

IN THE LABOUR COURT OF LESOTHO

**LAC/REV/12/02
LC/REV/11/06**

HELD AT MASERU

IN THE MATTER BETWEEN

JAMES TSEHLANA

APPLICANT

AND

**MORADI CRUSHERS
DIRECTORATE OF DISPUTE
PREVENTION AND RESOLUTION**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGMENT

Date of hearing: 23/08/07

Delivery: 23/08/07.

Review of DDRP award - Applicant failing to take steps to prosecute the review application in order to bring litigation to finality - Review application dismissed.

1. The applicant was disciplined and dismissed sometime in September 2002 for being drunk on duty. The applicant appealed against the dismissal internally but the appeal failed.
2. On the 8th February 2002, applicant filed a referral with the Directorate of Dispute Prevention and Resolution (DDPR). The referral was arbitrated on the 13th February 2002. On the 8th April 2002, the arbitrator handed down an award dismissing the referral.

3. On the 17th May 2002, applicant filed an application for review of the award of the DDPR. The application was in any event defective in as much as the applicant had neither cited the DDPR, the arbitrator who made the award nor called on any of those two to forward the record of the proceedings being taken on review to the Labour Appeal Court as it was the one that was seized of the matter at the time.
4. It appears that the matter was enrolled before Peete J. on the 3rd April 2003. Peete J. made an order that the applicant transcribe and file the record of the DDPR proceedings. Nothing was said about the defect referred to above. However, no record was filed until the respondent filed its opposing affidavits without knowing whether the applicant would amend his notice of motion or stand by it after the record would have been made available.
5. On the 16th June 2004, the applicant purported to file the record; which was clearly incomplete. On the 7th of July 2004, the respondent wrote to object to the record on the grounds that it did not show who the speakers were, some parts of what was said were missing and that it was generally incomprehensible.
6. It does not seem like that query by the respondent was ever addressed. If ever it was, the record still remained glaringly incomplete. The matter pended before the Labour Appeal Court without any progress until it was transferred to this court pursuant to the Labour Code (Amendment) Act No.5 of 2006, (the Act) which transferred review powers of DDPR awards from the Labour Appeal Court to the Labour Court.
7. The act was published in the gazette on the 4th August 2006. The application was re-registered under Case No. LC/REV/11/06. This made it one of the very first cases that this court dealt with. It was scheduled to proceed before this court on the 24th October 2006. It was however postponed by agreement between the parties to the 31st October 2006.
8. It however again could not proceed on the 31st October because the applicant's then representative, Mr. Thamae of CAWULE

- was not able to attend for a flimsy reason that he had been delayed. We say it is flimsy because if he was delayed he would in the end make it to court and tender his apology if any. *In casu* Mr. Thamae never showed up at all. The matter was then postponed at the request of the applicant who was himself personally in attendance.
9. It was again set down for the 15th February 2007. On this date the applicant attended accompanied by a new Counsel Ms. Khiba of N. Nathane Chambers. They filed their authority to represent the applicant only that morning i.e. on the 15/03/07. At the start of the proceedings Ms. Khiba sought a postponement of the matter as she had only been instructed the previous day and she was yet to familiarize herself with the case.
 10. The request was vehemently opposed by Ms. Sephomolo for the respondent, who argued that the matter has been pending on review for approximately six years. She contended that any further postponements would violate the long standing principle that there should be an end to litigation. She referred to the case of *Thaki Phoba .v. CGM LAC/REV/05/03*. In exercise of its discretion the court reluctantly agreed to grant the postponement sought, but warned that in future the court would not entertain any further requests for postponement of this matter other than for compelling and unavoidable reasons.
 11. The matter was rescheduled to proceed on the 21st March 2007. On that date counsel for the applicant disclosed that she was withdrawing from the matter. Applicant now representing himself requested that the matter be postponed to enable him to obtain services of another lawyer. While not forgetting its attitude of not easily entertaining further requests for postponements, the court acceded to the request for a postponement because we felt that the reason for which it was sought was sound.
 12. The matter was rescheduled for the 23rd August 2007. On the 22nd August 2007, Mrs. Khiba who withdrew as counsel for the applicant on the 21st March 2007, filed notice of reappointment

- as Counsel for the applicant. On the 23rd Ms. Khiba moved a preliminary point that respondent's opposing affidavit be expunged from the record because it had been commissioned by an attorney who had signed respondent's notice to oppose the review application.
13. After arguments the preliminary point was dismissed. This meant that counsel had to proceed to deal with the merits of the application. At this point counsel for the applicant stated that she had pinned all her hope on the success of the preliminary point she raised. As for the merits she was not able to deal with them because all the so-called grounds of review are infact grounds of appeal.
 14. She stated that she was then not in a position to proceed with the application. One would have expected her at this point to withdraw the application. She however did not do so, but again said she was withdrawing as applicant's representative. This time applicant was not in attendance to advise as to what his next course of action would be.
 15. Ms. Sephomolo for the respondent rose to move the application that the review application be dismissed. As it would be expected the application was not opposed.
 16. We could not but recall the case of Thaki Phoba *supra* that indeed public policy requires that there should be an end to litigation. This matter has been postponed numerous times before. It is not prudent to seek to postpone it again especially when there would be no basis for doing so. Accordingly, Ms. Sephomolo's request was accepted and the application was dismissed. No order as to costs was made.

THUS DONE AT MASERU THIS 27TH DAY OF AUGUST 2007

L. A. LETHOBANE
RRESIDENT

L. MATELA
MEMBER

I CONCUR

R. MOTHEPU
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MS. KHIBA
MS SEPHOMOLO