

IN THE LABOUR COURT OF LESOTHO

LC 18/12

HELD AT MASERU

In the matter between:

NATIONAL UNIVERSITY OF LESOTHO

APPLICANT

and

LESOTHO UNIVERSITY TEACHERS AND  
RESEARCHERS UNION

RESPONDENT

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## ***JUDGMENT***

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DATE: 02/08/13

*Strike action - Issuance of an ultimatum by the employer - Resumption of duty by union members following the issuance of an ultimatum - Union indicating it has not abandoned the strike but merely suspended it and has a right to resuscitate it - Whether this Court has jurisdiction to determine the issue - Court finds the DDPR to be the appropriate forum and therefore declines jurisdiction.*

1. This application is a sequel to a strike action that was embarked upon by the Lesotho University Teachers and Researchers Union (LUTARU) on November, 2010 pursuant to *Section 225 of the Labour Code (Amendment) Act, 2000*.

2. It is common cause that following the said industrial action, the applicant issued out an ultimatum on 28<sup>th</sup> December, 2011 against respondent's members' continued absence from work, whereupon they resumed work. The respondent, however, made it clear in their letter of 02<sup>nd</sup> April, 2012 addressed to the applicants that they were merely suspending the strike until 30<sup>th</sup> April, 2012 to facilitate consultations. Effectively, they said they were not abandoning it and could resuscitate it anytime during its authorized period. True to their intentions, by their letter dated 30<sup>th</sup> April,

2012 the respondent informed the applicant of its intention to resuscitate the strike on 1<sup>st</sup> May, 2012. This is the letter that is the subject of the current dispute.

3. In reaction, the applicant through its Director of Human Resources wrote indicating that by resuming work after the issuance of the ultimatum, respondent's members had abandoned the strike, implying that their right to resume the strike had become extinct by virtue of their resumption of duty. She made it clear that any subsequent strike would be considered illegal and that the University reserved the right to invoke the **"NO WORK NO PAY"** principle. She had earlier expressed these very same sentiments in her letter dated 5<sup>th</sup> April, 2012 addressed to the respondent.

4. This issue had come up on numerous occasions hitherto as evidenced by **"NUL 3."** The latter is a letter from applicant's Registrar dated 06<sup>th</sup> January, 2012 in which he was responding to respondent's letter of 02<sup>nd</sup> January, 2012 in which they had threatened to revive the strike. Applicant's Registrar had pointed out that this issue had been a subject of a lot of correspondence between the parties and culminated in litigation and each time, it was rejected. Applicant's contention was dismissed by the High Court in **CIV/APN/509/2011 ("NUL 1")**. As far as the applicant was concerned, the letter was superfluous in that respondent's members had already resumed duty in response to the ultimatum issued by it on 28<sup>th</sup> December, 2011 as mentioned above. They maintained in their founding affidavit that there was no longer any strike in existence it having been extinguished by virtue of respondent's members' resumption of duty following the ultimatum.

5. All in all, applicant is saying any revival of the strike action subsequent to the issuance of the ultimatum would constitute a new dispute. They actually pleaded this in their founding papers attested to by the Vice Chancellor, Professor Sharon Siverts. As far as the applicant was concerned, if respondent's members wished to embark on a strike they had to abide by the provisions of **Section 229(1) of the Labour Code (Amendment) Act, 2000**. They contended that by resuming duty, the respondent tacitly waived its right to strike. The applicant is before this Court to have the strike that the respondent purports to resume on 1<sup>st</sup> May, 2012 to be declared unlawful.

6. This matter is one of a kind as it was heard long after the expiration of the timeframe for the duration of the strike had lapsed. It is trite that Courts of law determine rights of parties. They exist for the settlement of concrete disputes or actual infringement of rights, not to pronounce upon abstract questions or to advise on differing contentions, however important those may be - per Innes CJ in **Geldenhuys and Neethling v Beuthin 1918 AD 426 at 441**. Courts are not there to determine academic or hypothetical issues. We asked both Counsel whether the

dispute had not been overtaken by events and its determination would serve no practical purpose. They, however, answered in the negative. They felt that since the dispute was instituted on time, they wanted the Court to pronounce itself on the issue at hand lest parties are confronted with a similar impasse in future. In light of the evident tumultuous relationship between the parties the Court felt persuaded to hear and determine the matter with a view to help quell the instability prevailing at this important institution of higher learning.

