

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

**LC/REV/78/2013
E0010/2013**

IN THE MATTER BETWEEN

LESOMA NOKO

APPLICANT

AND

**MANGO TREE CONSTRUCTION
COMPANY LTD
DDPR**

**1st RESPONDENT
2nd RESPONDENT**

JUDGEMENT

*Application for the review of the proceedings in referral E0010/2013. Only two grounds of review having been raised. 1st Respondent raising three points of law,
-Non-compliance with the Rules of Court;
-Pleadings do not disclose the cause of action; and
-Jurisdiction of the court to review a settlement.
Court upholding points of law and dismissing review application and making no order as to costs.*

BACKGROUND TO THE ISSUE

1. This is an application for the review of proceedings in referral E0010/2013. Applicant had initially attempted to have judgment by default. However, he could not succeed for the reason that he had not served the 1st respondent with a notice in terms of Rule 16 of the Rules of this Court. As a result, We refused the application and directed him to file a notice in terms of rule 16 to indicate if he wanted to file additional ground/s of review, or not, so that 1st Respondent would be able to thereafter file an answer. The matter was then adjourned and postponed to this day.

2. On this day, Applicant raised a point of law that the 1st Respondent answer be disregarded, as had been filed out of time. We then directed that they address Us on the issue. From the submissions of parties, it transpired that Applicant had not filed a notice in terms of Rule 16, notwithstanding the order that We had initially made requiring him to do so. Rather, he proceeded to have the matter set down for hearing. It further transpired that 1st Respondent only took the decision to file an answer when Applicant had the matter set down.
3. On the premise of these said, We made a conclusion that the answer was not out of time but rather that, at best it could be said to have been premature, as a notice in terms of Rule 16 had not been served upon 1st Respondent. However, given the fact that parties were present, ready and desirous to argue the merits of the matter, We condoned the said breach and directed that they proceed to address the Court on the review. In 1st Respondent answer, he had raised four points of law to the Applicant notice of motion and founding papers. We therefore directed the parties to address Us on the points. Having heard their submissions, Our judgment is therefore in the following.

SUBMISSIONS AND ANALYSIS

4. 1st Respondent argued that Applicant had not complied with Rule 16 of the Rules of this Court in that he did not request the dispatch of the record of proceedings which are subject of review. He added that the absence of the record has prevented him from answering the Applicant's case issuably and that it will also make it difficult for the Court to exercise its discretion judiciously in handling this review. Applicant answered that he did not know that he was required to obtain and avail the record of proceedings to the Court and 1st Respondent. He however argued that he had filed a copy of the report from the DDPR namely, the arbitration award and the settlement agreement.
5. Review proceedings before this Court are governed by Rule 16 of the *Labour Appeal Court Rules of 2002*. In terms of that Rule, in particular Sub-rule (3)(b);
“(3) *The notice of motion shall-*

(a)

(b) *Call upon the decision maker to deliver to the Registrar within 14 days of the service of the notice of motion on the decision maker-*

(i) the record of proceedings; and

(ii) any reasons that the decision maker is required to give or wishes to give; and”

6. The provisions of Rule 16 are mandatory as the word “shall” have been used. As a result, Applicant was obliged to request the dispatch of the and to present a copy of same to both the 1st Respondent and to this Court for purposes of determining the review. Applicant claim of ignorance about this procedure cannot hold for a simple reason that ignorance of the law is no excuse in Our jurisdiction. Our attitude finds support in the High Court of Lesotho decision in *Molapo v Mphuthing & others CIV/APN/188/1994*, where the learned Maqutu J quoted an extract from the authority of *Evans v Bartlam 1937 2 All ER 646 at 649GH*, that
There is a rule that ignorance of the law does not excuse....”

Relying on the above authority, the learned Judge went to say,
“In other words the maxim that ignorance of the law does not excuse is a purposeful precept applied in the public interest to buttress rather than undermine the rule of law. If people can plead ignorance of the law in all cases there can be chaos.”

7. In view of the above authority, the conduct of Applicant is inexcusable as condonation of same would lead to chaos. Applicant was without fail expected to secure a copy of the record of proceedings under review, to file same with the Court and serve it upon the 1st Respondent. By this said, We signify that We take notice of the prejudice that the absence of the record presents on the part of 1st Respondent, let alone the Court in the exercise of Its judicial discretion.
8. Secondly, 1st Respondent argued that there are no factual or legal grounds upon which the review is based. It submitted in amplification that the Applicant’s pleadings do not disclose the course of action except to mention in passing that the learned Arbitrator unlawfully varied His own decision, by rescinding

His arbitration award. He further mentions in passing that the 1st Respondent representative in these proceedings, did not have a resolution from 1st Respondent company. It was added that the pleadings do not say what is being reviewed, and this makes it difficult to answer.

