

HELD AT MASERU

In the matter between:

GOODWILL AUTO CLINIC

APPLICANT

And

THE DIRECTORATE OF DISPUTE
PREVENTION AND RESOLUTION
SENG MASENKANE

1ST RESPONDENT
2ND RESPONDENT

JUDGMENT

Date: 8th November 2012

Review application of DDPR award. Respondent applying for dismissal of review application for want of precaution. Applicant failing to attend proceedings despite proof of service of notification of hearing. Court granting application for dismissal for want of prosecution. Costs being awarded on attorney and client scale against Applicant.

BACKGROUND OF THE ISSUE

1. This is an application for the dismissal of an application for review of an arbitration award of the DDPR, for want of prosecution. It was heard and granted on the 8th November 2012. Facts surrounding this application are basically that Applicant 2nd Respondent referred a claim for unfair dismissal with the DDPR under referral A0128/2007. The matter was heard on the 30th January 2007 and judgment was granted in favour of 2nd Respondent in default on the 31st January 2012.
2. Thereafter, Applicant filed an application for rescission in March of the same year, which application was dismissed. Subsequent thereto, this application was lodged with this Court by Applicant on the 12th April 2007. On the 27th January 2010, 2nd Respondent lodged an application for the dismissal of the review application for want of prosecution. The application was not opposed and as such 2nd Respondent applied for judgment in default. The

matter was set down for this day and both parties were notified as the record reflects. However, only 2nd Respondent was in attendance and the matter proceed in default.

SUBMISSIONS

3. It was submitted on behalf of 2nd Respondent that Applicant instituted these proceedings on the 12th April of 2007. Thereafter a notice calling upon them to collect the record of proceedings for transcription was served on them on the 12th July 2007. Since then to date, no further steps were taken by Applicant to prosecute this matter. As a result, 2nd Respondent instituted an application for dismissal of this matter for want of prosecution. He argued that from the conduct of Applicant, it was not interested in prosecuting this matter to finality but rather to delay the execution of the award granted in his favour by the DDPR. This application was not opposed and as such 2nd Respondent applied for default judgment of the application for dismissal of the review application for want of prosecution. He further prayed for an award of costs on attorney and client scale for abuse of court process by Applicant.

4. This Court is a specialised forum for both employers and employee to seek the protection and/or enforce their labour rights. This process is done by giving both parties to a dispute a fair chance to make representation. However, this opportunity can only be granted in favour of a party that is willing to utilise it. This court has pronounced itself on this issue before in the case of ***Khutlang Mokoaleli vs. Standard Lesotho Bank & DDPR LC/REV/21/07***) as follows,

“The court can only give effect to the right to be heard to a party that is willing and does utilise the opportunity to exercise its right to be heard. As a result, a party that fails to prosecute its case without a reason summarily waives their right to be heard.”

5. In the case at hand, Applicant has been given the opportunity to be heard. However, it has through conduct demonstrated its unwillingness to make use of this opportunity. Evident to this is the five year period that lapsed between the referral of this review application and today as well Applicant’s failure to react to both the applications for dismissal for want of prosecution as well as the application for judgment in default. I am inclined to agree with 2nd Respondent in his submission the referral of this review application was intended to delay the execution of his DDPR judgment award. I am convinced that the conduct of Applicant is an abuse of court processes, so extreme that it warrants the granting of an award of costs against.

AWARD

Having heard the submissions of parties, I hereby make an award in the following terms:

- a) That the application for dismissal of the review application is granted;
- b) That the review application is accordingly dismissed; and
- c) An order of costs is made against Applicant on attorney and client scale.

THUS DONE AND DATED AT MASERU ON THIS 8th DAY OF NOVEMBER 2012,

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**T. C. RAMOSEME
DEPUTY PRESIDENT OF THE LABOUR COURT OF LESOTHO (AI)**

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**Mrs. L RAMASHAMOLE
MEMBER**

I CONCUR

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**Mr. L. MATELA
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR RESPONDENT:**

**NO APPEARANCE
ADV. MAJAEAA**