

**IN THE LABOUR COURT OF LESOTHO**

**HELD AT MASERU**

**LC/93/2014**

**IN THE MATTER BETWEEN**

**LESOTHO CLOTHING & ALLIED  
WORKERS UNION O.B.O. 'MAPHOKOANE  
NKOKO & 1485 OTHERS**

**APPLICANT**

**AND**

**JONSSON MANUFACTURING (PTY) LTD  
RESPONDENT**

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**JUDGMENT**

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*Claims for payment of union dues in terms of section 85 of the Labour Code Order 24 of 1992. Court finding that Applicants claims are for unpaid monies due under the Act. Court finding that the Applicants claims fall within the jurisdiction of the DDPR in terms of section 226(2) of the Labour Code (Amendment) Act 3 of 2000. Court also declining jurisdiction. The principle of incidental jurisdiction discussed. No order as to costs being made.*

## **BACKGROUND OF THE DISPUTE**

1. This is a claim for an order directing the Respondent to deduct monies from the wages of its employees, Applicant members, as union dues. The claim has been referred in terms of section 85(2) (g) (iv) of the *Labour Code Order 24 of 1992*. According to Applicant, the employees of Respondent in question have given their written consent for the Respondent to deduct certain monies and pay them over to Applicant as union dues. Respondent strongly opposes the case and in addition, has raised a *point in limine*.
2. In terms of the *point in limine* raised, Respondent argues that this matter should have been referred to the Directorate of Dispute Prevention and Resolution (DDPR) for conciliation, before it could be brought to this Court. Applicants also opposed the *point in limine*. We gave both parties the opportunity to address Us and having heard them, Our judgment follows.

## **SUBMISSIONS AND ANALYSIS**

3. According to Respondent, all claims that must be brought before this Court for adjudication must first be conciliated upon, in terms of section 227 of the *Labour Code (Amendment) Act 3 of 2000*. It was argued that the matter at hand, has not been conciliated upon, contrary to the provisions of section 227. It was submitted that evident to

this is the fact that no certificate or report of non-resolution from the DDPR, has been filed with the Court.

4. It was added that while in the case of *Lesotho Highlands Development Authority v Tsotang Ntjebe C of A (CIV) 7/2012*, the Court states that the provisions of section 227 are permissive, but that is only in so far as claims referred under section 226(1) of the *Labour code (Amendment) Act (supra)*, are concerned. It was argued that the matter at hand has been referred in terms of section 85 of the *Labour Code Order (supra)* and should therefore have been referred to the DDPR for conciliation.
5. Applicant answered that the claim was referred to the DDPR under referral number C050/2011. Further that in that claim, Respondent had argued that the DDPR did not have jurisdiction, which contention was upheld by the learned Arbitrator. A copy of the award was handed in from the bar, with no objection from Respondent. It was argued that Respondent cannot now be heard to argue that the DDPR has jurisdiction at this point.
6. It was further argued that a claim under section 85 of the *Labour Code Order (supra)*, falls within the jurisdiction of this Court as it is a dispute of right. It was argued that in determining this matter, this Court would have to interpret section 85, which power the DDPR does not have. It was

submitted that such power lies with this Court in terms of section 226(1) of the *Labour Code (Amendment) Act (supra)*.

7. Respondent replied that the claim in referral C050/2011 is different from the current claim. It was argued that in C050/2011, the claim related to the conciliation of a check off facility, while the current claim related to an order directing Respondent to make deductions in terms of section 85 of the *Labour Code Order (supra)*. It was reiterated that a section 85 claim, must be conciliated first, as it falls within the exception to the principle in the *Lesotho Highlands Development Authority v Tsotang Ntjebe (supra)* authority.

8. In terms of section 85 (2) (a) (iv) of the *Labour code Order (supra)*,

*“(2) In accordance with obligations imposed by any written law or with the written consent of the employee, deductions may be made from the wages of such employee for the purposes of -*

*(a) payment by the employer on the employee’s behalf of -*

*...*

*(iv) such amounts as are provided for a trade union dues or contributions under the provisions of any collective agreement or arbitration award between a trade union and the employer or an organisation of employers of which the employer is a member; and”*

9. Clearly, section 85 (2) (a) (iv), provides for the right, on the part of the employee, to authorise a deduction of monies towards the satisfaction of their union dues. It also vests a right on the union to be the recipient of such monies where authorisation has been made in terms of this section. Consequently, failure to make such deductions and to forward them to the union gives rise to a claim for unpaid monies.
10. In terms of section 226(2)(c) of the *Labour Code (Amendment) Act (supra)*, the DDPR has jurisdiction to hear and determine by arbitration the following disputes,  
“ a dispute concerning the underpayment or non-payment of monies due under the provisions of this Act;”  
Discernibly, given that the claim at hand is an unpaid monies claim, it falls within the jurisdiction of the DDPR.
11. While We concede that the authority in the case of *Lesotho Highlands Development Authority v Tsotang Ntjebe (supra)*, makes it uncompelled for a party to refer a dispute referred under section 226 (1) for conciliation, it is inapplicable *in casu*. We say this because, We have shown that the dispute at hand is not a section 226 (1) dispute or one that should be resolved by adjudication before this Court, but rather a claim for unpaid monies. What should happen is that Applicants must refer their claims with the DDPR under section 226 (2) of the *Labour Code (Amendment) Act (supra)*, and that the

claims be conciliated upon in terms of section 227 (4) of the *Labour Code (Amendment) Act (supra)*.

12. We wish to comment that We have gone through the arbitral award in referral C050/2011. We do confirm, as Respondent has put, that the two claims were and are different even now. *In casu*, Applicants are asking that Respondent be ordered to make deductions from wages of employees and pay them over to them. In C050/2011, Applicants were asking the learned Arbitrator to declare the cancellation of a check off facility invalid. Clearly the claims were and are still different.

13. We wish to further comment that the mere fact that the DDPR, in determining a claim brought duly before it, would have to deal issues that it would ordinarily not have jurisdiction if individually referred, does not divest it of its jurisdiction over a duly referred claim. The DDPR would be seized with incidental jurisdiction over such issues. We have addressed this in a number of decisions this far (*see Kabelo Teisi v Minapex Lesotho (Pty) Ltd LC/56/2013, Mathabiso Sibolla & others v Tsepo ea Sechaba (Pty) Ltd t/a Pay n Save LC/14/2015*).

**AWARD**

We therefore make an award as follows,

- 1) That this Court has no jurisdiction over Applicants claims;
- 2) Applicants are at liberty to refer their claims with the DDPR;
- 3) Should they elect to do so, they must within 30 days of issuance herewith; and
- 4) No order as to costs is made.

**THUS DONE AND DATED AT MASERU ON THIS 10<sup>th</sup> DAY OF AUGUST 2015.**

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

**MRS. MOSEHLE**

**I CONCUR**

**MISS LEBITSA**

**I CONCUR**

**FOR APPLICANT:  
FOR RESPONDENT:  
NTAOTE**

**ADV. TLAPANA  
ADV.**