

HELD AT MASERU

In the matter between:

LESOTHO WORKERS UNION

APPLICANT

And

**ZINYATHI TRADING (PTY) LTD T/A
JIKELELE SERVICES
THE D.D.P.R**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGMENT

Date: 8th May 2013

Urgent applicant for a mandatory interdict to compel the 2nd Respondent to hear and determine a matter and issue an award expeditiously - dispensing with its rules and regulations as to the manner of service before the 2nd Respondent. Matter not being opposed and Court proceeding on the basis of the unchallenged averments of Applicant. Court finding that it has no jurisdiction to order the 2nd Respondent to make and issue an award earlier than the time periods stipulated in by law. Court refusing to grant all prayers and application being dismissed.

BACKGROUND OF THE ISSUE

1. This dispute involves a claim for mandatory interdict against the 2nd Respondent. It was heard on this day and judgment was reserved for a later date. Although both parties were present, the application was nonetheless unopposed. In fact, 1st Respondent had pronounced its deliberate intention not to oppose the matter on the ground that it stood to benefit from the expeditious finalisation of the main claim referred with the 2nd Respondent.

2. In this claim, Applicant seeks final order in the following,
 - “1) That 2nd Respondent be ordered to hear and determine referral A0444/13 as soon as it be heard on or before the 10th May 2013 and award be released as soon as possible.
 - 2) That the 2nd Respondent be ordered to dispense with its rules and regulations as to the manner of service.
 - 3) Granting the Applicant further and or alternate relief.”
3. In essence, Applicant is seeking an order for five prayers as thus,
 - a) That the 2nd Respondent be ordered to hear its case no later than the 10th May 2013;
 - b) That the 2nd Respondent be ordered to make an award in its case no later than the 10th May 2013;
 - c) That the 2nd Respondent be ordered to issue an award as soon as possible;
 - d) That 2nd Respondent be ordered to dispense with its rules and regulations as far as service of process is concerned; and
 - e) That any further and/or alternative relief as the court may deem fit.
4. Having broken down the remedies sought, We *mero muto* raised a preliminary issue in relation to the jurisdiction of this Court in respect of prayers *b) and c)* of Our breakdown and requested Applicant to make its 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 2nd Respondent arbitrators a period of 30 days within which to issue an award. Further, section 228E (4) thereof, provides for an open extension of the 30 days period on good cause being shown to the Director of the 2nd Respondent.
5. This in our opinion means that the speed with which an award may be issued depends among others, on the circumstances of the case, the time needed to prepare the award as well as the complexities of the issues raised. We had also considered the fact the process of making an award requires a certain level of research and analysis, irrespective of whether the matter being determined has been opposed or not. In view of Our concerns, Applicant made its addresses after which We declined to make a ruling on the preliminary point, on the ground that it will be

reflected in the final judgment together with Our decision on the merits of the matter. Our ruling and the reasons are thus in the following.

SUBMISSIONS AND ANALYSIS

Preliminary issues

6. It was submitted on behalf of Applicant this Court has jurisdiction to order the 2nd Respondent to make and issue an award no later than the 10th May 2013. In support, Mr. Masoebe for Applicant submitted that the remedy that they sought is provided for under 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.”

7. It is Our opinion that the above sections do not vest Us with the jurisdiction to compel that Learned Arbitrator to make an award in referral A0444/2013 and issue it no later than the 13th of May 2013. However, what We do agree on, is that section 228 (1), give us 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 We have the authority to order the DDPR to make and issue an award no later than the 13th May 2013, as Applicant has prayed.

8. Secondly We also agree with Applicant that section 228 (2), gives this Court the authority to give direction on the conduct of arbitration proceedings, if applicable. However, the order sought under b) and c) does not relate to arbitration proceedings but to the point after the arbitration proceedings have been concluded. At this instant, We wish to comment that even assuming that this section was applicable beyond arbitration proceedings, it has a qualifier to effect that “*if applicable*”. We maintain that it is not applicable for the reasons advance in the foregoing. Our stance thus remains

unchallenged that We do not have jurisdiction to compel the arbitrator to make and issue an award earlier than the times stipulated under section 228E.

The merits

9. Mr. Masoebe for Applicant submitted that on or around June 2012, an agency shop agreement was concluded between Applicant union and the 1st Respondent. Thereafter, the said agreement was put into effect as agency fees were deducted from the employees monthly wages. On or around March 2013, the 1st Respondent unilaterally stopped making the said deductions from its employees on the ground that it had been advised to desist from making such deductions. In reaction to this act, Applicant union referred a claim with the DDPR to enforce the said agency shop agreement. The said referral has been set down for hearing on the 29th May 2013.
10. In support of the application, Mr. Masoebe submitted that since the time that the deductions were stopped, they have already lost out on two months subscriptions and that they will lose more if the matter does not finalised expeditiously. He further submitted that although they have an alternative remedy of recovering the lost union fees from the concerned employees, they are worried about the impact of such a recovery upon the already meagre wages of the 1st Respondent employees. Further, that they are pressed by the fact that they have been reliably informed that the 1st Respondent intends to start its retrenchment processes by September 2013.
11. In an application for final a interdict, there are three main requirements that must be met by an applicant party. These requirements were laid out in the case of *Setlogelo vs. Setlogelo 1914 AD 221 at 227* as follows,
 - a) The existence of a clear right;
 - b) The existence reasonable or actual apprehension of harm;
and
 - c) The non-existence of an alternative remedy.These principles have been accepted and cited with approval in a number of cases within our jurisdiction (see *Moremoholo vs. Moremoholo & others CIV/APN/135/2010*; *Montši vs. Commissioner of Customs and Excise & another*

CIV/APN/521/2010; Makhutla & another vs. Makhutla & another C of A CIV/07/2002).

12. *In casu*, We are satisfied that the former two requirements have been satisfied in that a clear right has been established to emanate from the existence of the an agency shop agreement. Secondly, harm has already been suffered as the Applicant union has missed out on two months subscriptions and is likely to continue to lose out even more with the matter remaining pending. However, Applicant has not been able to discharge last requirement. They have not only failed to do so but have accepted that they have an alternative remedy which they can employ to recover the lost subscriptions. This being the case, they have clearly failed to meet the full requirements of a final mandatory interdict.
13. Assuming that this application was to be granted in terms of the prayers over which We have jurisdiction, it would not deliver the desired impact by Applicant. We say this because in issuing a mandatory interdict against the 2nd Respondent to hear a matter urgently, It must be given some reasonable time within which to rearrange its affairs in order to comply with the order of this Court. This Court has ruled in a number of cases before that a period of 14 days in circumstances of this nature, is a reasonable time.
14. It therefore follows that if this order is issued on this day, then it would only bring the date of hearing forward by just 2 days to the 27th May 2013. This period would not have much of an impact to address the pressures that Applicant faces. Clearly, the desire to have the matter heard no later than the 13th May 2013 will not have been addressed. If the worry relates to the retrenchments in September, the 2 days period brought forward would not add much value in comparison to the 19 days sought. Consequently, this application fails.

AWARD

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

- a) The application for a final mandatory interdict is refused;
and
- b) That there is no order as to costs.

**THUS DONE AND DATED AT MASERU ON THIS 13th DAY OF
MAY 2013.**

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

**Mr. S. KAO
MEMBER**

I CONCUR

**Mr. R. MOTHEPU
MEMBER**

I CONCUR

**FOR APPLICANTS:
FOR 1ST RESPONDENT:**

**MR. MASOEBE
MR. HORN**