

HELD AT MASERU

In the matter between:

THABO MATAMANE

APPLICANT

And

THE DDPR

1st RESPONDENT

LESOTHO BREWING COMPANY (PTY) LTD

2nd RESPONDENT

JUDGMENT

Date: 12th March 2013

Review application of DDPR arbitral award. 2nd Respondent applying for dismissal of review application for want of prosecution. Applicant not opposing the application – Applicant also failing to attend proceedings despite proof of service of notification of hearing. Application proceeding in default of Applicant – Applicant having not taken any steps to have the matter finalised – application not reacting to the application for dismissal for want of prosecution – Court finding conduct of Applicant demonstrative of lack of interest. Court granting application for dismissal for want of prosecution and awarding costs as prayed by 2nd Respondent 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 on this day and judgment was reserved for a later date. Facts surrounding this application are basically that Applicant 2nd Respondent referred a claim for unfair dismissal with the DDPR under referral A0845/2007. The matter was heard on the 4th and 22nd July 2008 and judgment was granted in favour of 2nd Respondent on the 20th August 2008. Thereafter, Applicant lodged the present application on the 31st October 2008. On the 24th January

2013, 2nd Respondent lodged an application for the dismissal of the review application for want of prosecution.

SUBMISSIONS

2. It was submitted on behalf of 2nd Respondent that Applicant instituted review proceedings of the DDPR arbitral award in referral A0845/2007 on the 9th October 2008. It was further submitted that since then to date, no further steps have been taken by Applicant to prosecute and bring this matter to finality. 2nd Respondent submitted that as a result, it initiated the current proceedings and served same on the Applicant. Despite service of the application, Applicant has neither opposed nor attended these proceedings. It was argued that from the conduct of Applicant, it is clear that he is not interested in prosecuting this matter to finality and that this is prejudicial to the 2nd Respondent. It was thus prayed that the review application be dismissed with costs of suit for abuse of court process by Applicant.
3. This Court is a specialised forum for both employers and employees 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.”
4. *In casu*, Applicant has been given the opportunity to be heard. However, he has through conduct demonstrated his unwillingness to make use of this opportunity. Evident to this is the fact that to date he has not taken any steps to have this matter finalised. Further evident to this is the fact that he has not reacted to the present application for dismissal for want of prosecution, yet it has been served upon him. We are inclined to agree with 2nd Respondent in their submission the Applicant is not interested in this matter anymore. We are 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 him.

AWARD

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

- a) That the application for dismissal of the review application for want of prosecution is granted;
- b) That the review application is accordingly dismissed; and
- c) An order of costs of suit is made against Applicant and must be complied within 30 days of receipt of this judgment.

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

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

**Mrs. N. THAKALEKOALA
MEMBER**

I CONCUR

**Mr. R. MOTHEPU
MEMBER**

I CONCUR

**FOR APPLICANT: NO APPEARANCE
FOR RESPONDENT: ADV. PULE**