

HELD AT MASERU

In the matter between:

**SEITEBATSO SEEISO
SEUTLOALI MAKHETHA**

**1st APPLICANT
2nd APPLICANT**

And

**DDPR (R. NKO-ARBITRATOR)
LESOTHO HIGHLANDS
DEVELOPMENT AUTHORITY**

**1st RESPONDENT
2nd RESPONDENT**

JUDGMENT

Hearing Date: 3rd December 2013

Application for review of the 1st Respondent arbitration award. 2nd Respondent applying for the dismissal of the matter for want of prosecution. Applicant neither indicating intention to oppose nor actually opposing the matter. Applicant further failing to attend the proceedings notwithstanding proof of notification. Court granting application and dismissing the review application. No order as to costs being made.

BACKGROUND OF THE ISSUE

1. This is an application for dismissal of the review application for want of prosecution. It was heard on this day and granted. Parties were then promised a full judgment at a later date. Parties herein are cited as they appear in the main review application for proposes of convenience. There was no appearance for Applicant, while 2nd Respondent was represented by Advocate Ramphalile.
2. The background of the matter is that the Applicants had referred claims for underpayment and severance payment with the 1st Respondent. The claims were accompanied by an application for condonation for their late referral. The

condonation application was duly heard after which the 1st Respondent issued an award in favour of the 2nd Respondent, wherein both the application for condonation and the Applicants' referrals were dismissed. The said award was issued on the 12th March 2009 and later served upon Applicants.

3. Dissatisfied with the arbitration award, Applicants instituted the current review proceedings with this Court, wherein they had sought the review, correction or setting aside of the 1st Respondent arbitration award. On the 6th November 2013, 2nd Respondent lodged an application for dismissal for want of prosecution. The said application was not opposed and remains so to date. On the date of hearing, Applicants did not attend and as such the matter proceeded both unopposed and in their default.
4. Having heard the submission of Advocate Ramphaile for 2nd Respondent, and having considered all the papers filed of record, We granted the application and promised the full judgment at a later stage. Our full judgment is therefore in the following.

SUBMISSIONS AND FINDINGS

5. It was submitted on behalf of the 2nd Respondent that Applicants initiated the current review proceedings on the 31st July 2009. Thereafter, on the 28th October 2010, the Applicants served them with the record of proceedings in compliance with Rule 16 of the Labour Appal Court Rules, which are also binding on this Court. However, Applicants failed to fully comply with the said Rules in that they did not deliver to 2nd Respondent a notice to express their intention to either file additional grounds or to stand with those already filed.
6. On the 2nd November 2011, 2nd Respondent wrote a letter to Applicants, reminding them to comply with the said Rule. A copy of the letter was annexed to the application and marked "A". That notwithstanding, Applicants continued with their failure to comply with the said Rule. On the 9th November 2011, 2nd Respondent sent yet another letter to remind Applicants about their non-compliance with Rule 16. A copy of

the said letter has also been annexed to the application and this time marked “B”. To this day, Applicants have neither complied with the said Rule nor communicated any reasons to either the Court or to 2nd Respondent for their failure to comply.

7. It was added that over two and a half years have passed since the first letter of reminder about non-compliance with Rule 16 was sent to Applicants. It was stated that the past two and a half years were ample time for Applicants to attempt to comply with the said rule. It was concluded that having failed to do so, their conduct clearly demonstrated the lack of interest in prosecuting the review application. It was thus prayed that this application be granted and that the review application be dismissed for want of prosecution.
8. In Our view, the conduct of the Applicants in the past two and half years, seems to confirm and affirm the suggestions made by 2nd Respondent that they do not have any interest in pursuing this matter to finality. Evident to this is proof in the form of annexures “A” and “B” and the inactiveness on the part of Applicants, these annexures notwithstanding. Their failure to attend on this day, further fortifies the suggestion made and leads us to conclude that not only are Applicants not interested in pursuing this matter to finality, but also that they do not wish to be heard.
9. It is an established principle of that the right to be heard can only be given to a party that is willing to make use of it. We have stated and re-stated this principle in a plethora of cases before and We continue to do so (see *Eclat Evergood Textile Manufactures (Pty) Ltd v Molefi & others LC/REV/99/2012*; *Boliba Multipurpose corporative v Motsoasele & another LC/REV/95/2012*; *C & Y Garments (Pty) Ltd v The DDPR & another LC/REV/98/2012*; *Eclat Evergood Textile v Nthontho & others LC/REV/54/2011*).
10. Further, this Court cannot permit and/or assist Applicant to hold 2nd Respondent at ransom by keeping this matter pending. It is trite law that parties to any litigation are entitled to its finality. Our conclusion find support in the remarks of

the Learned Dr. Mosito AJ in the case of *Thabo Teba & 31 Others v LHDA LAC/CIV/A/06/09*, as follows,
“A litigant is entitled to closure of litigation. Finality in litigation is intended to allow parties to get on with their lives.”

11. We are therefore in agreement with 2nd Respondent that Applicants, by their own conduct, have shown in no uncertain terms their lack of interest in having this matter finalised. It is therefore Our opinion that this matter is worthy of dismissal because maintaining it, tempers with the entitlement of 2nd Respondent to closure of litigation and consequently disallows it to get own with its life.

AWARD

We therefore 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 A0927/2008 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 13th DAY OF DECEMBER 2013.

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

**Mrs. M. THAKALEKOALA
MEMBER**

I CONCUR

**Mrs. M. MOSEHLE
MEMBER**

I CONCUR

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

**NO APPEARANCE
ADV. ADV. RAMPHALILE**