

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

LC/14/2015

IN THE MATTER BETWEEN

MATHABISO SIBOLLA

1st APPLICANT

MAMOSIUOA MAMPA

2nd APPLICANT

REBECCA MAQEKOANE

3rd APPLICANT

MATŠELISO KHOHLOKOANE

4th

APPLICANT

AND

TŠEPO EA SECHABA (PTY) LTD T/A

PAY SAVE HYPERSTORES (PTY) LTD

RESPONDENT

JUDGMENT

Claims for unpaid maternity leave and notice pay. Court mero motu raising a point of law regarding its jurisdiction over the Applicants claims. Parties agreeing with the Court that the claims relate to unpaid monies and are arbitrable before the DDPR in terms of section 226(2) of the Labour Code (Amendment) Act 3 of 2000. Court remitting the matter to the

DDPR to be heard in the merits, with terms. The principle of incidental proceedings being explained. No order as to costs being made.

BACKGROUND OF THE DISPUTE

1. These are claims for unpaid maternity leave. All Applicants were employees of Respondent until their termination. They referred claims for unpaid maternity leave and unpaid notice with the Directorate of Dispute Prevention and Resolution (DDPR). These claims were separately referred under referrals A0713/14, A0675/14 and A0650/14, and were duly conciliated upon. Conciliation having failed, reports of non-resolution was issued by the Arbitrators, in the respective referrals, referring them to this Court for adjudication. All claims were then joined and referred together under the current application, with this Court.

2. Upon perusal of the Originating Application, and in particular, at paragraph 12 thereof, We noted that the Applicants' substantive prayer was only for payment of maternity leave. The Applicants prayers are couched as follows;
 - "1. Directing the respondent to pay the [maternity] leave owed as it was not paid."*
 - 2. Directing the respondent to pay the costs of suit in the event of opposing this application.*
 - 3. Further and/or alternative relief."*

Evidently, nothing touches on the issue of the interpretation or application of either or both the *Labour Code Order (Supra)* and the *Labour Code Wages Order (supra)*.

3. Mindful of this substantive prayer, that is prayer 1, We indicated to parties that We intended to *meru motu* raise a point of law regarding the jurisdiction of this Court to hear and determine the Applicants claim. Our approach finds support in the case of *Lepolesa & others v Sun International of Lesotho (Pty) Ltd t/a Maseru Sun and Lesotho Sun (Pty) Ltd [2011] LSLAC 4*, where the Court of Appeal stated that a court is not only entitled but obliged to raise a point of law *mero motu*, where such is apparent. Having duly alerted parties of Our intention, We were subsequent thereto addressed and Our judgment then follows.

SUBMISSIONS AND ANALYSIS

4. Applicants submitted that they had referred claims for unpaid maternity leave and unpaid notice. During the conciliation stage, which failed to resolve the matter, Respondent had raised the defence that it was not liable to pay maternity leave, as the *Labour Code Order 24 of 1992* made it discretionary on the part of the employer to either pay or not pay.

5. It was submitted that, it was at this stage that the learned Arbitrators, in the separate trials informed them that they had formed the opinion that parties sought the interpretation

of the *Labour Code Order (supra)* against the *Labour Code Wages Order*. The Arbitrators had also said that in their opinion, that was the premise of the Applicants claims. It was on these bases that these referrals were referred to this Court for resolution by adjudication.

6. Applicants added that in their opinion, the matter fell within the jurisdiction of the DDPR, as they had referred claims for unpaid monies. They however, came before this Court because the learned Arbitrators had directed them to do so. They therefore agreed with the Court that the matter fell well within the jurisdiction of the DDPR. Respondent's representative briefly reacted that he was in agreement with the submissions of Applicant, as well as the attitude of the Court. He prayed that the matter be remitted back to the DDPR to be heard in the merits.

7. It is without doubt that Applicants claims are for unpaid monies, that is, unpaid maternity leave and unpaid notice pay. In terms of section 226(2) (c) of the *Labour Code (Amendment) Act 3 of 2000*, the DDPR has jurisdiction to hear and determine by arbitration,

"a dispute concerning the underpayment or non payment of monies due under the provisions of the Act;"

Evidently, the Applicant's claim fall within the jurisdiction of the DDPR.

8. We wish to comment that the jurisdiction to hear and determine a matter is not determined by issues that may arise in the proceedings, but by the claim referred. *In casu*, the claims referred were for unpaid maternity leave and unpaid notice, and not the interpretation of the *Labour Code Order (supra) against the Labour Code Wages Order (supra)*, as the learned Arbitrators subsequently determined. While the interpretation of these laws may have become the issue/s, or part thereof, in determining the Applicants' claims, it could not determine jurisdiction as it was not the claim referred.

9. Further, We wish to comment that in terms of section 226 (2) (b) of the *Labour Code (Amendment) Act (supra)*, the jurisdiction of the DDPR is only limited to the application and interpretation of,

“(i) a collective agreement;

(ii) a breach of a contract of employment;

(iii) a Wages Order contemplated in section 51;”

10. This in essence means that, where a party has referred, as an independent claim, the application and/or interpretation of any law other than those stated under section 226(2)(b) *Labour Code (Amendment) Act (supra)*, the DDPR would be right to decline jurisdiction. We say this because, not only is the DDPR limited by section 226(2) of the *Labour Code (Amendment) Act (supra)*, but that such jurisdiction is vested with this Court in terms of section 226(1).

11. Section 226(1) of the *Labour Code (Amendment) Act (supra)* provides that,

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

(a) Subject to subsection (2), the application or interpretation of any provisions of the Labour Code or any other labour law;”

However because *in casu* no such independent claim, that falls outside the scope of authority of the DDPR, has been referred, it cannot therefore be proper for the DDPR to decline jurisdiction.

12. We wish to add that the law of incidental proceedings provides that a court can deal with matters in respect of which it would ordinarily not have jurisdiction to hear and determine. This happens if and when these matters, that are outside its scope of jurisdiction, are connected to the merits of the matters that fall within its ordinary jurisdiction. In essence, this means that for a court to have jurisdiction on account of incidental proceedings, the subject matter of the incidental matter or issue must be connected with the principal proceedings on the merits, as is the case *in casu*. These matters are said to be incidental to a matter which is already before court (see Briggs, *The Incidental Jurisdiction of the International Court of Justice as Compulsory Jurisdiction*, 1960 at page 89).

AWARD

We therefore make an award as follows:

- 1) The matter is remitted to the DDPR to be heard in the merits;
- 2) Parties are left liberty to recommence conciliation proceedings, if they may so wish;
- 3) The remittal must be made within 30 days of issuance herewith;
- 4) No order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 10th DAY OF AUGUST 2015.

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

MRS. MOSEHLE

I CONCUR

MR KAO

I CONCUR

FOR APPLICANTS:

MR. LETSIE

FOR RESPONDENT:

ADV.

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