IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU **LC/61/2013**

IN THE MATTER BETWEEN

'MANKETU MOELETSI **1st APPLICANT**
'MALIEPOLLO KHOJANE **2nd APPLICANT**
QOBETE LEUTA **3rd APPLICANT**

AND

DIRECTOR – DEPARTMENT OF RURAL WATER SUPPLY **1st RESPONDENT**
P. S MINISTRY OF ENERGY, METEOROLOGY & WATER AFFAIRS **2nd RESPONDENT**
MINISTER OF ENERGY, METEOROLOGY & WATER AFFAIRS **3rd RESPONDENT**

JUDGMENT

Application for an interdict and a declaratory order. Requirements for both an interdict and duress considered. Applicants failing to meet the requirements for an interdict. Applicants further failing to establish duress/coercion. Applicants claims failing to sustain. Court dismissing application and making no order as to costs.

BACKGROUND OF THE ISSUE

1. This is an urgent application for a declaratory order in the following terms,

   "1. That the rules of this court pertaining to normal modes and periods of service be dispensed with on account of urgency hereof.

   2. A rule nisi be and is hereby issued returnable on the date and time to be determined by this Honourable Court calling upon the respondents to show cause (if any) why an order in the following terms shall not be made final:-

(a) That the unlawful termination of applicant's employment contracts effective 1st September 2013 in terms of letter of 25th and 30th issued by 1st respondent be stayed and 1st respondent be ordered to continue to renew applicants into service and pay their salaries accordingly pending finalisation of this matter.

(b) That the respondents be restrained and interdicted from their unlawful conduct of coercing or forcing or compelling or inducing applicants consent to sign new contracts which-negatively vary their current terms except by following due process of the law pending finalisation of this matter.

(c) That the respondents conduct of coercing or forcing or compelling or inducing applicants consent to sign new employment contracts which negatively vary their current terms of employment be declared unlawful.

(d) That respondents pay costs at attorney and own client scale only in the event of opposition.

(e) That applicants be granted such further and or alternative relief as the Honourable Court may deem fit in the interest of fairness.

3. That prayers 1, 2(a) and (b) should operate with immediate effect as interim orders."

2. By agreement of both parties, We granted prayers 1 and 2(a) to operate as interim pending finalisation of this matter. Parties were then put to terms regarding the filing of remaining pleadings. Respondent had in its answer raised a number of *points limine* which were later withdrawn in favour of the merits of the matter. Having heard the submissions of parties in the merits, Our judgement is thus in the following.

SUBMISSIONS

3. Applicant's claim was that on or around the 2nd May 2013, they were called to a meeting by 1st Respondent where at a copy of a unilateral contract was presented to them for their signature. The Court was referred to annexure MM2, which is

the said contract. The Applicants refused to sign the said contract mainly for two reasons, that they had not been consulted prior to the presentation of the contract and that it made them worse off in comparison to their then or earlier contracts signed in 2006.

4. It was submitted that during the said meeting, it had also been said that those who would not sign the new contracts would not be paid any salaries from June 2013. They were indeed not paid any salaries in June and in reaction to that, they caused their attorneys of record to write a letter to respondents to demand payment of same. It was only after that they were paid their June salaries, in July, together with those of July. The Court was referred to MM3 which is the said letter of demand.

5. It was further submitted that immediately thereafter, Applicants were given letters terminating their employment contracts and an ultimatum that they sign the new contracts within month of receipt of the said ultimatums. The Court was referred to MM4 being copies of the said letters. It was argued that both the letter of termination and ultimatum to sign, are an act of coercion on their part to sign the new contracts, to which they are opposed. It was prayed this conduct on the part of the employer is unlawful and stands to be declared as such and that the Respondents be interdicted from coercing the Applicants to sign the new contracts.

6. The Court was referred to the cases of *Setlogelo v Setlogelo 1914 AD 221; Knox v D'Arcy Ltd & others v Jamieson & others 1955 (2) SA 579 (WLD); Sanachem (Pty) Ltd v Farmers Agri-care (Pty) Ltd & others 1995 (2) SA 781 (A); Bull v Minister of State Security & others 1987 (1) SA 422 (ZH); and Gossschalk v Rossouw 1996 (2) SA 476 (C),* for the requirements of an interdict. These were said to be the following,
   1) A clear right;
   2) A well-founded fear or apprehension that harm will be caused by Respondents; and
   3) That here is no other adequate remedy available to Applicants.

7. The Court was further referred to the cases of *Law Society of Lesotho v Minister of Defence and Internal Security & another CIV/APN/111/1986; Motlhala v The Attorney General 2006 (1) BLLR 282 (CA); Bulawayo Municipality v Bulawayo Indian Sports Ground Committee 1956 (1) SA 34 (SR); Ex parte Ginsberg 1936 TPD 155; and section 24(2)(d) of the Labour Code (Amendment) Act 3 of 2000,* for the circumstances under which a declaratory order may be sought. It was said that they include where there is a concrete controversy involving an actual invasion of a person's right. It was argued that on the face of the admitted facts alone, Respondents conduct constitutes an act of coercion or duress and thus violate the rights of Applicants.

8. It was added that Applicants have made out a case for an interdict in that they have demonstrated a clear right to their initial contract of employment. Further, that they have established a well-founded apprehension of harm in that their employer is coercing them into a prejudicial contract than the one that they have. Lastly, that they have established that there is no adequate remedy in the event that this Court does not grant them the relief sought.

9. Respondents answered that Applicants' contracts of employment were terminated because the donor to the project from which their salaries were sourced, had since stopped providing funds. As a result there were no funds from which the salaries of Applicants were to be paid. It was added that the meeting of the 2nd May 2013, was a consultative meeting wherein, they were appraised of the situation. They were in that meeting offered new contracts of employment.

