

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

LC/25/2015

IN THE MATTER BETWEEN

NTSUKUNYANE MOKHOTHO

1st

APPLICANT

MOSEBETSI MONONELA

2nd

APPLICANT

MOTŠELISI WEETHO

3rd APPLICANT

JEMINA SETONA

4th APPLICANT

NTJABU CHAKANE

5th APPLICANT

TEBOHO LIKOTSI

6th APPLICANT

‘MAMOLETE RAMAHAPU

7th APPLICANT

JERATA KAO

8th APPLICANT

SUZAN PALAMA

9th APPLICANT

‘MALEMPE MAKHELE

10th APPLICANT

NTINA LEBAKA

11th APPLICANT

MATŠELISO NTSUPA

12th APPLICANT

‘MARETHABILE TENEI

13th APPLICANT

AND

MAMOHOU HOSPITAL

RESPONDENT

JUDGMENT

Application for payment of salaries of Applicants made on urgent basis. Court finding that the matter is not urgent. Court finding that parties relied on matters external to the complaint to justify urgency. Further that Applicants have failed to show that they would not have substantial relief in future. Court further finding that the basis of the Applicants claims being brought before this Court was on account of alleged urgency. Having dismissed the prayer for urgency, Court declining jurisdiction over the claims with terms. No order as to costs being made.

BACKGROUND OF THE DISPUTE

1. This is an application for an order in the following terms,
 - “1. Dispensing with ordinary rules pertaining to the modes and period of service.*
 2. A rule nisi be and is hereby issued returnable on the date and time to be determined by this Honourable Court calling upon respondent to show case (if any) why an order in the following terms shall not be made final order in this matter.
 - (a) *That the respondent cannot be ordered to pay applicants and other employees salary of April 2015 exactly the way it is reflected on their pay slip issued by respondent.*

(b) That the respondent cannot be ordered to make payment into applicants and other employees accounts on the 19th May 2015 before closure of the business.

(c) That the respondent cannot be ordered to pay costs that applicant have suffered on their personal loans and others due to delay of payment for salaries.

3. Cost in the event of opposition

4. Applicants shall not be granted further and/alternative relief.

5. Prayers 2(a) (b) (c) shall operate with immediate effect.”

2. Applicants are all currently under the employ of Respondent. They claim that Respondent has not paid their salaries for the month of April 2015. They have approached Us on urgent basis seeking the prayers mentioned above. The matter was tabled before Us on the 19th May 2015 and both parties were before Court.

3. On that day, Respondent’s concern was that the application had only been served upon them on 18th May 2015 and that they had not been able to give instruction to their legal representative to take over the matter. They had then asked for more time to enable them to instruct their lawyers. They had also undertaken that by 21st May 2015 at 9:00am, they would be ready to argue the matter.

4. On this first date of appearance, We had indicated to parties that We wished to be addressed on the issues of urgency of this matter and the jurisdiction of this Court over their claims, as they related to unpaid wages. We had then postponed the matter on the terms stated in the aforementioned. No order was made on the prayers sought.
5. On the date of argument, Respondent had not filed any opposition and in addition thereto, had failed to appear. Upon application by Applicants, We directed that the matter proceed unopposed and in default of Respondent. Having heard Applicants' submission and arguments, Our judgment follows.

SUBMISSION AND ANALYSIS

Urgency

6. Applicants' case was that in an application made on urgent basis, there are three requirements that must be met. These were identified as follows:
 - a) A clear right
 - b) Apprehension of irreparable harm, and
 - c) Absence of an alternative remedy.
7. Applicants argued that they had a clear right in that they had worked during the month of April 2015, and were thus entitled to be paid their salaries. It was added that notwithstanding this legal right, Respondent withheld their

salaries. It was submitted that supportive of their claim for a clear right, was the letter from Bishop Bane, the proprietor of Respondent hospital, where he wrote that there was no reason not to pay Applicants their salaries.

8. On the second requirement, it was submitted that Applicants were in the actual apprehension of harm as their salaries were still being withheld. Further that they were worried that Respondent would continue to withhold them unless directed otherwise. It was argued that this essentially meant that they would continue to suffer unless the Court intervened. It was added that Applicants were and continued to be unable to pay their monthly rent, loans and other obligations that depended on a salary, as a result of the conduct of Respondent.
9. On the last requirement, Applicants argued that they had no alternative remedy in that if they did not pay their rent, loans and other obligations, the creditors would go after them and that consequences which cannot be repaired, will follow.
10. In an application that has been made on urgent basis, the most important factor is whether the party approaching the court on urgent basis, cannot and will not obtain substantial redress if the matter is to be heard on ordinary modes and periods. Supportive of Our view on the principle is the case of *East Rock Trading 7 (Pty) Ltd & another v Eagle Valley Granite (Pty) Ltd & others*.

11. At paragraph 6 of the judgment, the learned Notshe AJ had the following to say,

“An applicant party has to set forth, explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether the matter is urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course.”

1. The requirements for urgency are further illustrated in the case of *Aroma Inn v Hypermarkets & Another 1981 (4) SA 108 at 110-111*, which was cited with approval within Our jurisdiction in *Motemoka Mokaba v Security Lesotho (Pty) Ltd LC/98/1995*, as being the following,

- a) That the circumstances of the matter require that it be heard and determined on urgent basis; and
- b) That if the normal modes and periods of the court are followed, an applicant party will not obtain the substantial relief.

