

**IN THE LABOUR COURT OF LESOTHO LC/41/09**

**HELD AT MASERU**

**IN THE MATTER BETWEEN**

**LABOUR COMMISSIONER OBO  
JOHN MOLELEKI  
SECHABA MOKHU  
MOTSOALLE NKOTSI  
LEBOHANG SEBOTSA  
LEETO MOYEYE  
MOTLATSI RAMATABOEE  
MOKETE KHASAKE**

**APPLICANT**

**AND**

**LESOTHO STEEL PRODUCTS (PTY) LTD   1<sup>ST</sup> RESPONDENT  
THE MANAGING DIRECTOR               2<sup>ND</sup> RESPONDENT**

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## **JUDGMENT**

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*Date: 23/03/10*

*Section 16(b) of the Labour Code empowers Labour Commissioner to institute proceedings on behalf of an employee in order to enforce provisions of the Code - Labour Commissioner must investigate the case to ensure there is violation of the Code calling for her intervention -  
Condonation - Applicant failing to make out proper case for condonation - Application for condonation struck off.*

1. At the conclusion of submissions the court struck off the application for condonation and reserved the reasons for that ruling. These are now those reasons.

2. The persons on behalf of whom the Labour Commissioner has brought this case are all male adult Lesotho nationals who were employed by the respondents at Letseng. No reason is given why they could not file this application in their own names as they are all competent adult persons to do so.
3. Clearly, the Labour Commissioner for her part acted in terms of section 16 (b) of the Labour Code Order 1992 (the Code) which provides that;

*“For purpose of enforcing or administering the provision of the Code a labour officer may:*

- a) .....*
- 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.”*

The section clearly gives the Labour Commissioner discretion to institute proceedings against an employer who flagrantly violates the provisions of the Code in violation of his or her employees’ statutory rights.

4. The section gives the Labour Commissioner the power to intervene where there is outright violation of provisions of the Code. To be able to intervene the Labour Commissioner should inform herself through investigation of the facts surrounding the dispute. Failure to do so would mean the Labour Commissioner is exercising her powers capriciously, oblivious of the interest of the other party who also yearns for protection from her office in respect of violations of the law by the employees. As the court of Appeal said in *Mike Nkuatsana .v. Maluti Mountain Brewery C. of A (CIV) No.23/97* an officer in the position such as that of the Labour Commissioner ought to act “to right palpable wrongs in cases regarded as meritorious, therefore worthy of going into battle for.”

5. What happened in the present case would appear to be the direct opposite. The complainants filed a complaint with the office of the Labour Commissioner that the 2<sup>nd</sup> respondent verbally dismissed them on the 20<sup>th</sup> January 2009. There is no evidence that a labour officer was sent to go and establish the facts surrounding the dismissal of the complainants. Infact Mr. 'Nono who represents the applicant was not aware that the facts of the dismissal of the complainants was ever investigated to establish whether the respondent has indeed violated the provisions of the Code by terminating the complainants' contracts.
6. What is clear is that an officer of the Maseru District Labour Office took the dispute to the DDPR. It was there that they learned for the 1<sup>st</sup> time that the respondent's defence is that the complainants were terminated for participating in any illegal strike. The DDPR accordingly issued a certificate referring the dispute to this court. The certificate was issued on the 28<sup>th</sup> April 2009.
7. It was only on the 29<sup>th</sup> October 2009 that the complainants with the assistance of the office of the Labour Commissioner filed the Originating Application out of the Registry of this court. In the same Originating Application, Mr. 'Nono for the applicant sought to include the prayer for condonation of the late filing of the Originating Application. Two problems arose.
8. The first was that Mr. Lebone on behalf of the respondents objected that there was a proper application for condonation for consideration by the court. He was correct. The applicants have failed to comply with rule 30 of the Rules of the Labour Court 1994, that govern an application for condonation. The importance of making a proper application for an interlocutory application was underscored in Thabo Teba & 30 Others LAC/CIV/A/06/09 at p.5 of the typed judgment. In that judgment the court observed that a separate application with a different number to distinguish it from the main case should be filed.
9. The second problem was that the supporting affidavit was filed

by one of the complainants and not the Labour Commissioner who is the petitioner in the main action. Furthermore, the affidavit did not set out the established grounds of condonation namely the degree of lateness, explanation for the delay, prospects of success, importance of the case and prejudice.

10. The affidavit merely set out the history of the case and alleged that the applicants were verbally dismissed on the 20<sup>th</sup> January 2009. It then proceeded to allege what was essentially hearsay concerning the stages that the dispute went through which allegedly resulted in the late filing. All that was hearsay as it is information which deponent to the supporting affidavit is not in a position to know. It is information that can only be known by an officer of the Labour Department who has been dealing with the case.
11. There was no affidavit filed by the District Labour Officer who handled the case to say what investigations he made about the dismissal which led him to conclude that the employer has violated the law. It was from that investigation that prospects of success could be assessed. The Labour Officer had clearly acted on information of one side namely; the employees. In the light of the answer of the respondent that the employees had embarked on an illegal strike, the court could not conclude that there were prospects of success. Accordingly, the court upheld Mr. Lebone's point in limine that there was no proper condonation application made. Even assuming there was, the applicant has failed to make out a proper case for condonation. Accordingly, the application was struck off. There was no order as to costs.

THUS DONE AT MASERU THIS 23rd DAY OF APRIL, 2010

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

**J. M. TAU**  
**MEMBER**

**I CONCUR**

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

**I CONCUR**

**FOR APPLICANT:**  
**FOR RESPONDENT:**

**MR. 'NONO**  
**MR. LEBONE**