application was signed by the legal officer of the Labour Department.

4. The answering affidavit was signed by the legal officer of the respondent who contended in limine that the so-called founding affidavit was no affidavit in law for the following reasons.
 - (i) the maker thereof does not make same under oath.
 - (ii) The maker does not say facts to which he deposes are true and correct.
 - (iii) The document has not been attested and sworn to before a commissioner of oaths.

He contended further that the Authority to Represent has been signed by the Labour commissioner instead of the complainant who ought to authorize the Labour Commissioner to litigate on his behalf.

5. At the hearing Mr. Shale for the respondent further motivated the above points and prayed the court to dismiss the application as it fails to conform with the rules both in form and content. Ms. Mabusane who appeared for the applicant conceded the points raised in limine. She stated further that she has lost contact with the complainant and that she had no objection to the application being dismissed on the grounds raised in limine by the respondent. Accordingly the application was dismissed as prayed by the respondent. No order as to costs was made.

THUS DONE AT MASERU THIS 16TH DAY OF NOVEMBER, 2009.

L. A. LETHOBANE
PRESIDENT

J. M. TAU
MEMBER

I CONCUR

D. TWALA
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MS. MABUSANE
MR. SHALE