

HELD AT MASERU

In the matter between:

TEBELLO THANDAZO & 6 OTHERS

APPLICANTS

AND

NIEN HSING INTERNATIONAL

RESPONDENT

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*JUDGMENT*

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09/11/10

*Practice and Procedure - Respondent raising a point in limine that the originating application and the authority to represent do not comply with the Rules of this Court in that they have not been signed by all the applicants - Point in limine dismissed.*

1. Applicants are all former employees of the respondent company, and they were all dismissed on 11<sup>th</sup> December, 2009 for participation in an illegal strike.
2. Applicants deny that they were involved in an illegal strike. It is common cause that the dismissals were precipitated by the events of 11<sup>th</sup> December, 2009, but parties do not agree on how the dispute arose. Applicants' version is that they were dismissed for holding a Christmas party which they allege is a traditional annual event in their workplace. They allege that on 11<sup>th</sup> December, 2009 they held the party at respondent's premises as usual, but for some reason management did not seem pleased and interpreted it as a strike, and decided to cut off power. They submitted that following this the Human Resource Manager met with the shop stewards to try to sort out the matter amicably, but apparently things came to a dead end and some workers were dismissed as a result. They are challenging the fairness of this dismissal.

3. In reply, respondent's Managing Director denied that the dismissals were unfair. He contended that the said employees were dismissed for engaging in an unlawful work stoppage. He maintained that even if one were to assume that the work stoppage was a result of a Christmas party, employees were still obliged to consult with management. He indicated that management took exception to the employees' conduct and issued them with three ultimatums to discontinue with what management perceived as an industrial action. He confirmed that negotiations with shop stewards were held, but were unsuccessful. Their main interest was that employees resume work. He averred in his answer that employees were given an opportunity to reapply, but failed to seize it, hence their dismissals on 11<sup>th</sup> December, 2009. As far as he was concerned the dismissals were fair, hence a prayer that the application be dismissed with costs.

4. Furthermore, the respondent raised a point *in limine* to the effect that the 1<sup>st</sup> applicant, Tebello Thandazo, had no authority to sign the originating application and the authority to represent on behalf of the other six co-applicants. It was contended that the papers ought to have been signed by all the applicants individually, and the 1<sup>st</sup> applicant could only sign for herself. They therefore asked the Court to dismiss the application on this legal point, and submitted that the trade union was not properly before Court. In terms of their papers only the 1<sup>st</sup> applicant had given the union authority to represent her. Mr. Mohaleroe, for the respondent, insisted that this Court might be a Court of equity in terms of Section 28 of the Labour Code, 1992 but it cannot flout its own Rules. He emphasised that it is of prime importance that a person mentions in what capacity he is appearing before Court as required by law.

5. In reply, Mr. Mokhele on behalf of the applicants, indicated that Rule 8 (2) of the Labour Court Rules, 1994 allows one party to sign on behalf of all the other applicants. The Rule provides that;

***Where there are numerous persons having the same interest in an originating application, one or more of them may be the applicant as the respondent or respondents, or may be authorised by the Court, before or at the hearing.***

There appears to be a legislative drafting error in the couching of the Section, for one, applicants cannot be cited as respondents. Be that as it may,

the general import of the Rule seems to be that one of the applicants may be authorised to represent others at the hearing. It does not relate to the signing of pleadings.

### ***THE COURT'S ANALYSIS***

6. Proceedings before the Labour Court are instituted through an originating application per Rule 3 of the Labour Court Rules, 1994. The Rule prescribes that an originating application shall be in writing and couched substantially in accordance with Form LC I contained in Part A of the schedule to the Rules. Sub-Rule (h) thereof provides that it ***“shall be signed and dated by the applicant”***. It follows therefore that the applicants ought to have all appended their signatures to the originating application, or at least authorised the union to act on its behalf through signing the authority to represent.

7. With regard to the authority to represent, Rule 26 provides that;

***Where a party is represented by a legal practitioner, or any of the persons specified in Section 28 (1) of the Code, that party shall file in Court a written authority for such representation in or substantially in accordance with Form LC 6 contained in Part A of the schedule.***

Trade Unions form part of ***“any of the persons specified in Section 28 (1) (a) of the Code”***. The said Section provides that;

***At any hearing before the Court, any party may appear in person or be represented by an officer or an employee of a trade union or of an employers' organisation.***

Union's rights to represent their members therefore derive from this Section. However, the Section makes it mandatory for them to be authorised by their members for such representation. If we may revisit the Rule it reads in part that a party ***“shall file in Court a written authority for such representation in or substantially in accordance with Form LC 6”*** attached to the Rules. The said LC 6 has to be signed by the person/persons granting such authority to be represented. Applicants in this case therefore ought to have signed the

authority to represent authorising the union to represent it. The point *in limine* raised on behalf of the respondent is therefore in order.

8. However, Rule 27 provides that failure to comply with any requirements of the Rules shall not invalidate any proceedings unless the Court directs otherwise. The Court therefore has a discretion to condone failure by the applicants to abide by any of the Rules. This does not mean that Labour Courts should condone flagrant disregard of the Rules, but in some circumstances justice demands that failure to abide by its Rules be condoned.

9. Behind this Rule lies the underlying principle that Labour Courts have been established as Courts of equity, and as such are enjoined to concern themselves more with substance than with legal technicalities - see *South African Technical Official's Association v President of the Industrial Court & Others 1985 (1) SA 597 (A)* at 612 J. It is not in accordance with fair labour relations practices to place undue technical hurdles before litigants in Labour Court proceedings - see *Society of Bank Officials v First National Bank of Southern Africa (1996) 17 ILJ, 135* at p. 139. In their quest for fairness, Labour Courts are not to frustrate themselves with a narrow and legalistic approach to matters before it. It is only in extreme cases that the Court can permit legal hurdles to block its pursuit for fairness.

10. Clearly, the applicants *in casu* (with the exception of the 1<sup>st</sup> applicant) flouted the Rules by failing to sign the originating application and the authority to represent as prescribed by the Rules. However, the Court finds the flaw not to be so grave as to warrant the invalidation of proceedings. It deems it to be a mistake or an oversight that can be rectified. The Court therefore orders that the applicants all append their signatures to the originating application and the authority to represent, following which the matter will be set down for hearing. This could be achieved by attaching applicants' signatures to both documents by way of an amendment.

The point *in limine* is therefore dismissed. There is no order as to costs as the respondents had anyway raised a valid point.

**THUS DONE AND DATED AT MASERU THIS 09<sup>TH</sup> DAY OF NOVEMBER, 2010.**

**F.M. KHABO**  
**DEPUTY PRESIDENT**

**L. MOFELEHETSI**  
**MEMBER**

**I CONCUR**

**R. MOTHEPU**  
**MEMBER**

**I CONCUR**

**FOR THE APPLICANTS:**  
**FOR THE RESPONDENT:**

**MR. S. MOKHELE**  
**ADV. T. MOHALEROE**