

HELD AT MASERU

In the matter between:

FACTORY WORKERS' UNION
SEBOLELO MAKHOSE
PONTS'O MOTSAMAI
MARETHA PATJOA
VERONICA MAKARA
NTJOETSO LEJAHA
SAMUEL TLELAKA
THISETSO MOETI
JULIA TAMATLAPENG
`MAPULENG MOKOROBELE

1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT
5TH APPLICANT
6TH APPLICANT
7TH APPLICANT
8TH APPLICANT
9TH APPLICANT
10TH APPLICANT

AND

J. W. INTERNATIONAL (PTY) LTD

RESPONDENT

JUDGMENT

DATE: 29/05/2012

Practice and Procedure - Unfair dismissal claim - brought about three years after the date of dismissal - Respondent's Counsel arguing that applicants' claim is time - barred as it had been lodged after an inordinate delay and therefore necessitated a condonation application - Applicant's Counsel arguing on the contrary that there is no need for a condonation application as the law prescribed no statutory time limit for unfair dismissal claims filed before the Labour Court - Court finds the delay to have been unreasonable and warranting a condonation application.

1. The dispute arises from the dismissal of the applicants for allegedly participating in an illegal strike. The alleged strike is said to have emanated from an incident in

which one of the employees had been accused of theft and had been removed from the factory floor by Security Personnel. Employees are alleged to have taken exception and stopped working and were subsequently dismissed for participating in an illegal strike. Applicants claimed that they had been unfairly dismissed as they had not been afforded a hearing prior to the dismissal. In response, respondent's Counsel, Advocate Ntaote, indicated that a hearing was held but proceeded in the employee's absence after they had frustrated it by refusing to be heard in manageable groups.

2. The applicants were dismissed on or about 3rd March, 2008 when the purported strike took place around February, 2008. They lodged their claim for unfair dismissal on 18th February, 2011. Dates are of essence where prescription is in issue. The Directorate of Dispute Prevention and Resolution (DDPR) had declined jurisdiction in the matter on the basis that it impinged on a strike, an issue falling under the jurisdiction of this Court. It referred it to this Court on 6th May, 2008. after it had Respondent's Counsel raised an objection to the effect that the matter had prescribed as it had been filed three years after the date of dismissal which according to him constituted an unreasonable delay necessitating condonation for the delay in filing the claim. He submitted that in the absence of an application for condonation, the matter should be dismissed.

3. In reaction, Advocate Molise for the applicants submitted that there is no statutory limit within which to file unfair dismissal claims before the Labour Court. According to him, **Section 227 (1) (a) of the Labour Code (Amendment) Act, 2000** which sets out a statutory limit of six months for unfair dismissal claims only relates to the DDPR. He contended that the legislature did not intend that there be a time - limit and in that case there is no duty on the applicants to apply for condonation. As far as he was concerned they could only have not violated any rule. In reply, Advocate Ntaote argued that much as no time-limit has been prescribed, the principle of fairness cannot be overlooked. He insisted that a delay of three years was unreasonable and it warranted an application for condonation.

THE COURT'S ANALYSIS

4. Indeed, there is no statutory time frame within which to file unfair dismissal claims before the Labour Court. It is also true that **Section 227 (1) (a) of the Labour Code (Amendment) Act, 2000** only relates to the DDPR. This question of the statutory time - limit for filing of unfair dismissal claims has a history to it. A look at this history reveals that at the inception of the Labour Code Order, 1992

there was a provision regarding time within which to lodge an unfair dismissal claim before the Labour Court. This was Section 70(1). It provided that:

(1) A claim for unfair dismissal must be presented to the Labour Court within six months of the termination of the contract of employment of the employee concerned.

And went further to provide that:

(2) The Labour Court may allow presentation of a claim outside the period prescribed in subsection (1) above if satisfied that the interests of justice so demand.

The Section has since been repealed with the ushering in of the Labour Code (Amendment) Act, 2000. Section 227(1) (a) thereof is couched in terms similar to Section 70.

5. In its wisdom the Legislature deemed it necessary to prescribe to remove the time - limit. The issue then becomes whether in the absence of a statutory time-limit parties are at large to file unfair dismissal claims anytime that is convenient to them following the termination of their employment contracts. With no statutory guidance, resort is normally had to the common law. This Court held in *Mohau Takane v Lesotho Bank LC 165/95*, *Moholi Chaka v Lesotho Bank LC 163/95*, *Molikeng Ramabanta and 2 Others v Likhoele Dry Cleaners LC 40/03*, *Mahao & Others v Hotel Mafeteng LC 39/01* and *Samuel Brandt Masia v JHI Estate (Pty) Ltd LC 58/08* that even if there is no statutorily prescribed time within which to file a case, a claim must in terms of the common law be filed within a reasonable period from the time that the cause of action arose.

6. It is critical that claims are instituted timeously. In the employment context, it is important for the employer to know as early as possible after the dismissal whether he could be required to reinstate an employee who has been terminated to enable him/her for that eventuality - see *Metal & Allied Workers' Union v Filpro (Pty) Ltd IC (1984) 5 ILJ, 171*. This case was followed in *Samuel Brandt Masia* (supra). The Court will not allow a party to enforce against the other a right which he/she has not enforced for years - see *Manaptjoane Naptjoane v Frasers Furnishers LTD., LC 116/01*.

7. A man whose legal interests are threatened should be vigilant in protecting them in line with the latin maxim *Vigilantibus Non Dormientibus Jura Subveniunt*

(equity aids the vigilant, not the ones that sleep over their rights). The need for parties to enforce their rights timeously cannot be overemphasised. In *Marumo & Others v Dorby & Others (2005)26 ILJ 498* at p.500 the Court held that public policy dictates that there should be finality to litigation. Thus, if a party takes an unreasonably long time to seek a relief he/she is assumed to have waived his right to the claim. We are also inspired in this regard by the ILO Convention 158 concerning Termination of Employment, 1982 which provides in Article 8(3) that:

A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

8. We consider three years to have been an unreasonable delay for which condonation ought to have been sought. The application is accordingly dismissed on this ground. Respondent's point *in limine* is upheld.

No order as to costs.

THUS DONE AND DATED AT MASERU THIS 29TH DAY OF MAY, 2012.

F.M. KHABO
DEPUTY PRESIDENT

S. KAO
MEMBER

I CONCUR

R. MOTHEPU
MEMBER

I CONCUR

FOR APPLICANTS: ADV., M. A. MOLISE
FOR THE RESPONDENT: ADV., N. T. NTAOTE