

IN THE LABOUR APPEAL COURT OF LESOTHO
HELD AT MASERU

LAC/A/02/09
LC67/2007

In the matter between:

**J.D.G. TRADING (PTY) LTD t/a PRICE AND PRIDE
AND
LABOUR COMMISSIONER OBO
MOLAHLI MOLAHLI
ARBITRATOR M. KETA N.O.
PRESIDENT OF THE LABOUR COURT (NO)**

APPLICANT

**1st RESPONDENT
2nd RESPONDENT
3rd RESPONDENT**

CORAM: HONOURABLE MR K.E.MOSITO A.J.

ASSESSORS: MR J. TAU
MR M. MAKHETHA

Heard: 03rd November 2010
Delivered: 03rd November 2010

SUMMARY

Appeal before the Labour Appeal Court-security filed to confirm jurisdiction of the court-there being no documents in the nature of pension rules to enable the court to consider the matter-by agreement of parties matter remitted to the DDPR to be heard by a different arbitrator.

JUDGMENT

1. This case had been postponed on the previous occasion on 2nd January 2010 because this court expressed its reservations in relation to its jurisdiction to entertain the matter after being told that the appellant had since left the country. The court then expressed its concern about the effectiveness of the judgment that would result from the hearing of this case. It directed that before the case could proceed, the Court should be satisfied that the judgment would be effective. It therefore suggested that the appellant should consider filing some form of security to confirm the jurisdiction of this court.

2. When the case was called on the 3rd day of November 2010, Mr Moilola informed the court that he had been put in funds as the attorney of record in the sum of the claim before court and that the money was held by him in trust pending final determination of the case. Mr Moilola told the court that the money in his possession was in the sum of twenty six thousand Maloti two hundred and thirty seven Maloti and ninety seven Lisente (M26, 237.97). Miss Russel had no problem with the matter proceeding as Mr Moilola had indicated that the money was available within the jurisdiction of this court.

3. When this matter was called before us, it became apparent that the decision (award) of the Directorate of Dispute Prevention and Resolution (DDPR) had been made on sketchy facts. The main problem revolved around the availability of certain documents: there was a problem in relation to the availability of the pension scheme rules which had apparently not been filed of

record. The Rules had apparently not been submitted to the arbitrator, and yet it became the pivot on which the determination of the case revolved.

4. When this issue was brought to the attention of both counsel by this court, Mr Moiloa (for the appellant) accepted that this document ought to have been availed at the DDPR. He consequently suggested that the matter be remitted to the DDPR for the case to be heard de novo so that all the relevant documentation should be placed before the arbitrator. In this way, the learned counsel submitted that the arbitrator would be given an opportunity to consider all facts involved and come up with a fair determination.

5. Miss Russel in all fairness accepted the proposal.

6. This court unanimously agreed with the proposal.

7. It is consequently ordered as follows:

(a) That the case is remitted to the DDPR to start de novo so as to avail the parties an opportunity to fully ventilate their respective cases before the arbitrator.

(b) The case is to be heard by a different arbitrator

(c) There is no order as to costs.

K.E.MOSITO AJ

Judge of the Labour Appeal Court

For Appellant: Mr Moiloa

For respondents: Miss Russel