

IN THE LABOUR APPEAL COURT

HELD AT MASERU

In the matter between:

SIMON TAU

APPLICANT

AND

LESOTHO FLOUR MILLS (PTY) LTD

1ST RESPONDENT

THE DIRECTORATE ODF DISPUTE PREVENTION

AND RESOLUTION

2ND RESPONDENT

CORAM: HON. MR ACTING JUSTICE K.E. MOSITO

ASSESSORS: MR. D. TWALA

MR. L.C. MOFELEHETSI

HEARD: 27TH JUNE 2007

DELIVERED: 28TH JUNE 2007

SUMMARY

Jurisdiction of Labour Appeal Court – Review of awards of the DDPR in terms of sections 3, 4, and 5 of the Labour Code (Amendment) Act No.5 of 2006. Labour Appeal Court having no jurisdiction to hear reviews from DDPR. Labour Court having jurisdiction to hear reviews from DDPR. No need to order condonation. Matter referred to Labour Court for hearing.

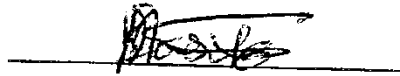
JUDGEMENT

MOSITO AJ:

1. This application came by way of a review to this court. It arose out of arbitration proceedings in the Directorate of Dispute Prevention and Resolution (DDPR).
2. The chronology of events in this matter shows that at all times material to this dispute, the Applicant was an employee of the first respondent as a cashier until he was dismissed on the 10th day of July 2002.
3. Consequent upon the said dismissal, Applicant instituted proceedings in the DDPR in which he challenged the fairness of his dismissal under Referral number: A1079/02. The matter was ultimately heard by the DDPR, and an award was handed down on the 24th day of October 2002. In that award, the DDPR dismissed the Applicant's claim.
4. Dissatisfied with the award, the Applicant filed an application before this Court on the 12th day of December 2002. The matter came before my brother Peete J with assessors, on the 9th day of September 2005 and was postponed *sine die*. It was ultimately placed before me with assessors for hearing on the 1st day of September 2006. It appeared on the latter date that the record was not complete, as some documents were missing. This Court then ordered that, the DDPR should dispatch to the Registrar of this Court, the full record of proceedings before it in Referral number A1079/02, and all documents submitted therein as exhibits and/or annexures on or before the 22nd day of September 2006. The matter was to be enrolled as soon as those documents had been received.

5. It is worth mentioning that the order referred to in paragraph 4 above was made after the hearing had commenced, and it had become apparent that some documents to which the parties were making reference in the case were not before Court. It was at that point that the hearing was stopped for the record to be completed.
6. The matter was subsequently enrolled for hearing before this Court on the 27th day of June 2007. When the matter resumed on that date, the Court *mero motu sua*, raised a point with counsel for the parties whether, regard being had to the terms of sections 3,4 and 5 of the ***Labour Code (Amendment) Act No. 5 of 2006***, read with the Court of Appeal decision in ***Attorney General & 2 Others v S.J. Kao C of A (CIV) NO. 26 of 2002*** delivered on the 14th day of April 2003, the Labour Appeal Court had jurisdiction to entertain this application. This court raised the issue of jurisdiction *mero motu sua*, because it is a question of law. A point of law may in our procedural law, be raised *mero motu* where the dictates of justice so warrant (see: ***Albert Molefi Tlali v Attorney General NO. C of A (CIV) NO. 9 of 2002*** (unreported)).
7. The learned counsel for the parties agreed that, sections 3,4 and 5 of the ***Labour Code (Amendment) Act No. 5 of 2006*** did take away the jurisdiction of this Court in respect of review of awards of the DDPR. This power is now vested in the Labour Court by section 5 of the ***Labour Code (Amendment) Act No. 5 of 2006***.
8. Therefore, the parties requested this Court to transfer this matter to the Labour Court for hearing, as it is the appropriate forum. No Court could refuse such a suggestion. It accordingly received our favour.

9. The court further raised the issue whether by transferring the matter to the Labour Court, there would be any need for condonation application to be made to the Labour Court for the late filing of this matter before the Labour Court. This concern was made in the light of the fact that, it has come to the attention of this Court that in the past, when the High Court, or this Court ordered matters to be transferred to the Labour Court, or from the Labour Court to the DDPR, applicants were required by the destination fora to file condonation applications for the late filing of such applications before such fora. the learned Counsel for the 1st respondent Advocate Sephomolo, made a point that, such question would and should not arise where the transferring of such a matter came as a result of an order of Court. We fully agree with this view. Indeed as the learned Counsel correctly submitted in this regard, the position may be different where the matter brought before Court was filed in the High Court or this Court out of time. Advocate Shale agreed with his colleague on this point as well. In the circumstances, we agree that there is no need to make an order regarding condonation.
10. The ruling of this Court therefore is that, this matter should be transferred to the Labour Court for hearing. It is accordingly so ordered.
11. We were not addressed on the question of costs. We consequently do not find it necessary to make an order as to costs at this stage. In our view the justice of this matter will be met by ordering that costs shall be costs in the cause.
12. My assessors agree.



K.E. Mosito

Judge of the Labour Court

For the Applicant:

Advocate S. Shale

For the First Respondent:

Advocate L. Sephomolo

For the Second Respondent:

No appearance

