

LESOTHO / JUDGMENT

Marumo Tsili V COMPOL & 4 Others (CIV/APN/140/2020) [2024]

LSHC 13 (15 February 2024)

[2024] LSHC 13

COURT

High Court

CASE / FILE NUMBER

CIV/APN/140/2020

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IN THE HIGH COURT OF LESOTHO
HELD AT MASERU CIV/APN/140/2020

In the matter between:

MARUMO TS`ILI
APPLICANT
and
COMMISSIONER OF POLICE
1st RESPONDENT
HUMAN RESOURCE - POLICE 2nd RESPONDENT
HEADQUARTERS
PENSION FUND 3rd RESPONDENT
MINISTRY OF POLICE AND PUBLIC SAFETY 4th RESPONDENT
ATTORNEY GENERAL 5th RESPONDENT

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Neutral citation : Marumo Ts`ili v Commissioner of Police and 4 Others
[2020] LSHC 13 (15 February 2024)

CORAM : KHABO J.,

HEARD : 01 AUGUST, 2023

DELIVERED : 15 FEBRUARY, 2024

SUMMARY

Employment law - Retirement v resignation - Where an employee terminated his employment following involvement in a motor vehicle accident while driving an official vehicle - He initially requested an early retirement, but upon the employer preferring disciplinary charges against him, he decided to resign - The employer accepted the said resignation on the basis that the resignation interrupted the retirement process which was to take effect on 18th May, 2019, when resignation was with immediate effect on 06th May, 2019 - A dispute arose on the mode of separation, namely, whether the employee retired or resigned with the employee insisting that he

retired and not resigned - Court finds the employee to have resigned in the circumstances of this case.

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ANNOTATIONS

Cases cited

Lesotho

Selloane Mahamo v Nedbank Lesotho Limited LAC/CIV/04/11

South Africa

Rustenburg Town Council v Minister of Labour and Others 1942 TPD 220

Literature

Barker FS and Holtzhausen MME, South African Labour Glossary, (1996) 127

Grogan J., Workplace Law 4th Ed., JUTA & Co, LTD, 1999

Grogan J., Workplace Law, 11th ed., Juta and Company (Pty) Ltd, 2015

Midlands State University Law Review, Midlands State University, Faculty of Law, Gweru, Zimbabwe, 2017

International instruments cited

Abolition of Forced Labour Convention No. 105 of 1957

ILO Forced Labour Convention No. 29 of 1930

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JUDGMENT

KHABO J., Background to the dispute

- [1] The facts surrounding this case are straight forward. The Applicant was a member of the Lesotho Mounted Police Service (LMPS). Whilst engaged as a Police Constable and stationed at Maseru Urban, Lithabaneng, he got involved in a motor vehicle accident sometime in April, 2019 in an official police vehicle. He decided to terminate his employment by tendering an application for early retirement on 18th April, 2019¹ effective from 18th May, 2019.
- [2] As fate would have it, he was served with a notice to attend a disciplinary hearing on 03rd June, 2019 in relation to the motor vehicle accident, and his reaction was to resign² with immediate effect on 06th May, 2019. LMPS approved this resignation on 23rd May, 2019.³ 1 Annexure 'MT 1' to the founding affidavit 2 Annexure 'MT 2' to the founding affidavit 3 Annexure 'MT5' to the founding affidavit Page | 4
- [3] The Applicant avers that he only learned⁴ after he had tendered his resignation that in fact his application for early retirement had been approved on 30th April, 2019 as reflected in folio 17 of his personal file, but this was never communicated to him. He subsequently wrote to the Commissioner of Police, 1st Respondent herein, on 15th June, 2019 requesting to be considered as having retired and not resigned.⁵ In response, the Human Resource Office informed him that they consider him to have resigned. Aggrieved by this response, he is before this court to pray that Respondents treat him as having retired effectively from 30th April, 2019 and entitled to all his terminal benefits. Relief sought

- [4] The Applicant is seeking the following prayers in the main against this backdrop before this court that:
- (a) Respondents be ordered to retire him with effect from 30th April, 2019 per his personal file record; 4 Para 4.8 of the founding affidavit 5 Annexure 'MT 4' to the founding affidavit Page | 5
 - (b) He be declared entitled to all his retirement and employment benefits as per the law; and
 - (c) Costs of suit.

