

**HELD AT MASERU**

**In the matter between:**

**FUTHO HOOHLO**

**APPLICANT**

**And**

**THE DDPR**

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

**LESOTHO BREWING COMPANY (PTY) LTD**

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

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## **JUDGMENT**

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*Date: 12<sup>th</sup> June 2013*

*Application for the review of the DDPR arbitral award in referral A0848/2009. Applicant failing to attend the hearing despite notification having been duly made - 2<sup>nd</sup> Respondent applying for dismissal for want of prosecution – Court granting application and dismissing this review application. Court awarding costs of suit in favour of 2<sup>nd</sup> Respondent.*

### **BACKGROUND OF THE ISSUE**

1. This is an application for review of the DDPR arbitral award in referral A0848/2009. It was set down hearing on this day at 09:00 am. When Applicant failed to make appearance, 2<sup>nd</sup> Respondent applied for the dismissal of the review application for want of prosecution, with costs of suit. 2<sup>nd</sup> Respondent submissions were heard and a ruling granting the application was made in Court. Our full judgment is thus in the following.

### **SUBMISSIONS AND FINDINGS**

2. Advocate Loubser for 2<sup>nd</sup> Respondent, submitted that this matter was duly set down with this Court by both parties. However, in spite of this, Applicant has failed to make appearance. He added that almost an hour has gone by from the time that this matter was initially set down to proceed. Notwithstanding, the grace period granted, Applicant has failed

to attend. He prayed for the dismissal of the review application with costs, for want of prosecution.

3. Advocate Loubser submitted that Applicant is clearly not interested in pursuing this matter to finality. He further added that, the attitude of Applicant is unbecoming in a number of respects. Firstly, Applicant was informed about the date of hearing and has failed to attend. Secondly assuming he was aware but unable to come for reasons beyond his control, no communication has been made to inform the Court. He prayed that the attitude of Applicant in these proceedings, be punished with costs.
4. It is trite law that the right to be heard is only given to a party that is willing to utilise it (see *Lucy Lerata & others vs. Scott Hospital* 1995-196 LLR-LB 6 at page 15). It is Our view the conduct of Applicant is clear indication of his unwillingness to utilise this right. We agree with 2<sup>nd</sup> Respondent that if Applicant was serious about this matter, then he would have taken any necessary measures to ensure that he was represented on this day. Having failed to do so, and without communicating the reasons behind such failure, We find it probable that Applicant never really intended to prosecute the matter.
5. In view of this said above, We dismiss this matter for want of prosecution and award costs of suit in favour of 2<sup>nd</sup> Respondent. We are driven into making an award of costs, by the apparent undesirable attitude of Applicant towards this matter. We are of the view that he must be punished with costs to discourage him from further conducting himself in this fashion. This is also intended to further discourage the similar behaviour from other potential Applicants. This is an abuse of the processes of this Court which should not be allowed.

### **AWARD**

We hereby make an award in the following terms:

- a) That LC/REV/02/2011 is hereby dismissed for want of prosecution; and
- b) That an order of costs of suit is made in favour of Respondent.

**THUS DONE AND DATED AT MASERU ON THIS 12<sup>th</sup> DAY OF  
JUNE 2013.**

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

**Mrs. L. RAMASHAMOLE  
MEMBER**

**I CONCUR**

**Ms. P. LEBITSA  
MEMBER**

**I CONCUR**

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

**NO ATTENDANCE  
ADV. LOUBSER**