

IN THE LABOUR COURT OF LESOTHO

LC/REV/21/07

HELD AT MASERU

IN THE MATTER BETWEEN

KHUTLANG MOKOALELI

APPLICANT

AND

STANDARD LESOTHO BANK
THE ARBITRATOR (MOLAPO-MPOFE)

1ST RESPONDENT
2ND RESPONDENT

JUDGMENT

Date : 05/08/09

Review - Application to strike out the review for want of prosecution - Applicant failing to file notice of intention to oppose despite being served with the notice to strike out - Maxim interest republicae ut sit finis litum applicable - Application granted as prayed and the review was struck out.

1. This is an application by the 1st respondent to have the main application for review struck out for want of prosecution. Applicant approached this court to review the award of the 2nd respondent issued on the 9th December 2006. The applicant filed the review application out of the Registry of this court on the 21st March 2007, which was some three months and two weeks since the award was issued.
2. In his application for review applicant did not state when he received the award. Neither did he apply for condonation regard being had to the fact that in terms of section 228F(1)(a) of the Labour Code (Amendment) Act 2000, a party seeking to review an award should apply to this court for an order setting

aside the award *“within 30 days of the date the award was served on the applicant.”*

3. In their Answer the 1st respondent picked this point; and pleaded in limine that the review application has been filed out of time and no condonation application has accompanied the late application. In his reply applicant averred for the first time that *“the award was served upon the applicant towards the end of February 2007.”* Applicant did not furnish a specific date when he received the award, in a situation where it was absolutely important to furnish such a date; if he is to decidedly defeat the point taken by the first respondent that his application is late.
4. Applicant also raised a point that the affidavit of the 1st respondent is deposed by Lehlohonolo Manamolela, but it has been sworn to and signed by the Managing Director Mr. Colin Addis. The 1st respondent quickly reacted and filed a notice of amendment in terms of which he amended the opposing affidavit of Mr. Manamolela by filing the one that has been signed by Mr. Manamolela himself. Applicant filed a notice in terms of which he gave notice that on the date of hearing he would raise a point of law in limine that a party is not allowed to amend an affidavit. 2nd respondent in turn filed a notice that it would oppose the point being sought to be raised in limine by the applicant.
5. On the 9th August 2007, the Registrar sent a notice to the counsel for the applicant that the record of the arbitration proceedings was available and invited counsel to serve it upon the parties in terms of rule 16(5) of the rules of the court. Counsel for the applicant did not distribute the record as directed. On the 30th August 2007, Counsel for the applicant filed a notice of withdrawal as applicant’s attorneys of record. Nothing further was done thereafter.
6. On the 17th April 2009, 2nd respondent filed an application to strike out the review application for want of prosecution. The notice of application was sent to the applicant by registered mail. On the 29th June 2009, applicant’s then attorneys of

record filed a notice of reinstatement as attorneys of record for the applicant. 1st respondent's application to strike out was set down for hearing on the 5th August 2009.

7. On the scheduled date advocate Mofilikoane represented the applicant while advocate Macheli represented the 1st respondent. It is common cause that the applicant had not filed a notice to oppose the 1st respondent's application to strike out the review. Mr. Mofilikoane's approach was to propose that before dealing with the application to strike out, both sides be given time to make a stated case in relation to the various points in limine raised by the parties.
8. That approach did not find favour with Mr. Macheli for the 1st respondent. He argued that the stated case as proposed by Mr. Mofilikoane will only be relevant if the present application to strike out does not succeed. We agree with that proposition. The present set down is to deal with 1st respondent's application to strike out and not the points in limine.
9. Mr. Macheli argued further that the applicant has been served with the notice of application to strike out. He argued further that it is that same application which prompted applicant to reengage his attorneys of record. He pointed out that there was ample time between the 29th June 2009, when applicant reinstated his attorney and the date of hearing of the application, for the applicant to file opposing papers if he intended to oppose the application to strike out.
10. Mr. Macheli argued further that since this application has been abandoned for two years it is in the interests of justice that it be struck out. He averred that this is more so when regard is had to the fact that the applicant has been aware of the application to strike out since April 2009 and up to now when the matter is heard he has not indicated his intention to oppose it. He implored the court to grant the application to strike out as an unopposed application.

11. Mr. Mofilikoane for the applicant argued on the contrary that this is a court of equity as such it should give them an indulgence to file notice of intention to oppose as well as opposing affidavits. He contended that the court should jealously guard against the infringement of right of parties to be heard. He averred that the reasons why applicant delayed to prosecute the review are matters of fact which he can only outline in an opposing affidavit.
12. It is trite that this court is a court of equity and law. That does not however mean that the Labour Court is entitled to make its own rules or to disregard rules pertaining to filing of notice to oppose an application. (See Lucy Lerata and Others .v. Scott Hospital 1995 - 1996 LLR - LB6 at p.17. Again on the issue of the right of parties to be heard, the court can only give effect to that right in respect of a party that is willing and does utilize its opportunity to exercise its right to be heard. (See Lucy Lerata Supra at p.15).
13. The applicant in the present matter has spurned his right to be heard by not taking steps to prosecute his review application. To make matters worse he has not even complied with the rules of the court with regard to the transcribing and circulation of the record to the interested parties pursuant to the rules. He has also not complied with the rules of the court with regard to filing the necessary notice of intention to oppose the present application.
14. The rules of the court are clear as to what should happen where a party has not opposed an application. The court grants the application as an unopposed application. This is what Mr. Macheli has asked this court to do in casu. We see no reason why we should not grant the application as prayed. For all intents and purposes, the applicant has shown very scant regard to the rules of this court. Respondents have interest in the finality of this litigation based on the maxim *interest reipublicae ut sit finis litum.*

15. This is a proper case where this important maxim must be given effect to. (See also Thaki Phoba .v. CGM Industrial (Pty) Ltd LAC/CIV/A/05/03 (unreported). The applicant has squandered all the opportunities afforded to him to prosecute his case. Even when he was notified of the intention to approach court to strike the matter out, he did nothing to oppose the application. In the circumstances the application is granted as prayed and the review is struck off. There is no order as to costs.

THUS DONE AT MASERU THIS 10th DAY OF SEPTEMBER, 2009.

L. A. LETHOBANE
PRESIDENT

L. MATELA
MEMBER

I CONCUR

M. MOSEHLE
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MR. MOFILIKOANE
MR. MACHELI