Analysis

- [5] An employment relationship may be terminated either at the instance of the employer or the employee. As succinctly put by the renowned Labour Law author Grogan J., in Workplace Law: 6 Both the employee and the employer may, by giving the statutory, agreed or reasonable notice, terminate the contract of employment... That a contract of employment has been entered into does not under the common law or statutory law give either a vested right to the continuance of the resulting employment relationship in perpetuity. Consequently, either party may give the other either the agreed or, in the absence of agreement on this point, the prescribed notice of termination. 6 Grogan J., Workplace Law 4th Ed., JUTA & Co, LTD, 1999 at pp 70 -71 Page | 6 On the part of employees, such termination may either be through retirement or resignation. Thus, the Applicant had a right to terminate his employment with LMPS.
- [6] That Applicant terminated his employment relationship with LMPS is not in dispute, what is in issue is the mode of his exit, whether it was by retirement or resignation. The answer to this question lies in the effect of the resignation that was tendered subsequent to the request for an early retirement. Applicant's retirement was to take effect on 18th May, 2019, when resignation was with immediate effect on 06th May, 2019.
- [7] The Applicant insists that he retired and his separation with LMPS should be taken as such. Respondents, on the other hand, argues that the Applicant resigned because he tendered his resignation whilst his retirement was still being processed, and that any benefits that may accrue to him flow from his resignation and not retirement. The latter having been interrupted by Applicant's subsequent resignation, so they say. They contend that as a result of the resignation, retirement never took effect. Hence, LMPS accepted the said resignation. The dispute essentially revolves on the mode of separation, namely, whether the employee retired or resigned. Page | 7
- [8] The Applicant avers that he heard through the grapevine that his retirement had been approved on 30th May, 2019, but this was never communicated to him. This averment was, however, not substantiated by any evidence. Be that at it may, it is worth noting that he had requested that his retirement take effect on 18th May, 2019. It appears he changed his mind and resorted to resignation with immediate effect on 06th May, 2019 before retirement could

take effect. In my opinion, it was only reasonable for LMPS to respect his decision to resign as opposed to retiring.

- [9] This court wishes to underscore that retirement had not taken effect on 06th May, 2019 when the Applicant decided to resign. He had every right to change his mind, resignation being a voluntary and unilateral act. Barker and Holtzhausen⁷ defines resignation as "the termination of employment on the employee's initiative, of his or her own volition and without employer coercion." Unless, of course, he or she were to prove coercion or duress into resigning on the part of the employer.
- [10] As stated in *Rustenburg Town Council v Minister of Labour and Others*⁸ resignation is a unilateral act that does not need to be accepted by the employer. Murray J., stated therein that "[t]he giving of notice is a 7 Barker FS and Holtzhausen MME, South African Labour Glossary, (1996) 127 81942 TPD 220 Page | 8 unilateral act: it requires no acceptance thereof or concurrence therein by the party receiving notice, nor is such party entitled to refuse to accept such notice and to decline to act upon it." This case was cited with approval in *Selloane Mahamo v Nedbank Lesotho Limited*⁹ where the court pointed out that once tendered, resignation may not be withdrawn without the consent of the employer. The rationale behind this principle lies in international labour standards,¹⁰ the Constitution and labour legislation which outlaw forced labour. However, there is nothing at law that precludes an employer from accepting a resignation.
- [11] It is worth noting that although the Applicant insists on having retired as opposed to having resigned, the Applicant never stated his intention to withdraw the early retirement application. Perhaps, the employer could have looked at the situation differently. Retirement is where employment ends because the employee has reached the agreed or normal retirement age.¹¹
- [12] It is common for employees to resign when faced with disciplinary action, often to avoid its consequences and the stigma attached thereto if found guilty. The Applicant avers in his founding affidavit that "in fear of that 1 9 LAC/CIV/04/11 p. 12 at para 18 10 ILO Forced Labour Convention No. 29 of 1930 Abolition of Forced Labour Convention No. 105 of 1957 11 Grogan J., Workplace Law, 11th ed., Juta and Company (Pty) Ltd, 2015 at p. 169 Page | 9 would ... undergo a disciplinary hearing, I was forced to tender my application for resignation..."¹² Clearly the Applicant was averting the implications of a disciplinary process when he opted to terminate his employment with LMPS.
- [13] What goes on through an employee's mind when faced with a disciplinary action was best captured in *Midlands State University Law Review*¹³ that: Some of the problematic situations involve cases where employees facing disciplinary action resign impulsively so as to avoid the stigma associated with a dismissal, but later on regret the act and attempt to resurrect the contract by withdrawing the resignation. The author went further to note that: In other instances, it is not unusual for employees to allege that when they resigned, they did not appreciate the consequences of their actions due to emotional stress or that it was a moment

of weakness or madness. Others claim that they resigned under protest, undue influence or duress rendering the termination constructive dismissal. 12Para 4.6 of his founding affidavit at p.8 13Midlands State University, Faculty of Law, Gweru, Zimbabwe, 2017 Page | 10 It is unfortunate that in the midst of stress and confusion over an impending disciplinary action, employees sometimes make irrational decisions, a situation which clearly befell the Applicant.

- [14] One could wonder why the fuss over resignation or retirement because both involve quitting one's job. The fuss is worth the trouble because both have different implications, with resignation, one tends to lose out on certain benefits such as monthly pension. The court considers the Applicant to have retired in the circumstances of this case. The timing of the resignation, having been tendered before retirement could take effect was very critical in determining this matter. ORDER In the result, I make the following order: The application is dismissed with costs. Page | 11 F. M. KHABO JUDGE For the Applicant : Adv., M. Hlakametsa For the Respondents : Adv., M. Chitja Page | 12

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