

**IN THE LABOUR COURT OF LESOTHO**

**LAC/REV/31/03  
LC/REV/82/06**

**HELD AT MASERU**

**IN THE MATTER BETWEEN**

**FRASERS LESOTHO**

**AND**

**THE DIRECTORATE OF DISPUTES  
PREVENTION AND RESOLUTION  
FRANCIS LEKAU**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

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**JUDGMENT**

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**Date of hearing : 14/11/06**

*Referral of disputes to the DDPDR must be made in the regions in which the dispute arose – The Director may permit that a dispute be referred in a district other than the one in which it arose.*

1. The applicant filed a notice of motion on the 16 July 2004 seeking an order in the following terms:
  - (a) Calling upon the respondents to show cause why the decision or proceedings in arbitration case No. 0349/03 shall not be reviewed corrected and set aside.
  - (b) Calling upon the 1<sup>st</sup> respondent to deliver the record of proceedings in Arbitration Case No. 0340/03 and any other reasons which it wishes to give to the Registrar within fourteen (14) days hereto.
  - (c) That the respondents pay costs of this application in the event that they oppose this application.
  - (d) Granting applicant such further and/or alternative relief.

2. This application arises out of an award of the arbitrator of first respondent in which she found that the 2<sup>nd</sup> respondent, who had been employed and worked in the district of Mafeteng could file a referral arising out of that employment in any one of the various regional offices of the Directorate of Disputes Prevention and Resolution (DDPR).
3. The 2<sup>nd</sup> respondent referred a dispute concerning unpaid wages, leave pay, notice severance pay, overtime and pension. As said 2<sup>nd</sup> respondent was employed and worked at applicant's store at Malea-lea, which is in the district of Mafeteng.
4. At the hearing a representative for the applicant Advocate Sephomolo raised an objection to the filing of the referral in Maseru whilst the 2<sup>nd</sup> respondent worked in Mafeteng district which falls in the southern region whose head office is at Mohole's Hoek. She contended that the referral ought to be filed in Mafeteng which is where all the records pertaining to 2<sup>nd</sup> respondent's employment can be found. She was overruled, hence this review application.
5. None of the respondents filed any opposing papers. Even at the hearing hereof none attended. Only Ms Sephomolo for the applicant attended. She pointed out that they have referred this case as a special case and review on a point of law, in particular whether it is correct that a claimant can refer their dispute to any one of the regional offices of the DDPR irrespective of the region in which it arose.
6. It is common cause that the DDPR has been established under section 46B of the Labour Code (Amendment) Act 2000 (the Act), as a national dispute prevention and resolution body. However in order to facilitate its service delivery, the directorate decentralized its offices by establishing three regional offices.
7. The central region covers the districts of Berea, Maseru and Thaba-Tseka. The Northern region covers the districts of Leribe, Butha-Buthe and Mokhotlong. Lastly, it established the Southern

Region which is responsible for Mafeteng, Mohale's Hoek, Quthing and Qacha's Nek districts.

8. The intention for the establishment of these regional offices was as said to decentralize, service delivery so that disputes arising in those regions can be resolved right there where they arose. These offices were established by administrative decree. The arrangement has functioned smoothly since inception to this day.
9. Decision making is the heart of administration. Except where directly instructed by statute, administrative decision making is essentially an exercise of a discretion, in order to give effect to the object and intention of the statute they are implementing. Such discretion must as a rule be exercised judicially. In other words the decision maker must act reasonably and apply his mind in accordance with the behests of the statute viz. the act. (see JDG Trading (Pty) Ltd t/a Supreme Furnitures .v. M. Monoko, N.O and 20 others LAC/REV/39/04 (unreported) and the cases therein cited in particular Johannesburg Stock Exchange and Another .v. Witwatersrand Nigel Ltd & Another 1988 (3) SA 132(A) at 152 A-E).
10. Once an administrative action/decision has been taken it is binding and it must be followed unless its legality is challenged on any of the following grounds:
  - (a) That the perpetrator of the action in question is not legally empowered to perform the act.
  - (b) That the decision has not been taken by a lawfully constituted authority.
  - (c) The decision/act was performed without due regard to circumstantial and procedural prerequisites prescribed by the empowering legislation.
  - (d) The decision/act was exercised unreasonably.
  - (e) The decision/act was not taken in a fair manner.

