

**IN THE LABOUR COURT OF LESOTHO**

**HELD AT MASERU**

**LC/09/2015**

**IN THE MATTER BETWEEN**

**MASILO MASILO**

**APPLICANT**

**AND**

**NALELI SUPERMARKET (PTY) LD**

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

**RESPONDENT**

**MR. EMBO CHAN**

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

**RESPONDENT**

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**JUDGMENT**

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*Application for enforcement of the DDPR Award and committal for failure to comply with same. Court granting application to be heard in default and hearing the matter in default of Respondents. Court finding in favour of Applicant and ordering compliance with the DDPR award and setting terms of compliance. Court declining the power to commit for non-compliance with the award of the DDPR. No order as to costs being made. Also considered – Jurisdiction of the Labour Court*

*to apply awards of the DDPR; Sources of the Labour Law of Lesotho; and Interpretation of section 24(2)(j) of the Labour Code Order 24 of 1992.*

## **BACKGROUND OF THE DISPUTE**

1. This is an application for the enforcement of the award of the Directorate of Dispute Prevention and Resolution (DDPR) in referral A0347/14, and the committal of 2<sup>nd</sup> Respondent for failure to comply with the said award. The matter has not been opposed and no appearance was made on behalf of Respondents on the date of hearing.
2. The brief background of the matter is that Applicant was an employee of the 1<sup>st</sup> Respondent until he was dismissed for misconduct. Unhappy with his dismissal, he referred a claim for unfair dismissal with the DDPR. The matter was duly conciliated upon but without success. It was then heard in arbitration.
3. An award was thereafter issued in favour of Applicant, wherein the 1<sup>st</sup> Respondent was ordered to reinstate him into his former position, in terms of section 73 of the *Labour Code Order 24 of 1992*. The Order was to take effect on the 3<sup>rd</sup> November 2014. 1<sup>st</sup> Respondent had also been ordered to pay Applicant an additional amount of M57.44 as his unpaid public holiday due.
4. Acting on the strength of Rule 14 of the *Rules of this Court*, and in consideration of an application by Applicant to be

heard in default, We granted same and directed Applicant to proceed to motivate his application for enforcement and committal for contempt. Having heard submissions made on behalf of Applicant, Our judgment follows.

### **SUBMISSIONS AND ANALYSIS**

5. It was submitted on behalf of the Applicant that when he reported at 1<sup>st</sup> Respondent place of business, on the 3<sup>rd</sup> November 2014, to enforce the award of the DDPR, he was returned by the 2<sup>nd</sup> Respondent, who told him that he would not comply with the award.
  
6. It was added that since then to date, nothing has been done of the part of Respondents to comply with the said award. Applicant prayed that the award of the DDPR be enforced and that 2<sup>nd</sup> Respondent, who is the Managing Director of 1<sup>st</sup> Respondent, be committed to jail for failing to comply with same.
  
7. Section 226 (1) (a) of the *Labour Code (Amendment) Act 3 of 2000*, provides that:  
*“The Labour Court has the exclusive jurisdiction to resolve the following disputes:*
  - (a) *Subject to subsection (2), the application or interpretation of any provisions of the Labour Code or any other labour law;”*

8. The Labour Law of Lesotho is sourced and/or composed of the following,

- 1) The Constitution of Lesotho;
- 2) The legislation
- 3) Common law
- 4) Judicial precedent
- 5) Decisions of the DDPR, and
- 6) Authoritative texts.

9. In essence, the awards of the DDPR, being one of the sources of the law of Lesotho, are in effect the Labour Law of Lesotho. This means that these awards fit within the provisions of Section 226 (1) (a) of the *Labour code (Amendment) Act (supra)*, for either application or interpretation.

10. *In casu*, Applicant is asking this Court to apply the DDPR award by compelling the Respondents to live up to the dictates of the DDPR award, in simple terms to comply with it. We have already shown where the power of this court to apply the awards of the DDPR stems from. In addition, We have also been asked to order the committal of the 2<sup>nd</sup> Respondent, to compel him to comply with this award. We shall now address this aspect of the Applicant's prayers in this application.

11. The authority of this Court to commit for contempt, lies under section 24 (2) (j) of the *Labour Code (Amendment) Act (supra)*. In terms of that section, this Court has the power,

*“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.”*

12. Clearly, the section only allows this Court to commit for contempt in relation to its order and not of any other court or body. This position has been addressed by the Court of Appeal of Lesotho in the case of *‘Nokoane Mokhatla v Lesotho Brewing Company (Pty) Ltd and Others C of A (CIV) 35/13.*

13. In that authority the Court had the following to say, in interpreting section 24 (2) (j),  
*“Then 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 section 3 of the Code.”*

14. Therefore, this Court cannot order the committal of the 2<sup>nd</sup> Respondent except in the circumstances stated by the court, that is, where contempt is against the order of either this Court or the Labour Appeal Court, depending on the context. What We can only do, is to apply or give effect to the award by ordering compliance therewith.

## **AWARD**

We therefore make an award as follows,

- a) Respondents are ordered to comply with the award of the DDPR in referral A0347/2014 within 30 days of issuance herewith;
- b) Failure to comply with this order amounts to contempt of this Court;
- c) If this order is not complied with within 30 days of issuance herewith, Applicant may approach the Court, without notification to Respondents for the issuance of a warrant for contempt against 2<sup>nd</sup> Respondent;
- d) For each month that Respondents refuse, fail and/or neglect to comply with the order of this Court, a fine equal to Applicant's last salary shall accrue and become payable to Applicant.
- e) No order as to costs is made.

**THUS DONE AND DATED AT MASERU ON THIS 7<sup>th</sup> DAY OF SEPTEMBER 2015.**

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

**MRS. RAMASHAMOLE**

**I CONCUR**

**MR KAO**

**I CONCUR**

**FOR APPLICANT:**

**MRS. LECHE-LECHESA**

**FOR RESPONDENTS:**

**NO ATTENDANCE**