

HELD AT MASERU

In the matter between:

THABO MOSAO T/A MOSAO WOOD & COAL

APPLICANT

And

**NEO MOKEBE
THE ARBITRATOR, DDPR**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGMENT

Date: 11th June 2013

Application for the review of the DDPR arbitral award in referral A0031/2009. 1st Respondent applying for dismissal for want of prosecution. Applicant not answering application. Matter being set down for hearing and Applicant failing to attend the hearing. Hearing proceeding unopposed – Court granting application and dismissing this review application. No order as to costs being made.

BACKGROUND OF THE ISSUE

1. This is an application for the dismissal of this review application in LC/REV/13/2010 for want of prosecution. Parties herein are cited as appear in the main review application for purposes of convenience. This matter was heard on this day in default and a ruling was delivered immediately thereafter in Court. Our full written judgment on the matter is thus in the following.
2. Facts surrounding this matter are basically that 1st Respondent referred a dispute for unpaid monies with the DDPR under referral number A0031/2009. An award was thereafter issued in favour of the 1st Respondent. Thereafter, on or around the 17th March 2010, Applicant herein referred a review application with this Court. It is this application that the 1st Respondent wishes to have dismissed for want of prosecution.

SUBMISSIONS AND FINDINGS

3. 1st Respondent submitted that he aligned himself with his averments in his notice of motion and founding affidavit save to add that the fact that Applicant is not in attendance today, and that he has not filed any opposing documents to his application, is an indication that he has no interest in the matter. He thus prayed that this application be dismissed for want of prosecution.
4. In terms of his affidavit, 1st Respondent had averred that since this matter had been lodged by Applicant, no further steps were taken to have it finalised. On account of the prejudice that he was suffering due to the delay, he then served Applicant with answering affidavit and filed same with this Court. Notwithstanding receipt of the answering affidavit, Applicant took no steps to have the matter enrolled for hearing. As a result, 1st Respondent then filed this application and had it set down.
5. 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 clear from the submissions of 1st Respondent that Applicant has been given all the opportunities to prosecute and finalise his case. 1st Respondent answered his claims, notwithstanding the fact that he had not complied with Rules 16 of the Rules of this Court. Further, Applicant was served with an application for dismissal for want of prosecution well in time. The Records of this Court reflect that Applicant was served with the application on or around the 30th April 2012. This is well over a year from this date and yet Applicant has not even bothered to answer the said application.
6. From these said above, it is Our opinion that in failing to exhaust the availed avenues, Applicant has by conduct demonstrated in clear and certain terms, his intension to waive his right to be heard. We agree with 1st Respondent that Applicant is clearly not interested in having the matter finalised. His non attendance today, notwithstanding notification about the date of hearing, goes a long way to further fortify 1st Respondent suggestion of his lack of interest in the matter. Consequently, the application for dismissal for want of prosecution is granted.

AWARD

We hereby make an award in the following terms:

- a) That LC/REV/13/2010 is hereby dismissed for want of prosecution; and
- b) That there is no order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 11th DAY OF JUNE 2013.

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

**Mrs. M. MOSEHLE
MEMBER**

I CONCUR

**Mr. S. KAO
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR 1ST RESPONDENT:**

**NO ATTENDANCE
IN PERSON**