

IN THE LABOUR COURT OF LESOTHO

LC 19/12

HELD AT MASERU

IN THE MATTER BETWEEN:

LIPHAPANG LETUMANYANE

APPLICANT

AND

**DECORAT ART FURNITURE
MANUFACTURER (PTY) LTD.**

RESPONDENT

DEFAULT JUDGMENT

DATE : 20/03/13

Enforcement of an arbitral award following respondent's failure to abide by an order of reinstatement - Court has power to enforce its orders by, among others, contempt proceedings in terms of Section 24 (j) of the Labour Code (Amendment) Act, 2000 - Respondent further failing to enter appearance and judgment granted by default.

1. These are contempt proceedings brought in terms of Section 24 (j) of the Labour Code (Amendment) Act, 2000 following failure by the respondent to reinstate the applicant per the award of the Directorate of Dispute Prevention and Resolution (DDPR). Awards of the DDPR are treated in the same manner as orders made by the Labour Court under Section 228E (5) of the Labour Code (Amendment) Act, 2000.
2. The applicant having invoked the provisions of Section 24 (j) of the Labour Code (Amendment) Act, 2000 the respondent having failed to enter appearance in the said proceedings, the former filed an application for default judgment in terms of Rule 14 of the Labour Court Rules, 1994.

3. The facts surrounding this case are briefly that the applicant is a former employee of Decorat Art Furniture Manufacturer (Pty) Ltd, the respondent herein. He was engaged in employment from 10th March, 2010 to 19th April, 2011 when he was dismissed for misconduct. It was alleged that he pursued his own business interests in the employer's premises during working hours by selling cigarettes.

4. He challenged this dismissal on both substantive and procedural grounds and claimed severance pay, accrued leave, underpayments and salary arrears. The DDPR ordered reinstatement on 3rd February, 2012, and the respondent was duly served with the award on 16th February, 2012. It emerged in evidence tendered by the applicant before Court that he duly reported for work to the Managing Director, one Mololi, and he turned her back. He testified that he made several attempts to go back to his work but to no avail.

5. Consequently, the applicant through his union, the Lesotho Transport & Allied Workers' Union (TSAWU) instituted contempt proceedings before this Court in terms of Section 24 (j) of the Labour Code (Amendment) Act, 2000.

6. From the papers filed of record and applicant's testimony, it emerged that the respondent was served with processes relating to contempt of Court proceedings together with a notice of hearing (set-down), but still there was no appearance on behalf of the respondent.

7. It further emerged in evidence that due to the time that has elapsed from the handing down of the DDPR award, the applicant has since been employed somewhere else. He is therefore claiming compensation in lieu of reinstatement and other benefits he feels he is entitled to. These are;

• Salary arrears from date of dismissal to handing down of judgment	M23,722.00
• Unpaid leave for twelve (12) days	M438.46
• Severance payment from 10 th March, 2010 to 19 th April 2011 (date of dismissal)	M467.64

Total	M 24,628.10

8. Contempt proceedings are penal in nature and envisage imposition of a fine or imprisonment. While the purpose of contempt proceedings is to ensure the enforcement of orders, they may be brought for the sole purpose of punishing the respondent - see *SA Forestry Co., Ltd. v Africa Wood & Allied Workers' Union & Ors (1999) 20 ILJ, 1928 LC at p. 1932*. The Court does not feel inclined to incarcerate a representative of the respondent and therefore orders that the applicant be paid the monies he is claiming. If the respondent continues to be in default, the Court will order imprisonment of the Managing Director of the respondent.

9. It is accordingly ordered that the respondent pay the applicant the monies that he is claiming to the tune of Twenty - Four Thousand, Six Hundred and Twenty - Eight Maloti, Ten Cents (M24,628.10) there having been no opposition thereto.

10. This sum is to be paid to the applicant within thirty (30) days from the handing down of this judgment.

THUS DONE AND DATED AT MASERU THIS 20th DAY OF MARCH, 2013.

F.M. KHABO
DEPUTY PRESIDENT

L. MATELA
MEMBER

I CONCUR

M. MALOISANE
MEMBER

I CONCUR

**FOR THE APPLICANT: MS. 'MAPHARINA LECHE - LECHESA FOR THE
LESOTHO TRANSPORT & ALLIED WORKERS'
UNION**
FOR THE RESPONDENT: NO REPRESENTATION