

**IN THE LABOUR COURT OF LESOTHO**

**HELD AT MASERU**

**LC/56/2013**

**IN THE MATTER BETWEEN**

**KABELO TEISI**

**APPLICANT**

**AND**

**MINOPEX LESOTHO (PTY) LTD**

**RESPONDENT**

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**JUDGMENT**

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*Claims for underpayments and unfair dismissal. Respondent raising a point of law that that this Court has no jurisdiction to adjudicate both claims as they fall within the jurisdiction of the DDP. Court finding that the Labour Code (Amendment) Act 3 of 2000 does not limit the basis of underpayments for traibility before the DDP. Court further finding that Applicant's dismissal is not based on grounds stated under section 226(1)(c) of the Labour Code (Amendment) Act (supra). Court declining jurisdiction. Court further directing parties to arbitrate the dispute before the DDP within 30 days of issuance of this order. No order as to costs being made.*

**BACKGROUND OF THE DISPUTE**

1. These are claims for underpayments and unfair dismissal. Facts giving rise to these claims are that Applicant was employed by Respondent until his dismissal on or around the 18<sup>th</sup> March 2013. Following the said dismissal, Applicant referred a dispute with the Directorate of Dispute Prevention and Resolution (DDPR), wherein he claimed both underpayments and an unfair dismissal. The matter was then duly conciliated, during which process the learned Arbitrator made a determination that since both claims were based on discrimination, then he had no jurisdiction to entertain them.

A report of non resolution was thereafter issued referring the matter before this Court for adjudication.

2. Following the initiation of underpayments claim, Applicant lodged the unfair dismissal claim against Respondent. He then sought its consolidation with the underpayments claim. The consolidation was unopposed and having found merit in the said application, We granted it and the claims were duly consolidated.
3. In its answer to Applicant claims, Respondent raised a *point in limine* in which it challenged this Court's jurisdiction to entertain the two claims. Respondent argued that both the unfair dismissal claims and underpayments fell within the jurisdiction of the DDPR in terms of section 226(2) of the *Labour Code (Amendment) Act 3 of 2000*. We then directed both parties to address Us and having heard them, Our judgment follows.

#### **SUBMISSIONS AND ANALYSIS**

4. Respondent argued that, in terms of section 226(2) of the *Labour Code (Amendment) Act (supra)*, the DDPR has jurisdiction to hear and determine by arbitration the following disputes:

*“(a) a dispute referred by agreement;*

*(b) a dispute concerning the application or interpretation of –*

*(i) A collective agreement;*

*(ii) A breach of a contract of employment;*

*(iii) A wages order contemplated in section 51;*

*(c) a dispute concerning the underpayment or non-payment of monies due under the provisions of this Act;*

*(d) an unfair dismissal for any other reason other than a reason referred to in subsection (1) (c).”*

5. It was argued that both Applicant's claims fall within the jurisdiction of the DDPR in terms of sections 226(2)(c) and 226(2)(d) of the *Labour Code (Amendment) Act (supra)*. In support of the contention, it was submitted that Applicant has claimed underpayments which in terms of section 226(2)(c) clearly falls within the jurisdiction of the DDPR. It was added that Applicant's claim for unfair dismissal is based on

inconsistency and/or discrimination. It was submitted that these are reasons other than those stated in subsection 1(c) of the *Labour Code (Amendment) Act (supra)*. It was prayed that the claims be dismissed for want of jurisdiction.

6. Applicant answered that while he has claimed underpayments, which seemingly fall within the DDPR jurisdiction in terms of section 226 (2) (c), the cause of action is discrimination and that this founds this Court's jurisdiction over the claim. Further that in this unfair dismissal claim, he complains about inconsistency, which is the same as discrimination, while his underpayments claim is based on discrimination as well. He argued that the DDPR does not have jurisdiction to determine discrimination claims.
7. We agree with Respondent that Applicant's claims are triable before the DDPR in terms of section 226 (2) of the *Labour Code (Amendment) Act (supra)*, in that one claim is for underpayment of monies, while the other is for unfair dismissal for reasons other than those set out in section 226 (1) (c) of the same Act. This Court has jurisdiction to hear and determine unfair dismissal claims only if they are premised on any of the following reasons:
  - “(i) for participation in a strike;
  - (ii) as a consequence of a lockout; or
  - (iii) related to the operational requirements of the employer.”
8. The reasons for the dismissal of Applicant are clearly for other reasons other than those stated above. Further, section 226 (2) (c) of the *Labour Code (Amendment) Act (supra)*, does not limit or restrict the basis of underpayments to other reasons other than discrimination for them to be triable before the DDPR. In fact, the said section permits the referral of an underpayment claim for any grounds recognised under the *Labour Code Order of 1994* as amended. Therefore, We are of the view that We do not have jurisdiction over both claims, as they fall within the DDPR jurisdiction.

## **COSTS**

9. Respondent had asked for dismissal of the Applicant's claims with costs. We have stated before that costs are awarded in extreme circumstances of either frivolity or vexatious conduct (see *Thabiso Moletsane v Ministry of Public works and Transport LC/31/2014*). Respondent does not allege any of the two or both. As a result, We do not find justification in its prayer for costs and We accordingly refuse same.

## **AWARD**

For the above reasons, We make the following award,

- 1) That these claims are dismissed for want of jurisdiction.
- 2) The two claims fall within the DDPR jurisdiction.
- 3) Applicant may, if he so wishes, proceed to arbitrate these two claims within 30 days of issuance herewith failing which he shall be barred.
- 4) No order as to costs.

**THUS DONE AND DATED AT MASERU ON THIS 11<sup>th</sup> DAY OF FEBRUARY, 2015.**

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

**MRS. RAMASHAMOLE**

**I CONCUR**

**MS. LEBITSA**

**I CONCUR**

**FOR APPLICANT:  
FOR RESPONDENT :**

**ADV. RASEKOAI  
MR. LETSIKA**