

IN THE LABOUR COURT OF LESOTHO

**LAC/REV/09/05
LC/REV/300/06**

HELD AT MASERU

IN THE MATTER BETWEEN

TEBOHO B. NTSAMO

APPLICANT

AND

**THE MANAGING DIRECTOR
LOTI BRICK (PTY) LTD
DIRECTORATE OF DISPUTE
PREVENTION AND RESOLUTION**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

JUDGMENT

***Date: 18/07/07
Ruling made 18/07/07-Reasons reserved
Review-Section 228F of Act Number 3 of 2000
require review application to be made within 30 days
of a party becoming aware of the award- Applicant
filing review 18 months after award is handed down-
Public policy requires an end to litigation -
Application dismissed.***

1. This review application arises out of an award of the Directorate of Dispute Prevention and Resolution (DDPR) dated 3rd June 2003. The applicant had been employed by the 2nd respondent from 21st December 1998 to 7th May 2001 when he was dismissed for misconduct.

2. The applicant launched proceedings with the Labour Court challenging the fairness of his dismissal. Pleadings were closed and the matter was set down on two occasions and each time it was postponed. The applicant and his counsel finally decided to withdraw the case from the Labour Court and reinstated it in the Directorate of Dispute Prevention and Resolution (DDPR).
3. The referral to the DDPR was made on the 14th March 2003 and it was scheduled for hearing on the 2nd June 2003. Since the referral was admittedly made later than six months from the date of dismissal, it was accompanied by an application for condonation. On the 3rd June 2003, the learned Arbitrator M.J.Shale issued an award refusing condonation and consequently dismissing the referral.
4. It is not clear from the record when the applicant became aware of the award. However, it was only on the 24th January 2005, that he issued a notice of motion out of the registry of this Court seeking the review of the said award of Arbitrator Shale. The application was opposed. The Human Resource Manager of the 2nd respondent Mrs. Mosongoa Motseko deposed to an opposing affidavit in which she raised a point *in limine* that the review application has been made out of time as it has been brought more than a year after the handing down of the award.
5. At the hearing Ms Sephomolo for the 1st and 2nd respondents argued that the present application has been filed some eighteen (18) months after the handing down of the award and yet no condonation application has been made. She contended that in terms of Section 228F (1) (a) of the Labour Code (Amendment) Act 2000, (the Act) a review application has to be filed within 30 days of a party being aware of the award. She concluded by referring the Court to the decision of this Court in *Leeto Malataliana V. Lesotho Brewing Company LC/REV/143/06* where it was pointed out that public policy dictates that there should be an end to litigation.

6. Mr. Nthontho for the applicant conceded that an application for review ought to have been made within 30 days of applicant being aware of the award. He contended that the rules of this Court have not set out how a condonation application should be done and submitted that they intended to move same from the bar. This was however vehemently opposed by the counsel for the 1st and 2nd respondents who said that approach would greatly prejudice them as they would be taken by surprise.
7. After hearing submissions, the Court adjourned briefly after which the following ruling was made. The Law governing reviews of DDPR awards is Section 228F of the Act. That Section is clear that a review application has to be made within 30 days of the date that the award was served on the party seeking to review the award. No averment has been made regarding when the applicant received the award. We are left to speculate that he received it on the day that the award was made namely, 03/06/03.
8. With that conclusion it follows that this review application was made some 18 months after the applicant became aware of the award. Section 228F(2) of the Act gives the court the discretion to condone the late filing of an application for rescission. It is trite law that a court vested with a discretion should exercise that discretion judicially.
9. A judicial exercise of the discretion means that the court must not act arbitrarily or capriciously. It must consider the totality of the facts presented before it. (See JDG Trading (Pty) Ltd t/a Supreme Furnitures .v. M. Monoko & 2 Ors LAC/REV/39/04. It is common cause that no formal condonation application has been made. That is the application in which the facts enabling the court to exercise its discretion would be alleged.
10. As it was correctly pointed out by Ms Sephomolo it would not be proper that the condonation application be made

from the bar as to do so would be taking the respondents by surprise. (See also Makhele Simon Ramphoma .v. Middlestown (Pty) Ltd t/a DHL Lesotho LC/REV/454/06.

11. Provisions such as section 228F are a reinforcement of the Maxim "*interest reipublicae ut sit finis litu*" i.e. public policy dictates that there should be an end to litigation. (See Thaki Phoba .v. CGM Industrial LAC/REV.05/03 and the Leeto Malataliana .v. LBC case to which we were referred.
12. To entertain the review after a delay of 18 months which is not accompanied by any explanation would be making a mockery of this time tested principle. For these reasons we are of the view that the point *in limine* is well taken. Accordingly, the review application is dismissed for being out of time. There is no order as to costs.

THUS DONE AT MASERU THIS 18TH DAY OF JULY 2007

L. A. LETHOBANE
RRESIDENT

M. THAKALEKOALA
MEMBER

I CONCUR

M. MOTHEPU
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MR. NTHONTHO – LEGAL AID
MS SEPHOMOLO - ALE