

IN THE LABOUR COURT OF LESOTHO LC/REV/81/06

HELD AT MASERU

IN THE MATTER BETWEEN

SECURITY UNLIMITED

APPLICANT

AND

DIRECTORATE OF DISPUTE  
PREVENTION AND RESOLUTION  
LEFA MAKOSHOLO

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

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## JUDGMENT

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***Date : 06/08/09***

***Award reviewed and set aside. Reasons reserved.***

***Review - 2<sup>nd</sup> respondent failed to appear or to be represented at several scheduled hearings despite notification - Application to review the DDPR award granted as prayed.***

1. This review application arises out of the award of the 1<sup>st</sup> respondent dated 13<sup>th</sup> June 2003. The award ordered the applicant to pay the 2<sup>nd</sup> respondent M28,390-00 being salary for 34 months that the 2<sup>nd</sup> respondent had allegedly been on suspension without getting paid. The applicant company had further been ordered to pay 2<sup>nd</sup> respondent his salary for the period that the 2<sup>nd</sup> respondent would remain on further suspension.
2. On the 14<sup>th</sup> July the applicant had filed a Notice of Motion in the Registry of this Court in which it prayed as follows:  
***“1(a) calling upon the respondent (sic) why the decision in arbitration case No. A1265/02 should not be reviewed, corrected and set aside;***

- “(b) calling upon the respondents why the decision or proceedings in arbitration case No. A1265/02 (sic);*
- “(c) calling upon the 1<sup>st</sup> respondent to deliver the record of the arbitration award in case No. A1265/02 to the Registrar of the Labour Appeal Court within 14 days of service of this application.*
- “(d) Costs of suit in the event of opposition;*
- “(e) Further and/or alternative relief.*

*“(2) That prayers 1(b) and (c) operate with immediate effect as interim orders of this court.”*

3. The applicant also filed a founding affidavit in support of the notice of motion. In terms of the founding affidavit the arbitrator had acted irregularly in awarding 2<sup>nd</sup> respondent payment of salary for the period when evidence under cross examination had shown that during the period in question 2<sup>nd</sup> respondent was employed by American Peace Corps. The arbitrator was accused of ignoring that piece of evidence as well as that 2<sup>nd</sup> respondent was actually convicted of the offence that led to his suspension in the Magistrate Court.
4. The 2<sup>nd</sup> respondent filed opposing affidavits in which he denied he was employed by American Peace Corps. As for conviction he contended that it had nothing to do with his employment and that the only decision that would affect his rights would be a decision in the disciplinary hearing which he contended was not concluded. He however did not address applicants concern why he did not go to the employer to demand his payment for more than two years if he genuinely felt he was still an employee of the applicant. This aspect the arbitrator was also accused of acting irregularly in not considering it.
5. The review was set for hearing on the 1<sup>st</sup> November 2006. It turned out that 2<sup>nd</sup> respondent's attorney of record Mr. Litsoane had since passed on. Mr. Makeka for the applicant liaised with the late Litsoane's erstwhile partner Mr. Mabulu who was reported to have said he was the one handling Mr. Litsoane's files and he was unfortunately not aware of the set down of this matter. He was further reported to have promised to instruct an

advocate who would approach the Registrar in due course to attend to fresh set down of the matter. The matter was then postponed sine die.

6. The matter was again set down for the 28<sup>th</sup> July 2009. Notice of hearing was sent to Mr. Mabulu's office. On the date of hearing only Mr. Macheli for the applicant was present. The court postponed the matter to the 6<sup>th</sup> August and instructed the Registrar to write to Mr. Makosholo directly at the address that he furnished as his correspondence address in the DDPR referral form, which forms part of the record in the review proceedings.
7. The letter was duly written and posted to the postal address that appears in the referral form as 2<sup>nd</sup> respondent's postal address. However, even on the 6<sup>th</sup> August there was still no sign of either the 2<sup>nd</sup> respondent or his representative. Mr. Macheli for the applicant moved the application for review and asked that prayer 1(a) of the notice of motion be granted as prayed. There being no objection prayer 1(a) was granted and the award in referral A1265/02 was reviewed, corrected and set aside. Mr. Macheli did not insist on costs. Accordingly there was no order as to costs.

THUS DONE AT MASERU THIS 23rd DAY OF SEPTEMBER, 2009.

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

**M. MOSEHLE**  
**MEMBER**

**I CONCUR**

**M. MOFELEHETSI**  
**MEMBER**

**I CONCUR**

**FOR APPLICANT:**  
**FOR 1<sup>ST</sup> & 2<sup>ND</sup> RESPONDENT:**

**ADV. MACHELI**  
**NO APPEARANCE**