

HELD AT MASERU

In the matter between:

**ECLAT EVERGOOD TEXTILE
MANUFACTURERS (PTY) LTD**

APPLICANT

And

**LEFU MOLEFI
'MATSEPANG SHEMANE
THE DDPR**

**1st RESPONDENT
2nd RESPONDENT
3rd RESPONDENT**

JUDGMENT

Hearing Date: 11th September 2013

Application for review of the 3rd Respondent arbitral award. Respondent making an application for dismissal of review application for want of prosecution. Applicant requesting the postponement of the matter on the date of hearing. Court refusing the application for postponement. Court finding that the application for dismissal for want of prosecution is not opposed. Court proceeding to hear application and granting same. Court not making an order as to costs.

BACKGROUND OF THE ISSUE

1. This is an application for the dismissal of the review application of the award in referral A1139/2011, for want of prosecution. It was heard on this day and judgement was reserved for a later date. Parties herein are cited as they appear in the main review application for the convenience of the Court. Applicant was represented by Advocate Klass and 1st and 2nd Respondents were represented by Advocate Rasekoai. The background of the matter is essentially that Applicant lodged review proceedings with this Court around the 25th October 2012. Subsequent thereto, Applicant filed an application for

dismissal for want of prosecution. The application was not opposed.

2. The above notwithstanding, on the date of hearing, Applicant's representative made appearance with the intention to seek the postponement of the matter. The application was opposed and parties were given the opportunity to make their addresses. We dismissed the application for postponement and proceeded with the application for dismissal for want of prosecution. Given that the said application was unopposed, We directed that it proceed in that fashion. After hearing the submissions of Advocate Rasekoai for 1st and 2nd Respondent, We made a decision with brief reasons, granting the application and dismissing the review application for want of prosecution. Our full judgment on the matter is thus as follows.

SUBMISSIONS AND FINDINGS

Application for postponement

3. Advocate Klass for Applicant submitted that a copy of his file relating to this matter had been misplaced. He sought a postponement of the matter to secure the file and to attempt negotiations towards settlement with the 1st and 2nd Respondents. He added that although Applicant company is just recovering from closure, after a situation of unrest that took place on its grounds, he believed that the 14 days would be sufficient time for both these processes to take place.
4. Advocate Rasekoai replied that the Applicant was served with an application for dismissal for want of prosecution sometime in May 2013. He added that since then to date, Applicant had not filed any opposition to the application or to even hint the problems that they were experiencing. He submitted that it would be greatly prejudicial to 1st and 2nd Respondents, if this matter was to be postponed on such feeble grounds. It was added that this would cause an undue delay towards finality of this matter. It was further submitted that there were no prospects of settlement in the matter, as both the 1st and 2nd Respondents were not willing to explore it anymore.
5. It was added that the postponement was an attempt, on the part of Applicant, to delay finalisation of this matter. To fortify this argument, it was stated that sometime in August, the

Registrar of this Court reminded Applicant, through a letter, to return the files that it had earlier uplifted in preparation for this day's hearing. Notwithstanding the notification, the files were not returned and no communication was made to suggest the problems that Applicant is now relying on for postponement. It was further submitted that in the event that this Court should grant a postponement, it should be with wasted costs for the day and that they be payable within 7 days.

6. In the case of *Tumo Lehloenya and Others vs. Lesotho Telecommunications Corporation LC/20/2000*, when dealing with an application for postponement, the Court cited with approval a quotation from *Real Estate Services (Pty) Ltd vs. Smith (1999) 20 ILJ 196* at 199, where Revelas J had this to say,
"In courts of law, the granting of an application for postponement in an indulgence by the court exercising its judicial discretion. A reasonable explanation is usually required from the party seeking the postponement."
7. Two reasons for the postponement have been presented on behalf of Applicant. The first relates to the misplaced files and the other relates to the desire to explore settlement. Respondents are clear on their stance in relation to the second ground for postponement, as they are not desirous of engaging in further negotiations with Applicant. If parties are not willing to negotiate, this Court cannot compel them to. As a result, a postponement on this grounds falls away.
8. On the remaining ground, We are in agreement with Respondents that Applicant is merely trying to unduly delay finalisation of this matter. While it is not clear from the submissions of Applicant when it is that they became aware about the missing files or even the efforts made to secure same, they had ample time to attempt to find the file. We say this because at least two instances in which this opportunity was availed to Applicants, have been highlighted in the Respondents submissions.
9. Firstly, Applicants were reminded to return the files which they had earlier uplifted from the Court's records in preparation for

the hearing of this matter on this day. Secondly, Applicant was served with an application for dismissal for want of prosecution of the review application. In Our view, these notices called upon Applicant to ensure that their records were in order or to at least communicate the issue of the missing file to Respondent. Having failed to look for and locate the file when circumstances called for such action, We are inclined to agree with 1st and 2nd Respondents that this application is merely intended to delay finalisation of this matter. The postponement is therefore refused.

Dismissal for want of prosecution

10. It was 1st and 2nd Respondents case that Applicant lodged a review application with this Court on the 25th October 2012. Thereafter no further process was filed by or on behalf of Applicant. Then on the 16th April 2013, which was about 6 months later, 1st and 2nd Respondents wrote a letter to Applicant requesting them to avail a copy of the record of proceedings. Since the letter of the 16th April 2013, to date, Applicant has not done anything to advance this matter. It was argued that this clearly shows that Applicant is not serious about this matter, but that they are only trying to avoid complying with the award of the 3rd Respondent. It was argued that this is causing great prejudice upon 1st and 2nd Respondent whose award cannot be enforced while these proceedings continue to remain pending.
11. 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.
12. We agree with 1st and 2nd Respondent that for as long as the review proceedings remain pending, they stand to suffer irreparably, in that the enforcement of their award is dependent upon the fate of the review application. In Our view,

the conduct of the Applicant company is nothing but an abuse of the processes of this Court. This cannot be condoned as it will lead into the loss of confidence in this Court and consequently undermine the spirit and purpose behind the establishment of this Court. We therefore grant this application as prayed by 1st and 2nd Respondent.

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 A1139/2011 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 14th DAY OF OCTOBER 2013.

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

**Ms. P. LEBITSA
MEMBER**

I CONCUR

**Mr. R. MOTHEPU
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR 1ST AND 2ND RESPONDENTS:**

**ADV. KLASS
ADV. RASEKOAI**