

**IN THE LABOUR COURT OF LESOTHO**

**HELD AT MASERU**

**LC/34/2013**

**IN THE MATTER BETWEEN**

**NATIONAL UNION OF COMMERCE,  
CATERING AND ALLIED WORKERS**

**APPLICANT**

**AND**

**SUN INTERNATIONAL (PTY) LTD  
RESPONDENT**

**1<sup>st</sup>**

**THE AREA MANAGER, SUN  
INTERNATIONAL (PTY) LTD  
RESPONDENT**

**2<sup>nd</sup>**

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**JUDGMENT**

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*Application for committal for contempt of court. Respondents raising three points in limine. Court finding merit in the first point raised and dismissing the application on its strength alone. No order as to costs being made. Principles considered: Jurisdiction of the Labour Court to enforce DDPR awards.*

## **BACKGROUND OF THE DISPUTE**

1. This is an application for committal for contempt of court. Specifically, applicant asks that Respondents show cause, if any, why,  
*“The 2<sup>nd</sup> respondent shall not be committed and punished for contempt for disobeying or unlawfully refusing to carry out or be bound by the DDPR award dated the 25<sup>th</sup> August 2010 directing the 1<sup>st</sup> respondent to comply with the substantive agreement entered into between the applicant and the 1<sup>st</sup> respondent;”*
2. The brief background of the matter is that sometime in 2010, Applicant referred a claim for breach of a collective agreement with the Directorate of Dispute Prevention and Resolution (DDPR). On or around the 25<sup>th</sup> August 2010, an award was issued wherein the 2<sup>nd</sup> Respondent was found to have been in breach of the said agreement. It was then ordered to comply with same from the date that it came into effect.
3. Subsequent to the issuance of the said award, Applicant initiated enforcement proceedings under LC/ENF/94/2013. The said application was moved before Mrs. F. Khabo, the Deputy President of the Labour Court of Lesotho, as she then was. In the process of enforcing the award of the DDPR,

parties entered into a settlement agreement in respect of the award that was being enforced.

4. Later on, Applicant approached this Court to proceed with the enforcement of the arbitration award. The result of the enforcement was the minute of the 15<sup>th</sup> April 2013. In terms of that minuting, parties were ordered to approach the DDPR for a relief, after this Court had determined that the dispute now concerned the interpretation of the settlement agreement earlier concluded.
5. Following was the initiation of the current proceedings wherein Applicant is asking for the committal and punishment of the 1<sup>st</sup> Respondent for contempt. In answer to the application, 1<sup>st</sup> Respondent raised three *points in limine*. We were duly addressed by both parties and having heard them, Our judgment follows.

## **SUBMISSIONS AND ANALYSIS**

### *Relief sought*

6. Respondent submitted that there is no procedure in the law of Lesotho that allows for the relief sought to be granted. It was argued that the powers and jurisdiction of this Court are provided under section 8 of the *Labour Code (Amendment) Act 3 of 2000*. It was submitted that in terms of that section, this Court is not vested with the jurisdiction to grant the relief sought.

7. It was submitted that whereas the Applicant has approached this Court by way of contempt, that is an improper step. It was argued that contempt proceedings are governed by section 24(2) (j) of the *Labour Code Order 24 of 1992*, as amended by section 8 of the *Labour Code (Amendment) Act (supra)*. It was submitted that section 24(2) (j) gives this Court the power to:

“(i) to commit and punish for contempt any person who disobeys or unlawfully refuses to carry out or to be bound by an order made against him or her by the court under the Code;”

8. It was submitted that from the provisions of section 24(2) (j), contempt can only be made if it is against an order of this Court and not an award of the DDPR. It was submitted that the proper procedure would have been an enforcement in terms of section 34 of the *Labour Code Order (supra)*, as Applicant had initially done. It was argued that the award had directed that payment be made with specific instruction, hence the suggestion that the section 34 procedure would have been proper.