12. We wish to highlight that the requirements that Applicants have relied on to argue urgency are in fact requirements for the granting of an interdict and not for urgency. An interdict is a court order that is sought to enforce a right, while in approaching a court on urgent basis, a party is merely asking

such a court to hear it/him/her outside the normal court periods, by expediting the hearing of the matter. Clearly the distinction is huge and cannot be confused.

13. The requirements for an interdict, as shown by Applicant, are stated in a plethora of cases as,
- (a) A *prima facie* right, even if doubtful,
 - (b) Apprehension of irreparable harm,
 - (c) The balance of conscience favours the granting of an interdict, and
 - (d) The absence of a satisfactory remedy in future.
- (see *Setlogelo v Setlogelo* 1914 AD 221; *National University of Lesotho v Ntitsane & others* CIV/APN/454/2012, *Lepule v Lepule* CIV/APN/193/13; *Nthathi Mokitimi v Central Bank of Lesotho* LC/23/2011).

14. However, We do note that there is one common requirement in both situations, namely the absence of substantial or satisfactory remedy in future. We wish to note at this stage that the substantial or satisfactory remedy, relates the redress or remedy for the complaint brought before court for determination and not factors outside the complaint.

15. *In casu*, Applicants are not saying that they will not be paid their wages/salaries if this matter is not heard on urgent basis. Rather they rely on factors outside the complaint, that is factors which are not part of their complaint. We say this

because, they argue inability to pay their rent, loans and other obligations. Evidently, these are not the complaints before Court. It is Our view that if urgency were to be granted on these grounds, it would mean that anyone can approach this Court on urgent basis in respect of almost any claim available in law, as they always carry harm beyond the complaint before Court. We therefore find that there is no basis for urgency.

16. Further, Applicants have not shown that if not heard on urgent basis, they will not be able to recover their unpaid salaries. Evidently, they have failed to meet the test for urgency. Supportive of Our view is the authority *Makhuva v Lokoto Bus Service (Pty) Ltd 1987 (3) SA 376*, at page 389-390, where the Court held as follows,

“I am not persuaded that the matter was so urgent that anything more drastic than enrolment on the motion roll even in the ordinary way, even if that were on short notice, was required. In the present case some financial loss to applicants is alleged, albeit faintly, but there is no suggestion that it would be irrecoverable.”

Jurisdiction

17. Applicant’s case is that they have brought this matter under section 228 of the *Labour Code (Amendment) act 3 of 2000*. They submitted that in terms of section 228, claims made under section 227 may be brought before this Court on urgent basis. They added that the rationale behind this

section is that the Directorate of Dispute Prevention and Resolution (DDPR), does not have the power to hear matters on urgent basis. As a result where a claim that falls within the jurisdiction of the DDPR needs to be heard on urgent basis, it can be brought before this Court under section 228. It was however conceded that Applicants are claiming unpaid salaries.

18. Applicant argument for the jurisdiction of this Court is primarily based on their claim that this matter is urgent. This essentially means that if a declaration is made that the matter is not urgent, as We have done, then the basis of their claim falls together with its substance. On the strength of Our finding on the issue of urgency, and the primary basis of Applicants to bring this claim before this Court, the matter stands to be dismissed for lack of jurisdiction.

19. We wish to comment that the invocation of section 228 *in casu*, is misplaced. In terms of that section, where a party has referred a claim with the DDPR, they may come and seek interim relief or any urgent relief pending finalisation of the referred dispute. Clearly that section does not authorise the initiation of a matter that falls within the jurisdiction of the DDPR before this Court simply because it is urgent or claimed to be as is the case *in casu*. The section is clear that in approaching the Court under section 228, there has to be pending litigation before the DDPR, which is not the case *in casu*.

20. Applicants have conceded that their claim is for unpaid salaries. In terms of section 226(2), in particular subsection (c) thereof,

“The following disputes of right shall be resolved by arbitration -

...

(c) a dispute concerning the underpayment or non-payment of monies due under the provisions of the Act;”

Clearly, this is a matter that falls within the jurisdiction of the DDPR to arbitrate, as the Labour Court clearly lacks such powers.

21. We wish to comment that there is a developing tendency on the part of parties to abuse court process regarding urgent applications. This is a bad practice in law which must be stopped. The practice has been condemned before by this Court and those superior to it. Parties should not and cannot be allowed to file matters on urgent basis for both flimsy and inadequate reasons, as *in casu*.

AWARD

On the basis of the above reasons, We find that,

- 1) The matter is not urgent.
- 2) The claim for unpaid wages falls within the jurisdiction of the DDPR.
- 3) Applicants are at liberty to refer their claims with the DDPR.
- 4) Should they elect to do so, they must within 30 days of issuance herewith.
- 5) No order as to costs is made.

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. RAMASHAMOLE

I CONCUR

MS LEBITSA

I CONCUR

**FOR APPLICANTS:
FOR RESPONDENT:
APPEARANCE**

**MR. SEOAHOLIMO
NO**