

**HELD AT MASERU**

**In the matter between:**

**SEMAKALENG LIPHAPANG  
MAMMUSA MAEMA  
MOTSEKO MOTSEKO  
'MAMOSEMBO MPHEPHOKA  
MOHLALEFI KHASU**

**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**

**And**

**LEGAL VOICE (PTY) LTD**

**RESPONDENT**

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**JUDGEMENT**

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*Date: 13<sup>th</sup> March 2014*

*Claims for unfair dismissal based on retrenchment. Respondent not attending the matter despite directive to attend and matter proceedings in its default. Court on own motion raising a point law concerning the initiation of the proceedings. Court finding a procedural irregularity which cannot be cured by a condonation and dismissing the originating application without prejudice to the rights of Applicants. Court further giving direction to parties. No order as to costs being made.*

**BACKGROUND OF THE ISSUE**

1. These are claims for unfair dismissal based on the retrenchment of Applicants. This matter has a rather involved history. Briefly, this matter initially had six Applicants. On the 23<sup>rd</sup> September 2013, We made an order to the effect that one Shahid Hassan, who was 1<sup>st</sup> Applicant then, be removed from these proceedings on account of a misjoinder. We had then ordered that this matter proceed on this day in respect of the remaining applicants. This notwithstanding, Respondent failed to attend the hearing. As a result, we directed that the matter proceeded in its absence.

2. At the commencement of the proceedings, We *mero muto* raised a point of law that the Applicant's claims had been improperly referred with this Court. We explained that the originating application did not comply with Rule 3, of the *Labour Court Rules of 1994*, in that it was not signed by the Applicants. We went further to explain that this being the case, there had been an improper procedure. Mr Mosuoe, who appeared for the Applicants rejected the suggestion and claimed to have fully complied with the Rules of this Court. We then directed that he address Us on the issue.

### **SUBMISSIONS AND ANALYSIS**

3. Mr. Mosuoe acknowledged that he had signed the originating application on behalf of the Applicants. He however, argued that this did not constitute a procedural irregularity. He stated that he had been authorised to do so in terms of the authority to represent filed of record. He added that in terms of the said document, he had been authorised by Applicants to act on their behalf and in their place, and that this included signing the originating application on their behalf. He further argued that the fact that the Applicants have not personally signed the originating application did not prejudice anyone, including the Court.
4. We wish to note that the Rules of the Court are made for the Court and not the Court for them. This essentially means that the Court can condone a breach of its rules. However, this is only limited a breach of the Rules that does not go to the root of the claim referred. In a case where the breach goes to the root of the claim before court, the Court has an obligation to uphold its rules lest it set a very ruinous precedence. In essence, failure to comply with the rules in the latter instance is prejudicial to the very existence of this Court.
5. *In casu*, the provisions of Rule 3 of the Rules of this Court provide that an originating application must be signed by an applicant party. Specific reference is made to Rule 3(h), which provides as follows,  
“3. *Proceedings for the determination of any matter by the Court shall be instituted by any interested person or persons presenting, or delivering by registered post, to the Registrar an originating application, which shall be in writing in or*

*substantially in accordance with Form LC 1 contained in Part A of the Schedule and shall*

...

*(h) be signed and dated by the applicant”*

6. Mr. Mosuoe does not deny the fact that it is himself who has signed the originating application. If this is the case, and in view of the above provisions, clearly there is no doubt that the provisions of Rule 3 have been flawed. This is a breach that goes to the competence of the claim before this Court. We say this because, the referred claims against Respondent have been made by Mr. Mosuoe and not the Applicants. Consequently, Applicants have no claims before this Court.
7. Even if We were to take the argument of Mr. Mosuoe, that where an authority to represent have been filed, it authorises him to institute claims on behalf of Applicants, that cannot hold for two reasons. Firstly, an authority to represent authorises representation where a claim has already been referred with the Court. In essence the institution of a claim is the condition for the authority to represent. This is different from a special power of attorney which authorises the agent to act in the place of the principal even before a claim can arise.
8. Secondly, an authority to represent that has been filed of record, on behalf of the Applicants, does not authorise Mr. Mosuoe to appear on their behalf. We say this because it is phrased as follows,  
*“BE PLEASED TO TAKE NOTE THAT the Applicant in this matter has chosen the offices of Attorneys, **Mosuoe & Associates, Room 31, Tradorette Mini-Top Adjacent to Ackermans, Kingsway Maseru** as the address at which she will receive all notice and service of process in this matter.”*  
This document merely introduces Mr. Mosoué’s addresses as the addresses where Applicants will receive all process in this matter. Consequently, We maintain Our stance that this matter has been improperly referred and that it amounts to no claim at all.

**AWARD**

We therefore make an award in the following terms:

- a) That claim before Court is dismissed without prejudice to the rights of the Applicants;
- b) Applicants may refer a claim with this Court in line with Rule 3 of the Rules of this Court, if they so wish;
- c) Should Applicants elect to refer a claim, they must do so within 30 days of receipt herewith; and
- d) That there is no order as to costs.

**THUS DONE AND DATED AT MASERU ON THIS 18<sup>th</sup> DAY OF MARCH 2014.**

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

**Mrs. M. THAKALEKOALA  
MEMBER**

**I CONCUR**

**Mr. R. MOTHEPU  
MEMBER**

**I CONCUR**

**FOR APPLICANT:  
FOR RESPONDENT:**

**ADV. MOSUOE  
NO ATTENDANCE**