

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

**LC/REV/60/2014
A0034/2014**

IN THE MATTER BETWEEN

**MOTEBANG LELIMO
t/a SUBWAY FIX IT**

APPLICANT

AND

**SEISA SHAKHANE
DDPR**

**1st RESPONDENT
2nd RESPONDENT**

JUDGMENT

Application for review of arbitration award. 1st Respondent noting on record that review is not opposed. Applicant raising only one ground of review. Applicant arguing that, notwithstanding its failure to attend the hearing, Arbitrator erred in proceeding to hear a matter which had already been finalised settlement. Court finding that in failing to attend hearing, Applicant failed to bring this issue to the attention of the Arbitrator and that as such Arbitrator committed no irregularity in hearing the matter as he was not conscious of the issue. Review application being refused and no order to costs being made.

BACKGROUND TO THE DISPUTE

1. This is an application for the review of the arbitration award in referral A0034/2014. Only one ground of review was raised on behalf of the Applicant. The review application was unopposed and was accordingly heard as such. Mr. Masoebe for 1st Respondent was in attendance to confirm this.
2. The brief background of the matter is that 1st Respondent had referred claims for unfair dismissal, unpaid leave, unpaid wages, underpayments and unpaid leave, with the 2nd

Respondent. The matter was arbitrated upon in default of Applicant after which an award was made in favour of 1st Respondent. In terms of the award, Applicant had been ordered to pay 1st Respondent the sum of M7,299-00 IN satisfaction of his claims. It is this award that Applicant wishes to have reviewed and set aside. Having heard the submissions of Applicant, Our judgment follows.

SUBMISSIONS AND ANALYSIS

3. It was Applicant's case that he did not attend the arbitration proceedings in the referral in issue. His reason for failure to attend was that he had fairly dismissed 1st Respondent and further that the matter had been finalised by settlement, which was concluded at the Maseru Labour Department. The Court was referred to annexure A to the founding affidavit, which was said to be the settlement agreement reached between parties.
4. Applicant argued that the matter having been finalised by settlement, 1st Respondent ought not to have referred it to the 2nd Respondent and that similarly, the 2nd Respondent ought not to have entertained it. The matter having been referred and the 2nd Respondent having entertained same, He committed a gross breach of procedure which warrants interference with the arbitration award made.
5. It is clear from the submissions of Applicant that he failed to attend the arbitration proceedings in the referral in issue. Having failed to attend the arbitration proceedings, he denied himself the opportunity to raise these issues in defence of the claim. As a result, the learned Arbitrator cannot be held at fault over issues which were never argued before Him. In the case of *Khutlang Mokoaleli vs. Standard Lesotho Bank & DDPR LC/REV/21/07*, the Court held that
The court can only give effect to the right to be heard to a party that is willing and does utilise the opportunity to exercise its right to be heard. As a result, a party that fails to prosecute (in our case to defend) its case without a reason summarily waives their right to be heard.
In the light of the circumstances, We find no irregularity on the leaned Arbitrator's part and consequently dismiss this ground.

6. We wish to comment that the arguments raised by Applicant in these proceedings, seem to justify his failure to attend the proceedings before the court a quo, more than to point to a breach of procedure on the part of the learned Arbitrator. In view, of the fact that the award in issue was obtained in applicant's default, he is at liberty to approach the 2nd respondent for a rescission of His arbitration award, if he may so wish, rather than to attempt to argue a rescission on review.

AWARD

On the strength of the reasons advanced above, We make an award in the following:

- (1) That this application is refused.
- (2) The award in referral A0034/14 remains in force; and
- (3) No order as to costs is made.

THUS DONE AND DATED AT MASERU ON THIS 15th DAY OF SEPTEMBER 2014

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

MR. MATELA

I CONCUR

MRS. MOSEHLE

I CONCUR

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

**ADV. MAKARA
MR. MASOEBE**