9. In answer, Applicant submitted his grounds of review have the factual and legal basis. He added that in any event a breach in that sense can be condoned by the Court. It was further argued that while 1st Respondent claims that Applicant has not laid any factual or legal basis of the review, it has not shown how that is the case.
10. Rule 16(3)(c) of the *Labour Appeal Court Rules* provides that an affidavit in support of an application for review, must set out the factual and legal grounds upon which the applicant party relies to have the decision or proceedings corrected. While We admit that We have the power to condone any breach of the Rules of Court, in terms of section 27 of the *Labour Court Rules of 1994*, but the exercise of such powers depends on the impact of the breach of the other party to the proceedings. Simply put, a breach can, among others, only be condoned where it bears no prejudice on the part of the other party or if the likely prejudice is insignificant.
11. *In casu*, We are in agreement with 1st Respondent that the pleadings of Applicant do not disclose the cause of action. A cause of action in any claim must contain at least the following elements,
 - a) Facts against which a claim made is based;
 - b) The law relied upon for the claim made; and
 - c) The conclusion which must flow from both the facts and the law relied upon.
12. The absence of any of the above elements makes it difficult for one of the parties to answer. At paragraph 5 of the Applicant's founding affidavit, he states that he "*was awarded M17,814.00 by 2nd respondent only to be varied by him unlawful.*" Further at paragraph 6 of same, Applicant prays that the Court "*review, correct and set aside the variation made by 2nd respondent in as much as the applicant for variation did*

not have a resolution of the directors of the company to do so.” The pleading does not state the premise of the claim or even how this constitutes an irregularity worthy of being reviewed. There is simply no sufficient material averments to enable the 1st Respondent to issuably react to the claims of Applicant.

13. Thirdly, 1st Respondent argued that Applicant has failed to comply with both Rule 16 of the *Labour Appeal Court Rules*, to file a notice indicating his intention to file additional grounds or not to, and an order of this Court directing him to comply with this Rule. It was argued that when Applicant had approached this Court for default judgement, in refusing the application, the Court ordered him to file a notice in terms of Rule 16, but he has not. It was added that this is a breach that warrants the dismissal of the matter.
14. Applicant answered that he conceded that he had flaunted both the order of Court and Rule 16 of the Rules of this Court. He submitted that the Court should take note of his effort to comply with the rest of the Rules of this Court, in considering his current breach.
15. Rule 16(6) of the *Labour Appeal Court Rules* provides that;
“*(6) The applicant shall, within 7 days after the Registrar has made the record available, either:-*
(a) by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit; or
(b) deliver a notice that applicant stands by its notice of motion.”
16. The provision of this Rule are clearly mandatory. We have already pronounced Ourselves over the effect of mandatory provisions. Consequently, We find that Applicant has committed a breach. Not only has this been the case, as Applicant has also deliberately flaunted an order that We made when he had approached Us for a default award. The conduct of Applicant to flaunt Our order amounts to the violation of the dignity, repute and authority of this Court. Applicant has simply been contemptuous. We are tempted to commit him at

this instant as his conduct is inexcusable, not even by his effort to comply with the rest of the Rules of this Court.

17. The last point of law was that the proceedings before this Court are improper. It was submitted in amplification that the award that is subject of review was rescinded and that thereafter, the matter was finalised by settlement. The Court was referred to annexures to the Applicant's founding affidavit. Applicant answered that indeed the award annexed to his founding papers has been rescinded and further that a settlement agreement was thereafter made. He stated that he sought the review of the said agreement as it reduced the amount that had initially been awarded to him. He added that this Court being superior to the 2nd Respondent Tribunal has the power to review all its proceeds including the settlement agreement.
18. The jurisdiction of this Court to review decisions of the DDPR derives from section 228F of the *Labour Code (Amendment) Act 3 of 2000*. The said section is headed "*Review of arbitration awards*". It is clear from the reading of the heading that reviews are limited to arbitration awards and nothing else. Applicant has approached this Court for the review of a settlement agreement. This falls outside the scope of reviewable decisions in terms of the quoted section. Consequently, We are in agreement with 1st Respondent that the approach adopted by Applicant is improper and We therefore have no jurisdiction to review a settlement agreement.
19. On the basis of the above arguments, with each point raised being sufficient on its own to have the matter dismissed, We dismiss this review application. No order as to costs has been prayed for and We accordingly decline to make any.

AWARD

Our award is therefore in the following:-

- (1)The review application is dismissed;
- (2)The award in referral E0010/2013 remains in effect; and
- (3)That there is no order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 16th DAY OF JUNE 2014.

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

MS. LEBITSA

I CONCUR

MRS. MOSEHLE

I CONCUR

**FOR APPLICANT:
FOR RESPONDENT:**

**IN PERSON
ADV. TŠENASE**