

IN THE LABOUR COURT OF LESOTHO

LC/REV/29/09

HELD AT MASERU

IN THE MATTER BETWEEN

LOTI BRICK (PTY) LTD

APPLICANT

AND

NKUEBE LEROTHOLI

1ST RESPONDENT

DDPR (ARBITRATOR MOLAPO-MPHOFE)

2ND RESPONDENT

RULING

Date: 22/03/2011

Dismissal of an application for review - Attorney for the applicant failing to attend court without justifiable explanation - Applicant failing to oppose the application for the dismissal of the review application - Application dismissed and reasons for judgment reserved.

1. This was application for the review of the award of learned arbitrator Malika Molapo-Mphofe in which she had set aside the applicant employee's decision to surcharge the 1st respondent for the disappearance of a laptop and a desktop in his office. The laptop was admittedly used by the 1st respondent and occasionally by the applicant's immediate supervisor to access essential company information stored therein.
2. When the two computers disappeared, the 1st respondent was admittedly on leave. He had left the two computers in the office as usual and locked the office. The office was manned by a security guard and it also had surveillance cameras. The security guard also confirmed that the computers were still on applicant's desk after he proceeded on leave. For some reason the company was of the view that 1st respondent was negligent

in leaving the laptop in his office. Accordingly, they charged him of negligence, found him guilty and ordered that he be surcharged the full cost of the laptop.

3. The 1st respondent referred a dispute of unfair deductions to the DDPR because he was of the view that he had not been negligent. The learned arbitrator agreed with him and ordered that the company should cease the deductions and refund him what it had already deducted. Unhappy with that order, the company swiftly applied for the review and setting aside of that order. However, the applicant could not file the record because certain portions of the cassettes were inaudible. Later the DDPR furnished the hand written notes of the arbitrator to help to complete the record. However the applicant still did not file the complete record.
4. On the 15th September 2010, the 1st respondent filed an application for the dismissal of the review application on account of failure to prosecute same. The applicant did not oppose the application. However, on the date of hearing counsel for applicant requested that the hearing be stood down to 11.00am to enable her to attend to an unfinished case before Hlajoane J in the High Court. The court granted her the indulgence. She did not show up at 11.00am as promised. We waited until 12.00 midday when I sent Mr. Ntaote for the 1st respondent to go to the High Court to check what problems Mrs. Khiba could be facing which barred her to be back as promised.
5. At 12.15 midday the court convened still without the representative of the applicant. Mr. Ntaote for the 1st respondent reported that he had made all reasonable search for Mrs. Khiba including to go to the High Court where he checked all the court rooms to find out if Mrs. Khiba was held up in any of them. She was not in any of them including Hlajoane J's court where she had said she was having an unfinished business from the previous day.

6. He averred that he called his office and asked his clerks to call Mrs. Khiba's mobile phone and she still could not be found. He requested the court to proceed in applicant's absence now that it was almost lunch time. He submitted that even though applicants belatedly filed the notice to oppose the application to dismiss the review, the applicants have failed to file opposing affidavit. He prayed the court to dismiss the review application.
7. Given that no reasons had been given why the application should not be dismissed, the court favourably considered the request to dismiss the application as an unopposed application. This was more so when counsel for the applicant failed to attend despite being aware of the set down. In the premises the application for the review was dismissed as prayed. There was no order of costs.

THUS DONE AT MASERU THIS 3RD DAY OF AUGUST 2011

L. A. LETHOBANE
PRESIDENT

L. MATELA
MEMBER

I CONCUR

D. TWALA
MEMBER

I CONCUR

FOR APPLICANT:
FOR 1ST RESPONDENT:

NO APPEARANCE
MR. NTAOTE