

HELD AT MASERU

In the matter between:

TSEPANG KOLISANG

APPLICANT

And

SUN TEXTILE (PTY) LTD

RESPONDENT

JUDGMENT

Date: 6th August 2013

A claim for a discrimination. Respondent failing to attend. Matter proceedings in default. Court questioning the locus standi of Applicant – Court directing Applicant to proceed into evidence to validate Applicant’s locus standi – Applicant failing to make a case for discrimination against herself. Court also finding that Applicant has not right to bring a claim for discrimination on behalf of others. No order as to costs being made.

BACKGROUND OF THE ISSUE

1. This is a claim for discrimination on account of race. It was heard on this day and judgment was reserved. The background of the matter is essentially that Applicant instituted discrimination proceedings with the DDPR, in terms of section 227 (5) of the *Labour Code Order 24 of 1992* as amended. A certificate of non-resolution was issued, thus founding the jurisdiction of this Court over the claim. This matter was then set down for hearing on this day at 9:00 am.
2. In the morning session of the hearing, We had intimated to both parties that We intended to *mero muto* raise a point of law on the *locus standi* of Applicant in the proceedings. Advocate Rasekoai, who was then appearing for Applicant, had requested that the matter the matter was then stood down to 2:30 pm to allow him to make appearance in a case of contempt against himself before the High Court. By agreement

of both parties the matter was then stood down to 2:30 pm. In the afternoon, only Applicant was in attendance. Having waited for almost an hour for Respondent to attend, We resolved to proceed with the matter in default. Our judgment is thus in the following.

SUBMISSIONS AND ANALYSIS

Locus standi

3. We had made a proposition to Applicant that her pleadings seemed to suggest that she is claiming discrimination on behalf of her former colleagues. We went further to explain that her pleadings give the impression that she is claiming that her former colleagues were discriminated against in that the Respondent management applied its disciplinary code to her former colleagues in a manner that is dissimilar to the manner in which it dealt Richedio with one Richedio who is a foreign national, yet the offences involved were similar.
4. Mr. Bohloko submitted that Applicant has a *locus standi* in these proceedings. In support he added that Applicant's claim is that she was discrimination in that her complaint was dealt with in a discriminatory manner when compared to those that came before hers. Mr. Bohloko further submitted that Applicants case is not that her former colleagues who were dismissed for a similar conduct to that of Richedio were discriminated against, but that she made reference to them to illustrate her point. We concluded that the submissions made were not clear enough to allow us to make a determination on this point. We thus resolved to allow Applicant to proceed with evidence in the main claim.

Evidence

5. Applicant was the only witness in these proceedings. Having taken an oath, she testified that on the day in question, it was just after knock off when the incidents leading to this mater arose. Applicant and one Relebohile were just preparing to leave their workstations when they were approached by one Richedio. Richedio is an Indian national and a supervisor to the department in which Applicant and the said Relebohile are based. He inquired from them why they had remained at their workstation beyond the working hours. They had then explained that Relebohile was trying to locate both her cell phone and clocking card, both of which she had misplaced.

6. To their surprise, Richedio stormed at them with bitter insults. When they protested against his behaviour, he became even more furious and grabbed hold of the cellphone belonging to Relebohile, which she had just located, and threw it into the rubbish bin where it broke into pieces. Both Applicant and Relebohile went to the office of the Human Resources to lodge a complaint against Richedio. Although their complaint was received, it was however dealt with in a discriminatory manner. Whereas the rules of the employer provide for summary dismissal of anyone employee who is found guilty of passing insulting remarks at their co-employee, Richedio was not dealt with in this fashion.
7. Applicant testified further that rather than the punishment of dismissal, as the rules indicate, Richedio was given a final written warning. Witness testified that in the past, one Mosotho supervisor was dismissed for a similar offence in line with the rules of the employer, which rules were not applied in her case and Richedio. When asked how she was discriminated against, Applicant stated that the discrimination was against her former Basotho supervisors, who were dismissed in line with the same rules for a similar conduct with that of Richedio. She prayed that the discriminative conduct of the Respondent should be condemned.

Submissions and analysis

8. Mr Bohloko submitted that it is clear from the evidence of Applicant that Respondent is perpetuating discrimination within its employee at it affords dissimilar treatment in the application of its rules towards employees of different races. He further submitted that in terms of section 9 of the *Labour Code (Codes of Good Practice) of 2003*, the employer must be consistent in the application of its rules. He added that *in casu*, Respondent has not been consistent, particularly in the treatment of Applicant and the said Richedio. He argued that this amounts to discrimination in terms of the Labour Laws of Lesotho. Mr Bohloko concluded by praying that the Court grant all prayers as appears in the originating application. He added that under further an alternative relief, he prayed for a remedy of in terms of section 202 (2) (b) of the *Labour Code Order (supra)*.

9. The submissions of Mr. Bohloko are not consistent with the evidence of Applicant. Whereas Mr. Bohloko argues that the discrimination was in respect of how the Respondent dealt with the complaint by Applicant against the complaints of others, Applicant argues discrimination against other former Basotho employees who were dismissed on a similar conduct to that of Richedio. Clearly the Applicant and her representative are not arguing the same case. Not only is that the case, but the evidence lead by Applicant does not tally with the closing submissions by Mr. Bohloko.

10. The above notwithstanding, the evidence led does not establish a claim for discrimination against Applicant. Rather, evidence led established a claim against Applicant's former colleagues who were dismissed for a similar conduct to that committed by Richedio. This being the case, We find that there is no claim for discrimination against Applicant in as much as Applicant is no right to bring a claim of this nature on behalf of others.

AWARD

We therefore make an award in the following terms:

- a) That this matter is dismissed; and
- b) That there is no order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 12th DAY OF AUGUST 2013.

**T. C. RAMOSEME
DEPUTY PRESIDENT (a.i)
THE LABOUR COURT OF LESOTHO**

**Mr. L. MATELA
MEMBER**

I CONCUR

**Mrs. L. RAMASHAMOLE
MEMBER**

I CONCUR

**FOR APPLICANTS:
FOR RESPONDENT:**

**MR. BOHLOKO
ADV. MOHALEROE**