

IN THE LABOUR COURT OF LESOTHO

LC/47/2007

HELD AT MASERU

IN THE MATTER BETWEEN

LIMPHO POTSANE

APPLICANT

AND

**MR. PRICE (PTY) LTD
MOTJOPI MOLISE**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGMENT

Date of hearing: 31/10/07

Ruling made and reasons reserved. Contempt proceedings - Respondents failing to reinstate applicant in accordance with DDPR award - 1st respondent liability for failure to comply with order can only be through its agents who must help it to comply with court orders - Evidence - 2nd respondent not at work at the time to comply with the order - contempt not proved - Application dismissed.

1. The 1st respondent was until the 24th November 2006, an employer of the applicant. She was dismissed for allegedly contravening company rules. The 2nd respondent is the Manager of the 1st respondent. Following her dismissal applicant filed a referral with the Directorate of Disputes Prevention and Resolution (DDPR) in which she claimed unfair dismissal, 14 days leave and unlawful deduction.
2. The referral was arbitrated in default of attendance by the respondents on the 19th June 2007. An award reinstating

the applicant and ordering payment of M13,345-34 was made on the same day. The applicant was to be reinstated back to her job on the 1st August 2007.

3. According to evidence of the applicant she presented herself for reinstatement on the 1st August 2007 as ordered. However, she was told that the 2nd respondent was on leave. She asked for his assistant Mr. Lefa Mahlomola whom she was able to meet. He told her that he had no knowledge of her case and as such could not do anything in the absence of 2nd respondent.
4. PW1 testified further that Mr. Mahlomola went further to telephone the company's lawyers. He informed them about her presence and the lawyers told him to tell her to go back home and read her review application. She averred that she knew nothing about the review. She went back to her union which decided to file contempt proceedings against the respondents.
5. The 2nd respondent confirmed in his testimony that when the applicant presented herself for reinstatement he was on leave. He did learn upon his return that she had been there, but there was no document left with his assistant to enable him to learn what it was that he was expected to do. He testified further that the applicant never came back to him upon his return from leave.
6. He stated further that in any event the DDPR order against the 1st respondent is unlawful in as much as it was made in the face of the existence of an order of this court interdicting the DDPR from entertaining any referrals in which 1st respondent is cited as the employer until the issue of the representation of the 1st respondent in proceedings before the DDPR has been finalised by this court.
7. It is trite law that a body corporate's criminal liability involving imprisonment can only be enforced through its Directors. Its ability to oblige a court order and to purge a contempt of court is only possible through its officers. These explain why

in casu the 1st respondent has been sued together with its Manager and, I stress without making any judgment, that it has been sued with its manager and not one of its directors.

8. The manager has presented two defences against the contempt charge. The first is that there is an order of this court interdicting the DDPR from proceeding with any cases in which the 1st respondent is cited as an employer pending finalization of an application in which the 1st respondent has sought a ruling on its right of representation in arbitration proceedings before the DDPR.
9. It is common cause that on the 8th May 2007 Mr. De Beer for the 1st respondent sought and obtained a rule interdicting and restraining the DDPR “from hearing any further matters in which Mr. Price Group (Pty) Ltd or Mr. Price Group Ltd are cited as employer with specific reference to DDPR case Nos A0194/07, A0195/07, A0309/07 and A0310/07 until such time as the court makes a ruling/order/judgment pertaining to the applicant’s right of representation.” (Para 2.3 of the court order).
10. Mr. Semoli argued that the interdict did not apply to the applicant’s case in as much as it is not one of those listed in paragraph 2.3 of the Order. Mr. Mako for the respondents placed reliance on the phrase “any further matters” and said that is wide enough to include all other matters that came after the granting of the order. That cannot be correct. No court properly advised would grant such an open and wide order as to restrain all other future cases against the 1st respondent.
11. The words “any further matters” are limited by the list of cases that follow them. Accordingly, the interdict only relates to those cases and no other. To the extent that the applicant’s case is not one of those listed it is not covered by the interdict.
12. The second defence is that the 2nd respondent cannot be guilty of contempt as he was not there when the applicant

presented herself for reinstatement. The applicant also confirmed that the 2nd respondent was not at work. She was asked why she has not joined the assistant manager being the person to whom she presented herself. She had no response.

13. The 2nd respondent also said the applicant denied him the opportunity to see what he could do to help her by not coming back when he had come back from leave. Indeed it is clear that the union acted precipitously in bringing this case to court before exhausting all avenues that indeed there was a difficulty with honouring the order to reinstate the applicant.
14. To make matters worse they have cited the person who admittedly never refused to reinstate the applicant. True enough he contended that even if the applicant had come to her he would not have had the power to give effect to the order to reinstate her as he said that is the responsibility of the Area Manager Mr. Ian Theron. However, the applicant and the union had not even reached that stage of getting to know who the responsible person to reinstate applicant would be.
15. Mr. Mahlomola had said he had no power to reinstate applicant in the absence of the 2nd respondent as he was not privy to the case. One would have expected applicant to come back to report to the 2nd respondent when he came back from leave. That is the point at which the applicant would get to know the attitude of the 2nd respondent, whether he had the power to reinstate or not or whether he was defiantly refusing to comply with the court order.
16. Despite not knowing the attitude of the 2nd respondent, the applicant and her union have pressed contempt charges against him. Evidence before us which is corroborated by the applicant herself that, the 2nd respondent never did anything to frustrate the implementation of the DDPR order does not sustain the contempt charge preferred against the respondents. If the 2nd respondent through whom the 1st

respondent could be liable for contempt is not found guilty as is the case, it follows that even the 1st respondent is not guilty of contempt as charged. Accordingly, the contempt application is dismissed and both respondents are found not guilty.

THUS DONE AT MASERU THIS 13TH DAY OF NOVEMBER 2007

L. A. LETHOBANE
RRESIDENT

M. MOSEHLE
MEMBER

I CONCUR

L. MOFELEHETSI
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MR. SEMOLI
MR. MAKO