

**IN THE LABOUR COURT OF LESOTHO**

**HELD AT MASERU**

**LC/REV/101/13  
A1219/2012(b)**

**IN THE MATTER BETWEEN**

**ATLANTIC ENTERPRISES (PTY) LTD**

**APPLICANT**

**AND**

**MAKATLEHO LETLALO  
DDPR**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT**

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**JUDGMENT**

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*Application for the review of the arbitration award. Only one ground of review being raised that Arbitrator denied Applicant the opportunity to motivate its review application. Record no reflecting Applicant complaint – Application having not challenged authenticity of record - Court finding no merit in the ground raised and dismissing the review application. Purpose of record of proceedings in review proceedings being considered. Applicant asking for costs - Court not finding merit in same – Court declining to make an award of costs.*

**BACKGROUND OF THE DISPUTE**

1. This is an application for the review of the arbitration award in referral A1219/2012(b). The brief background of the matter is that 1<sup>st</sup> Respondent had referred a claim for unfair dismissal with the 2<sup>nd</sup> Respondent. An award was later issued in favour of 1<sup>st</sup> Respondent and in default of Applicant. Thereafter Applicant initiated rescission proceedings with the 2<sup>nd</sup> Respondent against the default award. The said proceedings were dismissed on account of non-attendance of the Applicant. It is this award that Applicant wishes to have reviewed, corrected and/or set aside as being irregularly obtained.

2. It is important to note at this stage that 1<sup>st</sup> Respondent had made an application for the dismissal of this review application for want of prosecution. However, this application was abandoned in favour of the merits of the review proceedings. Having been duly addressed by both parties, Our judgement in the matter therefore as follows.

### **SUBMISSIONS**

3. Applicant claimed that the learned Arbitrator erred in denying it the opportunity to motivate the rescission application. It was submitted in amplification that whereas the arbitration award makes it appear like Applicant was not in attendance, in fact it was in attendance but was denied the right of audience on the ground that it had not brought a Chinese interpreter. It was argued that the conduct of the learned Arbitrator was irregular and that at best She ought to have postponed the matter to allow Applicant to obtain an interpreter.
4. It was further argued that this is a serious allegation of an irregularity on the part of the learned Arbitrator. This notwithstanding, the learned Arbitrator has not rebutted same. As a result, it was argued that the Court should take the version put on record by Applicant as a true reflection of what took place in the arbitration proceedings. The Court was referred to the authority of *Tseliso Kabinye v The Clerk of Court – Magistrate court & others C of A CRI/06/2010*, in support of the argument. It was submitted that in this authority, the Court stated that failure to rebut an allegation of fact, is to be taken to be an admission of same.
5. It was prayed that the application be granted on the strength of the above points with costs. It was submitted that the case is against the learned Arbitrator and not 1<sup>st</sup> Respondent and that as a result, 1<sup>st</sup> Respondent ought not to have answered same. In doing so, 1<sup>st</sup> respondent caused applicant to incur unnecessary costs of dealing with and addressing her answer.
6. 1<sup>st</sup> Respondent answered that it is inaccurate to suggest that Applicant was denied the opportunity to initiate its rescission application. It was submitted that on the contrary, Applicant failed to attend, not only the main claim of 1<sup>st</sup> Respondent, but

also the rescission application. The Court was referred to both the record of proceedings in pages 2 and 4 and the arbitration award, in support.

7. It was argued that on the basis of this above said, the learned Arbitrator could not have denied Applicant the opportunity to make presentations in as much none of what is alleged to have happened could have under the circumstances. It was added that the record bears a true reflecting of what took place. It was submitted that there is no irregularity committed on the part of the learned Arbitrator.
8. On the issue of costs, it was submitted that 1<sup>st</sup> Respondent is an interested party in these proceedings, in as much as the review is against the award made in her favour. As a result, it was necessary that 1<sup>st</sup> Respondent oppose the review.

