

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

LC/PS/A/05/2013

IN THE MATTER BETWEEN

TEBOHO MAFEREKA

APPELLANT

AND

**MINISTER OF PUBLIC
WORKS AND TRANSPORT
PUBLIC SERVICE TRIBUNAL –
CHAIRPERSON (NT NTAOTE)
ATTORNEY GENERAL**

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

JUDGMENT

Appeal against the finding of the Chairperson of the Public Service Tribunal. Matter not being opposed and therefore being heard in default. Eleven grounds of review having been earlier raised, Appellant proceeding on some of them, but not all. Court finding merit in the grounds raised and granting the appeal. Court ordering the reinstatement of Appellant without loss remuneration. No order as to costs being made.

BACKGROUND OF THE DISPUTE

1. This is an appeal against the finding of the 2nd Respondent in case number PST/7/2011. The brief background of the matter is that Appellant was employed by 1st Respondent in the position of driver until his dismissal on 1st April 2010, for misconduct. He was dismissed on the ground that the motor vehicle that he was in charge of, bearing registration number Y3631, had unjustifiable and recurring high petrol consumption, in the period between 1st March 2010 and 14th April 2010.

2. Following Appellant's dismissal, he appealed to the Public Service Tribunal, 2nd Respondent herein. He had raised several grounds of appeal, which unfortunately were unsuccessful. Armed with the decision of 2nd Respondent, and dissatisfied with same, Appellant initiated the current proceedings. This appeal was not opposed and no appearance was made on behalf of Respondents and therefore, the matter was heard both unopposed and in default of Respondents. We wish to note that about eleven grounds of review were raised on behalf of Appellant. However, on the date of hearing only a few were canvassed and these will form the basis of Our judgment.

SUBMISSIONS AND ANALYSIS

3. Appellant claimed that the charges against him did not disclose the cause of action, but that they were rather vague and embarrassing. It was argued that at page 9 of the record, it is recorded that Appellant was charged with breach of clause 3(1)(f) of the *Codes of Good Practice (Public Servants) of 2005*. It was submitted that nothing further is stated regarding what Appellant was alleged to have done in contravention of this clause. It was argued that 2nd Respondent should have dismissed the charges at the onset.
4. We have gone through the record, and in particular page 9 thereof. It is the letter of charge against Appellant. As appellant has rightly pointed out, that letter states that:
“*You are charged with contravention of the following clauses of Code of Good Practice; Clause 3(1)(f).*”
Nothing further is said in so far as how clause (3) is alleged to have been contravened.
5. A sufficiently set out cause of action must have the following,
 - i) Facts
 - ii) The law; and
 - iii) The conclusion that is drawn from the application of the law to the facts.

(see Lesotho National General Insurance Company v Alfa Plan Hire & another C of A (CIV) 24/2005)

These requirements are non-existent in the case of Appellant. Therefore, the charges did not disclose the cause of action.

6. It is further Appellant's case that on the 4th June 2010, his disciplinary hearing was postponed to an indefinite date. The Court was referred to page 6 of the record where Appellant's representative had argued on appeal, before the 2nd Respondent, that the matter had been postponed *sine die*. The Court was further referred to 1st Respondent representative's representation where he also confirmed this position. Specific reference was made to paragraph 1 at page 7 of the record. It was argued that given those complementing presentations, the 2nd Respondent ought to have concluded that the matter was postponed *sine die* and could therefore have not been validly heard without notice to Appellant thereafter.

7. We have again perused the record, in particular, paragraphs 6 and 7 as referenced. We wish to confirm that at page 6, the following is recorded:
"He pointed out that after the hearing had initially proceeded on the 4th day of June 2010, it was postponed to an indefinite date."
At page 7, the following is recorded,
"Adv. Kotelo submitted that the respondent Ministry gave appellant an opportunity to be heard as he was present on the initial date of the hearing wherein the matter was heard and postponed to a later date on which appellant failed to attend the hearing."

8. Clearly no mention of the next date and/or time of hearing was made after the postponement of the 4th June 2010. As a result the matter was postponed without mention and consequently *sine die*. Therefore, We are in agreement with Appellant that it could not have been proper that this matter was heard without notice to him subsequent to the date of a *sine die* postponement. Consequently, the 2nd Respondent ought to have found that it was improper to have heard the matter without notice to Appellant following the *sine die* adjournment.

9. Appellant further argued that after the *sine die* adjournment, when the matter reconvened, the record reflects that he could not attend because he was sick. If this was the case the 2nd Respondent ought to have found that it was improper for the matter to have proceeded in the light of the Appellant's health

situation that had been presented. The Court was referred to page 13 of the record where the chairperson of the initial hearing recorded this acknowledgement.

10. At the referenced page, the following is recorded:

“The hearing was reconvened on June 4th for determination, but Mr. Mafereka did not show up. When called on his cellphone he said he was sick.”

Clearly, the chairperson in the initial hearing was fully appraised of the health situation of appellant. Illness is a condition in respect of which no one has control. In Our view, a reasonable person seized with the information that one of the parties is ill, must stay the proceedings. To act otherwise is tantamount to undermining the rules of natural justice.

AWARD

On the basis of the above reasons, We make an award as follows:

- 1) That the appeal succeeds,
- 2) Respondent is ordered to be reinstated to his position without loss of remuneration, and
- 3) The order is to be complied with within 30 days of issuance herewith.

THUS DONE AND DATED AT MASERU ON THIS 3rd DAY OF DECEMBER, 2014.

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

MRS. MALOISANE

I CONCUR

MISS LEBITSA

I CONCUR

**FOR APPELLANT:
FOR RESPONDENT:**

**MR. MOSUOE
NO ATTENDANCE**