

HELD AT MASERU**In the matter between:****TANKI MONYE****APPLICANT****And**

**‘MAMOJALEFA MAPHOKOANE
‘MALEBEA MOROLONG
BOITELO ENGLISH MEDIUM
PRIMARY SCHOOL – BOARD
BOITELO ENGLISH MEDIUM
PRIMARY SCHOOL**

1st RESPONDENT**2nd RESPONDENT****3rd RESPONDENT****4th RESPONDENT**

JUDGMENT

Date: 6th March 2013

Application for the reinstatement of a claim dismissed for want of prosecution. Requirements for reinstatement being similar to those of a rescission of judgment namely sufficient explanation for the default in attendance and bona fide defence or prospects of success – Applicant failing to meet these requirements – explanation being grossly insufficient by reason of a misrepresentation of certain facts material to the determination of the matter – Court finding it unnecessary to consider prospects of success. Application for reinstatement being dismissed. No order as to costs being made.

BACKGROUND OF THE ISSUE

1. This is an application for the reinstatement of LC/25/2011. It was head on this day and judgment was reserved for a later date. Facts surrounding this application are essentially that Applicant referred a claim for unfair dismissal with the DDPR. Conciliation having failed, the matter was referred to this Court in terms of section 225 (7) for adjudication. It was duly lodged with this Court and when all pleadings had closed it was set down for hearing. It was then dismissed for want of prosecution on the 20th November 2012.

2. An application for reinstatement of the main application was lodged by Applicant on the 17th January 2013 and served upon the Respondents on the same day. Respondent having failed to oppose the matter and the time periods for filing the opposing papers having lapsed, Applicant then applied for judgment by default. It is in this application that Applicant seeks to have the dismissal of the matter set aside and for the matter to be heard in the merits. At the commencement of the proceedings, Applicant indicated that they stood and fell by their pleadings as they felt that they were self explanatory. He indicated that he wished for the Court to consider them and its records in making its finding. Applicant's pleadings, Our ruling and reasons on this application are in the following.

SUBMISSIONS AND ANALYSIS

3. It was averred on behalf of Applicant that this matter was first heard on the 10th November 2011 before the late President of the Labour Court, Judge President L. A. Lethobane. It was thereafter postponed to the 17th April 2012, on which date the evidence of Applicant and his witnesses was led. Subsequently, it was postponed to the 28th August 2012 but could not proceed on that day due to the illness of the learned presiding Judge. As a result, it was then postponed to the 7th November 2012. Before the date of postponement, the matter was again postponed to the 20th November 2012, on the ground that there was no presiding officer to preside over the matter.
4. However, it later transpired that the 20th November 2012 was not suitable for both parties and as a result, they both approached the Registrar of this Court to have the matter postponed to another date. The matter was then further postponed to the 6th March 2013. As a result, Applicant was surprised when he learned that the matter had proceeded on the 20th November 2012 despite the fact that they had already had it postponed. Applicant thus submitted that their default was not deliberate and further that they had good prospects of success in that Respondents had already admitted some of their allegations in the main application. He prayed that this application for reinstatement be granted as prayed.
5. An application for the reinstatement of a matter dismissed for want of prosecution, is similar to an application for rescission of a matter granted in default of the other party. As a result,

the requirements of the two are similar. These principles were outlined in the case of *Loti Brick vs. Thabiso Mphofu & others 1995-1996 LLR-LB 447* as follows,

- a) A reasonable explanation for the default, and
 - b) The existence of a bona fide defence or prospects of success.
- On the basis of these above principles, We shall now proceed to deal with the Applicant arguments.

6. We have considered the arguments of Applicant as appears in his pleadings. However, We have found his explanation to lack sufficient merit in relation to the postponement from the 20th November 2012 to the 6th March 2013. It is not clear from the pleadings when exactly it is that the postponement was sought. As a result, We perused the Court's record and, and in particular the notification of hearing, and discovered that the postponement to the 6th March 2013 was only sought on the 15th February 2013 whereas the matter was dismissed on the 20th November 2012 for want of prosecution. Clearly, by the time that the postponement was sought, the matter had already been disposed off.
7. In Our view, Applicant ought to have approached this Court to seek a postponement of the matter before the date of hearing. Applicant's failure to have the matter postponed before the set date of hearing demonstrates a deliberate act on his part not to attend the proceedings of the 20th November 2012. Consequently, the explanation given by Applicant for his failure to attend the proceedings of the 20th November 2012 is not sufficient to justify the granting of this application.
8. We have also found the explanation given to be grossly insufficient. We say this because We have discovered and noted the existence of a gross misrepresentation of facts on the part of Applicant. Applicant has attempted to lead this Court to the view that the postponement was sought before the 20th November 2012 whereas the actual position is that it was only sought after the matter had been disposed of, which was on the 15th February 2013. Consequently, We will not consider the prospects of success and We accordingly refuse this application for lack of a sufficient explanation alone. Our finding is based on the decision of the Labour Appeal Court in *Phetang Mpota vs. Standard Lesotho Bank LAC/CIV/A06/2008*, where the Labour Appeal Court held that

where the explanation given is grossly insufficient, it is not necessary to consider the prospects of success no matter how strong they may be.

AWARD

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

- a) That this application is dismissed; 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. S. KAO
MEMBER**

I CONCUR

**Mrs. L. RAMASHAMOLE
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR RESPONDENTS:**

**ADV. MOELETSI
NO APPEARANCE**