

IN THE LABOUR COURT OF LESOTHO

HELD AT MASERU

**LC/REV/12/2013
A0932/2012**

IN THE MATTER BETWEEN

**LESOTHO CONSOLIDATED
CIVIL CONTRACTORS (PTY) LTD**

APPLICANT

AND

**LEKENA LETSIE
ARBITRATOR DDP**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGMENT

Application for review of Arbitration award. Several grounds of review having been raised but only two argued. Applicant claiming the Arbitrator disregarded its evidence and that Arbitrator upheld 1st Respondent contradictory evidence. Court not finding merit in both grounds and refusing the review application. Court further finding that conduct of Applicant is frivolous and making an award of costs in favour of 1st Respondent.

BACKGROUND OF DISPUTE

1. This is an application for the review of the arbitration award in referral A0943/2012. Seven grounds of review had initially been raised but only two were argued. 1st Respondent had filed an application for the dismissal of this application for want of prosecution. However, the application was withdrawn by agreement and both parties argued the merits of the review. Having heard the arguments of parties, Our judgement follows.

SUBMISSION AND ANALYSIS

2. The first ground of review was that the learned Arbitrator had disregarded the admitted facts while passing the award. It was

submitted that 1st Respondent gave evidence that he was employed on a fixed term contract. It was argued that this evidence was disregarded by the learned Arbitrator. It was added that having ignored this evidence, the learned Arbitrator made an assumption conclusion that 1st Respondent was on a fixed term contract.

3. It was submitted that at page 9 of the record, there is evidence that 1st Respondent was a subcontractor and not on a contract without limit of time. The Court was referred to the following record at this page:

“Q: I put it to you that applicant was a full time employee since 11/09/2011.

A: I will say applicant was subcontractor because he did not pay PAYE tax to LRA like it was his responsibility.”

4. 1st Respondent answered that Applicant’s case before the DDPH was that 1st Respondent was on a fixed term contract and that it expired. The Court was referred to page 2 of the record where the following is recorded:

“Court

In summary how can you explain the termination of applicant’s contract?

Mr. Makamane

Applicant’s contract came to an end due to the time that was set and not because of misconduct.”

5. It was further argued that contrary to Applicant’s case, its witness before the DDPH claimed that 1st Respondent was a subcontractor. The Court was referred to the extract referenced by Applicant at paragraph 3 of this judgement. It was added that in fact, it was the said witness’s testimony throughout evidence that 1st Respondent was a subcontractor. It was argued that as a result, no evidence was led by Applicant to show that 1st Respondent was on a fixed term contract, as the whole evidence rested on 1st Respondent being a subcontractor, which was not the Applicant’s defence.

6. It was further argued that 1st Respondent did not admit to anything. It was submitted the referenced portion of evidence

to support this argument, is the evidence of Applicant's witness under cross-examination. It was argued that this evidence cannot be taken to have been an admission by 1st Respondent.

7. It was also denied that the learned Arbitrator made an assumptious conclusion that 1st Respondent was on a contract without limit of time. It was argued that whereas Applicant had led no evidence to show that 1st Respondent was on a fixed term contract, there was ample unchallenged evidence of 1st Respondent that his contract was without limit of time.
8. The Court was referred to page 9 of record, where 1st Respondent put his case to Applicant that he was an employee on a full time basis. Further reference was made to page 12 where 1st respondent stated his case. At page 12, the Court was specifically referred to the following extract:
*“Mr. Ntaote
When you were hired were you told anything?
Applicant
I was told the site that I was going to be working on nothing more. I was never told of the end of the contract by anyone not even Me Mpaka (respondent's witness).”*
9. In law, an admission of facts *‘puts no point in issue at all, but operates to eliminate the admitted facts from the issues to be tried. Its effect is to bind the party making it and he or she is bound to the extent of its inevitable consequences or necessary implications unless those are specifically stated to be denied.’* (See *H. Daniels, 6th Ed., Becks Theory and Principles of Pleading in Actions, Butterworth's, at page 79.*
10. *In casu*, it is alleged that 1st Respondent made an Admission that he was employed on a fixed term contract. We have not been referred to any extract from the record of proceedings where this is alleged to have taken place. Rather, We are referred to a record of the Applicant witness's cross examination which does not go anywhere nearer to the suggestion being made. We confirm that indeed, the evidence of Applicant went nowhere near establishing the existence of a

fixed term contract between parties. Rather, as 1st Respondent has submitted, the whole of Applicant's evidence went on to establish something else outside their case. All evidence of Applicant was based on the 1st Respondent being a sub-contractor.

11. On the other hand, 1st Respondent was consistent that he was an employee of Applicant, and that he had been employed on a contract without limit of time. Therefore, We agree with 1st Respondent that the learned Arbitrator's finding was not assumptious but based on the evidence that was before Her. The evidence of 1st Respondent was consistent with his stated case, while the evidence of Applicant was not. Its case was something totally different from what it canvassed through its witness in evidence.
12. The second ground of review was that the learned Arbitrator upheld the contradictory evidence of 1st Respondent. It was submitted that at one point 1st Respondent testified that he was told in a group about his terms of contract and later changed to say he was told alone. It was argued that on the basis of this, the learned Arbitrator ought to have treated 1st Respondent as an unreliable witness.
13. In support of its argument, the Court was referred to page 12 of the record, where the following is recorded:
"I was told the site that I was going to be working on nothing more. I was never told of the end of the contract by anyone not even Me Mpaka (respondent's witness)."
14. 1st Respondent answered that it is not clear where on the record the alleged contradictions are said to appear. It was argued that even the referenced portion does not demonstrate any contradiction or inconsistencies. It was added that assuming that there were contradictions and inconsistencies, which were denied, that Applicant has not shown the relevance of the two towards the decision made.
15. It was argued that there is clearly no merit in the review application and that it be dismissed with costs. It was argued

that this is a frivolous case as Applicant is attempting to review an irreviewable decision. It was argued that Applicant has not shown which facts were admitted or even the alleged inconsistencies and contradictions.

16. We are in agreement with 1st Respondent that applicant has not shown the contradictions complained of. In fact the referenced portion of the record demonstrate consistency in the evidence of 1st Respondent. By this We mean that both statements made in that extract support each other. As a result, without contradictions or inconsistencies as put by 1st Respondent, there is no reason to treat witness evidence with caution as sought by Applicant. Consequently, the learned Arbitrator did not err in Her approach.
17. Regarding the issue of costs, We are of the view that the circumstances *in casu*, warrant an award of costs. Clearly there is no case to review as Applicant has failed even to lay a basis of its argument, which step is very primary in a matter of this nature. Applicant has failed to show both admitted facts and contradictions. It essentially has no case at all, and has as thus been frivolous.

AWARD

We therefore make an award as follows:

- 1) That the review application is refused.
- 2) Applicant is ordered to pay costs of this application to 1st Respondent.
- 3) The award of the DDPR remains in force.
- 4) The order to be complied with within 30 days of issuance herewith.

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

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

MR. MATELA

I CONCUR

MR TŠEUOA

I CONCUR

**FOR APPLICANT:
FOR RESPONDENT:**

**ADV. TALANYANE
ADV. NTAOTE**