

IN THE LABOUR COURT OF LESOTHO

**LC/REV/81/08
A0297/08**

HELD AT MASERU

IN THE MATTER BETWEEN

**HONG SHUN IMPORT &
EXPORT (PTY) LTD**

APPLICANT

AND

**LYDIA LEROTHOLI
DDPR**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGMENT

Date : 16/06/10

Review - Arbitrator proceeding with a case with only the employee giving her side of the story - The employer who is Chinese was not assisted to follow the proceedings or to present her case because she had not brought a qualified interpreter - Such constitutes a mockery of justice as the employer is denied the right to be heard or to challenge evidence despite being present - The whole proceedings were reviewed, corrected and set aside.

1. This is an application for the review and setting aside of the award of the 2nd respondent dated 16/09/08. The award ordered the reinstatement of the 1st respondent and that she be paid M5,400-00 for the six months that she was out of employment. The employer promptly applied for the review and setting aside of the award on a number of grounds.
2. The facts are briefly that the 1st respondent referred a dispute of unfair dismissal to the 2nd respondent, after she was allegedly

dismissed by the wife of the Managing Director of the applicant (a Mrs. Mei) 1st respondent alleges that she assisted a customer who was buying a curtain worth M200-00.

3. 1st respondent claims further that the customer requested to be given back M20-00 from the M200-00 she paid for transport back home. 1st respondent claims to have informed Mrs. Mei who was manning the till and she agreed to refund the customer M20-00.
4. It was 1st respondent's testimony that soon after the customer left, Mrs. Mei came to her and asked her how much she said the curtain was? She explained as herein before stated, but Mrs. Mei refuted the explanation and accused her of being a cheat. She ordered her to leave the shop immediately.
5. 1st respondent testified that she refused to leave. She stated further that Mrs. Mei went to where she keeps her bag, took it and threw it out. She then came to her and sought to push her out but she resisted. She said Mrs. Mei assaulted her, but she for her part just held her hands. She said another Chinese lady came, she pushed her away and she (the 2nd Chinese lady) ran out of the shop to another shop. The husband of that lady who was in that other shop came and slapped her on the face as well.
6. By this time it was chaos, a lot of people had gathered and there was a lot of noise. She stated that the husband of Mrs. Mei arrived and asked security to disperse people who had gathered. She then approached him after people had left telling him "that I am asking for money since you see we had fought with your wife and that she has expelled me so I could go and rest." She said he responded that he was not giving her any money and that she should go to the police. She then took her bag and left.
7. The 1st respondent referred a dispute to the DDPR which was presented with the evidence as aforesaid. But before the matter was arbitrated it was conciliated and three claims were settled. Only the claim of unfair dismissal remained unresolved

- and had to be resolved by arbitration. The arbitration was postponed on three occasions because the applicants had each time failed to bring a qualified Chinese/English/Sesotho interpreter, despite being provided with a list of such people for them to contact.
8. On the 18th August 2008, the arbitrator who was assigned to deal with the dispute found that there was still no “qualified” interpreter brought along by the applicants herein. They had brought a person who said she or he could only speak a bit of both English and Sesotho. The extent of that person’s ability to communicate in either of these two languages was, however, not tested. After considering the numerous times the arbitration was postponed for the same reason, the arbitrator resolved to proceed with the arbitration with only the 1st respondent giving her version.
 9. The 1st respondent testified as herein before narrated. Mrs. Mei who is the one who had fought with the 1st respondent was present but was not assisted to follow the evidence of the 1st respondent. She thus could not challenge it. Neither was she invited to attempt to put her version either on her own or with the assistance of the interpreter who said he could only speak a little bit of English and Sesotho. On the basis of the “uncontested” evidence of 1st respondent the learned arbitrator came to the conclusion that her dismissal was substantively unfair and ordered her reinstatement.
 10. The applicant quickly applied for the review and setting aside of the award on the ground that it was irregular for the arbitrator to decide against the applicant on the ground that they did not bring a qualified interpreter yet applicant had witnesses whose evidence would be useful as they had witnessed the fight between Mrs. Mei and the 1st respondent. Applicant contended that the arbitrator erred in ordering reinstatement of 1st respondent whose relationship with the management had irretrievably broken down as a result of a fight she had with Mrs. Mei, a part of the management.
 11. The manner the learned arbitrator dealt with this case sounds

- like a fairytale. It is incredible to say the least, that a person with direct interest in a matter, has a case proceeded with in their presence without being allowed an opportunity to participate and put her side of the story. It is an unheard of mockery of justice. No court properly advised would countenance such a conduct of proceedings by a tribunal falling under its supervision.
12. True enough the arbitrator was frustrated by the repeated failure of the applicant to bring along an interpreter who would interpret to the arbitrator's convenience. We say this because the person brought by the applicant could still interpret, but not to the satisfaction of the arbitrator. He (the arbitrator) did not give himself chance to hear how far the person brought by the applicant could be able to help the court with the interpretation. He just ruled him out without assessing him.
 13. Even assuming he found him unhelpful, the manner he proceeded with the arbitration as though it was a default hearing when it was not, was wrong and irregular. If the applicants had no interest in defending 1st respondent's claims as is alleged in the award, they would not have attended court every time the matter was scheduled to proceed. Faced with the situation he faced, the learned arbitrator had many options to consider but certainly not the one he opted for. Audi alteram partem rule is the fundamental principle of our law which no decision can be allowed to stand if it violates it. This is the situation with the award in this case. It callously contravenes this well established rule of the common law that no man can be condemned unheard. For this reason the whole proceedings stand to be reviewed and set aside as irregular.
 14. Even assuming the award could stand, the relief of reinstatement granted to the 1st respondent does not show that the arbitrator exercised the discretion vested in him judicially, when regard is had to the fact that 1st respondent admitted to fighting with the wife of the Managing Director. (see p.18 of the transcribed record).
 15. Furthermore, the arbitrator failed to administer oath on the

witness. It was administered by the representative of the 1st respondent Mr. Kemiso (see p.7 of the transcribed record). This was irregular as Kemiso has no power in law to administer oath. The witness was thus not sworn. All these are irregularities which call for interference with the award of the learned arbitrator. For these reasons, the arbitration proceedings in A0292/08 as well as the award they gave rise to are reviewed, corrected and set aside. There is no order as to costs.

THUS DONE AT MASERU THIS 15TH DAY OF JULY 2010

L. A. LETHOBANE
PRESIDENT

D. TWALA
MEMBER

I CONCUR

M. THAKALEKOALA
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MR. CHOBOKOANE
MS. KHALANE