(See L. Baxter, Administrative Law 1996 Juta & Co. p.301).

11. In terms of section 46B(9) of the Act, the Director is responsible for the proper management and functioning of the DDPR. It follows therefore that the Director has the requisite authority and power to act and make binding administrative decisions on behalf of the DDPR.
12. Such decisions and actions ought to be followed and given effect to unless, they are declared illegal by a review court of competent jurisdiction.
13. The effect of the above remarks is that, in deciding as she decided, the learned arbitrator, effectively ignored the Director's decision that there will be such regional offices which will be responsible to handle disputes arising in their respective area of jurisdiction.
14. It cannot be correct that notwithstanding the existence of the regional offices, claims may be referred in any district that one deems convenient to them. That would make a mockery of the whole field of administration and administrative law. Disputes must be referred in accordance with that administrative arrangement that they will be made in the regions/districts where they arose, unless that administrative decision is changed.
15. There is no allegation that the decision has been changed. It must therefore be implemented and followed. (See Attorney General and 3 Others .v. M.S. Makesi & 85 Others C. of A. (CIV) No.3 of 2000 unreported), in which the Principal Secretary for the Public Service deposed to an affidavit that the decision of Cabinet to upgrade the positions of Local and Central Courts Presidents had been changed hence why it was not effected.
16. The Court of Appeal found that the statement that the relevant Cabinet decision was changed was not supported by evidence. The court went on to endorse the proposition that a decision maker may cancel it as follows:

*“There can be no dispute that a policy-maker is entitled to change policy decisions. The importance of an unfettered power to*

*change policy has been stressed .....But this does not mean that the power of the courts to intervene in appropriate circumstances has removed.” P.12 of typed judgment.*

17. Policy decisions create expectations and as such they must not only be followed they also cannot be changed willy-nilly especially where such decision creates rights. Thus in the case of *Makesi supra* the learned Judge of Appeal referred to the remarks of Lord Denning MR in *Reg. v. Liverpool Corporation Ex parte Liverpool Taxi Fleet Operations Association* [1972] 2 ALL ER 589 where the learned Lord Justice pointed out that “a person or public body entrusted with powers for public purposes cannot divest themselves of those powers e.g. by contract.” Lord Denning went further to point out that;

*“....that principle does not mean that a (public) corporation can give an undertaking and break it as they please. So long as the performance of the undertaking is compatible with their public duty they must honour it.”*

18. By the same token the litigants referring disputes to the DDPR must do so in accordance with administrative arrangements put in place by the Director. One thing good about administrative decisions is that as pointed out in paragraph 16 above, they are not immutable. Thus if the circumstances of a case so require, the Director may vary that a particular case be referred in a district other than the one in which it arose. But the general rules remains that they must be referred in the district in which they arose.
19. For these reasons the statement of the arbitrator that “...all the DDPR offices have jurisdiction to hear and determine any referral whose cause of action occurred anywhere in Lesotho...” to the extent that it declared a general rule and not an exception, duly authorised by the Director, is reviewed, corrected and set aside. There is no order as to costs.

**THUS DONE AT MASERU THIS 11<sup>TH</sup> DAY OF DECEMBER 2006**

**L. A. LETHOBANE**  
**PRESIDENT**

**M. THAKALEKOALA**  
**MEMBER**

**I CONCUR**

**D. TWALA**  
**MEMBER**

**I CONCUR**

**FOR APPLICANT:**  
**FOR RESPONDENT:**

**MS SEPHOMOLO**  
**NO APPEARANCE**