

IN THE LABOUR APPEAL COURT OF LESOTHO

HELD AT MASERU

LAC/CIV/A/12/13

In the matter between:

LESOTHO EXPRESS DELIVERY SERVICES

(PTY) LTD

APPELLANT

AND

DDPR

1ST RESPONDENT

NKOTO MARIAM CHABANE

2ND RESPONDENT

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

ASSESSORS : MR. L. MOFELEHETSI
MRS. M. MALOISANE

Heard on : 29 OCTOBER 2013

Delivered on : 7 NOVEMBER 2013

SUMMARY

Appeal from the Labour Court to the Labour Appeal Court – Appellant failing to appear either through its duly authorised officials or a legal practitioner – appellant having instructed a non-legal practitioner who subsequently disappears.

Court invoking Rule 13(b) of the Labour Appeal Court Rules 2002 – appeal dismissed with costs in terms of Rule 13 (b) – appellant directed to pay 2nd 2nd Respondent in terms of the award of the DDPR.

JUDGEMENT

MOSITO AJ

1. INTRODUCTION

1.1 This is an appeal brought to this court by the appellant against the judgement of the Labour Court handed down on 12 November 2012 in LC/REV/18/2010. The facts which gave rise to the present appeal are that the Labour Court in its review jurisdiction dismissed an application for review of the arbitration award of the Directorate of Dispute Prevention and Resolution (DDPR) on 10 February 2010.

2. THE FACTS

The facts that gave rise to the present application are briefly as follows herein below.

2.1 The 2nd Respondent was employed by the appellant as from 4 February 2002. On 14 June 2002, the 2nd Respondent received a letter of suspension on the allegation that she had been involved in an authorised removal of goods from the appellant store. She was also informed that she was suspended on full pay while the matter was being investigated and she was to report to the appellant's office on 2nd July 2002 where she would be informed of the management's decision regarding the future of her contract of employment. It seems that she never received any wages from July 2002 until the date of hearing.

2.2 She enquired from appellant on 27 June 2002 about her suspension but she received no response from the appellant until July 2003 when she filed a referral regarding her unpaid wages whilst on suspension. The appellant's view was that it had terminated the 2nd Respondent's services on 15 August 2002 by means of a letter. 2nd Respondent's contention on this issue was that she had never received a letter of termination. As can be seen the facts were not relatively difficult.

However, the problem arose from the procedure that was adopted culminating in the present appeal

3. BACKGROUND TO THE DISPUTE

- 3.1 The history of this case may be traced from as far back as 2003 when the 2nd Respondent initially referred a dispute under Referral No. A0939/2003. That dispute was ultimately resolved in favour of the 2nd Respondent in default by the arbitrator. The appellant made an application for the rescission before the DDPR which was unsuccessful. The appellant then lodged a review application with the Labour Court under review No. LC/REV/252/2006. The Labour Court concluded that the matter had to be heard *de novo* before a different arbitrator. The matter was duly remitted to the DDPR and was heard by a different arbitrator. The arbitrator handed down an award with which the appellant was not satisfied. Being dissatisfied with the award, the appellant then took it on review to the Labour Court in LC/REV/18/2010. In that review application, the appellant sought to have the award granted by the DDPR on 10 February 2010 reviewed, corrected and set aside.
- 3.2 The 2nd Respondent relied on three points *in limine* based on jurisdiction in that, she was arguing that it was irregular to review the same matter twice. Second, that the review application had been lodged out of the prescribed time limits and third, that the application was an appeal disguised as a review in which case the Labour Court had no jurisdiction to entertain the matter if that would be the case. The court proceeded to deal with the preliminary issues, that is, the points *in limine* and ultimately handed down an award in the following terms: first, that the

court had no jurisdiction to hear the matter and second that there was no order as to costs on the basis of the aforementioned grounds.

3.3 The appellant was not satisfied with the decision of the Labour Court and it appealed to this court on the following grounds:

- “1. The Labour Court erred or misdirected itself in finding that the review grounds raised by the appellant constitute grounds for appeal.
4. The Labour Court erred in not finding that errors in the manner in which the Arbitrator approached the evidence in coming to the conclusion reached could constitute reviewable grounds.
5. Proceeding from the above incorrect legal premise, the Acting President of the Labour Court presiding erred and misdirected himself in holding that the Labour Court lacks jurisdiction in the review proceedings instituted by the appellant”.

3.4 A perusal of the Court file reveals that the matter first came before my brother Peete J on 24 May 2013 and certain directives were made as to the future of the matter. The matter was postponed to 31 May 2013 and the warrant of apprehension which had been issued by the Labour Court against the appellant was stayed pending finalization of this appeal.

3.5 On 17 October 2013, the matter was presented before me sitting with assessors. A Mr Mahaleroe appeared before us claiming that he had just received instructions in the matter to proceed with the matter. Advocate Nts'ene for the 2nd Respondent also appeared and complained that the matter was an old one traceable from as far back as July 2002. The matter was first referred to the DDPR on 21 July 2003 and was heard in the absence of the appellant in consequence of the

appellant's failure to attend the hearing on 28 August 2003. An award was consequently issued in default against the appellant on 28 October 2003. Subsequent to that an application for rescission of the award was lodged by the appellant and was heard on 4 May 2004. It was granted consequently and on 12 July 2004 the case was heard in the presence of all parties. An award was made on 12 August 2004 by arbitrator Rantsane in which he ordered the appellant to pay the sum of sixty seven thousand five hundred Maloti (M67, 500.00) to the 2nd Respondent on or before 30th September 2004.

