

HELD AT MASERU

In the matter between:

ECLAT EVERGOOD TEXTILE

APPLICANT

And

**MALEFANE NTHONTHO
MOTLOANG MAKAFANE
THE DDPR**

**1st RESPONDENT
2nd RESPONDENT
3rd RESPONDENT**

JUDGMENT

Date: 15th August 2013

Application for the review of the DDPR arbitral award in referral A0067/2011. Applicant taking time to advance the matter – 1st and 2nd Respondents applying for dismissal for want of prosecution. Application not being opposed and Applicant failing to attend the hearing despite notification having been duly made - 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 the review of application for want of prosecution. It was set down hearing on this day at 09:00 am. Parties herein are cited as they appear in the main review application, for purposes of convenience. The background of the matter is essentially that 1st and 2nd Respondents, referred claims for unfair dismissal, unlawful deductions and unpaid wages. The latter two claims were settled and the matter proceeded into arbitration in respect of the unfair dismissal claim. An award was issued in favour of the 1st and 2nd Respondents on the 12th June 2011.
2. On the 15th June 2011, Applicant lodged review proceedings with this Court in terms of which it sought the review, correction or setting aside of the arbitral award in referral

A0067/2011. On the 30th November 2012, the current proceedings were lodged by the 1st and 2nd Respondents. The matter was duly set down for hearing on this day. Only 1st and 2nd Respondents were in attendance, through their legal representative, Advocate Khalane. Notwithstanding a grace period that We extended, Applicant failed to make appearance and We resolved to proceed with matter in default. Our judgment is thus in the following.

SUBMISSIONS AND FINDINGS

3. Advocate Khalane submitted that, after the review application had been lodged, She served Applicant with a notice of intention to oppose and filed same with the Court. She further submitted that as far back as the 8th July 2011, Applicant was called through a notice to come and collect the record of proceedings before the DDPR. The notice was annexed to the founding affidavit as EG2. Since then to date, Applicant has not served them with a notice in terms of Rule 16 (5) of the Rules of this Court. She added that when this matter was set down for hearing, Applicant was represented by both Mr. Tšita and Advocate Klass. This notwithstanding, both Advocate Klass and Mr Tšita have failed to attend on this day.
4. Advocate Khalane further submitted that the time taken by Applicant to advance the matter has been too long as to date, Applicant has not gone further than the referral of the matter. She submitted that Applicant is playing delaying tactics hence the reluctance to finalise the matter. She added that this clearly demonstrates that Applicant simply wants to frustrate the execution of the award granted in favour of 1st and 2nd Respondents. She stated that this is prejudicial to Applicants as it causes a delay in, among others, the payment of the awarded amounts in their favour. She prayed that this application be granted, that the review application be dismissed for want of prosecution.
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 Our view the conduct of Applicant is a clear indication of its unwillingness to utilise this right. We agree with Advocate Khalane that the inactiveness on the part of Applicant demonstrates either the lack of interest in the matter or a deliberate intention to

frustrate execution of the award granted in favour of 1st and 2nd Respondent. Our view is further fortified by the failure to attend the matter in spite of prior notification of the date, which was agreed upon by both parties. We therefore see no reason not to grant the application as prayed by 1st and 2nd Respondents.

AWARD

We hereby make an award in the following terms:

- a) That the application for dismissal for want of prosecution is granted;
- b) The review application is dismissed;
- c) The award in referral A0067/2011 is hereby reinstated;
- d) That the said award must be complied with within 30 days of receipt herewith; and
- e) That no order as to costs is made.

THUS DONE AND DATED AT MASERU ON THIS 2nd DAY OF SEPTEMBER 2013.

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

**Miss. P. LEBITSA
MEMBER**

I CONCUR

**Mr. R. MOTHEPU
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR 1st & 2nd RESPONDENTS:**

**NO ATTENDANCE
ADV. KHALANE**