

**IN THE LABOUR COURT OF LESOTHO**

**LC/REV/41/12**

**A0734/2011**

**HELD AT MASERU**

**In the matter between:**

**LESOTHO ELECTRICITY COMPANY (PTY) LTD**

**APPLICANT**

**And**

**MPAIPHELE MAQUTU**

**1<sup>ST</sup> RESPONDENT**

**ARBITRATOR SENOOE**

**2<sup>ND</sup> RESPONDENT**

**DIRECTORATE OF DISPUTE PREVENTION**

**AND RESOLUTION**

**3<sup>RD</sup> RESPONDENT**

---

**JUDGMENT**

---

*Date: 22<sup>nd</sup> January 2013*

*Application for review of arbitration award. 1<sup>st</sup> Respondent applying for dismissal of review application for want of prosecution – Court finding that the period of delay and the circumstances surrounding the delay were unreasonable. Court granting application and dismissing review. No order as to costs being made.*

**BACKGROUND OF THE ISSUE**

1. This is an application for the review of an arbitration award of the DDPN which was lodged with this Court on the 4<sup>th</sup> June 2012. On the 23<sup>rd</sup> August 2012, 1<sup>st</sup> Respondent lodged an application for dismissal of the review application for want of prosecution. Both applications were duly opposed by parties. However, on this day the Court only heard the application for dismissal for want of prosecution and declined to entertain the review application

before pronouncing itself on the dismissal application. for purposes of convenience, the parties have been cited as appear in the main review application. The ruling and reason are herein contained.

### **SUBMISSIONS OF PARTIES**

2. It was argued on behalf of 1<sup>st</sup> Respondent that an award was issued by the DDPR on the 20<sup>th</sup> April 2012. Almost two months later, on the 4<sup>th</sup> June 2012, Applicant lodged an application for review of the said award with this Court. After almost three months since referral of the review application, no further processes were advanced by Applicant and as a result, 1<sup>st</sup> Respondent filed an application for dismissal of the review application for want of prosecution. According to 1<sup>st</sup> Respondent, to date no further processes have been taken by Applicant as the record of proceedings has not been transcribed. It was further argued on behalf of 1<sup>st</sup> Respondent that the conduct of Applicant is indicative of the fact that they have no interest in pursuing the matter to finality but rather to circumvent the execution of the award of the DDPR.
  
3. Furthermore, it was submitted that the delay in transcribing the record of proceedings of the DDPR and in prosecuting this matter, is causing great prejudice on the 1<sup>st</sup> Respondent as the judgment creditor. 1<sup>st</sup> Respondent thus prayed for the dismissal of this application on these grounds. Reference was made to the case of ***Eclat Evergood Textile (Pt) Ltd vs. Mohau Rasephali LC/REV/64/2007*** where the Court confronted with the same situation and dismissed an application for want of prosecution. It was argued that this case satisfied the requirements for dismissal for want of prosecution as outlined in the above referred case, namely the delay and the reason for the delay.
  
4. Applicant replied that it is not accurate that they have no interest in prosecuting this matter to finality. It was submitted that the

record of proceedings had been transcribed in part and the reason is that one of the Compact discs containing the record of proceedings was inaudible and had to be returned to the DDPR for rectification. Although, Applicant could not tell how far they were with the processes of transcribing the record of proceedings or to even show how far they had gone with the transcription, they submitted that the transcription had still not finalised on this day. They denied that the prejudice that is being suffered by 1<sup>st</sup> Respondent was attributable to them but to the ordinary cause of events. It was further argued that the facts of the cited case in support were different from the current facts and thus inapplicable to this case. Consequently, they prayed that this application be dismissed and that the matter be heard in the merits.

5. In a claim for dismissal for want of prosecution, there are two main considerations that must be met. These considerations are the length of the delay in having the matter finalised and the circumstances that caused the delay. This Court has made reference to these considerations in a plethora of cases including the above referred case of ***Eclat Evergood Textile (Pt) Ltd vs. Mohau Rasephali (supra)***. We feel that it is important to make a comment that although the circumstances in the above case are not totally similar with the current case, the principle still applies equally. The purpose for which this matter was cited was to illustrate the principle applicable in dismissing an application for want of prosecution.
6. In view of the submissions of the parties, We have come to the conclusion that the Applicant has been very tardy in dealing with this matter. We are drawn to this conclusion by the fact that almost full 8 months have passed since this matter was first lodged with this Court. In this period nothing concrete has taken place towards the advancement of these proceedings as there is

neither a record of proceedings or a reasonable explanation for the lack or absence thereof.

7. Applicant has attempted to argue that the record has been done in part. However, they have not produced anything before this Court as proof of their argument but have rather made a bare submission about the existence of same. This was particularly important as 2<sup>nd</sup> Respondent has in clear terms denied the existence of the transcribed record. Even a few pages of the transcription would have gone a long way to illustrate that they are candid in the submission that the transcription is under way. Even when asked about the progress of transcription in the proceedings, they were in no position to respond with a clear and solid answer. This goes on to fortify the argument of 2<sup>nd</sup> Respondent about the lack of intention to prosecute the matter and also shows the level of carelessness with which they approach this matter. This leads us to agree with 2<sup>nd</sup> Respondent and conclude that Applicant has no intention to prosecute the matter to finality but merely to circumvent the execution of the judgment obtained in favour of 2<sup>nd</sup> Respondent.
8. Clearly the approach adopted by Applicant towards this matter has caused great prejudice upon 2<sup>nd</sup> Respondent being the judgment creditor. The argument that prejudice, if any, is due to the ordinary cause of events cannot sustain. Applicants being the complainants are the main drivers in ensuring that an application of this nature reaches finality. Failure on their part to ensure that the record of proceedings is transcribed expeditiously cannot be attributed to the ordinary cause of events but to them. In our view, both the period of delay and the circumstances surrounding same are unreasonable and warrant the dismissal of the review application for want of prosecution.

**AWARD**

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

- a) That the applicant for dismissal of the review application is granted; and
- b) That there is no order as to costs.

**THUS DONE AND DATED AT MASERU ON THIS 4<sup>th</sup> DAY OF FEBRUARY 2013.**

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

**Mr. S. KAO  
MEMBER**

**I CONCUR**

**Mr. R. MOTHEPU  
MEMBER**

**I CONCUR**

**FOR APPLICANT:  
FOR RESPONDENT:**

**ADV. M. MABULA  
ADV. N. T NTAOTE.**