7. Respondent's Counsel had however raised a number of preliminary points which had to be addressed before the Court could enter into the actual dispute between the parties. Naturally, the points *in limine* had to be determined prior to any adjudication on the merits. Counsel, however, agreed that they address the Court on the merits as well in the interest of time. The points *in limine* raised were:-

- (i) that the Court has no jurisdiction to hear this matter;
- (ii) that the adjudication of labour matters has to be preceded by conciliation; and lastly;
- (iii) that it was irregular that the applicant had not joined the student union as a party to the proceedings when the latter had a direct interest in the matter (the special plea of non-joinder).

## ***EVALUATION***

### ***ON JURISDICTION***

8. The dispute at hand relates to a misunderstanding that arose out of a strike that was otherwise legal when it commenced but then complications arose when employees returned to work after the issuance of an ultimatum by the applicant. The issue to be determined is therefore whether the strike was still alive after the resumption of duty by the employees, and just lay dormant such that it could be revived anytime or whether it ceased to exist when employees returned to work.

9. In establishing whether this Court has jurisdiction to hear this matter it is critical to ascertain the nature of the dispute. Is it a dispute of right or of interest? A "*dispute of right*" is defined in terms of the *Labour Code (Amendment) Act, 2000* as:-

***a dispute concerning the application and interpretation of any provision***

***of the Labour Code or any other labour law, collective agreement or contract of employment;***

whilst a “*dispute of interest*” relates to:-

***a trade dispute concerning a matter of mutual interest to employees but does not include a dispute of right.***

10. A question comes to mind - then what is a “*trade dispute?*” In terms of Section 3 of the Labour Code Order, 1992 it is defined as:

***any dispute or difference between employers or their organisations and employees or their organisations, or between employers and employees, connected with the employment or non - employment, or the terms of the employment or the conditions of labour, of any person.***

11. In the Court’s view, the current dispute revolves on a dispute of interest, which unfortunately it has no jurisdiction to determine. The Labour Court is a creature of statute and can only exercise powers conferred on it by statute. To this end, ***Section 24(1) of the Labour Code (Amendment) Act, 2000*** provides that:-

***Subject to the Constitution and Section 38A, the Labour Court has jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other labour law are to be determined by the Labour Court.***

***Subsection 2(a)*** thereof, gives the Court power:-

***to inquire into and decide the relative rights and duties of employees and their respective organisations in relation to any matter referred to the Court under the provisions of the Code (emphasis mine) and to award appropriate relief in case of infringement.***

12. It provides further in Subsection (d) that the Court has power:-

***to inquire into and make awards and decisions in any matters relating to industrial relations, other than trade disputes, (emphasis mine) which may be referred to it.***

It is clear from these provisions that the Legislature never intended the Labour Court to adjudicate matters emanating from trade disputes. Trade disputes are to be subjected to conciliation under *Section 225 of the Labour Code (Amendment) Act, 2000*.

### **CONCLUSION**

It is on the basis of the above analysis that the Court finds that it has no jurisdiction to determine the matter. Respondent's point *in limine* in respect of jurisdiction is upheld. The Court having determined that it has no jurisdiction to entertain the matter cannot go into the other points raised.

There is no order as to costs.

**THUS DONE AND DATED AT MASERU THIS 02<sup>nd</sup> DAY OF AUGUST, 2013.**

**F.M. KHABO**  
**PRESIDENT (a.i)**

**L. MATELA**  
**MEMBER**

**I CONCUR**

**L. RAMASHAMOLE**  
**MEMBER**

**I CONCUR**

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

**Mr. L.A. MOLATI**  
**Mr. Q. LETSIKA**