

LAC/APN/07/02

IN THE LABOUR APPEAL COURT OF LESOTHO  
HELD AT MASERU

In the matter between:

MOEKETSI SEITLHEKO

APPELLANT

AND

RETS'ELISITSOE PAE

RESPONDENT

CORAM: THE HONOURABLE MR. ACTING JUSTICE K.E.MOSITO

ASSESSORS: MRS. M. THAKALEKOALA

MRS M. MOSEHLE

HEARD: 23 October 2007

DELIVERED: 29 October 2007

#### SUMMARY

*Appeal against award of DDPR to the Labour Appeal Court - Appeal  
filed on 15 august 2002 - No records of proceedings*

*Jurisdiction - Court has no jurisdiction to hear appeals from awards of  
DDPR - The matter is dismissed with costs*

#### JUDGEMENT

Mosito AJ:

1. This case was filed on 15 August 2002. It is a case concerning an appeal to this Court against an award of the DDPR.
2. At the hearing hereof, the Appellant's counsel, Advocate T. Mpaka informed the Court that he had since lost contact with the Appellant, and was therefore no longer representing Appellant. He was however asked as to what should happen with the matter, and whether there

were any prospects of success in this matter regard being had to the terms of section.

3. Mr. Mpaka informed the Court that he was of the view that one can appeal to this Court regard being had to the terms of section 228E(5) of the **Labour Code (Amendment) Act 2000**, which provides that:

An award issued by the Arbitrator shall be **final** and binding and shall be enforceable as if it was an order of the Labour Court

4. As was once pointed out in **Kolber and Another v Sourcecom Solutions (Pty) Ltd and Others; Sourcecom Technology Solutions (Pty) Ltd v Kolber and Another 2001 (2) SA 1097 (C) pp. 1111-2:**

The only inference to be drawn from all this is therefore that the Legislature and both the parties in this matter all subscribed to the philosophy which transpires from the following dictum by Gardiner J in *Clark v African Guarantee and Indemnity Co Ltd* 1915 CPD 68 at 77:

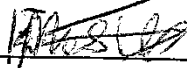
"The Court will always be most reluctant to interfere with the award of an arbitrator. The parties have chosen to go to arbitration instead of resorting to the Courts of the land, they have specially selected the personnel of the tribunal, and they have agreed that the award of that tribunal shall be final and binding. As Halsbury LC said in *Holmes Oil Co v Pumpherson Oil Co* Court of Sess R 18 at 53:

"One of the advantages that people are supposed to get by reference to arbitration is the finality of the proceedings when the arbitrator has once stated his determination. They sacrifice something for that advantage - They sacrifice the power to appeal. If, in their judgment, the particular judge whom they have selected has gone wrong in point of law or in point of fact, they have no longer the same wide power to appeal which an ordinary citizen prosecuting his remedy in the courts of law possesses, but they sacrifice that advantage in order to obtain a final decision between the parties. It is well-settled law, therefore, that when they have agreed to refer their difficulties to arbitration, as they have here, you cannot set aside the award simply because you think it is wrong." "

5. As the Court pointed out in Kolber's case (*supra*), against this background a party to arbitration proceedings should not be allowed

to take the arbitrator on appeal. This Court has no jurisdiction to hear appeals from the DDPR. This appeal must therefore be dismissed as awards of the DDPR are by law not appealable. In all the circumstances of this case, the appeal should be dismissed, and is accordingly so ordered with costs.

6. My Assessors agree.



K.E. MOSITO

JUDGE OF THE LABOUR APPEAL COURT OF LESOTHO

For Appellant: Advocate T.Mpaka

No appearance for Respondent

