

HELD AT MASERU

In the matter between:

C & Y GARMENTS (PTY) LTD

APPLICANT

And

**THE DDPR
MOKHANTŠO HLAO**

**1st RESPONDENT
2nd RESPONDENT**

JUDGMENT

Hearing Date: 24th September 2013

Application for the review of the DDPR arbitral award in referral A0438/2012. 2nd Respondent applying for dismissal for want of prosecution. Application not being opposed and Applicant failing to attend the hearing. Hearing proceeding unopposed – Court granting application and dismissing this review application. No order as to costs being made.

BACKGROUND OF THE ISSUE

1. This is an application for the dismissal of this review application for want of prosecution. Parties herein are cited as they appear in the main review application for purposes of convenience. This matter was heard on this day in default and a decision was made in which We granted the application. Our full written judgment on the matter is thus in the following.
2. Facts surrounding this matter are basically that 2nd Respondent referred a dispute for unfair dismissal with the DDPR under referral number A0438/2012. An award was thereafter issued in favour of the 2nd Respondent. Thereafter, on or around the 18th October 2012, Applicant herein referred a review application with this Court. It is this application that the 2nd Respondent wish to have dismissed for want of prosecution.

SUBMISSIONS AND FINDINGS

3. It was 2nd Respondent's case that after Applicant had lodged the application, it was called to come and collect the record of proceedings in referral A0438/2012, on the 10th January 2013. The court was referred to annexure FAWU 1. Thereafter, the record was collected but Applicant took no further steps to advance the review application. On the 16th April 2013, about 6 months later, 2nd Respondent wrote a letter to Applicant requesting a copy of the transcribed record.
4. The above notwithstanding, the said record was never availed to 2nd Respondent. Thereafter, 2nd Respondent lodged the application for dismissal for want of prosecution. It was concluded that the conduct of Applicant shows that they are not serious with this application but are attempting to delay the enforcement of the award of the 1st Respondent. Applicant prayed that this application be dismissed for want of prosecution.
5. It is trite law that the right to be heard is only given to a party that is willing to utilise it (see *Lucy Lerata & others vs. Scott Hospital 1995-196 LLR-LB 6* at page 15). The conduct of Applicant is glary of its unwillingness to be heard. After lodging their review application, they were called to advance this review application on two different occasions, but to no avail. Given the attitude of Applicant in these proceedings, We are inclined to agree with 2nd Respondent that Applicant has no interest in the matter and further that Applicant lodged these proceeding to delay the enforcement of an award obtained in favour of 2nd Respondent. We therefore grant this application and dismiss the review application for want of prosecution.

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 A0438/2012 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 14th DAY OF
OCTOBER 2013.**

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

**Mrs. M. MOSEHLE
MEMBER**

I CONCUR

**Mr. S. KAO
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR 1ST RESPONDENT:**

**NO ATTENDANCE
MR. BOHLOKO**