

HELD AT MASERU

In the matter between:

**PABALLO KHOETE
THOLOANA 'MOTA**

**1st APPLICANT
2nd APPLICANT**

And

**SUPREME MOTORS SPARES (PTY) LTD
ZHONG HUA WANG**

**1st RESPONDENT
2nd RESPONDENT**

JUDGMENT

Hearing Date: 12th September 2013

Application for committal and punishment for contempt of Court. Respondents failing to oppose application – Applicant applying for judgment by default. Court finding Respondents in contempt of Court – Court ordering a punitive fine in terms of section 239 of the Labour Code Order 24 of 1992, as amended. Court further finding that continued failure to comply attracts more fine – Court further ordering a fine after every 7 days of continued failure to comply from receipt herewith, until the order for reinstatement is complied with.

BACKGROUND OF THE ISSUE

1. This is an application for committal and punishment for contempt, made in terms of section 24(2)(j) of the *Labour Code Order 24 of 1992, as amended*. It was heard on this day. Applicants were represented by Mr. Semuli from TSAWU and there was no appearance for Respondents. The background of the matter is that Applicants referred claims for unfair dismissal and unpaid monies, with the DDPR. An award was issued on the 11th day of July 2012, in their favour by default. Thereafter, 1st Respondent lodged an application for rescission in respect of the award obtained by default. The rescission application was dismissed through an arbitral award on the 14th November 2012.

2. On the basis of the latter award, Applicants approached this Court for enforcement of the orders in the main arbitral award, and in particular, the order for reinstatement. The application was not opposed. Applicants then filed an application for judgment by default and the matter was then set down for hearing. On the date of hearing, Respondents were not in attendance and the matter proceeded by default. Having heard and considered the submission of Mr. Semuli for Applicants, We made a decision in favour of Applicants with brief reasons and promised a full judgment at a later date. Our full judgment is thus in the following.

SUBMISSIONS AND ANALYSIS

3. The evidence of Applicants is that Respondents were served with the arbitral award in both the main claim in referral A0463/2012, as well as the award in the rescission application in referral A0463/2012(b). It was stated that the said awards were served upon Respondents on the 14th August 2012 and 17th January 2013, respectively. According to Applicants, the award in referral A0463/2012, ordered their reinstatement to their former positions, while the award in referral A0463/2012(b) dismissed the application for rescission by 1st Respondent and reinstated the initial arbitral award.
4. When Applicants presented themselves for duty, they were sent back by the 2nd Respondent, who is the managing director of 1st Respondent. They had been returned on the ground that 2nd Respondent was in the process of having the arbitral award reviewed. Since Applicants were returned, Respondents have not done anything to have the matter reviewed, hence this current application for committal and punishment. Applicant submitted that the failure to comply on the part of Respondents is both wilful and *mala fide*, as no further process have been taken to either comply or have the matter reviewed.
5. In terms of Our law, the awards of the DDPR carry the same effect as the orders of this Court. This is reflected under section 228E(5) of the *Labour Code Order (supra)*, as thus, “An award issued by the arbitrator shall be final and binding and shall be enforceable as it if was an order of the Labour Court.”

The effect of this provision is that an allegation of contempt against an award of the DDPR, is by operation of the law an allegation of contempt against the order of this Court.

6. Where contempt is being perpetuated against an order of this Court, section 24(2)(j) of the *Labour Code (supra)*, provides direction on how to deal with the a contemptuous party. The provision of this section are as follows,
“to commit and punish for contempt any person who disobeys or unlawfully refuses to carry out or to be bound by an order made against him or her by the court under the code.”
7. From the submissions and evidence of Applicants, Respondents are clearly not taking the award of the DDPR, which is also an order of this Court, with the level of seriousness that is required of them. We say this because not only have they failed to comply with same, they have also not bothered to explain their default when called by this Court. In Our opinion, their behaviour is illustrative of both a wilful and *mala fide* failure to comply.
8. Both a wilful and *mala fide* refusal to comply with an order of this Court are serious offences, which if not dealt with could undermine the administration of justice and bring it into disrepute. We are therefore of the opinion that such behaviour must be punished in order to prevent it from recurring in future. As court of law, this Court is vested with the power to punish behaviour through the imposition of a fine or imprisonment.
9. It is Our view that, punishment by imprisonment is the last remedy, which should only be resorted to in extreme circumstances of improper behaviour. The circumstances *in casu*, are not so extreme as to warrant the punishment of imprisonment. There is a measure available, that is short of imprisonment, which has the capacity to induce Respondent to comply with the award of the DDPR. We therefore find that the appropriate punishment for failure to comply with the arbitral award is the imposition of a fine.
10. Punitive awards of fines in respect of offences for which no specific penalty has been provided for, are contained in section

239 of the *Labour Code (supra)*. The provisions of section 239 are as follows,

“Any person convicted of an offence against a provision of the Code for which no specific penalty has been provided shall be liable to a fine of six hundred maloti or to imprisonment for three months or both.”

AWARD

We therefore make an award in the following terms:

- a) That the 1st Respondent is ordered to pay a fine of M600.00 into government coffers;
- b) That the 2nd Respondent is ordered to pay a fine of M600.00 into government coffers, failing which he shall be imprisoned for three months;
- c) That the said fines shall be paid into the government account at the Labour Department within 7 days of receipt of this order;
- d) That failure to comply to comply with the award of the DDP is a continuing offence; and
- e) That Respondents shall be liable for further fines of M600.00 each, failing which there will be imprisonment for three months, in the case of 2nd Respondent, after every 7 days from receipt herewith, for as long as DDP order for reinstatement of the Applicants, would still not be complied with.

THUS DONE AND DATED AT MASERU ON THIS 14th DAY OF OCTOBER 2013.

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

**Mrs. THAKALEKOALA
MEMBER**

I CONCUR

**Mrs. MOSEHLE
MEMBER**

I CONCUR

**FOR APPLICANTS:
FOR RESPONDENT:**

**MR. SEMULI
NO APPEARANCE**