9. Respondent answered that section 228 E (5) of the *Labour Code (Amendment) Act (supra)*, provides that an award shall be equal to an order of this Court. It was argued that as a result, the procedure under section 24(2) (j) is proper. It was added that the Court of Appeal in *Lerotholi Polytechnic & another v Blandina Lisene C of A (CIV) 25/2009*, endorses this

approach. Specific reference was made to paragraph 7 thereof.

10. We wish to note three crucial issues for purposes of the determination of this *point in limine*. Firstly, it is accurate that contempt proceedings are made in terms of section 24(2) (j) of the *Labour Code (Amendment) Act (supra)*. Secondly, that the said section is limited to an order of this Court in terms of its application. Lastly, that it is inaccurate that section 228E (5) equates an arbitration award to an order of this Court.

11. The provisions of section 228E (5) are that:

*“An award issued by the arbitrator shall be final and binding shall be enforceable as if it was an order of the Labour Court.”*

Our view on the provisions of section 228E(5), finds support in the interpretation of this section by the Court of Appeal of Lesotho in *‘Nokoane Mokhatla v Lesotho Brewing & others C of A (CIV) 35/2013*. At para 15 of the judgment, the court states that,

*“Although section 228E (5) permits the enforcement of an arbitrator’s award in the Labour Court, its wording does not in my view elevate the award to an order of the Labour Court, nor can it. It remains an award which can be enforced by the court in other ways.”*

12. We therefore agree with Respondents that this Court has no jurisdiction to grant the relief sought, at least through section 228E(5). As demonstrated above, the section relied upon for the initiation of these proceedings in section 24(2) and it's limited to an order of this Court. An arbitration award is not an order of this Court and therefore cannot fall under the ambit of the said section.

13. We wish to further comment that while Respondent suggests that the proper route would have been through section 34 of the *Labour Code Order (supra)*, that would still not be proper. We say this because section 34 also relates to an order of this Court. In terms of section 34, *"where the court has given judgment .... court may order the party's detention...."*

14. In terms of the *Labour Code (Amendment) Act (supra)*, section 2 thereof, which amends section 3 of the principal Act, the Court excludes the DDPR. The work, 'court' has been defined to mean, *"...either the Labour Court or the Labour Appeal Court depending on the context."*

15. A similar view was expressed by the Court of Appeal of Lesotho in *'Nokoane Mokhatla v Lesotho Brewing & others (supra), as thus,*

*“Thus the offence is committed in respect of an order of either the Labour Court or the Labour Appeal Court, depending on the context, as per s3 of the Code.”*

16. As a result of the above, until the said interpretation has been extended by law to include the DDPR, depending on the context the DDPR, this Court has no jurisdiction to enforce arbitration awards under sections 24(2)(j) and section 34 of the *Labour Code Order 24 of 1994* as amended, through section 228E(5) of the *Labour Code (Amendment) Act (supra)*.

17. We wish to comment that in the authority of *‘Nokoane Mokhatla v Lesotho Brewing & others (supra)*, at paragraph 15 of the typed judgment, the Court makes the following comment,

*“It remains an award which can be enforced by the court in other ways.”*

In essence, this Court has jurisdiction to enforce the awards of the DDPR, but just not in the manner it has been approached.

18. About the case of *Lerotholi Polytechnic & another v Blandina Lisene (supra)*, the authority has been misapplied. That authority revolves around the power of the Labour

Appeal Court to punish for contempt. In that case, the Court held that this Court has the power to punish for contempt in respect of its order and not that of the Labour Appeal Court. The authority therefore does not aid Applicant's case. In view of this finding, We see no need to comment on the rest of the *points in limine*.

**AWARD**

We therefore find as follows:

- 1) That this Court has no jurisdiction to grant the relief sought,
- 2) The application is therefore dismissed,
- 3) Applicants are at liberty to follow the route earlier prescribed,  
and
- 4) No order as to costs.

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

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

**MR. MOTHEPU**

**I CONCUR**

**MRS. THAKALEKOALA**

**I CONCUR**



**FOR APPLICANT:**  
**FOR RESPONDENTS:**

**ADV. 'NONO**  
**DR. VAN ZYL**