

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

LC/ENF/131/2013

A0002/2015

IN THE MATTER BETWEEN

SAM MOKHELE

APPLICANT

AND

FACTORY WORKERS UNION

RESPONDENT

JUDGMENT

An application for the enforcement of the DDPR award. Respondent claiming to no longer exist and that warrant is improperly enforced against its former officer. Court finding that Respondent has amalgamated into a new union and that the award is enforceable in terms of the Labour Code Order 24 of 1992. Court further finding that the warrant is properly cited. Court reinstating the warrant earlier issued. No order as to costs being made.

BACKGROUND OF THE DISPUTE

1. This is an application for the enforcement of the Directorate of Dispute Prevention and Resolution (DDPR) award in referral A0002/2015.
2. The brief background of the matter is that Applicant was the Deputy Secretary General in the respondent union, until he was dismissed for misconduct by Respondent. Unhappy with his dismissal, he referred a claim for unfair dismissal with DDPR, together with claims for unpaid wages, underpayments and unpaid leave.
3. An award was later issued in favour of Applicant wherein, Respondent was ordered to pay to him an amount in the sum of M39, 798-54 within 30 days. When Respondent failed to comply with the award, Applicant initiated the current proceedings with this Court. A warrant was then issued against one Seabata Likoti, the General Secretary of the Respondent union.
4. Subsequent thereto, one Mr. Bohloko, a former officer of the Respondent union, appeared before Court, armed with a letter from the offices of the Labour Commissioner, specifically from the Registrar of trade unions. He stated that the letter indicated that Respondent union was no longer in existence as it had been dissolved. He argued that the individual, Mr. Seabata Likoti, who had been cited in the

warrant was wrongly so, on this account. We had then suspended the warrant of detention earlier issued against Seabata Likoti and summoned both parties to appear and address Us on the issue. We were duly addressed and having heard the arguments of both parties, Our judgment follows.

5. We wish to note that the following facts were common cause between parties. Firstly, that Factory Workers Union (FAWU), National Union of Textile Workers (NUTEX) and Lesotho Clothing and Allied Workers Union (LECAWU), amalgamated and formed Independent Democratic Union of Lesotho (IDUL). For purposes of the amalgamation FAWU was dissolved. Further, that Seabata Likoti who is the General Secretary of FAWU, is now the Deputy General Secretary of UDL. Furthermore, those members of the former FAWU continue to pay subscriptions which are being received by UDL.

SUBMISSIONS AND ANALYSIS

6. Applicant's case is that section 180 of the *Labour Code Order 24 of 1992*, provides that an amalgamation of trade unions does not affect the rights of creditors to individual unions, before the amalgamations and even after the amalgamation has taken effect. It was submitted that in the case of Applicant, the current amalgamation is like a change in name. He added that in terms of section 183, a change in the name of a union does not affect the rights of its creditors before it changed its name. Applicant prayed that on these

bases he had a right to go after the Deputy General Secretary of UDL for his claim.

7. Respondent answered that an amalgamation of trade unions is specifically provided for by section 177 of the *Labour Code Order (supra)*. He stated that while that section provides that an amalgamation may be with or without dissolution, the said section does not state what is to happen where an amalgamation is with dissolution, in so far as creditors are concerned. It was added that even section 180 which Applicant had relied upon for his claim, does not state what is to happen in the same instance. As for section 183, it was said that FAWU did not change its name, but was rather dissolved and a new union called UDL was formed.

8. Respondent argued that it is therefore improper that Seabata Likoti, the Deputy General Secretary of UDL is to be detained for acts and deeds of a non-existent union, which he no longer worked for. The Court was referred to the case of *Chen Yu Bo v Paballo Theko and others LAC/REV/08/2013*, in support of the proposition. It was added that in the event the Court finds that Seabata Likoti has been properly cited, that he be given a chance to answer in terms of section 34 of the *Labour Code Order (supra)*.

9. Applicant replied that the authority of *Chen Yu Bo v Paballo Theko and others (supra)*, was inapplicable *in casu*. It was said that the case relates to a situation Applicant had opened

a business after his father had closed down his own. In that case, the Labour appeal Court found that there was no connection between the business of the Applicant and his father and then set aside the decision of the Labour court.

10. It was submitted that the circumstances of that case are different from those existing *in casu*. It was stated that FAWU amalgamated with other two unions, NUTEX and LECAWU to form UDL. It was added that there is therefore a connection between FAWU and UDL. It was stated that this is the position irrespective of whether an amalgamation was with or without dissolution. It was concluded that Seabata Likoti, being the Deputy General Secretary of UDL, has been rightly cited in the warrant.

11. We have gone through all authorities cited by parties, submissions and all documents exchanged and tendered. We do confirm that in terms of section 177 of the *Labour Code Order (supra)*, an amalgamation may be with or without dissolution. The section is couched as follows,

“Two or more registered trade unions or registered employers organisations may become amalgamated as one trade union or employer’s organisations, with or without dissolution or division of the funds of either or any of them,”

12. It is common cause that FAWU and two other unions, NUTEX and LECAWU, amalgamated and formed UDL, and that FAWU was dissolved. Evidently the amalgamation was

done in line with section 177. The effect of an amalgamation is stated under section 180. In terms of that section, *“An amalgamation or Federation of two or more registered trade unions or employers’ organisations shall not prejudice any rights of either or any of those trade unions or employer’s organisations or any right of creditor of either or any of them.”*

13. While the section does not state what is to happen in each specific event of amalgamation, that is, with or without dissolution, it also does not exclude its own application in either case. In fact in Our view, the correct interpretation is that it applies over any type of amalgamation, it be with or without dissolution.

14. This in essence means that a union or employers organisation formed through the amalgamation, whether with or without dissolution, has a right to claim from debtors what was due to the unions that came together in their own standing. The reverse also applies, that creditors of the unions that amalgamated can still go after the new union for acts of the individual union before the amalgamation.

15. Regarding section 183 of the *Labour Code Order (supra)*, We agree with Respondent that amalgamation and change of name are not one and the same thing. With amalgamation, a new union is born, while with a change of name, the union still exists but under a different name. FAWU did not change

a name but was amalgamated with dissolution, giving birth to UDL. As a result, section 183 does not aid Applicant's case.

16. About the authority of *Chen Yu Bo v Paballo Theko and others (supra)*, We agree with Applicant that it is inapplicable *in casu*. We say this because the facts and circumstances differ and therefore the two cases are distinguishable. Applicant has eloquently stated the distinction between the two, and We are content with the distinction made.

17. Respondent had asked that if the Court finds in favour of Applicant, that summons be issued calling upon Seabata Likoti to come and show cause why a warrant shall not be issued in terms of section of the *Labour Code Order (supra)*. We decline to grant the indulgence. We say this because Our record reflects that Seabata Likoti was summoned to appear on the 13th July 2015. He neglected, failed or refused to attend, hence the warrant issued on the same day. To give him another opportunity would be to make a mockery of the systems and processes of this Court.

AWARD

We therefore make the following award,

- 1) That Seabata Likoti has been properly cited in the warrant of arrest.
- 2) The warrant of arrest/detention issued on the 13th July 2015 is reinstated.
- 3) No order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 31st DAY OF AUGUST 2015.

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

MRS. MOSEHLE

I CONCUR

MRS. THAKALEKOALA

I CONCUR

FOR APPLICANT:

IN PERSON

FOR RESPONDENT:

MR. T.

BOHLOKO