

HELD AT MASERU

In the matter between:

MOTSEKUOA TEBOHO KHUELE

APPLICANT

and

**MINISTER OF HEALTH
AND SOCIAL WELFARE**

1ST RESPONDENT

**THE PRINCIPAL SECRETARY, MINISTRY OF
HEALTH AND SOCIAL WELFARE
ATTORNEY GENERAL**

2ND RESPONDENT

3RD RESPONDENT

JUDGMENT

Date of hearing : 26/03/15

Date of judgment : 09/07/15

Failure to attend a hearing by the respondent - workmen's compensation claim - for a gunshot accident purportedly incurred in the course of employment - There being no representation on behalf of the respondents on the day of hearing matter disposed of in terms of 16 of the Labour Court Rules, 1994.

BACKGROUND TO THE DISPUTE

1. The applicant is a former employee of the Ministry of Health and Social Welfare. He had been engaged as an HIV/AIDS Counsellor on a contractual basis, hence a claim under the **Workmen's Compensation Act, 1977** as opposed to the law regulating public officers.

2. This dispute arose out of an incident that purportedly occurred on or around 26th March, 2009 in which the applicant alleged that whilst he was on duty at Koali Clinic in the Berea District he was shot in the stomach by a Security Officer. The latter had apparently intervened in an altercation between the applicant and a fellow colleague. The applicant was subsequently rushed to Queen Elizabeth 11 Hospital where he was admitted for four days from 26th to 29th March, 2009 for treatment, followed by a series of check-ups. The said incident was confirmed by one Mathabiso Ratiea, Berea Senior Counsellor,

then applicant's supervisor in a statement dated 10th June, 2014 (attached to the originating application as annexure "MTK 5").

THE WORKMEN'S COMPENSATION CLAIM

3. The applicant only lodged a workmen's compensation claim on or about 27th November, 2013 when the alleged accident had occurred on or around 26th March, 2009. He cited a number of excuses for the delay including that he got arrested in the Republic of South Africa. The Ministry of Health and Social Welfare (**PAU**) duly filled in an accident report form provided by the Labour Department and styled **LD Form W/C9 - "Notice by Employer of Accident Causing Injury to or Death of Workman"** on 13th February, 2014 which duly contained an assessment of the injury by a Medical Practitioner. Upon receipt of this, the Labour Department computed applicant's compensation on 17th March, 2014 at **Thirty - Four Thousand, Two Hundred and Forty - Four Maloti (M34 244.00)** and communicated it through **LD FORM W/C2** to the Ministry of Health and Social Welfare.

4. The applicant alleges that he was called to the Ministry of Health headquarters around 29th April, 2014 whereat a payment voucher was cancelled in front of his eyes by the Principal Secretary (2nd respondent herein) who indicated to him that he would not be paid as he did not sustain the injury in the course of employment. It is applicant's case that the 2nd respondent did this just to spite him. As far as he was concerned, the latter ought to have satisfied himself before processing the payment whether or not the applicant was entitled to it. Applicant's Counsel wrote in a letter dated 5th May, 2014 to the 1st and the 2nd respondent seeking an explanation to 2nd respondent's conduct but none was forthcoming. The applicant is before this Court to claim his compensation for the injury as assessed by the Labour Department.

FAILURE TO ATTEND A HEARING - Rule 16 of the Labour Court Rules 1994

5. The matter was heard in the absence of all the respondents. Despite having duly filed opposing papers in which they denied liability, they failed to attend an otherwise scheduled hearing. The application to have the matter disposed of in the absence of the respondents was filed by applicant's Counsel, Advocate Ntabe in terms of **Rule 16 of the Labour Court Rules, 1994** which provides that:

If a party shall fail to appear and to be represented at the time and place fixed for the hearing of an originating application or appeal or application, the Court may, if that

party is an applicant or appellant, dismiss the originating application or, in any case, proceed to hear and dispose of the matter in the absence of that party, or may adjourn the hearing to a later date; (underlining mine)

Provided that before deciding to dismiss or dispose of any originating application or appeal in the absence of any party, the Court shall consider any written representations by that party submitted in pursuance to rule 15.

6. There were no representations tendered before Court on behalf of the respondents. In its discretion, and having heard applicant's Counsel's submissions the Court decided to hear the matter in the absence of respondents. Before it could proceed with the application it had to satisfy itself that the respondents had been properly served. It emerged that all the respondents had been duly served with the originating application and a Notice of Hearing by the Registrar of this Court dated 20th February, 2015 informing parties that the matter would be heard on 26th March, 2015. The matter had previously been postponed on 27th November, 2014 at the instance of the respondents' Counsel.

THE COURT'S ANALYSIS

7. Compensation for injury arising out of and in the course of employment is regulated by ***Part 11 of the Workmen's Compensation Act, 1977***. There being no appearance on behalf of the respondents, and the Court having satisfied itself that the respondents had been properly served, it proceeded to hear applicant's claim for workmen's compensation for an injury allegedly sustained in the course of employment in terms of ***Rule 16 of the Labour Court Rules, 1994*** under the circumstances related in paragraph 2 above.

RELIEF

8. It grants the following relief as prayed by the applicant:-

- (i) The 1st and 2nd respondents is ordered to pay applicant's claim of workmen's compensation to the tune of ***Thirty - Four Thousand, Two Hundred and Forty - Four Maloti (M34 244.00)***;
- (ii) The Order is to be complied with within ***thirty (30)*** days of receipt of this judgment;
- (iii) There is no order as to costs.

THUS DONE AND DATED AT MASERU THIS 09th DAY OF JULY, 2015.

F.M KHABO
PRESIDENT OF THE LABOUR COURT (a.i)

P. LEBITSA
ASSESSOR

I CONCUR

M. MOSEHLE
ASSESSOR

I CONCUR

FOR THE APPLICANT : ADV., M. NTABE - M. NTABE CHAMBERS

FOR THE RESPONDENTS : NO REPRESENTATION

LEGISLATION REFERRED TO

1. The Workmen's Compensation Act, 1977
2. Labour Court Rules, 1994 - Rule 16