

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

LC/REV/17/2012

A0536/2011

IN THE MATTER BETWEEN

TAI-YAUN GARMENTS (PTY) LTD

APPLICANT

AND

MACHERE LERAISA

1st

RESPONDENT

DDPR

2nd

RESPONDENT

JUDGMENT

Application for the review of the arbitration award. Only one ground of review having been raised. 1st Respondent claiming from the bar that pleadings are vague and that they made it difficult for her to answer. Court finding no merit in claim. Court adding that the issue ought to have been taken earlier. Court further not finding merit in the review ground and dismissing

the review. Requirements for unreasonableness as a review ground being stated. No order as to costs being made.

BACKGROUND OF THE DISPUTE

1. This is an application for the review of the arbitration award in referral A0536/2011. Only one ground of review has been raised on behalf of Applicant. The brief background of the matter is that 1st Respondent was employed by Applicant until she was dismissed for misconduct. Unhappy with her dismissal, she referred a claim for unfair dismissal with the Directorate of Dispute Prevention and Resolution (DDPR).
2. The matter was duly heard in arbitration at the end of which an award was issued, wherein Applicant was ordered to reinstate 1st Respondent in terms of section 73 of the *Labour Code Order 24 of 1992*. Equally dissatisfied with the finding, Applicant initiated the current proceedings, in terms of which it sought the review, correction and/or setting aside of the said arbitration award.
3. We wish to note that at some stage during the pleadings, 1st Respondent had made an application for the dismissal of this review for want of prosecution. On the date of hearing the said application was withdrawn in favour of the merits of the matter. We endorsed the withdrawal and accordingly directed parties to proceed to address Us on the merits. Our judgment therefore follows.

SUBMISSIONS AND ANALYSIS

4. Applicant's case was that the decision of the learned Arbitrator is grossly unreasonable in that She concluded that Applicant failed to provide a valid reason for the 1st Respondent dismissal, which reason connected her to the theft. It was argued that there is ample evidence on record supporting the fact that the 1st Respondent committed the alleged misconduct.

5. 1st Respondent answered that the ground raised by Applicant is vague and that as a result, the averments made make it difficult for them to react. It was argued that the review be dismissed on this ground alone. The court was referred to the case of *Ever Successful Textile (Pty) Ltd v Tajane Tajane LC/REV/139/2013*, in support of this argument.

6. 1st Respondent further answered that there is no unreasonableness on the part of the learned Arbitrator. It was submitted that evidence on record showed the misconduct to have been committed by someone else hence why the learned Arbitrator concluded that there was no evidence to connect 1st Respondent with the misconduct.

7. It was submitted further that the learned Arbitrator applied Her mind to the facts, contrary to Applicant's suggestion. It was added that Applicant is merely unhappy with the award

in as much as it has not shown any irregularity or even the extent of same. The Court was referred to the case of *Rustenburg Platinum Mines Ltd .v. CCMA 2007 (1) SA 576 (SCA)* for the distinction between an appeal and a review.

8. Applicant replied that the argument that the grounds raised are vague and that they make it difficult for them to react has no merit. It was argued that the argument is in fact overtaken by events as they have not indicated the alleged difficulty when they answered. It was prayed that the point be dismissed. The court was referred to the case of *'Masekhantšo Sekhantšo v Maluti Mountain Brewery & Another LC/REV/36/12*, in support.

9. We wish to start by addressing the issue of the vagueness of the pleadings with the result that one of the parties is unable to plead issuably. We are conscious of the authority of *Ever Successful Textile (Pty) Ltd v Tajane Tajane (supra)*. However, that authority has been misplaced *in casu*. In that authority, Respondent was challenging the submissions of Applicant on the premise that the factual arguments made on behalf of Applicant had not been pleaded, contrary to the principle in motion proceedings that stands and falls by their submissions. This is not the 1st Respondent's case *in casu*. Therefore the argument fails.

10. We however, subscribe to the Applicant's case that one cannot claim to have had difficulty to answer when such has

not been shown in their pleadings. We confirm that 1st Respondent has answered and in so doing, she has not laid a complaint against the initial pleadings by Applicant. We therefore maintain Our view in the case of *Masekhantšo Sekhantšo v Maluti Mountain Brewery (supra)* that, “If 1st Respondent truly found the review grounds vague, the proper procedure would have been to raise a point of law prior to filing its answer. We therefore find that this point of law has been overtaken by events and as such it is not competent at this stage.”

11. Unreasonableness is the only instance in which an award may be challenged on the conclusion. The conditions for this challenge to succeed are that there must be evidence, which evidence must be accepted. With the evidence having been accepted, there must only be one reasonable conclusion against which the decision maker strayed (see *Carephone (Pty) Ltd v Marcus NO & 7 others (1998) 11 BLLR 1093 (LAC)* at 1103).
12. *In casu*, it is suggested that there was evidence to show that 1st Respondent had committed misconduct. It is not alleged that such evidence was accepted by the learned Arbitrator so that she was bound to the conclusion suggested or sought to be suggested by Applicant as being the one and only reasonable one. This being the case, Applicant’s case does not pass the test for unreasonableness.

13. We are therefore to conclude that the learned Arbitrator duly applied Her mind to the facts before Her and that she made a reasonable conclusion. We also led to the view that Applicant is merely unhappy with the arbitration award, and in particular the conclusion as opposed to the procedure. We also take note of the authority of *Rustenburg Platinum Mines Ltd CCMA (supra)* referenced by 1st Respondent.

AWARD

In the light of the above reasons, We make the following award:

- 1) That the review application is refused.
- 2) That the award in referral A0536/2011 remains in force and must be complied with within 30 days of issuance herewith.
- 3) No order as to costs.

THUS DONE AND DATED AT MASERU ON THIS 11th DAY OF MAY, 2015.

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

MR. MOTHEPU

I CONCUR

MR. MATELA

I CONCUR

FOR APPLICANT:

ADV. PEETE

FOR 1st RESPONDENT:

ADV. LEBAKENG