3.6 As I indicated above, that award was ultimately set aside and the matter found its way before another arbitrator Mr C.T. Thamae. It appears from the award of Mr C.T.Thamae that on the date of hearing the 2nd Respondent was represented by Advocate Pitso Nts'ene and the appellant was represented by Attorney Mr Martin De Beer from Sello Mafatle Attorneys. Arbitrator Thamae awarded the 2nd Respondent's claim in the sum of two hundred and eighty thousand Maloti (M280, 000.00) on 10 February 2010. It is against that award that appellant proceeded to the Labour Court on review. The Labour Court declined jurisdiction and hence the present appeal.

3.7 I have referred to the rather convoluted history of the matter to show that it seems to me that the appellant has never been serious with ensuring the finalisation of this matter. At some stage the appellant absented itself through its representatives. The appellant changed attorneys on various occasions when the matter was to be heard. At some stage it was represented by Mr De Beer. It changed attorney and it was later represented by Webber Newdigate (Miss Tohlang). It

changed from Webber Newdigate and went to a Mr Mohaleroe, who identified himself at the hearing of this matter as a “Advocate Doctor Mohaleroe”.

3.8 When on the 17th day of October 2013 Mr Mohaleroe appeared before us, he was neither robed like a court official nor did he have anything to indicate that he was a legal practitioner. He however asked for the matter to be postponed promising the court that on the further date of postponement, he would appear before court properly robed and with his appropriate credentials to show that he was a legal practitioner. The court consequently postponed the matter to 29 October 2013.

3.9 I must say that when the matter was postponed on the 17th October 2013, Mr Mohaleroe undertook to confer with advocate Nts’ene the same afternoon to ensure that the matter was resolved. The parties informed the court that there would thereafter come back to report as to what transpired. On 29 October 2013, Advocate Nts’ene informed the court that Mr Mohaleroe disappeared as soon as they left the court room and all attempts had failed to locate him.

3.10 I must indicate that in another matter which appeared on the same date of the 17th October 2013 the case of ‘Manapo Maisa & 142 Ors vs Nien Hsing International (Pty) Ltd - LAC/CIV/A/13/2013, Mr Mohaleroe appeared again to seek a postponement citing the same reasons that he had just received instructions as was the case with the present matter. This court emphasised that it would not accept postponements of this nature on the dates of hearing the matters and directed the Registrar of this Court to write to the companies concerned and which were allegedly represented by Mr Mohaleroe to appear before this court

either through their duly authorised officials or through other legal practitioners duly entitled to practice so as to ensure that the cases were proceeded with on the dates to which they were postponed.

3.11 On the 29th day of October 2013, the Registrar informed the Court that she had written the letter to the appellant in the present case bringing it to the attention of the company to appoint another legal practitioner or to appear through its duly authorised officers on the 29th day of October 2013. In the letter of 25 October 2013 the Registrar indicated that she had been trying to trace Mr Mohaleroe all in vain to serve him with a copy of the letter. He however later on appeared and received the copy of the letter which required that he should come to court on the 29th.

3.12 In addition the Registrar through a letter dated 25 October 2013 addressed to the Managing Director of the Appellant, informed the company that it must appear at the hearing of this matter on the 29 October 2013. She emphasised that if they did not appear then the matter would proceed without them. She informed the court that the letter was duly served on the company and acknowledgement of receipt is reflected on the letter. The Registrar took a further step, according to her report and informed the company through the person that identified himself as “Jerky”, and who is a Chinese man that they must try all in their power to ensure that their company would be represented on the date of hearing.

3.14 On the 29th day of October 2013 advocate Nts’ene for the 2nd Respondent appeared and there was no appearance for the appellant. The apparent intention was that the case was going to be postponed again for want of appearance on behalf of the appellant. Faced with the

aforementioned dilemma and the obvious misconceived intentions of the appellant that the matter would not proceed because they would be no appearance for the appellant on the 29th October 2013, Advocate Nts'ene urged the court to invoke **Rule 13 (b) of the Labour Appeal Court Rules 2002** in order to dispose of the matter. In terms of that Rule:

“If no good reasons shown to the Court, the appellant fails to appear in person or through a representative on the date of the hearing, the Court may-

- (a)...
- (b)Dismiss the appeal
- (c) ...
- (d) ...”

3.15 The history of this matter shows that the appellant has been playing hide and seek ever since when the matter was in the DDPR in 2003, that game continued even before this court when the appellant decided to send an unqualified person who had no entitlement to appear before this court to represent it. All attempts were made to secure the attendance of the appellant as we have indicated above, all in vain. In my view, there must be an end to litigation. This court has on numerous occasions indicated that labour matters are by nature commercial matters. One of the factors that inform prospective investors whether or not they should opt to invest in Lesotho is the nature and effectiveness of the labour laws of the country. Students of law and development would indeed have it that in cases of foreign direct investment, prospective investors also consider the aspect as to how expeditious labour dispute resolutions in the country are effected. Once a country does not have an effective and expeditious labour dispute

resolution system, then such a country must expect to be on the losing side viza viz attracting prospective investors. In addition public policy requires that there must be finality to litigation.

3.16 Consequently the present litigation must come to an end. If this court were to strike this matter off the roll, and the matter has been in the courts for over 10 years, that would open the door for a party who wishes to frustrate the principle of finality to litigation to come back and try to reinstate the matter. Furthermore, postponement of the matter to a later date does not seem to be a solution.

4. **CONCLUSSION AND THE ORDER**

4.1 In the result this court makes the following order:

- (a) The appeal is dismissed with costs.
- (b) The appellant is directed to pay the 2nd Respondent the amount awarded by the DDPR handed down by arbitrator C.T. Thamae within thirty days hereof.

4.2 This is an unanimous decision of the court.

DR K.E. MOSITO AJ.

Judge of the Labour Appeal Court

For the Appellant No appearance

For the 2nd Respondent Advocate P.S. Nts'ene