### **ANALYSIS**

9. We wish to highlight the purpose of the record of proceedings, in the *court a quo*, for purposes of a review. The record is meant to reflect what took place in the proceedings without the need to require the presiding officer in the *court a quo* to take part in the review proceedings. As a result, where a certified record is presented before Court and has not been challenged, it is taken to be a true picture of what took place in the initial hearing. Our view finds support in the High Court of Lesotho authority in *Ramoroke v Director of Public Prosecutions & another CRI/APN/795/2010*, where the Court relying on the Court of Appeal authority of *Tseliso Kabinye v The Clerk of Court – Magistrate Court and others* (supra) held that, “*The contents of their affidavits have not been rebutted by the applicant; as such they stand as they are.*”
10. *In casu*, whereas, Applicant alleges that it was denied the opportunity to motivate its rescission application, this is not reflected in the undisputed record of proceedings before the 2<sup>nd</sup> Respondent. We say that the record is not disputed in that no specific challenge has been made to the record as a ground for review. Rather, Applicant makes reference to the issue in passing and at submission stage. This is clear from the

Applicant's argument that *while it may seem that Applicant was not in attendance from the arbitration award, he was.*

11. In the light of this said above, We are inclined to agree with 1<sup>st</sup> Respondent that Applicant was not denied the opportunity to motivate its rescission application, as it was not in attendance on the date of the hearing. The record bears prove of this in the cited pages. At page 4 of the record, it is recorded as follows,

*“Arbitrator: welcome lady and gentleman, today is the 6 March 2013 this is case number A1219/12 between ‘Makatleho Letlalo and Atlantic Enterprise where are the respondents?”*

*“TT: We still don't know where they are but we believe they found the documents that we are supposed to be here.”*

12. At page 2, the following is recorded:

*“Arbitrator: Welcome lady and gentleman in this case of A1219 of 2012 between Atlantic Enterprise which is the applicant and ‘Makatleho Letlalo is the respondent. I only see the respondent in this matter, would you happen to know where the applicant is?”*

*“TT: My Lord until this point when we are here I still don't know their whereabouts.”*

13. The above extracts reflects on page 4, that Applicant was not in attendance in the main hearing, while page 2 of the record reflects that Applicant was also not in attendance in the rescission application hearing. We therefore find that there is no irregularity on the part of the learned Arbitrator in proceeding with the matter in default, and in drawing the award in the manner She did. The record and arguments of 1<sup>st</sup> Respondent out-rightly controvert the insinuation of Applicant. Consequently, this ground fails.

14. On the issue of costs, We differ with the argument presented by Applicant. In Our view, 1<sup>st</sup> Respondent is an interested party in a substantial capacity. As, 1<sup>st</sup> Respondent has rightly put, the award being reviewed was issued in his favour and this not only makes him an interested party, but in a substantial capacity. Further fortifying Our attitude is the fact that Applicant has cited him as 1<sup>st</sup> Respondent not 2<sup>nd</sup>

Respondent. 1<sup>st</sup> Respondent citation cannot have been in his nominal capacity as Applicant wishes to imply. Consequently, it was necessary that he react to the review application. Therefore We decline to grant an award of costs.

**AWARD**

On the basis of the above said We make an award in the following,

- (1) That the review application is refused;
- (2) The arbitration award in referral A1219/12(b) remains in effect;
- (3) Applicant must comply with the award in referral A1219/12 within 30 days of issuance herewith; and
- (4) No order as to costs is made.

**THUS DONE AND DATED AT MASERU ON THIS 11<sup>th</sup> DAY OF JULY 2014**

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

**MR. MOTHEPU**

**I CONCUR**

**MRS THAKALEKOALA**

**I CONCUR**

**FOR APPLICANT:  
FOR 1<sup>ST</sup> RESPONDENT:**

**ADV. MOHAPI  
MR. LETSIE**