

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

LC/55/2012

IN THE MATTER BETWEEN

NTAHLI MATETE

APPLICANT

AND

**MALUTI MOUNTAIN
BREWERY (PTY) LTD**

RESPONDENT

JUDGEMENT

Date of hearing: 27/05/14

Claim for unpaid monies. Court mero muto raising a point of law on its jurisdiction to hear and determine claim. Both parties making addresses and in their addresses conceding that this Court has no jurisdiction over the claim referred. Court declining jurisdiction and directing that the matter be remitted back to the DDPR for determination. Court declining to exempt parties from going through the conciliation process. No order as to costs being made.

BACKGROUND OF THE ISSUE

1. This is a dispute that involves a claim for unpaid monies. The dispute had initially been referred to the Directorate of Dispute Prevention and Resolution (DDPR) under referral A0060/2012, together with a number of other claims. By agreement of both parties, the unpaid monies claim was withdrawn for the reason that it had not as yet accrued. As for the other claims, they were referred to this Court for adjudication, purportedly in terms of section 226(3) of the *Labour Code (Amendment) Act 3 of 2000*.
2. When the unpaid monies claim accrued, Applicant referred same with the DDPR for resolution by both conciliation and

arbitration, under referral A0995/2012. During conciliation, the learned arbitrator declined to proceed with the matter on the ground that this claim had already been referred to this Court for adjudication, under referral A0060/2012. She then directed that parties proceed to initiate the claim with this Court, as directed in the certificate on non-resolution under referral A0060/2012. Pursuant to the directive, Applicant initiated the current proceedings.

3. At the commencement of the proceedings, We *meru muto* raised a point of law to the effect that this Court lacked jurisdiction to determine a claim for unpaid monies. We specifically indicated that claims for unpaid monies fall within the exclusive jurisdiction of the DDPR for resolution, by arbitration in terms of section 226(2)(c) of the *Labour Code Act (supra)*. We added that the said provisions are mandatory and thus leave no room for this Court over the concerned claims. We directed parties to address Us and having heard them, Our judgment is therefore in the following.

SUBMISSIONS

4. Applicant submitted he in fact agreed with the Court that this matter would competently be heard and determined by the DDPR. He added that they only lodged it with this Court because they had been directed to do so by the learned Arbitrator. He prayed that this Court direct that it be remitted back to the DDPR for resolution and that it be given priority in the DDPR case roll. Respondent agreed with Applicant submissions and in addition prayed that the remittal should go with the rider that the matter proceed directly into arbitration, as there were no prospects of settlement.
5. It is without doubt that parties agree with Us that this Court has no jurisdiction over this matter. Our stance finds support under the provisions of section 226(2)(c) of the *Labour Code Act (supra)*, as amended by section 4 of the *Labour Code (Amendment) Act 5 of 2006*. The said provisions are as follows,
“The following disputes of right shall be resolved by arbitration –
(a).....
(b).....

(c) A dispute concerning the underpayment or non-payment of any monies due under the provisions of the Act;”

Consequently, We decline jurisdiction over the referred unpaid monies claim.

6. In reaction to the additional prayer by Respondent, We wish to comment that all claims referred to the DDPR must undergo two significant processes, namely conciliation and arbitration. Supportive of Our attitude are the provisions of section 227(4) that,
“(4) If the dispute is one that should be resolved by arbitration the Director shall appoint an arbitrator to attempt to resolve the dispute by conciliation, failing which the arbitrator shall resolve the dispute by arbitration.”
7. The above provisions are clearly mandatory and any of the procedures prescribed thereunder cannot be avoided. To do so would constitute a grave procedural irregularity worthy of being reviewed and set aside. Consequently, We cannot direct that the matter proceed directly into arbitration and surpass the conciliation process.
8. We wish to comment that We have noted from the record, that the learned arbitrator merely made a verbal declaration of lack of jurisdiction, wherein S/He also referred the matter for adjudication before this Court. In Our view, jurisdictional issues deserve a much more formal process than the one adopted by the learned arbitrator *in casu*. As a result, once the learned Arbitrator had heard the presentations of parties on the issue of jurisdiction, S/He ought to have made a written finding in the form of an arbitration award. By this said, We direct that arbitrators avoid adopting a similar approach in future, as that is an irregular conduct.

AWARD

In the light of the above said, We therefore make an award in the following terms:

- a) That this Court has no jurisdiction over the referred claim;
- b) That the claim is remitted to the DDPR for determination;
- c) That referral A0995/2012 must be given priority in the DDPR case roll; and
- d) That there is no order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 2nd DAY OF JUNE 2014.

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

**Mr. R. MOTHEPU
MEMBER**

I CONCUR

**Mr. S. KAO
MEMBER**

I CONCUR

**FOR APPLICANT:
FOR RESPONDENTS:**

**ADV. MOHAU
ADV. LOUBSER**