

IN THE LABOUR APPEAL COURT OF LESOTHO**LAC/CIV/A/01/2013****LC/REV/41/12****In the matter between:****LESOTHO ELECTRICITY COMPANY (PTY) LTD****APPELLANT****AND****MPAIPHELE MAQUTU****1ST RESPONDENT****ARBITRATOR SENOOE****2ND RESPONDENT****DIRECTOR OF DISPUTE PREVENTION AND****RESOLUTION****3RD RESPONDENT****CORAM: THE HON. MR JUSTICE K.E. MOSITO AJ.****ASSESSORS: MR. L. MATELA****MRS. M. MOSEHLE****Heard on: 19TH June, 2013****Delivered on: 28th June, 2013****SUMMARY**

Appeal against the judgment of the Labour Court granting a dismissal of the review application for want of prosecution – the record of proceedings being presented before the Labour Appeal Court as having been fully transcribed.

By agreement of the parties, Labour Appeal Court upholding the appeal and setting aside the judgment of the Labour Court. The Labour Appeal Court directing that the review application before the Labour Court be reinstated and proceeded with.

Costs - costs of the appeal being costs in the review application

JUDGEMENT

MOSITO AJ

1. This is an appeal against the judgment of the Labour Court (T.C. RAMOSEME ADP) handed down on 4 February 2013. The appeal arises out of an application brought by the applicant (now first respondent Mr Maqutu).
2. It appears that on the 23 August 2012, 1st Respondent lodged an application for dismissal of the review application brought by the appellant for want of prosecution. Both applications were duly opposed by the parties. On 22 January 2013 the Labour Court only heard the application for dismissal of the review application for want of prosecution
3. On 4 February 2013, the Labour Court handed down its judgment in the following terms:
 - “(a) That the [application] for dismissal of the review application is granted; and
 - (b) That there is no order as to costs”.
4. It suffices to say that before us, the parties argued as they had done in the Labour Court. The 1st respondent was contending in such a way as to support the judgment of the Labour Court, while the appellant contended that the Labour Court judgment should be overturned.
5. It however emerged before us that the record on the basis of which the complaint for the dismissal of the review application had been pursued in

the Labour Court, that the DDPR record had not been transcribed by the appellant, had become academic because, the record had now actually been transcribed and it was now before court. There was therefore no longer any need for the parties to fight over the issue whether or not the dismissal of the review application on the basis of non-prosecution and non-transcription of the record.

6. Before us, the parties agreed that the proper way to deal with the matter would be to uphold the appeal and set aside the judgment of the Labour Court and, order that the matter be remitted to the Labour Court for hearing of the review application.
7. Consequently, and in light of the above, the following order is made:
 1. The appeal succeeds.
 2. The Labour Court judgment granting the dismissal of the review application is set aside and the review application reinstated.
 3. The application for review is to be proceeded with before the Labour Court and the Registrar of that court is requested to give priority to that application regard being had to the lapse of time that it has taken for the finalization of the matter.
 4. Costs of the present appeal are to be costs in the review application.
8. This is an unanimous decision of the court.

K.E. MOSITO AJ.
Judge of the Labour Appeal Court

For the Applicant : Adv. H.H.T. WOKER

For the Respondent : Adv. N.T. NTAOTE