

**IN THE LABOUR COURT OF LESOTHO      LC/REV/67/10**

**HELD AT MASERU**

**IN THE MATTER BETWEEN**

**THOTANYANA MINING & CIVIL WORKS    APPLICANT**

**AND**

**MOKITIMI MOONYANE  
DDPR (M. MPHOFE-MOLAPO)**

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

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## **JUDGMENT**

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***Date: 10/08/2010***

***Application for stay of execution pending finalization of a review application - Applicant lacking prospects of success in the main application - stay refused.***

1. This is an application for stay of execution of the award of the 2<sup>nd</sup> respondent dated 30<sup>th</sup> May 2010. The application was moved by Advocate Mothibeli on Friday 6<sup>th</sup> August. I postponed it to Tuesday 10<sup>th</sup> to enable me to study the file which in turn would enable me to exercise the discretion whether to grant the application or not judicially.
2. On Tuesday 10<sup>th</sup> Mr. Mothibeli appeared before me in Chambers to move the application. I ruled against the granting of the stay he was seeking. He requested me to furnish written reasons for my refusal to grant the application. These are now those reasons.
3. The 1<sup>st</sup> respondent referred a dispute concerning unlawful

deductions made by the employer from his salary. The 1<sup>st</sup> respondent is an employee of the applicant. He is allocated company vehicle for his use. He permitted one of the supervisors to drive the vehicle. The said supervisor was involved in an accident which caused damage to the vehicle.

4. The applicant surcharged both the supervisor who caused the damage and the 1<sup>st</sup> respondent herein to recoup the costs of repairs of the vehicle. The 1<sup>st</sup> respondent then referred a dispute to the DDPR alleging that the surcharge was unlawful. The applicant justified the surcharge on applicant by saying that company policy was the one that made the 1<sup>st</sup> respondent liable despite not having been the one who caused the accident. The witness for the applicant said the 1<sup>st</sup> respondent was negligent hence the surcharge.
5. The learned arbitrator found that the 1<sup>st</sup> respondent could not be made liable for the damage he had not caused. She said that even assuming the policy permitted the punishment meted out to 1<sup>st</sup> respondent, the witness had failed to show the said policy to the court to satisfy itself that it indeed authorized that 1<sup>st</sup> respondent be surcharged in the circumstances. She then ordered that 1<sup>st</sup> respondent be refunded the amount of M2,487-98 which had been unlawfully deducted from his salary.
6. Applicant promptly applied for the review and setting aside of the award and sought to have execution of the award stayed pending the finalization of the review. As a general rule the court will grant a stay of execution where real and substantial justice requires such a stay. (see *Strime .v. Strime* 1983 (4) SA850 at 852 A-B.
7. I had occasion to glance at applicant's grounds of review and found that they are no grounds of review at all. This led me to the conclusion that applicant has not the slightest prospect of success in the main case. Applicant's ground of review is that the arbitrator erred in saying in her award that she was not availed a copy of the policy when it was infact produced. This is a clear appeal as opposed to a review.

8. Deponent to the Founding Affidavit annexed the copy of the said policy. Clearly, the purpose was for this court to see it and determine its merits. This is wrong as the merits are not to be entertained in a review. In any event, the policy does not even support their testimony that they should surcharge an employee even when the employee is not directly or even indirectly responsible for the damage. Accordingly, I refused to grant the stay sought.

THUS DONE AT MASERU THIS 13<sup>TH</sup> DAY OF AUGUST 2010

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

**FOR APPLICANT:**

**MR. MOTHIBELI**