

**IN THE LABOUR COURT OF LESOTHO**

**LAC/REV/173/05  
LC/REV/454/06**

**HELD AT MASERU**

**IN THE MATTER BETWEEN**

**MAKHELE SIMON RAMPHOMA**

**APPLICANT**

**AND**

**MIDDLES TOWN (PTY) LTD t/a  
DHL LESOTHO**

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

**DIRECTORATE OF DISPUTE  
PREVENTION AND RESOLUTION**

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

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**JUDGMENT**

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*Date of hearing : 20/06/07*

*Application for condonation of late filing of review application –  
A party must explain the delay and show that they have  
prospects of success – Since applicant has no prospects it is  
futile to grant him condonation – condonation refused.*

1. The applicant was employed by the 1<sup>st</sup> respondent on the 26<sup>th</sup> April 2004. He was dismissed on the 21<sup>st</sup> April 2005 after he was found guilty of breaching company rules by conveying persons in the vehicle he drove contrary to the rules.

2. He referred a dispute of unfair dismissal to the Directorate of Disputes Prevention and Resolution (DDPR). The referral was arbitrated on the 11<sup>th</sup> August 2005. In an award dated 24<sup>th</sup> August 2005 the DDPR dismissed the referral and imposed an order of costs against the applicant for frivolity. The costs order was to be complied with within 30 days from the date of the award.
3. On the 8<sup>th</sup> December 2005, the applicant filed an application for review and setting aside of the aforesaid award. Since the review application was admittedly filed outside the 30 days prescribed by section 228F of the Labour Code (Amendment) Act 2000 (the Act), the applicant also prayed for the condonation of his late filing.
4. It is trite law that a party applying for condonation of failure to comply with prescribed periods must proffer a reasonable explanation for their default. Secondly, a party in default must show that it has prospects of success (see *Melane .v. Santam Insurance Co. Ltd* 1962(4) SA 531(A)).
5. Applicant's explanation for the delay is that he was struggling to collect enough funds to enable him to instruct an attorney for instituting the proceedings. On prospects, Mr. Metsing for the applicant, contended that they had prospects of success in as much as their case is based on denial of litigant's right to legal representation, contrary to the constitution of Lesotho.
6. Ms. Sephomolo for the 1<sup>st</sup> respondent contended that the explanation is not convincing since the applicant ought to have acted swiftly to institute these proceedings in the light of the fact that the award gave him 30 days to pay the costs. On prospects she contended that what the applicant advances as his ground for review was never canvassed before the DDPR.
7. Indeed applicant is presently in default of payment of the costs order which he ought to have paid within 30 days of the award. Even in his notice of motion he never made any prayer for stay of execution of the award in respect of that order. However his

reason that he was not having enough funds to brief counsel cannot be faulted for the above reason.

8. In response to the 1<sup>st</sup> respondent's contention that the issue they raise as a ground of review was not canvassed before the DDPR, Mr. Metsing for the applicant sought to show that the issue was raised, but it does not appear from the record because the record is incomplete. At the level of review the applicant is obliged to stand and fall by the averments contained in the notice of motion and the supporting affidavits.
9. Nowhere in the supporting affidavit is mention made that the record received from the DDPR is not complete. It is therefore not available for the applicant to allege from the bar that the record is not complete.
10. The factual position is that the applicant's claim that he was refused legal representation does not find support from the record of the proceedings of the DDPR. It is therefore logical to conclude that the issue was not raised before the DDPR. It is raised for the first time before this court. The court has repeatedly stated its position that, it will not entertain issues that were never canvassed before the DDPR and are raised for the first time on review (see *Maleshoane Bohloa and 2 Others .v. Jet Stores Maseru and 2 Others LC/REV/181/06*, *Frasers Lesotho .v. Hata-Butle 1995-1999 LAC698*, *Malerotholi Sekhonyana .v. Standard Bank Lesotho Ltd 1999-2000 LLR-LB 416*, *Pascalis Molapi .v. Metro Group Ltd and Others LAC/REV/09/03*).
11. Were condonation to be granted the applicant would be faced with the uphill task of first proving the truthfulness of their allegation that the arbitrator refused him representation. As we have already said that is an impossible task given that the record is silent and applicant's supporting affidavit says nothing about the belated allegation that the record is incomplete. That leaves us with the only and irresistible conclusion that applicant's ground for review is an issue that never arose before the DDPR.

12. With that conclusion there is no way that the applicant can justifiably say he has prospects of success. His case is for the reasons given, very weak. It would therefore be a futile and academic exercise to condone the applicant's late filing as his case cannot stand on the merits. For these reasons the application for condonation is refused and the review application is dismissed for being out of time. There is no order as to costs.

**THUS DONE AT MASERU THIS 21ST DAY OF JUNE 2007**

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

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

**I CONCUR**

**L. MOFELEHETSI**  
**MEMBER**

**I CONCUR**

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

**MR. METSING**  
**MS. SEPHOMOLO**