

**HELD AT MASERU**

**In the matter between:**

**FAHHIDA CASH AND CARRY (PTY) LTD**

**APPLICANT**

**And**

**LEBOHANG MARUOA  
RAMOTHABENG SEMOKO  
THE DDPR**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT  
3<sup>rd</sup> RESPONDENT**

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**JUDGMENT**

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*Date: 14<sup>th</sup> May 2013*

*Application for the review of the DDPR arbitral award in referral A0856/2006. 1<sup>st</sup> and 2<sup>nd</sup> Respondent applying for dismissal for want of prosecution. Application not being opposed 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/25/2007 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 1<sup>st</sup> and 2<sup>nd</sup> Respondents referred a dispute for unfair dismissal with the DDPR under referral number A0856/2006. An award was thereafter issued in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Thereafter, on or around the 27<sup>th</sup> March 2007, Applicant herein referred a review application with this Court. It is this

application that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents wish to have dismissed for want of prosecution.

### **SUBMISSIONS AND FINDINGS**

3. Advocate Russell submitted on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that after the matter had been referred with this Court, Applicant was notified by the Registrar to collect the audio record of the DDPR proceedings in referral A0856/2207 for transcription. This letter was followed by another letter from Advocate Russell to remind Applicant about the record of proceedings. The two letters form part of the record as annexes "A" and B". Notwithstanding the said notices, Applicant failed to collect same to date. She further submitted that this is causing great prejudice on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who are still waiting for the execution of their award.
4. Advocate Russell furthermore submitted that it is clear from the conduct of Applicant that it does not have the serious or solid intention of having the matter finalised. Advocate Russell argued that the conduct of Applicant is rather meant to frustrate and delay the execution of the DDPR award issued in favour of 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Moreover, she submitted that the fact that Applicant has made appearance today, is an indication that it has also lost interest in the review application. She thus prayed that the review application be dismissed.
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 Advocate Russell that Applicant has been given all the opportunities to prosecute and finalise its case. As a result, it is Our opinion that in failing to exhaust the availed avenues, Applicant has by conduct demonstrated in clear and certain terms, its intension to waive its right to be heard. We agree with Advocate Russell that Applicant is clearly not interested in having the matter finalised. 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; and
- b) That there is no order as to costs.

**THUS DONE AND DATED AT MASERU ON THIS 27<sup>th</sup> DAY OF  
MAY 2013.**

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

**Mrs. L. RAMASHAMOLE  
MEMBER**

**I CONCUR**

**Mr. S. KAO  
MEMBER**

**I CONCUR**

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

**NO ATTENDANCE  
ADV. RUSSELL**