

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

LC/51/2012

IN THE MATTER BETWEEN

MATSEPO MOHALE

1st

APPLICANT

MPHO LETOOANE

2nd APPLICANT

'MAMOLLELOA MPATI

3rd APPLICANT

'MATUMELISO THAKHOLI

4th APPLICANT

SENATE LEROTHOLI

5th APPLICANT

'MAMOTHETSI KHATI

6th APPLICANT

'MAPOLO MANKA

7th APPLICANT

'MASEMENYANE SEMENYANE

8th APPLICANT

'MASAENE PHETHOANE

9th

APPLICANT

'MALEFU LATELA

10th APPLICANT

'MAKHAHLISO MOKOTJO

11th APPLICANT

KAO TOFOSA

12th APPLICANT

NTHABISENG MONKHE

13th APPLICANT

AND

TZICC CLOTHING MANUFACTURER

(PTY) LTD

RESPONDENT

JUDGMENT

Claims for discrimination in employment. Respondent failing to attend hearing. Court proceedings on the basis of the unchallenged evidence of Applicants. Court finding in favour of Applicants and directing Respondent to make payment to Respondents in terms of section 202(2) of the Labour Code Order 24 of 1992. No order as to costs being made.

BACKGROUND OF THE DISPUTE

1. These are claims for discrimination in terms of section 196 (2) of the *Labour code Order 24 of 1992*. The brief background of the matter is that Applicants had referred claims for discrimination with the DDPR. The matter was duly conciliated upon and conciliation having failed the claims were referred to this Court. In the period between the 6th and 20th June 2013, the matter was heard and finalised, and judgment later issued. In terms of the said judgment, the Applicants claims were dismissed. It had been the finding of the Court that, whereas Applicants had referred claims for discrimination in terms of section 196(2), they had failed to establish a case for discrimination as contemplated by the same section.

2. Dissatisfied with this finding Applicants appealed before the Labour Appeal Court where the decision of this Court was set aside and substituted with a finding that Applicants had

made a case for discrimination. The Court had gone further to say that even if Applicants had failed to establish a case for discrimination in terms of section 196(2) of the *Labour Code Order (supra)*, there was nonetheless a clear case for discrimination in terms of section 196(1)(b). The Court then found that there had been discrimination in terms of the latter section and remitted the matter before this Court for determination of the appropriate remedy. It is on the premise of the above finding of the Labour Appeal Court that the matter is before Us again.

3. At the commencement of the proceedings, Applicants asked the Court to consider their evidence on record, to determine the appropriate remedy in terms of section 202(2) of the *Labour Code Order (supra)*. They argued that they will lead the same evidence as that which is on record and that they feel that it would be unnecessary to burden the Court by requiring it to rehear the evidence that it has already heard. Respondent was not in attendance and the Applicant's submission was not opposed. We therefore accepted the suggested approach. Having considered the Applicant's evidence on record, Our judgment follows.

EVIDENCE ON RECORD

4. Applicants had testified that had they not been discriminated against, they would have worked eight (8) weekly rest days and overtime of eight (8) hours on Saturdays and Sundays for the entire period in issue. They had also testified that they

earned M980.00 per month for working 8 hours per day. They further testified that period of discrimination ran from the 11th August 2012 to the 9th September 2012. They each claimed M963.52 in overtime and weekly rest days in terms of section 202(2)(b) of the *Labour Code Order (supra)*.

5. In the period between the 11th August 2012 and 9th September 2012, there are 10 weekly rest days. In these 10 weekly rest days, if Applicants would have worked 8 overtime hours, they would have been entitled to 80 overtime hours. The evidence of Applicants remains unchallenged to date. It is trite law that what is not challenged is taken to have been admitted (see *Theko v Commissioner of Police and Another 1991-1992 LLR-LB 239 at 242*). We therefore find in favour of Applicants. Our formulation of their award follows.

FORMULATION OF AWARD

Weekly rest days calculation

Monthly salary X hours of work X number of weekly rest days

Monthly hours

M980.00 X 8 hours X 10 days

195 hours

= M402.05

Overtime calculation

Monthly salary X overtime X quarterly rate

Monthly hours

M980.00 X 80 hours X 1.25

195 hours

=M502.56

Total awarded amounts for each Applicant are M904.61(M402.05+M502.56), per the above calculations.

AWARD

We therefore make an award as follows:

- 1) That each Applicant be paid M904.61 each.
- 2) The said amount be paid within 30 days of issuance herewith.
- 3) No order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 11th DAY OF MAY, 2015.

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

MRS. THAKALEKOALA

I CONCUR

MRS. MOSEHLE

I CONCUR

FOR APPLICANTS:

ADV. RAMPAI

**FOR RESPONDENT:
ATTENDANCE**

NO