

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

LC/67/2013

In the matter between:

**‘MABAKUENA MONAHENG
‘MAMOJABENG PROSENTE
‘MATHAPELO MOTA
PUSELETSO MATSOSO
MPHO MAKHELE
ITUMELENG SHELILE**

**1st APPLICANT
2nd APPLICANT
3rd APPLICANT
4th APPLICANT
5th APPLICANT
6th APPLICANT**

And

MENKHOANENG HOLDINGS (PTY) LTD

RESPONDENT

JUDGEMENT

Date of Hearing: 15th May 2014

Claims for breach of contract and unpaid wages. Court mero muto raising a point of law on its jurisdiction to hear and determine the claims. Both parties making addresses and in their addresses conceding that this Court has no jurisdiction over the claims referred. Court dismissing matter for want of jurisdiction. Further directing that the matter be remitted back to the DDPR for determination.

BACKGROUND OF THE ISSUE

1. This is a dispute that involves claims for breach of contract and unpaid wages. The dispute had initially been referred to the Directorate of Dispute Prevention and Resolution (DDPR) for resolution by both conciliation and arbitration. However, when conciliation failed, the learned conciliator issued a certificate referring the matter to this Court, purportedly in terms of section 226(3) of the *Labour Code (Amendment) Act 3 of 2000*. Pursuant to the terms of the certificate of referral, Applicants initiated the proceedings with this Court.

2. In terms of their pleadings, Applicants claimed that Respondent breached their contracts of employment by unilaterally altering their open-ended contracts of employment, and replacing them with one year fixed term contracts, which they refused to sign. Further, as a result of both the breach and their refusal to sign the imposed contracts, Respondent refused to pay and accept them into service, notwithstanding the fact that they remained its employees. They claim that these acts by the Respondent constitute a breach of their contracts of employment.
3. Respondent's defence is that it had to alter the Applicants contracts of employment due to the fact that the main contractor, Vodacom, had altered their contract. The contractor had also demanded that Respondent also alter employment contracts of its employees with the view to align them to the main contract, failing which the main contract would be terminated. As a result, Respondent introduced new contracts to its employees and those who refused to sign them were terminated, hence the non-payment of their wages.
4. In the light of these pleaded, We *mero muto* raised a point of law that this Court lacks jurisdiction to determine claims referred as they were based on a breach of contract and unpaid wages. We indicated that these claims fall within the exclusive jurisdiction of the DDPR, in terms of section 226(2) of the *Labour Code Act (supra)*. Both parties were directed to address the Court on the issue and having heard them, Our therefore in the following.

SUBMISSIONS

5. Applicants submitted that they conceded that the matter did not fall within the jurisdiction of this Court but that of the DDPR. They added that they only brought it before this Court under a directive of the DDPR that it be brought here. They stated that the certificate having been issued, they had no alternative but to honour its terms and seek appropriate relief against it before this Court. They added that they have done so and this is reflected in their heads of argument where they have challenged the jurisdiction of this Court over their claims.

6. Respondent submitted that it agreed with Applicants that this Court has no jurisdiction over their claims, as they fall within the jurisdiction of the DDPR. It was added that as a result, Applicants ought not to have referred these claims with this Court. Further that having referred same, they ought to have withdrawn them as soon they became aware that they were wrongly placed before this Court. It was prayed that in view of the current circumstances, the Court dismiss the claims.

7. Both parties agree with Us that this Court lacks jurisdiction over the Applicants claims. Claims for breach of contract and unpaid wages indeed fall within the exclusive jurisdiction of the DDPR for resolution by both conciliation and arbitration. As We have already stated, relevant to this position are the provisions of section 226 of the *Labour Code Act (supra)*, which provide as follows,
“The following disputes of right shall be resolved by arbitration –
(a)...
(b)A dispute concerning ...
(i)...
(ii) a breach of contract of employment.
(iii) a wages order contemplated in section 51;”

8. We wish to make a point that the mere fact that Respondent raised a defence of operational requirements to Applicants claims, did not render this matter a section 226(3) claim. Section 226(3) provides that,
“Notwithstanding the provisions of this section, the Director may refer a dispute contemplated in subsection (2) to the Labour Court for determination if the Director is of the opinion that the dispute may also concern matters that fall within the jurisdiction of the Court.”

9. Now section 226(1) of the *Labour Code Act (supra)*, provides for specific disputes of right that fall within the exclusive jurisdiction of this Court, as contemplated in section 226(3). In terms of this section, the only dispute of right that falls within the exclusive jurisdiction of this Court, against which a defence of operational requirements has been raised, is a dispute over the fairness or otherwise of a dismissal. Relevant to Our point are the following provisions of section 226(1),

“The Labour Court has exclusive jurisdiction to resolve the following disputes:

(a)...

(b)...

(c) an unfair dismissal if the reason for the dismissal is related to operational requirements of the employer.

10. *In casu*, the defence of operational requirement has not been raised against a claim for dismissal but breach of contract. As a result, this claim does not qualify as a section 226(1) claim and as such it is incapable of being referred to this Court for determination. Consequently, the provisions of section 226(3) have been improperly invoked as both the breach of contract and unpaid wages claims fall within the exclusive jurisdiction of the DDPR. They therefore cannot be heard and determined by this Court.

11. We further wish to make a point that it is improper for the Applicants to have brought these claims before this Court. It is further improper for Applicants to have raised a point of law against their very own claims. In Our view, their conduct amounts to an attempt to use these processing to nullify the referral of their claim to this Court by the learned Conciliator. There are several avenues that they could have invoked rather than to refer a claim which they knew not to be competent before this Court. This Court has a wide jurisdiction over trade disputes under the provisions of section 24 of the *Labour Code Act (supra)*, including the right of Applicants to challenge the certificate in issue.

AWARD

We therefore make an award in the following terms:

- a) That this matter is dismissed for want of jurisdiction;
- b) Claims are remitted to the DDPR for determination; and
- c) That there is no order as to costs.

**THUS DONE AND DATED AT MASERU ON THIS 19th DAY OF
MAY 2014.**

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

**Mrs. M. MOSEHLE
MEMBER**

I CONCUR

**Mr. S. KAO
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR RESPONDENTS:**

**MR. MOLEFI
ADV. NTAOTE**