

**IN THE LABOUR COURT OF LESOTHO**

**HELD AT MASERU**

**LC/40/2012**

**IN THE MATTER BETWEEN**

**ITUMELENG MOTŠO-MOTŠO**

**‘MATŠELE KHOELI**

**‘MANTŠEBO MPHOTO**

**LINEO SENYANE**

**CHESETSI CHESETSI**

**MOKUOANE MASABALLA**

**TEBOHO FERENE**

**AUGUSTINA SELLO**

**PALESA MAHLO**

**MOHANUOA MORAKE**

**NTŠIELENG MONOTO**

**MATŠELISO RANTOA**

**KHABANE NTŠELI**

**‘MALILLO ‘MUSA**

**REFILOE LENKO**

**‘MAMOEKETSI LISEBE**

**MARIANNA SHOROMANE**

**‘MATEBOHO ABELE**

**‘MASEMANA PITI**

**1<sup>st</sup> APPLICANT**

**2<sup>nd</sup> APPLICANT**

**3<sup>rd</sup> APPLICANT**

**4<sup>th</sup> APPLICANT**

**5<sup>th</sup> APPLICANT**

**6<sup>th</sup> APPLICANT**

**7<sup>th</sup> APPLICANT**

**8<sup>th</sup> APPLICANT**

**9<sup>th</sup> APPLICANT**

**10<sup>th</sup> APPLICANT**

**11<sup>th</sup> APPLICANT**

**12<sup>th</sup> APPLICANT**

**13<sup>th</sup> APPLICANT**

**14<sup>th</sup> APPLICANT**

**15<sup>th</sup> APPLICANT**

**16<sup>th</sup> APPLICANT**

**17<sup>th</sup> APPLICANT**

**18<sup>th</sup> APPLICANT**

**19<sup>th</sup> APPLICANT**

**AND**

**ECLAT EVERGOOD TEXTILES PTY LTD**

**RESPONDENT**

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**JUDGMENT**

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*Claims for unfair dismissal for participation in a strike and for insubordination. Respondents claiming that some of the Applicants were dismissed purely for insubordination and challenging jurisdiction of this Court. Court finding that some of the Applicants were dismissed for insubordination and that his Court lacks jurisdiction over their claims. No order as to costs being made.*

## **BACKGROUND TO THE DISPUTE**

1. These are claims for unfair dismissal for participation in an unlawful strike and for insubordination. Claims had initially been referred to the Directorate of Dispute Prevention and Resolution (DDPR) for resolution. The learned Arbitrator issued an award wherein he made a determination that these claims fall under section 226(1) of the *Labour Code (Amendment) Act 3 of 2000*, in that they involve a claim dismissal for participation in a strike.
2. Armed with this determination, Applicants referred their claim with this Court. The claims were heard and dismissed for want of jurisdiction before this Court. Applicants then appealed to the Labour Appeal Court, whereat the decision of this Court was reversed and the matter was remitted back for determination. The matter was accordingly set down for hearing.
3. On the date of hearing, Respondent raised a point of law to the effect that this Court had no jurisdiction to hear and determine claims of the 1<sup>st</sup> to 5<sup>th</sup> applicants, 7<sup>th</sup> to 9<sup>th</sup> Applicants, and 11<sup>th</sup> to 19<sup>th</sup> Applicants. Parties were accordingly directed to address the Court on the issue and having heard their submissions Our judgement on the matter is as follows.

## **SUBMISSIONS AND ANALYSIS**

4. It was Respondent's case that only the 6<sup>th</sup> and 10<sup>th</sup> Applicants had been dismissed for participation in an unlawful strike. It was submitted that the rest of the Applicants were dismissed for misleading, disrespecting and influencing others to engage in an unlawful strike. It was argued that these are acts of misconduct which ought to have been dealt with by the DDPR as opposed to this Court. It was prayed that all others Applicants claims except for the 6<sup>th</sup> and 10<sup>th</sup> Applicants be excluded from these proceedings, as being improperly placed.
5. Applicants answered that this point was not raised in the pleadings and that as a result it has taken them by surprise. However, when asked by the Court if they needed time to reflect on it in order to issuably react thereto, they declined the

indulgence and elected to proceed with addresses. Applicants argued that the content of the letters of dismissal suggests that all Applicants were dismissed for actively taking part in an unlawful strike action. The Court was referred to the dismissal letters, which are annexures FAWU 3 to the Applicants originating application. It was argued that this Court has jurisdiction to entertain claims involving dismissals for participating in a strike action, per section 226 (1) of the *Labour Code Act (supra)*.

