

HELD AT MASERU

In the matter between:

LEPEKOLA MOLIELENG **1st APPLICANT**
M-ACTION SECURITY SERVICES (PTY) LTD **2nd APPLICANT**

And

PABALLO RAMOCHELE **1st RESPONDENT**
THE LEARNED ARBITRATOR – DDPR **2ND RESPONDENT**

JUDGMENT

Date: 19th February 2013

Application for the rescission of the DDPR arbitral award. Court acting on own motion to raise a point of law – Courts jurisdiction to entertain a rescission of the DDPR arbitral award. Matter being stayed to afford Applicant the opportunity to prepare presentations – Applicant failing to attend at agreed time – matter proceeding in default of Applicant - Court finding that it has no jurisdiction to rescind the DDPR arbitral award. Court dismissing the application for want of jurisdiction. No order as to costs being made.

BACKGROUND OF THE ISSUE

1. This is an application for the rescission of the DDPR arbitral award A0251/2005 which was handed down on the 31st March 2005. It was heard on this day in default of the Applicants and a ruling was delivered on the same day dismissing the application for want of jurisdiction. The full written Judgment on the matter is in the following.
2. Facts surrounding this matter are basically that 1st Respondent had referred claims for unfair dismissal, unpaid wages, underpayments, unpaid rest days, unpaid public holidays and unpaid leave with the DDPR. The matter proceeded in arbitration on the 29th March 2005 in default of 2nd Applicant. An award was issued in favour of 1st Respondent

on the 31st March 2005. Thereafter, the Applicants lodged this application on the 26th February 2008. Pleadings having been closed, the matter was accordingly set down for hearing on this day.

3. At the commencement of these proceedings, We *mero muto* raised a preliminary point concerning this Court's jurisdiction to entertain a rescission application of the DDPR arbitral award. In raising this point, We acted on the basis of the authority in *Thabo Mohlobo & others vs. Lesotho Highlands Development Authority LAC/CIV/A/02/2010*, that the Court has the power to raise a point of law on its own motion. The matter was then stood down by 2 hours, and in agreement with both parties, to enable them to make proper preparations to argue this point. At the return time, the Applicants were not in attendance and a further 2 hours grace period was given. Despite this indulgence, Applicant still failed to attend. As a result the matter proceeded in default. The submissions of 1st Respondent, Our ruling and reasons are recorded in the following.

SUBMISSIONS AND ANALYSIS

4. It was submitted on behalf of 1st Respondent that the jurisdiction of this Court derives from section 38A (b) (iii) of the *Labour Code Amendment Act 3 of 2000*. Further that in terms of Regulation 29 of the Labour Code (DDPR) Regulations of 2001, DDPR awards are rescindable before the arbitrator who issued them within a period of 10 days of the award being known to the party applying. It was submitted therefore that it is only the DDPR that has jurisdiction to hear this matter. 1st Respondent thus asked that the matter be dismissed for want of jurisdiction.
5. We wish to start by straightening the legal position regarding the jurisdiction of the Court. This Court's jurisdiction derives from section 24 of the *Labour Code Order 24 of 1992* as amended. Section 38A deals with the jurisdiction of the Labour Appeal Court and not this Court, so that it is not relevant for purposes of this matter. Having cleared this issue, We shall now proceed to deal with rest of the 1st Respondent arguments and submissions.

6. We are in agreement with 1st Respondent that the rescission of the DDPR arbitral awards is governed by Regulation 29 of the *DDPR Regulations*. In terms of these Regulations, a rescission must be made before the arbitrator who issued the arbitral award. As a result, it is irregular for the Applicants to have approached this Court for this remedy. Reference is drawn to Regulation 29(3) which reads as follows,
“ ... the arbitrator who issued the arbitration award or ruling shall hear the application for variation or rescission.”
Consequently, We decline jurisdiction to entertain this application.

AWARD

Having heard the submissions of parties, We hereby make an award in the following terms:

- a) That this application is dismissed for want of jurisdiction;
- b) The award in A0251/2005 remains in force; and
- c) That there is no order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 18th DAY OF MARCH 2013.

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

**Mr. S. KAO
MEMBER**

I CONCUR

**Mrs. M. MOSEHLE
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR 1st RESPONDENT:**

**NO ATTENDANCE
ADV. LETSIKA**