

HELD AT MASERU

In the matter between:

**PRESITEX ENTERPRISES (PTY) LTD**

**APPLICANT**

and

**MOTHIBE KOETLE  
DIRECTORATE OF DISPUTES PREVENTION  
AND RESOLUTION**

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

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**JUDGMENT**

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**DATE: 11/05/15**

*Practice and procedure - Employer failing to prosecute a review application - The employee in turn applying to have the matter dismissed for want of prosecution- Court finding the employer to have been reckless in handling its review application - Application dismissed.*

1. This is a case in which the 1<sup>st</sup> respondent had been dismissed for allegedly insulting his supervisor. He challenged the fairness of this dismissal before the Directorate of Dispute Prevention and Resolution (DDPR) which found the said dismissal to have been substantively unfair, and ordered compensation in the amount of **Two Thousand, Six Hundred and Ten Maloti (M2, 610.00)**. The employer (the applicant herein) dissatisfied with this award noted a review. The review application was, however, never pursued and the record of proceedings was not filed .

2. In reaction, the 1<sup>st</sup> respondent filed an application to have the matter dismissed on account of non- prosecution in terms of **Rule 7(2) of the Labour Court Rules, 1994 (the Rules)**. The matter was set down for hearing on 14<sup>th</sup> April, 2014. On the said date Mr Motlere of the Lesotho Private Sector Employers' Association appeared on behalf of the applicant. He sought a postponement in order to prepare the record. He contended that he had just been briefed on the morning of the hearing. The 1<sup>st</sup> respondent filed an application for dismissal for non-prosecution upon failure by the applicant to prosecute its review application and duly served the applicant with it. Still the applicant

failed to react, and only sent in a representative on the day of hearing to seek an indulgence for a postponement, pointing out that he had just been briefed. It is worth noting that the applicant had not filed any record of proceedings.

3. What applicant's representative is seeking is a discretion. Whilst we are generally bound by the ***audi alteram partem*** rule, we cannot condone a blatant disregard of this Court's Rules and operations. The Court takes exception to this kind of laxity. ***Rule 27 (2) of the Rules***, provides that "***... the Court may in its discretion, in the interests of justice, upon written application, or oral application at any hearing, or of its own motion, condone any failure to observe the provisions of these Rules.***" The discretion has to be exercised judicially. Hence, every party has to respect the Rules, and not disregard them with impunity.

4. The manner in which the applicant handled this application shows lack of interest in the matter or a disrespect of Court processes, perhaps with the knowledge that the Court can always condone its actions. Despite having filed a record of proceedings to facilitate the determination of the review application, 1<sup>st</sup> respondent filed an application for non-prosecution but still the applicant did not do anything.

5. It is our considered opinion that this is not a case deserving our discretion in favour of the applicant.

We therefore come to the following conclusion that:

- i) ***The matter is dismissed for want of prosecution;***
- ii) ***The 1<sup>st</sup> respondent be ordered to pay the Two Thousand, Six Hundred and Ten Maloti (M2, 610.00) amount of compensation ordered by the DDPR;***
- iii) ***The amount is payable within thirty (30) days of the handing down of this judgment;***
- iv) ***There is no order as to costs.***

**THUS DONE AND DATED AT MASERU THIS 11<sup>TH</sup> MAY, 2015**

**F.M. KHABO**  
**PRESIDENT OF THE LABOUR COURT (a.i)**

**S. KAO**  
**ASSESSOR**

***I CONCUR***

**M. MOSEHLE**  
**ASSESSOR**

***I CONCUR***

**FOR THE APPLICANT: MR M. MOTLERE - LESOTHO PRIVATE SECTOR  
EMPLOYERS' ASSOCIATION**

**FOR THE 1<sup>st</sup> RESPONDENT: ADV., M. RASEKOAI - PHOOFOLO CHAMBERS on  
behalf of the Factory Workers' Union (FAWU)**