

HELD AT MASERU

In the matter between:

PHEELLO MAAPESA

APPLICANT

and

OK FURNITURES (PTY) LTD

RESPONDENT

JUDGMENT

Date: 22/06/16

Jurisdiction - liability of employer to payment of severance pay - Employee claiming severance pay upon resignation - Employer denying liability on account of possession of an exemption certificate - Court finding the Labour Court to lack jurisdiction in the determination of the matter.

1. It is common cause that the applicant was engaged by the respondent on 26th September, 2005 as an Administration Controller and left through resignation on 18th July 2014.
2. He subsequently claimed severance pay and the respondent having failed to pay, he lodged a claim before the Directorate of Dispute Prevention and Resolution (DDPR), to which the respondent raised a defence that it possessed an exemption certificate issued in terms of *Section 79 (1) of the Labour Code Order, 1992* on 16th September, 2003 granted on the basis that it operated a more beneficial scheme.
3. It is applicant's case that the exemption certificate does not affect him as he only learnt of it at the DDPR, and that it related to Shoprite Checkers and not to OK Furnitures (Pty) Ltd, his employer. In his ruling the learned Arbitrator referred the matter to this Court on the basis that the DDPR lacked jurisdiction to entertain it because it related to *"the validity of an exemption certificate."*
4. In its defence, the respondent contended that OK Furnitures is the trading name of Shoprite Checkers' furniture shops, thus making the two one and the same thing.

Proof thereto was attached to the answer in the form of Annexure “**SR1**” and **SR2**,” the trading license as well as a Recognition Agreement concluded between OK Bazaars (Lesotho) (Pty), Ltd (t/a Ok Bazaars and Shoprite) and the Lesotho Wholesalers, Catering and Allied Workers Union, respectively.

5. It was respondent’s case that both the DDPR and the Labour Court lack jurisdiction to hear the matter as it impinged on the review of an administrative decision taken by the Labour Commissioner in issuing out the exemption certificate. It contended further that the applicant was employed by Shoprite Checkers (Pty) Ltd trading as OK Furnitures as evidenced by applicant’s contract of employment which was Annexure “**SR3**” to respondent’s answer.

THE COURT’S ANALYSIS

6. Indeed, administrative decisions are only reviewable by the Labour Appeal Court in terms of **Section 38A (b)(iii) of the Labour Code (Amendment) Act, 2000** which gives the Labour Appeal Court power to, *inter alia*, hear and determine all reviews

of any administrative action taken in the performance of any function in terms of this Act or any other labour law.

It is however our considered opinion that the issue at hand does not revolve on the administrative action of the issuance of the exemption certificate by the Labour Commissioner but on the implication of an exemption certificate on the applicant. As far as we are concerned, the issues for determination are:-

- i) Respondent’s liability to payment of severance pay to the applicant in light of possession of an exemption certificate obtained on 16th September, 2003 pursuant to **Section 7 of the Labour Code (Amendment) Act, 1997**; and
- ii) whether or not the certificate related to the sued party which is OK Bazaars (Pty) Ltd.

7. In our opinion the matter falls squarely on the doorsteps of the DDPR in terms of **Section 226 (2) of the Labour Code (Amendment) Act, 2006**. The matter does not relate to the “*validity of the exemption certificate*” *per se* as opined by the learned Arbitrator but it is a dispute concerning the “*non-payment*” of monies due under the **Labour Code Order, 1992** as envisaged by this Section. The Section gives the DDPR powers to, *inter alia*, to resolve disputes “*concerning the*

underpayment or non - payment of any monies due under the provisions” of the Code.

8. The Labour Court being a creature of statute lacks inherent jurisdiction and derives its powers, obligations and jurisdiction from the four corners of its empowering statute.¹ The Courts finds the appropriate forum to hear this matter to be the DDPR.

ORDER

The Court therefore orders that the matter be remitted to the DDPR for determination, if the applicant is still interested in pursuing it.

THUS DONE AND DATED AT MASERU THIS 22ND DAY OF JUNE, 2016.

F.M. KHABO
PRESIDENT OF THE LABOUR COURT

M. THAKALEKOALA
ASSESSOR

I CONCUR

R. MOTHEPU
ASSESSOR

I CONCUR

FOR THE APPLICANT : ADV., M. QHOMANE, ASTUTE CHAMBERS

FOR THE RESPONDENT : ADV., L. SEPHOMOLO (KC), ASSOCIATION OF LESOTHO EMPLOYERS AND BUSINESS

ANNOTATIONS

STATUTES

Labour Code Order, 1992

Labour Code (Amendment) Act, 1997

Labour Code (Amendment) Act, 2000

Labour Code (Amendment) Act, 2006

¹ *Venter v. Compensation Commissioner (2001) 22, ILJ p. 2425 (T)*

CITED CASES

Venter v Compensation Commissioner (2001) 22, ILJ, 2425 (T)