

SOUTH AFRICA / JUDGMENT

Deetlefs v Minister of the South African Defence Force (J5549/00) [2001] ZALC 133 (22 August 2001) [2001] ZALC 133

COURT
Labour Court

BEFORE
A A Landman

CASE / FILE NUMBER
J5549/00

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IN THE LABOUR COURT OF SOUTH AFRICA

(Held at Johannesburg)

Case Number: J5549/00

In

the matter between:	E
	G DEETLEFS
	Applicant
	and
	MINISTER
	OF THE SOUTH AFRICAN Respondent
	DEFENCE
	FORCE

JUDGMENT

Landman J:

I recused myself in this matter and indicated that my reasons would follow. These are my reasons.

Allegations of bias

Adv Prinsloo, his instructing attorney Ms Salome Roux and his client, Captain Deetlefs, have alleged that I am biased (alternatively have created a perception of bias) against Adv Prinsloo and therefore also his client. See the application for leave to appeal and other documents in *E G Deetlefs v Minister of the SADF J5549/00*. It is alleged there (I summarise and comment on the grounds relating to alleged bias) that:

3.1. I was biased, hostile and had the intention to harm and demean Adv Prinsloo in case J3369/98.

The judgment in this case reflects my dissatisfaction with the way he conducted himself and also criticises the conduct of counsel for the respondent. 3.2. I had a double agenda. I am not sure what is implied. 3.3. I “failed to inform the applicant *mero motu* about his bias or possible perceived bias against Applicant’s Advocate (and hence again displaying discriminatory bias and or perceived bias)”. I was unaware that Adv Prinsloo held the opinion that I was biased against him. He did not inform me of his opinion. 3.4. I was motivated by irrelevant, erroneous and/or biased opinions, preconceptions and/or notions when I decided to uphold the exception in case J5549/2000. The judgment speaks for itself. The statement of case did not disclose a cause of action. The applicant was granted an opportunity to remedy the situation by amending her papers. 3.5. I displayed discriminatory bias when I criticised and made adverse comments about Adv Prinsloo and his attorney after delivering

judgment.

The intertwining of a statement of case and a review application and the obvious failure to set out facts and allege that the dispute fell within the scope of the single dispute adjudicable by the Labour Court sitting as the Defence Special Tribunal caused me to be concerned about the plight of the client. It is difficult to ignore this. But perhaps I should have.

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The judgment speaks for itself. The statement of case did not disclose a cause of action. The applicant was granted an opportunity to remedy the situation by amending her papers.

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3.6. I displayed discriminatory bias when I allegedly failed to decide that Adv Prinsloo and his attorney “made a (more than) reasonable effort to place, as fully as possible, a complex case before the court” etc. The statement of case must show a cause of action. 3.7. I displayed bias when I refused my associate permission to fax a judgment to Adv Prinsloo. The judgment was delivered orally from rough notes. There was no judgment which could be faxed at that stage. 3.8. I displayed bias by not giving him credit for apologizing that he would not be in court, and that he tendered to attend court to note the judgment, but the court would not wait for him. . I informed the parties in open court that judgment would be delivered at a certain time on a certain date. It is unthinkable that a court should then have to wait for counsel to make himself available to note the judgment at another time, more convenient to himself. 3.9. I displayed bias when “I accepted or caused a position where Applicant’s [Captain Deetlefs] case was one of two other cases that was apparently removed from the initially allocated roll in front of the Honourable Judge Revelas, and transferred” them to myself. It is common practice for a judge who is available to assist a colleague with his or her roll. I did not know and have no association with Captain Deetlefs

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3.10 I displayed a discriminatory bias by hearing what was an unopposed matter (alleged to be such because there was no affidavit attached to the notice of motion) as an opposed matter. Rule 11 does not require the notice of motion to be accompanied by an affidavit. 3.11. I displayed discriminatory bias when I did not postpone the matter sine die after being informed that the matter was on the unopposed roll and that the parties were willing to settle. . The matter was on the opposed motion roll. Had the parties wished to postpone the application and had they moved to do so this application would have been entertained. I have known Adv Prinsloo only in the course of my judicial duties in the Labour Court. He has appeared in a trial, an opposed motion and one unopposed motion. I recused myself in another opposed motion after receiving the application for leave to appeal. Complaints by Adv Prinsloo about others

5. Besides Adv Prinsloo's charge that I am biased against him and therefore also his instructing attorney and client, he has complained about a number of other persons: 6.1. Adv Bezuidenhout, Adv Blom and Mr Eybers, their instructing attorney, have been accused of trying to extort security from Adv Prinsloo by threatening to report him for allegedly taking work from the streets, and launching vexatious and personal attacks on him. 6.2. Mr Jansen who instructed Adv Prinsloo was accused of making sexual innuendos towards him and lying about certain matters concerning their professional relationship.