10. In the said meeting Applicants were told that those who would not accept the contracts would not be paid, hence the non-payment of the Applicants salaries in June, as they had not accepted the new contracts. Formal letters of termination were issued against those who did not accept the new contracts together with an ultimatum to sign if they wished.

11. It was denied that both the termination letters and ultimatums were an act of coercision on the part of Applicants,

as they had the freedom to either accept or refuse the new contracts, after their old contracts had terminated. It was submitted that in order for one to succeed in a claim for duress or coercion, they must establish the following requirements,

1. Fear must be reasonable;
2. It must be caused by threat of some considerable evil to the person concerned or his family;
3. It must be threat of an imminent or inevitable evil;
4. The threat or intimidation must be unlawful or contra bonos mores; and
5. The moral pressure used must have caused damage.

The Court was referred to the case of *Arend & another v Astra Furnishers (Pty) Ltd 1974 (1) SA 298 (C)*, for these requirements.

12. It was denied that the Applicants have met the above requirements. It was said that Applicants only claim that the termination letters and the ultimatums were intended to render Applicants desperate and make them feel coerced into accepting the new contracts of employment. It was categorically denied that the Respondents were coercing the Applicants in any manner but that they were merely offering them new employment so that they may continue to be paid. It was prayed that the application be dismissed as it was devoid of merit.

13. It was argued Applicants have failed to meet the requirements for an interdict in that they have failed to show a clear right as their alleged right is based on the contracts which were lawfully terminated. Further that owing to absence of a clear right, Applicants have no right to protect and thus cannot suffer any prejudice from the conduct of Respondents. It was furthermore submitted that Applicants have other alternative remedies among which is the exercise of their right not to accept the newly offered contracts of employment. It was submitted that on the basis of these said, Applicants have not met the requirements for an interdict.

14. Applicants substantive relief lies in prayers (b) and (c) of their Notice of Motion that "*the respondents be restrained and interdicted from their unlawful conduct of coercing or forcing or compelling or inducing applicants consent to sign new contracts*

which-negatively vary their current terms except by following due process of the law pending finalisation of this matter" and "*that the respondents conduct of coercing or forcing or compelling or inducing applicants consent to sing new employment contracts which negatively vary their current terms of employment be declared unlawful."* In order to address these claims, We must first determine if the conduct of the Respondent to both terminate and place ultimatums to sign the contracts amounts to coercision to contract.

15. Coercion, which is also duress, relates to an unlawful threat of harm which is meant to induce another party to contract (see *C.G. Van der Merwe and S.E. Duppleis in the book entitled Introduction to the law of South Africa, 2004 found in Law International at page 248*). The elements thereof have been correctly noted by Respondents from the authority of *Arend & another v Astra Furnishers (Pty) Ltd (supra*). This authority has been cited with approval within Our jurisdiction by the Court of Appeal in *Pitso Selogile v Total (Pty) Ltd C of A 27/2010*.

16. The labour law of Lesotho provides for two ways through which a contract of employment can be terminated. These are at the instance of the employer or at the instance of the employee. It is the evidence of both parties that the Respondents terminated the employment contracts of Applicants through a letter marked MM4. Clearly termination occurred and it was at the instance of the Respondents.

17. If this is the case, We are of the view that the Respondents were within their right to terminate the contracts of employment of Applicants, as the law contemplates and permits same. Therefore there is nothing unlawful in the conduct of termination of the Applicants' employment. Care should be taken that by this, We are not suggesting that termination of Applicants contracts of employment was either fair or unfair. This is an issue for determination in another forum, that is different from the one *in casu*.

18. Regarding the ultimatum to sign the new contracts, We are in agreement with Respondents that it did not coerce applicants to contract. We say this because, Applicants had

an option to either comply with the ultimatum or not to, which is what they elected to do hence the non-payment of salaries to them in June. In fact, We are satisfied in the explanation given by Respondents regarding the issuance of the ultimatums. We therefore find that the ultimatums did not constitute an act of coercion as they were not unlawful.

19. Even when taken together, both the termination and ultimatums do not amount to coercision. We say this because We have not found any illegality in them or their conduct, in as much as Applicants have failed to demonstrate the alleged unlawful or illegal use of both, or each one of them. What is clear *in casu,* is that Respondents terminated the contracts of employment of Applicants, for the reasons which they advanced and offered them new contracts with terms regarding their acceptance.

20. Regarding the requirements for an interdict, We are also in agreement with Respondents that applicants have failed to meet them. Applicants have not established a *prima facie* illegality in the termination of their contracts that warrants interference with the termination of their contracts. As Respondents have right argued, without a clear right, there is no right to protect and therefore, there cannot be any prejudice suffered or to be suffered. We are also of the view that Applicants have alternative remedies to the conduct complaint of, such as the referral of an unfair dismissal claim with the DDPR or refusal to accept the new contracts and insistence of the old ones.

21. In essence, the requirements spelled out, by Applicants, in *Setlogelo v Setlogelo (supra)* and the other supporting authorities, for an interdict and in the *Law society of Lesotho v Minster of Defence and Internal Security & another (supra)* and the supporting authorities, have not been met. On the strength of the above reasons, We find no merit in this application.

AWARD

We therefore make an award in the following:
(1)That this application is dismissed;
(2)That the *rule nisi* earlier issued is discharged; and
(3)That there is no order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 16th DAY OF JUNE 2014

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

MRS. THAKALEKOALA **I CONCUR**

MRS. RAMASHAMOLE **I CONCUR**

FOR APPLICANTS: **ADV. TLHOELI**
FOR RESPONDENTS: **ADV. MOSHOESHOE ASSISTED BY ADV. MOK'HENA**