

SOUTH AFRICA / JUDGMENT

Corobrik (Pty) Ltd v Commission for Conciliation, Mediation And Arbitration and Others (JR3097/11) [2014] ZALCJHB 514 (17 December 2014)

[2014] ZALCJHB 514**COURT**

Labour Court Johannesburg

BEFORE

Tlhotlhamajie

CASE / FILE NUMBER

JR3097/11

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR3097/11

DATE: 17 DECEMBER 2014

Not Reportable

COROBRIK (PTY) LTD.....Applicant

And

COMMISSION FOR CONCILIATION,

MEDIATION & ARBITRATION.....First Respondent

COMMISSIONER R MOLETSANE NO.....Second Respondent

NATIONAL UNION OF MINEWORKERS.....Third Respondent

PETER MUDAU & ANOTHER.....Fourth & Fifth Respondent

Heard; 12 November 2014

Delivered: 17 December 2014

TLHOTLHALEMAJE, AJ

Introduction:

[1] This matter came before this court as an opposed application in terms of section 145 of the Labour Relations Act to review and set aside the arbitration award issued by the Second Respondent under case number GAJB31522-10. At the hearing of the application, the applicant had raised a preliminary point in respect of the third to further respondent's so-called 'counter review application' to its review application. This judgment is only concerned with the preliminary point raised.

Brief background:

- [2] A dismissal dispute involving six employees was referred to the CCMA. The arbitration proceedings were conducted by the second respondent who issued an award on 10 November 2011. In the award, the dismissal of four individuals was confirmed, whilst the fourth and fifth respondents were retrospectively reinstated with back pay.
- [3] On 8 December 2011, the applicant filed its Notice of Application in terms of sections 145 and 158 (1) (g) of the LRA, more particularly in respect of reinstatement order. The third respondent had on 15 December 2011, filed a "Notice to Oppose and Counter review", wherein it sought to have the findings of the second respondent in respect of the other four individuals to be reviewed and set aside. In this regard, a "Counter Founding affidavit" was filed. On 20 December 2011, the applicant had filed a notice to oppose the "Counter Application".
- [4] The applicant opposed the 'counter review' application as it is not properly before the court. It was submitted in this regard that 'a counter to a review application' does not exist in law, and that if a party was dissatisfied with certain aspects of an arbitration award and sought to review same, that party must do so in accordance with the provisions of the LRA and the Rules of this Court.
- [5] It was common cause that only the applicant had properly filed a review application, and that the third respondent had merely raised the issue of the 'counter review' in what was supposed to be its answering affidavit. The third respondent only filed a Notice in terms of Rule 7A (6) and 8 (b) on 3 November 2014, some nine days before the hearing of the matter.
- [6] The applicant's contention was further that it had requested the third respondent to file a separate review application in accordance with the Rules of this Court. The third respondent had instead on 8 November 2012, filed a supplementary affidavit following upon the applicant's compliance with the provisions of Rule 7A (6) of the Rules of this Court. The applicant views the conduct of the third respondent in this regard as seeking to take an easier and cheaper way out to ride on the back of its review application.

- [7] During the proceedings, Mr Zwane on behalf of the third to further respondents had merely submitted that its “Founding affidavit” in response to the review application was a proper counter review before the court, as what was being challenged was the second respondent’s findings in respect of the other four individuals whose dismissal was upheld.

Evaluation:

- [8] It is acknowledged that Rule 7A of the Rules of this court does not make provision for a ‘Counter review application’. In the absence of any such provision, it follows that a party that wishes to challenge the findings of a commissioner in any material respects must comply with the provisions of Rule 7A even if another review application has been lodged by the other party. In essence, a separate review application must be launched with full compliance with the provisions of Rule 7A of the Rules of this Court. This point, which I align myself with, was emphasised in *InS A Broadcasting Corporation Ltd v Grogan N O* and another[1], where it was held that:

“Rule 7A makes no provision for an animal such as a 'counter-review'. This is in contradistinction to rule A 5(5) of the Rules of the Labour Appeal Court, that provides for a notice of cross-appeal to be delivered within 10 days (or such longer period as may on good cause be allowed) after receiving notice of appeal from an appellant.

The absence of a similar provision in rule 7A relating to a 'counter-review' does not, to my mind, mean that a respondent in a review application can sit on his hands and then, only after the applicant has filed a rule 7A(8) notice, file a counter-review without further ado. On the contrary, it appears to me that what is styled as a 'counter-review' is simply an application for review by a different name. The second respondent seeks to review different aspects of the findings of the arbitrator, and on different grounds. That would usually be the case where a respondent seeks to bring an application for a 'counter-review'. He has to file a proper application for review, and has to do so within six weeks after publication of the award.”

- [9] The third respondent has therefore not properly placed before the court, a review application in respect of the other four individuals whose dismissal was confirmed by the second respondent. If it wishes to pursue that matter, it needs to bring a proper application before the court, together with an application for condonation. Accordingly, the following order is deemed to be appropriate:

Order:

- i. The third respondent’s “Counter Review’ application is dismissed.
- ii. The Registrar of the Court is directed to set the matter down in respect of the review application as brought by the applicant.
- iii. There is no order as to costs.

Tlhotlhalemaje, AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicants: Mr. I Lawrence of Edward Nathan Sonnenbergs Inc

For the Third – Further Respondents: Mr. B Zwane NUM Official

[1] (2006) 27 ILJ 1519 (LC). See also *Singh v First National Bank and Others* (D397/2011)

[2014] ZALCD 44 (9 September 2014)

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