

**HELD AT MASERU**

**In the matter between:**

**HLALELE HLALELE**

**APPLICANT**

**And**

**WOMEN WORKING WORLDWIDE LESOTHO  
THE D.D.P.R**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

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**JUDGMENT**

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*Date: 2<sup>nd</sup> May 2013*

*Urgent applicant for a mandatory interdict to compel the 2<sup>nd</sup> Respondent to hear and determine referral A0354/2013 on or before the 26<sup>th</sup> April 2013, that the award be released expeditiously and that 1<sup>st</sup> Respondent be ordered to comply with it before winding-off the project. Matter proceeding unopposed. Court raising a preliminary issue on its jurisdiction to grant the prayers sought. Court finding that It has no jurisdiction and dismissing the application for want of jurisdiction.*

**BACKGROUND OF THE ISSUE**

1. This dispute involves a claim for mandatory interdict against the 2<sup>nd</sup> Respondent. It was heard on this day in default and judgment was reserved for a later date. Facts surrounding this application are basically that Applicant referred a claim for unfair dismissal with the 2<sup>nd</sup> Respondent under referral A0444/2013, on the 3<sup>rd</sup> April 2013. This claim was set down for hearing on the 7<sup>th</sup> May 2013. *In casu*, Applicant seeks a final order in the following,
  - “1) That 2<sup>nd</sup> Respondent be ordered to hear and determine referral A0444/13 as soon as it be heard on or before the 26<sup>th</sup> April 2013 and award be released as soon as possible.
  - 2) That the 1<sup>st</sup> Respondent be ordered to honour the award before winding off the project.
  - 3) Granting the Applicant further and or alternate relief.”

2. In essence, Applicant is seeking an order for four prayers broken down as follows,
  - a) That the 2<sup>nd</sup> Respondent be ordered to hear its case no later than the 26<sup>th</sup> April 2013;
  - b) That the 2<sup>nd</sup> Respondent be ordered to make an award in its case no later than the 26<sup>th</sup> April 2013;
  - c) That the 2<sup>nd</sup> Respondent be ordered to issue an award as soon as possible thereafter;
  - d) That 1<sup>st</sup> Respondent be ordered to comply with the award of the DDPR before winding-off the project; and
3. Realising that prayers a) and b) had been overtaken by events, Applicant withdrew them and remained with prayers c) and d). We then *mero muto* raised a preliminary issue in relation to the jurisdiction of this Court in respect of the remaining prayers of Our breakdown and requested Applicant to make his addresses. In raising this issue, We had considered the fact that section 228E (3) of the *Labour Code (Amendment) Act 3 of 2000* gives the 2<sup>nd</sup> Respondent arbitrators a period of 30 days within which to issue an award.
4. Further, We had section 228E (4) thereof, which provides for an open extension of the 30 days period on good cause being shown to the Director of the 2<sup>nd</sup> Respondent, irrespective of the urgency of the matter. Furthermore, We had considered the provision of section 228F of the *Labour Code (Amendment) Act (supra)* on the right of a party to review the award of the DDPR within 30 days of being aware about its issuance and beyond the 30 days on good cause being shown. In Our view, the prayers sought by Applicant were in effect requesting this Court to vary the provisions of the law as opposed to simply applying them. Applicant was given the opportunity to make presentation and Our judgment on the matter is in the following.

## **SUBMISSIONS AND ANALYSIS**

### *Preliminary issue*

5. Applicant submitted that this Court had jurisdiction to grant prayers c) and d). His argument was premised on section 228 (1) and (2) of the *Labour Code (Amendment) Act 3 of 2000*. These sections read as follows,

*“(1) Any party to a dispute that has been referred in terms of section 227 may apply to the Labour Court for urgent relief, including interim relief pending the resolution of a dispute by arbitration.*

*(2) Notwithstanding the provisions of this Part, if the Labour Court grants urgent interim relief in terms of subsection (1), the Court shall give directions on the conduct of the conciliation or, if applicable, the arbitration of the dispute as may be appropriate.”*

6. It is Our opinion that the above sections do not vest this Court with the jurisdiction to either direct Learned Arbitrator as to when to issue an arbitral award or to compel a party to comply with an award in ignorance of the provision of section 228F. To be specific section 228 (1), on the one hand, give this Court the authority to make interim court orders. This section and its applicability is not in dispute and reference to it does not address the issue of whether the Court has the authority to order the 2<sup>nd</sup> Respondent to issue an award on or before a particular date or if It can compel compliance contrary to the provision of section 228F.
7. On the other hand, section 228 (2), gives this Court the authority to give direction on the conduct of arbitration proceedings, if applicable. However, the orders sought under c) and d) do not relate to arbitration proceedings but to the point after the arbitration proceedings have been concluded. Consequently, We find that the authorities cited by Applicant are misplaced and inapplicable to the issues arising herein. It is Our opinion that Our initial position on the lack of jurisdiction remains unchallenged and We accordingly find that this Court has no jurisdiction to grant the prayers sought.

### **AWARD**

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

- a) That the 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 13<sup>th</sup> DAY OF  
MAY 2013.**

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

**Mr. S. KAO  
MEMBER**

**I CONCUR**

**Mrs. M. MOSEHLE  
MEMBER**

**I CONCUR**

**FOR APPLICANTS:  
FOR 1<sup>ST</sup> RESPONDENT:**

**MR. HLALELE  
NO APPEARANCE**