

# IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/159/2012

In the matter between:-

**BOFIHLA MAKHALANE**

**APPLICANT**

**AND**

**LETŠENG DIAMOND (PTY) LTD.**

**1<sup>ST</sup> RESPONDENT**

**GENERAL MANAGER – MR. MORUTI MAPHATŠOE**

**2<sup>ND</sup> RESPONDENT**

**ASS. GENERAL MANAGER – MR. JOHN HOUGHTON**

**3<sup>RD</sup> RESPONDENT**

**RESIDENT DIRECTOR**

**4<sup>TH</sup> RESPONDENT**

## JUDGMENT

**Coram** : Hon. Mahase J.  
**Date of hearing** : 25<sup>th</sup> February 2013  
**Date of Ruling** : 30<sup>th</sup> May 2013

### Summary

*Civil Procedure – Motion proceedings – Leave by Court to convert same into a civil trial – Application of provisions of Rule 8 (14) of the Rules of this Court – Whether or not this Court empowered to so order at the instance of the applicant – Application for stay of payment of costs made by or in the Labour Appeal Court – Jurisdiction of the High Court in this application.*

ANNOTATIONS

CITED CASES:

- **Tšehlana v. National Executive of L.C.D. and Another LAC (2005 – 2006) 267 at 277.**
- **Hermannsburg Division v. Sugar Industry Central Board 1981 (4) S.A 717 (D).**

## STATUTES

- **High Court Act No. 5 of 1978**
- **High Court Act No. 9 of 1980**

## BOOKS

- **Herbstain and Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4<sup>th</sup> Ed. at page 702 and Authorities therein cited at footnote 6**

- [1] This is an application in which the applicant requests and prays this Court to have the motion proceedings herein to be converted into a civil trial. The basis for his application being provisions of Rule 8 (14) of the Rules of this Court.
- [2] The application which is referred to above is CIV/APN/159/2012 which is still pending argument and, determination before this Court. Subject-matter herein is the taxed bill of costs in the sum of M67,571.31, which emanated from the Labour Appeal Court – LAC/APN/01/2010 in the matter between Bofihla Makhalane v. Letšeng Diamond (PTY) Limited and Others.
- [3] In Other words, while the applicant has not yet paid to the respondents, the taxed bill of costs in the said sum of money shown above; and which bill of costs was correctly taxed by the Registrar of the Labour Appeal Court, the applicant now approaches the High Court requesting it to order that the payment by him of the said taxed costs be stayed pending the finalization of the appeal of this matter to the Court of Appeal of Lesotho.
- [4] The instant application has been launched by the applicant after he had received a demand from the present respondents that he should pay the taxed

costs. He does not challenged the validity nor the correctness of the bill of costs. This is not an application for review of the taxed costs.

- [5] The applicant's said reliefs or prayers herein set in prayers 1 (a) (b) and (c) are not interim relief. If granted they will all have a final effect since there is no prayer to the effect that they be granted as interim reliefs returnable on any specified dates. Put conversely, this application does not comply with the provisions of Rule 8 of the Rules of this Court in many respects.
- [6] The applicant reliance on the provisions of Rule 8 (14) is problematic for a number of reasons; one of which has already been stated above. The other reasons have been clearly spelt out by the respondents' attorneys in his written submissions which are incorporated herein and which one need not repeat.
- [7] Be that as it may, it is trite that the Court that made the order; whether it be of costs or of something else, is the court that has to be approached for an application for the stay of that very order.
- [8] In the instant application, the order for costs and which costs were subsequently taxed by the Registrar of the Labour Appeal Court are a result of the case between the applicant and the respondents; which case was prosecuted by or before the Labour Appeal Court, which court in turn ordered the applicant to pay costs. This is the original order of the Labour Appeal Court and as such only the Labour Appeal Court can and should deal with an application for stay of payment of its own order.

- [9] Aside from the fact that this matter, being a labour related matter and in which the Labour Court has an exclusive jurisdiction to determine such matters; the High Court has no jurisdiction to entertain and or to interfere with the original order of the Labour Appeal Court. The Labour Appeal Court being a specialized court is empowered to deal with cases of this nature.
- [10] The applicant has already noted an appeal to the Court of Appeal of Lesotho, (and correctly so) against the judgment of the Labour Appeal Court. Whilst it is correct that the High Court has unlimited jurisdiction to hear and to determine any civil or criminal proceedings under any law in force in Lesotho; the matter now under discussion in the instant application has been dealt with by a specialized court which has exclusive jurisdiction to deal with labour related matters and it is equally and competently empowered to deal with matters pertaining to execution or stay of its own judgments.
- [11] There are no exclusive reasons filed or supplied by the applicant which justify the removal of the application for the stay of payment of costs; a decision of the Labour Appeal Court, to be moved to the High Court. The Labour Appeal Court is a competent court to deal with this matter and to enforce its own judgments. Any other approach will create confusion especially because the issue(s) in question are not pending before the High Court.
- [12] Lastly, and bearing in mind the provisions of Rule 8(14), the applicant has not indicated in his papers the reasons for saying that there is a dispute of fact upon which the application cannot be decided on the affidavits filed of

record. It is somewhat strange that this should come from him being the applicant. The question is having foreseen and or having realized that there is such a dispute of fact, why did he proceed by way of motion proceedings in the first place?

[13] The applicant has indeed misconstrued the application of the provisions of this Rule and that explains why he has moved this Court as he has done even before this Court has heard his argument. He has not even waited to hear what the opinion of this Court is on this issue. He has indeed put the cart before the horse. This borders on abuse of court processes. This I say with the greatest respect.

[14] The applicant is in fact attempting to have this matter moved out of the Labour Appeal Court whilst the said court is a competent court to deal with matters of stay of its own judgment. This application is accordingly dismissed with costs to the respondents.

**M. Mahase**

**Judge**

For Applicant : In Person

For Respondents : Mr. HHT Woker