IN THE LABOUR COURT OF LESOTHO **LC 62/11**

HELD AT MASERU

In the matter between:

`MALINTLE MOHOANYANE **APPLICANT**

and

EMMANUEL HIGH SCHOOL **1st RESPONDENT**

EMMANUEL HIGH SCHOOL - SCHOOL BOARD **2nd RESPONDENT**

SEVENTH DAY ADVENTIST CHURCH **3rd RESPONDENT**

LESOTHO CONFERENCE OF THE SEVENTH DAY ADVENTIST **4th RESPONDENT**

JUDGMENT

Date: 06/09/12

Practice and procedure - Unfair dismissal claim - Counsel for 1st and 2nd respondents raising two points in limine viz., (i) that the claim was time barred; and that (ii) the 3rd and 4th respondents lacked locus standi in judicio - Both points dismissed.

1. We wish to point out at the outset that there is no appearance for the 3rd and 4th respondents. The facts giving rise to the present proceedings are briefly that the applicant had been employed from 1998 to November 2010 in the Accounts Section of Emmanuel High School. In November, 2010, the School Board of the said school purported to terminate her employment on operational grounds. Since the dismissal impinged on operational reasons it exclusively falls within the jurisdiction of this Court in terms of ***Section 226 (1) (C) (iii) of the Labour Code (Amendment) Act, 2000***. The applicant seeks to challenge the substantive and procedural fairness of this dismissal.

2. Reacting to this application 1st and 2nd respondents' Counsel, Advocate Nteso raised two preliminary points ***viz*****,** that the matter had prescribed; and secondly that the 3rd and 4th respondents lacked ***locus standi in judicio*** in as much as it has not been shown in their originating application that they are legally registered entities. He therefore prayed that applicant's claim be dismissed on these two grounds. Advocate Ratau, on behalf of the applicant argued on the contrary that there was no merit in the points ***in limine*** and they should be dismissed. An analysis of these legal points follows.

PRESCRIPTION

3. The applicant is claiming that the purported termination of her services is unfair. The said termination was effected by the letter dated 25th November, 2010. She initially instituted C 106/10 before the Directorate of Dispute Prevention and Resolution (DDPR) challenging this termination and the matter was dismissed for want of jurisdiction and subsequently referred to this Court. She, however, later filed C 052/11 claiming severance pay and unpaid wages, a claim which was also dismissed on the basis that there was an unfair dismissal claim referred to this Court. The Court will therefore concentrate on C 106/10 which challenged the fairness or otherwise of the dismissal, it being relevant to the current proceedings.

4. 1st and 2nd respondents' Counsel submitted that since the dismissal occurred in November, 2010, the applicant ought to have lodged her claim for unfair dismissal within six months from the date of the dismissal in terms of ***Section 227 (1) of the Labour Code (Amendment) Act, 2000***. The said Section provides that:

> ***Any party to a dispute of right may, in writing refer that dispute to the Directorate –***
>
> ***(a) If the dispute concerns an unfair dismissal within 6 months of the date of the dismissal;***
>
> ***(b) In respect of all other disputes, within 3 years of the dispute arising.***

5. As it is, the record does not reflect when C 106/10 was instituted before the DDPR, but according to annexure "B" to the originating application it was referred to this Court on 10th February, 2011 and lodged with this Court on 2nd December, 2011. The six months period prescribed by ***Section 227 (1) of the Labour Code (Amendment) Act, 2000*** relates to matters that are filed with the DDPR and not the Labour Court. There being no statutory prescription period in respect of claims before the Labour Court, resort is always had to the common law principle of reasonableness. 1st and 2nd respondent's Counsel having relied on an irrelevant statutory provision, the Court feels inclined to dismiss this point ***in limine***.

6. We will not even venture into whether it was reasonable for the applicant to have lodged her claim before the Labour Court on 2nd December, 2011 when a referral was made in February, 2011 or whether C052/11 on outstanding wages and severance pay could be said to have interrupted the prescription period.1st and 2nd respondent's Counsel had solely relied on ***Section 227 (1) of the Labour Code (Amendment) Act, 2000*** which as stated above is not relevant to proceedings before the Labour Court. This preliminary point is therefore dismissed.

LOCUS STANDI IN JUDICIO

7. In order to be capable of either suing or being sued, a person must have ***locus standi in judicio*** - Becks Theory and Principles of Pleading in Civil Actions 6th ed., 2002, p. 5. The 1st and 2nd respondents' Counsel argued that the 3rd and 4th respondents have no ***locus standi in judicio*** in these proceedings because there is no allegation that they are entities legally registered under the ***Society's Act, 1966*** which rendered them capable of suing and being sued. He maintained that the burden of showing that these are legal entities, fully registered, rested on the applicants. He submitted that without that averment the application stood to be dismissed. 1st and 2nd respondents' Counsel submitted that this issue of registration was irrelevant to the issue at hand. He argued that whether or not the two entities, the Lesotho Conference and the Church are registered is a matter for evidence.

8. It should be noted that 1st and 2nd respondents do not see eye to eye with the 3rd and 4th respondents, at least on this issue at hand. It is common cause that after 2nd respondent had served the applicant with a letter terminating her services with the 1st respondent, the 3rd respondent attempted to reinstate her and she was denied access to the school. It is also worth reminding ourselves that Advocate Nteso only represented 1st and 2nd respondents and not the 3rd and 4th respondents. We find it very strange that he can use this defence against the applicant. It is a basic principle of pleadings that ***"it is necessary for a plaintiff in all cases to allege in his or her summons or declaration facts sufficient to show that he or she has locus standi to bring the action."-*** Becks ***supra at p. 5***.

9. The defence of ***locus standi*** could at the most be raised against the applicant. Furthermore, it could be raised by the 3rd and 4th respondents themselves. 1st and 2nd respondent's Counsel's interest is limited to them and not to the other respondents. We do not even see how it builds 1st and 2nd respondent's case. In our view it is irrelevant as far as the 1st and 2nd respondents are concerned. If the four respondents acted in unison the point could have some validity but as aforementioned the two camps operated from two diametrically opposed angles. The point is therefore dismissed.

No order as to costs

THUS DONE AND DATED AT MASERU THIS 05TH DAY OF SEPTEMBER, 2012.

F.M. KHABO

DEPUTY PRESIDENT OF THE LABOUR COURT

M. MPHATS'OE **1 CONCUR**
MEMBER

M. MALOISANE **1 CONCUR**
MEMBER

FOR THE APPLICANT: **ADV. S. RATAU**

FOR THE 1ST AND 2ND RESPONDENTS : **ADV. P.T. NTESO**