

**HELD AT MASERU**

**In the matter between:**

**BOLIBA MULTIPURPOSE CORPORATIVE**

**APPLICANT**

**And**

**SEKOALA MOTSOASELE  
THE DDPR**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT**

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**JUDGMENT**

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*Hearing Date: 21<sup>st</sup> November 2013*

*Application for review of the 2<sup>nd</sup> Respondent arbitration award. 1<sup>st</sup> Respondent applying for the dismissal of the matter for want of prosecution. Applicant only indicating intention to oppose – applicant being given an opportunity to file an opposing affidavit. Applicant filing to file an opposing affidavit and further failing to attend the proceedings notwithstanding proof of notification. Court granting application and dismissing the review application. Court noting that the right to be heard can only be given to a party that is willing to utilize it. 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 judgment was reserved for 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 1<sup>st</sup> Respondent was represented by advocate Letsika.
2. The background of the matter is that 1<sup>st</sup> Respondent had referred a claim for unfair dismissal with the 2<sup>nd</sup> Respondent. The matter was duly heard after which the 2<sup>nd</sup> Respondent issued an award in favour of 1<sup>st</sup> Respondent. In terms of the said arbitration award, Applicant was ordered to compensate

1<sup>st</sup> Respondent in the sum of M727,801.20, which amount was to be paid within a period of 30 days. The award was delivered on the 23<sup>rd</sup> July 2012 and subsequent thereto served upon Applicant.

3. Thereafter, Applicant initiated the current review proceedings on the 5<sup>th</sup> October 2012, wherein it sought the review and setting aside or correction of the 2<sup>nd</sup> Respondent arbitration award. On the 5<sup>th</sup> September 2013, 1<sup>st</sup> Respondent then lodged an application for dismissal for want of prosecution, on an urgent basis and approached this Court on the 23<sup>rd</sup> September 2013. On this day, 1<sup>st</sup> Respondent requested that the matter be postponed to allow Applicant to file its opposing papers, as it had by then filed its intention to oppose. The matter was then postponed to this date.
4. On this day, Applicant had neither made appearance nor filed any opposition to the application for dismissal for want of prosecution. The matter then proceeded on the basis of the unopposed application and in default of Applicant. Having considered both the record and the submissions of Advocate Letsika for 1<sup>st</sup> Respondent, We granted the application for dismissal of the review application for want of prosecution and promised the full reasons at a later stage. Our full judgment on the matter is therefore in the following.

### **SUBMISSIONS AND FINDINGS**

5. It was 1<sup>st</sup> Respondent's case that following the institution of the review proceedings, Applicant was informed, in terms of Rule 16 of the Rules of this Court, by the Registrar to collect the record of proceedings there were before the 2<sup>nd</sup> Respondent. The Court was then referred to annexure "SM1", which was served upon Applicant on the 10<sup>th</sup> January 2013. It was further submitted that notwithstanding the notice, no efforts were made by Applicant to have the record prepared.
6. 1<sup>st</sup> Respondent then sent a letter to Applicant, on the 7<sup>th</sup> March 2013, requesting a copy of the prepared record. The said letter had further notified Applicant that if the record was not sent within a period of 14 days to 1<sup>st</sup> Respondent, he would institute dismissal proceedings against the review application. The Court was referred to annexure "SM2". This notwithstanding,

the record was never forwarded to 1<sup>st</sup> Respondent, thus resulting in 1<sup>st</sup> Respondent sending yet another letter to Applicant, to reiterate his earlier communicated stance in annexure “SM2”. The Court was referred to annexure “SM3”, wherein Applicant was also warned that if by the 15<sup>th</sup> May 2013, it would not have served the record, 1<sup>st</sup> Respondent would proceed with the dismissal application. It was added that to this date, and despite all efforts made by 1<sup>st</sup> Respondent to cause Applicant to prosecute this matter, Applicant has not to date, as no record has been prepared.

7. It was argued that the conduct of Applicant illustrates both a solid lack of interest in the matter, as well as a clear intention to waive the right to be heard. It was added that evident to this is the cavalier manner in which Applicant has elected to approach this matter, which is continuing to prejudice 1<sup>st</sup> Respondent by delaying the enforcement of an award made in his favour. It was submitted that almost a year had gone by since the institution of the review proceedings, yet nothing has been done to advance the matter beyond its initiation.

8. It was concluded that on the basis of these above, it would be in the interest of justice that the review application be dismissed for want of prosecution. The Court was referred to its decision in *Eclat Evergood Textile Manufactures (Pty) Ltd v Molefi & others LC/REV/99/2012*, where it is recorded as follows,

*“It is an established principle of law that the right to be heard can only be given to a party that is willing to utilise it (see Lucy Lerata & others v Scott Hospital 1995-196 LLR-LB 6 at page 15). In Our view, the conduct of Applicant is demonstrative of the lack of willingness to utilise this right. They have lodged proceedings but have done nothing to advance them. They were constantly reminded about the matter but opted to do nothing. Having failed to avail the record of proceedings when called to, they ought to have at least opposed this application, if they really wanted to be heard.”*

9. We have said before, as reflected in the case of *Eclat Evergood Textile Manufactures (Pty) Ltd v Molefi & others (supra)*, and continue to maintain Our stance that the right to be heard can only be given to a party that is willing to utilise it. We have no

doubt that the attitude of Applicant *in casu*, demonstrates both the solid intention to waive this right and the lack of interest, as suggested by 1<sup>st</sup> Respondent.

10. The circumstances of the case *in casu* resemble those in *Eclat Evergood Textile Manufactures (Pty) Ltd v Molefi & others (supra)*. We say this because, Applicant *in casu* lodged the review proceedings and did nothing to advance them, notwithstanding several reminders that were made to it. Further, they have not opposed this application, despite the opportunity availed them when the matter was postponed, by almost 2 months, to this date. We therefore see no reason to deviate from precedence that We have set in the *Eclat Evergood Textile Manufactures (Pty) Ltd v Molefi & others (supra)* authority.

#### **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 A1115/2011 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 13<sup>th</sup> DAY OF DECEMBER 2013.**

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

**Mr. S. KAO  
MEMBER**

**I CONCUR**

**Mrs. M. MOSEHLE  
MEMBER**

**I CONCUR**

**FOR APPLICANT:  
FOR 1<sup>st</sup> RESPONDENT:**

**NO APPEARANCE  
ADV. LETSIKA**