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6.3. Mr Milo was accused of refusing to provide Adv Prinsloo with a copy of the judgment in Deetlefs matter when oral judgment had been delivered using my rough notes. 6.4. Adv Prinsloo informed the Judge President that he did not want Judge Revelas to hear a matter in which I had recused myself. 6.5. A point was taken by counsel that in Adv Prinsloo's heads of argument it is suggested that the Minister of the South African National Defence Force attempted to bribe the legal advisors of the opponent. Adv Prinsloo and ethics Adv Prinsloo is either unaware of the rules of ethics and good manners applicable to advocates or chooses to disregard them.

8. He was prepared to waive his clients attorney-counsel/client privilege to protect himself.
9. He consulted with a witness who was under cross-examination about an issue without the knowledge or consent of the court or his opponent. 10. It was reported to me that Adv Prinsloo rammed his lectern into that of Adv Bezuidenhout, presumably to reflect his annoyance with her. 11. Without informing me in chamber or in open court that he was of the view that I was biased against him, he complained, after

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was granted against his client and he and his attorney were precluded from recovering fees, that I was biased.

12. When I recused myself in another opposed matter in which he was appearing. He retorted in open court: "Yes, because of bias".

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Adv Prinsloo's skill 13. Adv Prinsloo has not yet mastered his craft although in time he will. 14.1. He is unaware that counsel do not provide information by affidavit in a matter in which they are appearing but make a statement from the bar. 14.2. He did not read rule 11 of the Rules of the Labour Court or he would have known that procedural applications need not be accompanied by an affidavit. 14.3. He drafted pleadings on the basis of an alleged retrenchment well knowing that there was no factual foundation for this claim. 14.4. By obtaining clients through the offices of his Inner Circle of International Labour Lawyers (and his relationship with his instructing attorney) a conflict between his interest and those of his clients appeared to have risen. 14.5. He has complained that an exception should not have been upheld because the majority of averments were set out in the statement of case. Others relevant developments

15. A letter of complaint has been forwarded to the chairperson of the General Bar Council as well as the association to which Adv Prinsloo belongs. This was done prior to hearing to the matter concerning Captain Deetlefs.

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16. An application was made to the Judge President to convene the Labour Appeal Court to sit as a court of first instance to hear the application for leave to appeal. This was withdrawn after an audience with the Judge President.
17. I was informed on 20 August by Adv Prinsloo that the application for leave to appeal had not been withdrawn. Although I had been under the impression that this was the case. It therefore became necessary to consider the application for my recusal from this matter.
18. A judge is required to perform his or her duties impartially in accordance with the oath of office. In appropriate circumstances a judge must recuse himself or herself from a matter if it is alleged that an appearance has been created that the judge is likely to be biased and most certainly if the judge is biased. In other circumstances it would be improper for a judge to recuse himself or herself. E.g., where the allegation of bias or an appearance of bias is a pretext for “judge shopping”.
19. In making the decision to recuse or not recuse himself or herself a judge would also be influenced to a slight degree by the possibility of complaints of misconduct should the judge recuse or fail to recuse himself or herself. There is something unsatisfactory about a judge recusing himself or herself because the judge, in the course of judicial duties, forms an unfavourable opinion about counsel’s concept of ethics and competence. However, justice is about doing justice to the public. If a litigant believes or is led to believe that he or she will not receive a fair and impartial hearing the judge should recuse himself or herself. See *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 (A) especially at 12 F-G. This case concerned partly the extra curial and partly the alleged curial behaviour of an acting judge. In the premises I recused myself from the application for leave to appeal.
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In the premises I recused myself from the application for leave to appeal.

Signed and dated at CAPE TOWN this 22nd day of August 2001.

Judge A A Landman Judge of the Labour Court of South Africa

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6

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