

HELD AT MASERU**In the matter between:****FACTORY WORKERS UNION****APPLICANT****And****CRABTREE (PTY) LTD
THE DDPR****1st RESPONDENT
2nd RESPONDENT**

JUDGMENT

Date: 6th March 2013

Claim for an order declaring the conduct of the 2nd Respondent ultra vires. 1st Respondent neither opposing the matter nor attending despite notification. Applicant proceeding by way of default. Court acting on own motion to raise a point of law – Courts jurisdiction to declare the conduct of the learned conciliator ultra vires – Applicant relying on sections 24 (2) (i) and (m) to establish the Court's jurisdiction – Court finding the former to relate to matters already within the jurisdiction of this Court – Court finding that the said section does not establish jurisdiction on its own. Court finding the latter section to relate to powers sanction by the Labour Code or any written law – Applicant not referring to any law as sanctioning the alleged powers. Court dismissing the matter for want of jurisdiction and making no order as to costs.

BACKGROUND OF THE ISSUE

1. This is an application for an order declaring the conduct of the 2nd Respondent *ultra vires*. It was heard on this day and judgment was deferred for a later date. The matter was not opposed and 1st Respondent did not attend. As a result it proceeded in default of 1st Respondent. Facts surrounding this application are essentially that Applicant referred a dispute of interest before the 2nd Respondent, in terms of section 225 of the *Labour Code Order 24 of 1992* as amended. Conciliation was duly conducted and parties failing to settle the matter, a

deadlock was declared. Thereafter the Applicant communicated its intention to embark on a strike action.

2. As a matter of procedure, and in terms section 40 of the *Labour Code (Codes of Good Practice) of 2003*, the 2nd Respondent commenced the process of assisting parties to draw up and agree on the rules of the strike action. It is these rules that form the subject of this matter as Applicant contends that they amount to an award. Applicant contends that the learned conciliator exceeded his conciliatory powers by making an award in the matter. It is thus asking for an order declaring that conduct *ultra vires*.
3. Acting on our own motion, We raised a preliminary point concerning this Court's jurisdiction to declare the conduct of the learned conciliator *ultra vires*. We led to this view by the fact that this Court is a creature of statute and as such it is bound by the four corners of the statute that created it, for purposes of its jurisdiction on any matter referred to it. In raising this point *mero muto*, We acted on the basis of the authority in *Thabo Mohlobo & others vs. Lesotho Highlands Development Authority LAC/CIV/A/02/2010*, that the Court has the power to raise a point of law on its own motion. Applicant made its submissions both on the point of law and in the merits and they were advised that this Court would only consider the merits if it found that it had jurisdiction to grant the relief sought. Applicant's submissions, Our ruling and reasons on this application are in the following.

SUBMISSIONS AND ANALYSIS

4. It was submitted on behalf of Applicant that this Court's jurisdiction is based on the provisions of the *Labour Code Order 24 of 1992* as amended, and in particular sections 24 (2) (i) of the, read with (m) which read as follows,
“(i) to make any appropriate order, including an order of costs;
... (m) to perform such acts and carry out such duties as may be prescribed under the Code or any other written law.”
5. Applicant submitted that the order sought is within the above provisions and as such this Court has jurisdiction to make the order sought. It was specifically argued that the principle of *ultra vires* and its consequent relief are within the purview of

administrative law and as such in terms of the two sections this Court has the power to make an order as prescribed under administrative law.

6. The jurisdictional powers of this Court are derived from section 24 of the *Labour Code Order (supra)*. We have gone through the cited provisions and We differ with Applicant in terms of its interpretation of the sections. Firstly, section 24 (2) (i) relates to orders made in relation to matters that this Court has jurisdiction over. As a result, this section does not on its own establish this Court's jurisdiction to grant the relief sought but rather directs the Court in relation to orders that it can make in respect of matter on which it has jurisdiction.
7. Secondly, section 24 (2) (m) relates to acts sanctioned by the Code or any other written law. Applicant has not made reference to any provision of the *Labour Code Order (supra)* or any written law. Applicant has only referred this Court to the general principles of administrative law to the effect that this Court has jurisdiction to grant the relief sought. In our view Applicant has failed to show that this Court has jurisdiction to declare the conduct of the learned Arbitrator *ultra vires* in this instance and We accordingly dismiss this application for want of jurisdiction.

AWARD

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

- a) That this application is dismissed for want of jurisdiction;
and
- b) That there is no order as to costs.

**THUS DONE AND DATED AT MASERU ON THIS 18th DAY OF
MARCH 2013.**

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

**Mr. .L. MATELA
MEMBER**

I CONCUR

**Mrs. M. MOSEHLE
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR RESPONDENTS:**

**ADV. RASEKOAI
NO APPEARANCE**