

IN THE LABOUR COURT OF LESOTHO

HELD IN MASERU

LC/REV/109/2010

A0534/2010

IN THE MATTER BETWEEN

SOBITA INVESTMENT (PTY) LTD

t/a LAKESIDE HOTEL

APPLICANT

DDPR

1st RESPONDENT

M. MASHEANE (ARBITRATOR)

2nd

RESPONDENT

RAMOLIKO MONETHI

3rd

RESPONDENT

JUDGMENT

Application for review of arbitration award. 3rd Respondent raising a point limine of improper procedure. 3rd Respondent arguing that it is improper for a legal representative to depose to an affidavit laying out Applicant's review grounds and then continue to represent an applicant party. Court finding merit in the point limine. Court excusing Applicant's current

representation and directing that Applicant find another representative or to appear in person. 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 A0534/2010. The background of the matter is that 3rd Respondent was an employee of Applicant until he was dismissed for misconduct. Unhappy with his dismissal, Applicant referred a claim for unfair dismissal with the DDPR.
2. The matter was duly heard in the absence of Applicant, after which an award was made in favour of 3rd Respondent. In terms of the award, Applicant was ordered to pay 3rd Respondent compensation *in lieu* of reinstatement. Unhappy with the default award, Applicant initiated rescission proceedings against the said award.
3. The rescission application was heard but refused with the initial award being reinstated. Equally unhappy with this award, a review was lodged with this Court by Adv. Ntaote, Applicant's representative. He specifically deposed to averments in support of the review application.
4. At the commencement of the proceedings, 3rd Respondent raised a *point in limine* that the matter be dismissed. The premise of the claim was that it was improper for Adv. Ntaote to have deposed to an affidavit on behalf of his representee.

Parties were duly given the opportunity to make presentation and having heard them, Our judgment follows.

SUBMISSIONS AND ANALYSIS

5. Respondent's case was that it was improper for Adv. Ntaote, who is Applicant's representative in these proceedings, to have also deposed to an affidavit laying out the Applicant's grounds for review. The Court was referred to the Lesotho Court of Appeal authority in *Nkopa Emmanuel Letuka v Yacoob abubaker & Others C of A (CIV) 17/2012*. Applicant simply answered that the authority had been misapplied.

6. We have gone through the authority in issue and in particular at paragraph 14 thereof. At this paragraph, the Court makes the following remark,

"Where counsel becomes a witness to events which are pertinent to his client's case and which give rise to credibility issues, it is highly undesirable, if not improper for such counsel to continue to represent the client in the litigation. This is the second case in this session alone, in which legal representatives have made contentious affidavits. This growing tendency should be deprecated and discouraged."

7. In the light of the above cited authority, We are of the view that it was also improper for Adv. Ntaote to depose to an affidavit on behalf of his client and to continue to be his legal representative. In the case of *Mokhethi v Matlole and others*

C of A (CIV) 03/2012, the Court gave a remedy where an irregularity of this nature has occurred. At paragraph 16 of the judgment, the Court stated that,

"[16] Counsel in a case, whether advocate or attorney, owes a duty to the court to present facts, and to argue the issues, with objective independence from the interests of the client. Accordingly, if counsel has to make an affidavit regarding disputed facts, subsequent withdrawal from the case may well be required so as to avoid acting in conflict with that duty."

AWARD

We therefore make a finding in the following:

- 1) That the Applicant's current representative is excused from these proceedings on account of his conflicting involvement,
- 2) Applicant may appear in person or find another representative, if he may so wish, and
- 3) No order as to costs is made.

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

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

MRS. RAMASHAMOLE

I CONCUR

MRS. THAKALEKOALA

I CONCUR

FOR APPLICANT:

ADV. NTAOTE

FOR 3rd RESPONDENT:

ADV. RAMPAI