

IN THE LABOUR COURT OF LESOTHO

LC/REV/54/2005  
LC/REV/344/2006

HELD AT MASERU

IN THE MATTER BETWEEN:

ISLAMIC ENGLISH MEDIUM SCHOOL  
KHAIROON SALLY

1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT

AND

KENNETH MOTLOANG MOFOKA  
H. MOSHOESHOE (DDPR ARBITRATOR)

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

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JUDGMENT

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*Date : 18/09/08*

*Application dismissed and reasons reserved.*

*Application for review - Applicant failed to file the record of proceedings despite numerous reminders - postponement - Counsel for applicant asked for postponement to enable him to file notice of withdrawal - Matter old and counsel have known for a month about the set down - Since applicant has not complied with rules postponement futile anyway - Maxim that then should be finality to litigation applied.*

1. This is an old matter which bears all the hallmarks of a review application which has been made solely to frustrate execution and to cause prejudice to the judgment creditor. The review arises out of an award of the 2<sup>nd</sup> respondent dated 19<sup>th</sup> November 2004. The applicants had failed to attend the

proceedings before the DDPR as a result an award had been made against them by default.

2. The applicant who worked for the applicants had referred a dispute of unfair dismissal and payment of unpaid wages for one month. Despite the award being made by default, the learned arbitrator found that the dismissal of the 1<sup>st</sup> respondent was substantively fair. The learned arbitrator found that the dismissal was nonetheless procedurally unfair for failure to follow a fair procedure. She awarded applicant compensation of two months salary and ordered that he be paid his unpaid one month's salary as well. In total the applicants were ordered to pay 1<sup>st</sup> respondent M4,500-00.
3. Upon receipt of the award, applicants filed an application for rescission of the default award. The application was not successful. On the 29<sup>th</sup> April 2005, the applicants applied for the review of the decision to refuse their application for rescission of the main award. The application included a prayer for stay of execution of the main award. There is however no record indicating that the prayer for stay was moved and granted. It follows therefore that effectively execution of the main award was never stayed. It therefore ought to have been enforced.
4. The 1<sup>st</sup> respondent entered notice to oppose the review application through the office of the Labour Commissioner. He also indicated that he would be filing his answering affidavits only after applicants have complied with rules 16(5) and (6) of the Labour Appeal Court Rules 2002, pertaining to distribution of copies of the record and delivery of notice either amending the notice of motion or, supplementing the supporting affidavit or, indicating that the applicants stand by their notice of motion. Despite this clear statement which is in full compliance with the rules, counsel for the applicants wrote a letter to the Registrar which was not even copied to 1<sup>st</sup> respondent's representatives saying that following receipt of 1<sup>st</sup> respondent's Notice to Oppose from the Labour Department they would "wait for their further filing and thereafter will apply for allocation of a date of hearing."

5. How the applicants intend to apply for allocation of date of hearing before complying with the rules with regard to the filing of the record can only be interpreted as a clear sign that this was not a review but an attempt to have the matter re-heard. Be that as it may on the 14<sup>th</sup> July 2005, the Registrar requested counsel for the applicants to collect tapes of the DDPR proceedings in order to have them transcribed. Counsel for the applicants did not respond, save to say they would wait for respondent's further filing after which they would apply for allocation of a date of hearing.
6. A reminder was sent on the 5<sup>th</sup> August 2005. Again there was no response. A second reminder was sent on the 9<sup>th</sup> September and still no response was forthcoming. On the 19<sup>th</sup> October 2005 counsel for the 1<sup>st</sup> respondent stepped in and referred applicants' counsel to the reminders sent by the Registrar and further pleaded with them to transcribe the record, to no avail.
7. On the 14<sup>th</sup> November 2005, Counsel for the 1<sup>st</sup> respondent filed an application for dismissal of the review application on the ground of failure to comply with the rules. The application was opposed. The application was set down for hearing on the 9<sup>th</sup> December 2005. It could not proceed due to non-availability of counsel for the applicants. The application was scheduled to be heard on the 17<sup>th</sup> March 2006 before the Labour Appeal Court. There is no record of what transpired on that day.
8. On the 24<sup>th</sup> March Counsels for both sides appeared before Peete J. who postponed the matter to the 7<sup>th</sup> April 2006 and ordered both sides to file heads of argument in the interim. On the 7<sup>th</sup> April the matter was postponed sine die without any reasons being given. It was enrolled for the 21<sup>st</sup> September 2006, but there is again no record of what transpired on that day.
9. Following the enactment of the Labour Code (Amendment) Act No.5 of 2006, which vested powers of review of DDPR awards in the Labour Court, this matter was transferred to this court,

- hence the Labour Court registration number. It was scheduled to proceed before this court on the 18<sup>th</sup> October 2007. Mr. Molete for the applicant and Ms Russel for the 1<sup>st</sup> respondent appeared before Khabo DP and requested to have the matter postponed to enable them to consider a settlement.
10. Parties never came back to court to report the outcome of the settlement negotiations. Instead they set the matter down for the 18<sup>th</sup> September 2008, without even hinting what happened to the negotiations. On the date of hearing applicants were represented by Ms Kantoro who said she was standing in for Mr. Molete. She stated that her instructions were to ask for the postponement of the matter to enable counsel for the applicants to file notice of withdrawal as attorneys of record.
  11. Ms Russel for the 1<sup>st</sup> respondent strenuously opposed the sought postponement and argued that the review application be dismissed as the applicants had to date failed to comply with the rules pertaining to the filing of the record. The court observed that the notice of hearing which in effect formalized counsels' previously agreed date was made on the 19<sup>th</sup> August 2008 and sent to the parties on the 20<sup>th</sup> August. This was an advance notice of approximately one month. Counsel had ample time therefore, to have filed the notice of withdrawal prior to the date of hearing.
  12. To ask for postponement merely to enable counsel to file notice of withdrawal in the circumstances would be stretching the discretion vested in the court to grant or not to grant a postponement beyond the limit. Infact the prejudice such a postponement would visit on the 1<sup>st</sup> respondent who has had a judgment in his favour for three years, far outweighs counsels lame excuse to have the postponement simply to enable them to file notice of withdrawal.
  13. There can be no argument that this is an extremely old matter. As we all know public policy dictates that there should be an end to litigation. The applicants herein do not seem to be live to this maxim when regard is had to the fact that they have still not filed the record of the proceedings being sought to be reviewed

even to this day. Their review application has failed to comply with the rules of this court governing reviews. The application has only managed to frustrate the 1<sup>st</sup> respondent in the enjoyment of his right to have the award in his favour executed. This cannot be allowed to continue indefinitely. Accordingly, the court refused the application for postponement and went further that the application for review be dismissed. We made no order as to costs.

THUS DONE AT MASERU THIS 2ND DAY OF OCTOBER 2008.

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

**L. MATELA**  
**MEMBER**

**I CONCUR**

**M. MAKHETHA**  
**MEMBER**

**I CONCUR**

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

**MS. KANTORO**  
**MS. RUSSEL**