

IN THE LABOUR COURT OF LESOTHO

**LC/19/10
LC/REV/92/08**

HELD AT MASERU

IN THE MATTER BETWEEN

CASHBUILD (PTY) LTD

APPLICANT

AND

**DDPR
M. MASHEANE – ARBITRATOR
TSEPISO POSHOLI**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

JUDGMENT

Date : 01/07/2010

Application for reinstatement of a review application which was dismissed for want of prosecution – A party's right to be heard on the merits of his case is paramount – Reinstatement granted but the company was punished with costs for the inconvenience caused to the successful party.

1. This is an application for the reinstatement of a review application which was struck off because applicant was not taking steps to prosecute it. The review was filed out of the Registry of this court on the 28th November 2008. On the 2nd December, Counsel for the applicant moved an application for stay of execution which Khabo DP granted.
2. Thereafter it was total silence. Nothing in the file shows that any further action was taken which would finally lead to the hearing of the review. On the 11th February 2010, the 3rd respondent moved to enforce the award of the DDPR which is admittedly in his favour. Mr. Ntaote for the applicant appeared

- before the President on the 1st March and furnished an explanation that the award had not been complied with because there is a pending review application.
3. On Monday 8th March the 3rd respondent came to find what the response of the employer to his enforcement application has been. Upon noticing Mr. Ntaote's response as recorded in the file, he met with the President to make him aware that the review application was all but abandoned. It was then that I directed the Registrar to write to Counsel for the applicant and inform him to file the record within 14 days and that failure to comply may result in the dismissal of the review application.
 4. The letter had a space for the recipient to sign in acknowledgement of receipt. It appears from the signature that the letter was hand delivered and was received by Mr. Ntaote himself on the 10th March 2010. Despite receipt of the letter no action was taken by the applicant to file the record, until fourteen days had lapsed.
 5. On the 31st March Mr. Posholi approached the court to seek an order dismissing the review application for want of prosecution. The court duly granted the application and the review application was accordingly dismissed. A letter informing applicants of the dismissal of the application was written by the Registrar and was hand delivered on the same day.
 6. On the 15th April 2010, the applicant filed an application for the reinstatement of the review application. In an affidavit supporting the application, the Divisional Manager deposed that they were unable to attend to the prosecution of the review because they could not get the record of the arbitration proceedings from the DDPR. This was news to us since Mr. Ntaote had not mentioned on the 1st March when he attended the enforcement application that he was having difficulty to secure the record. He merely told the court that they had sought review of the award.
 7. Even after receiving the letter of the Registrar, imploring him to

- file the record, Counsel did not write back to give the reason for not filing the record. The reason only surfaces now after the review has been dismissed. The court would be inclined to dismiss it as an after-thought, but we will accept it for only one reason. That is that there is evidence in the form of a letter which Counsel wrote to the DDPR on the 15th January 2010 imploring them to furnish him with the record of the arbitration in several cases he listed and the present case topped the list.
8. If it were not for that letter the explanation would not be satisfactory. It follows that failure to put the court in the picture regarding the difficulty of securing the record can be blamed on sheer ineptitude on the part of Counsel for the applicant. He should have furnished this explanation after receiving the Registrar's letter of the 8th March 2010.
 9. The application was strongly opposed by the representative of the 3rd respondent. The court appreciates their concern but at the same time we should refrain from punishing the applicant company for the ineptitude of their lawyer, especially when there are means by which the 3rd respondent can be compensated for the inconvenience he has suffered as a result. I consider applicant's right to be heard in the main application to be paramount. Accordingly, we grant the application for reinstatement.
 10. We consider however that the ineptitude discussed above has caused 3rd respondent unnecessary inconvenience in the form of travel costs to and from Mohale's Hoek, where he presently resides. For this reason we order that applicant pays M1,000-00 to 3rd respondent as costs he suffered while travelling to Maseru to push what is essentially the case of applicant to move forward.

THUS DONE AT MASERU THIS 11TH DAY OF AUGUST 2010

L. A. LETHOBANE
PRESIDENT

M. THAKALEKOALA
MEMBER

I CONCUR

R. MOTHEPU
MEMBER

I CONCUR

FOR APPLICANT:
FOR RESPONDENT:

MR. NTAOTE
MR. MOSUOE