6. It was further submitted while it may seem that some of the Applicants were dismissed purely for participation in a strike action and others for both strike action and insubordination, this Court nonetheless has jurisdiction over all claims in terms of section 226(3) of the *Labour Code Act (supra)*. It was added these other claims of insubordination cannot be divorced from claims of dismissal for participation in a strike as they all derive from a single transaction.
7. It was denied by Respondents that dismissals were based on strike and other acts of misconduct in addition thereto. It was said that as the letter of dismissals, to which applicants had referred to and annexed to their originating application, some of the claims were borne by act of dismissal for misconduct. Regarding, the timing for raising a point of law, it was argued that a point of law can be raised at any time and that this is a trite principle of law. It was prayed that the claims relating to misconduct be excluded from these proceedings.
8. We wish to start with the first point raised by Applicants relating to the timing for purposes of raising a point of law. We agree with Respondent and confirm their contention that a point of law can be raised at any time. Supportive of Our finding in the case of *Thabo Mohlobo & others v Lesotho Highlands Development Authority LAC/CIV/A/02/2010* where the Court relied on a quotation from the authority of *Casa v Tao Ying Metal Industries & 3 others 2009 (2) SA (CC)* as thus, “*Jurisdiction which is essentially a question of law, can be raised at any time...*”

9. The above notwithstanding, We had inquired from Applicants if they wished to be given time to reflect on the point. However, and as We have already stated, they rejected the indulgence and elected to proceed to address Us. We have elected to highlight the incident for the reason that where a party claims to be unable to argue issuably to a point of law that has been raised from the bar, the Court has a discretion to stay proceedings to allow such a party to make the necessary preparations and thus avert any form of prejudice that they may suffer as a result of the element of a surprise.
10. Regarding the merits of the point of law, We have studied the letters of dismissals, bearing annexure number FAWU. All letters in relation to the dismissals of the 1<sup>st</sup> to 5<sup>th</sup> Applicants 7<sup>th</sup> to 9<sup>th</sup> Applicants, and 11<sup>th</sup> to 19<sup>th</sup> Applicants, though slightly different, relate to reason for dismissal being misleading, disrespect and influencing others. In Our view, this does not in any way suggest that these concerned Applicants partook in act of strike, it being lawful or otherwise. Consequently, We find that We do not have jurisdiction over their claims.
11. We say this because the only claims in respect of which We have the power to determine, which involve dismissals are those that are,  
(a) Based on participation in a strike,  
(b) a consequence of a lock out; and  
(c) those related to operational requirements  
(see section 226(1)(c) of the *Labour code Act (supra)*.  
The claims of all other Applicants except the 6<sup>th</sup> and 10<sup>th</sup> are nowhere near the requirements of section 226(1)(c).
12. We wish to comment that We are aware that this matter was referred to this Court pursuant to an award which was issued on the 20<sup>th</sup> June 2012. Whereas, the learned Arbitrator had declined jurisdiction in that award, for the reason that this matter involved a claim for dismissal for participation in a strike action, the proper procedure would have been to issue a conciliation report in terms of section 227(5), rather than to make an award. By this said, We call upon arbitrators to

observe the requirements of section 227(5) of the *Labour Code Act (Supra)*.

**AWARD**

In the light of the above said, We make an award in the following terms:

- (1) That this Court has no jurisdiction over the 1<sup>st</sup> to 5<sup>th</sup> Applicants, 7<sup>th</sup> to 9<sup>th</sup> Applicants and 11<sup>th</sup> to 19<sup>th</sup> Applicants.
- (2) Claims of these Applicants are remitted to the DDPR for determination.
- (3) Applicants must obtain a date of hearing of the matter within 30 days of issuance of this judgement.
- (4) The DDPR must give priority to the matter given its history and the nature of the relief sought.

**THUS DONE AND DATED AT MASERU ON THIS 16<sup>th</sup> DAY OF JUNE 2014.**

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

**MRS. MOSEHLE**

**I CONCUR**

**MS. LEBITSA**

**I CONCUR**

**FOR APPLICANT:**

**ADV. RASEKOAI**

**FOR RESPONDENT:**

**ADV. TLELASE**