

**HELD AT MASERU****In the matter between:****SECURITY LESOTHO (PTY) LTD****APPLICANT****And****LEBOHANG CLEMENT MOEPA****RESPONDENT**

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**JUDGMENT**

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*Date: 2<sup>nd</sup> May 2013*

*Application for the rescission of a judgement of this Court. There are two major requirements that must be met in application of this nature - Applicant failing to meet the requirements for a rescission application - the rescission application being dismissed. The initial judgment of this Court being reinstated – and no order as to costs being made.*

**BACKGROUND OF THE ISSUE**

1. This is an application for rescission of the judgment of this Court issued on the 30<sup>th</sup> November 2012. It was heard on this day and judgement was reserved for a later date. The background of the matter is essentially that Respondent filed an application for review with this court sometime on the 14<sup>th</sup> March 2011. On the 28<sup>th</sup> of the same month, Applicant filed a counter claims in terms of which it also sought the review of the same award of the DDPR. The matter was thereafter set down for hearing on the 28<sup>th</sup> November 2012.
2. On that day, only Respondent was in attendance and the Court proceeded in default, dismissing the counter claim and proceeding with the Respondent's review application. The review application was granted and the matter was remitted to the DDPR for hearing *de novo*. However, on the 12<sup>th</sup> December 2012, Applicant instituted the current proceedings. The matter

was unopposed and it proceed in that fashion on the 2<sup>nd</sup> May 2013. Our judgment on the matter is thus in the following.

### **SUBMISSIONS AND FINDINGS**

3. Advocate Mohapi for Applicant, submitted that on the date of hearing, he was seized with another matter before the High Court. He stated that he had sent his clerk to court to request a postponement on account of his engagement elsewhere. However, he was later informed by his clerk that by the time he arrived at the Labour Court, the matter had already been finalised. He submitted that his default was not wilful. He added that at best, the Court can only find that Applicant has been negligent which is short of the required element of wilfulness. Advocate Mohapi further submitted that Applicant has prospects of success in the main review application in that the decision of the learned Arbitrator is without any irregularities.
4. In an application of this nature, there are two main requirements that must be met and these are a satisfactory explanation for the default and the prospects of success in the main claim (see *Loti Brick v Thabo Mphofu 1995- 1996 LLR, 446 at 450*). In view of the requirements set above, We wish to comment that while wilfulness in the default may render the explanation given unreasonable, it is however not a requirement for the granting of a rescission application.
5. In Our analysis, We find that explanation given is not satisfactory for a number of reasons. Firstly, it is clear from the submissions of Applicant that the decision not to attend the proceedings was wilful in that it was the result of a choice to proceed with the case before the High Court and not the one before this Court. Secondly, failure to make appearance at the time that the matter was scheduled to proceed portrays either negligence on the part of Applicant or the lack of seriousness with which Applicant approaches this Court and its processes. This behaviour cannot be condoned by this Court as it would set a very ruinous precedence for this Court and those inferior to it.
6. Thirdly, Mr. Mohapi has made bare allegations of facts that he was engaged in the High Court on the day on question. He has not tendered any supporting evidence to corroborate his

allegations. Although, these allegations have not been challenged by Respondent, We remain doubtful about their veracity. Assuming that it is true that Mr. Mohapi was engaged elsewhere, no explanation has been given as to why the clerk from his office could not arrive at the Labour Court in time to seek the postponement before the matter proceeded. Had they done so, this would have demonstrated willingness on their side to be heard, in which case the matter would possibly not have proceeded in default on that day.

7. On the prospects of success, it is a trite principle of law that the good prospects of success may compensate the unsatisfactory explanation given by an applicant party (see *Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A) at 532.*) We have underscored the word “may” for the reason that the presence of good the prospects of success, as is the case *in casu*, does not necessarily mean the more indulgently this tribunal will regard the explanation of the default. An inadequate explanation will always remain so, irrespective of the strength of the prospects of success. The absence of a reasonable explanation causes the prospects of success to ample into insignificance, as is the case *in casu* (see *Thabo Teba & 31 Others vs. LHDA LAC/CIV/A/06/09*).
8. The above notwithstanding, We have indicated in Our background of the matter that, Applicant has filed a counter claim in terms of which it seeks the review, correction and/or setting aside of the award of the DDPR. While they may appear to have good prospects of success in their defence to the Respondent’s review application, and assuming We felt inclined to grant this application, there would be no reason to do so. We say this because, in the judgment of the 30<sup>th</sup> November 2012, We have granted what Applicant seeks in their counterclaim.
9. Further, the said counterclaim has not been withdrawn, so that the effect of the granting of this rescission application would be that the said claim would be before this court for determination. If granted, the effect would be similar to that created by the judgment of the 30<sup>th</sup> November 2012 against which this rescission application is made. The continued existence of the counter claim, renders this rescission application superfluous.

**AWARD**

We therefore make an award in the following terms:

- a) That the application for rescission is dismissed;
- b) The judgment of this Court issued on the 30<sup>th</sup> November 2012 is reinstated;
- c) That the said judgment must be complied with within 30 days of receipt herewith; and
- d) That there is no order as to costs.

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

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

**Ms. P. LEBITSA  
MEMBER**

**I CONCUR**

**Mr. L. RAMASHAMOLE  
MEMBER**

**I CONCUR**

**FOR APPLICANT:  
FOR RESPONDENT:**

**ADV. MOHAPI  
MR. MAHLEHLE**