

SOUTH AFRICA / JUDGMENT

Harold v Lucy and Others (J222/24)

[2024] ZALCJHB 520 (5 June 2024)

[2024] ZALCJHB 520**COURT**

Labour Court Johannesburg

BEFORE

M T M Phehane

CASE / FILE NUMBER

J222/24

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IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J222/24

In the matter between:

LIGEGE NDIFELANI HAROLD Applicant and MOYANE LUCY HOD

- MPUMALANGA DEPARTMENT OF EDUCATION First Respondent SIBIYA NOMVULA
GLADNESS AMSTERDAM CIRCUIT MANAGER Second Respondent COMMISSIONER OF THE
COMPENSATION FUND Third Respondent THULAS NXESI MINISTER OF LABOUR AND
EMPLOYMENT Fourth Respondent

Heard: 30 May 2024

Delivered: 30 May 2024

Reasons:

05 June 2024 (This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 05 June 2024.)

REASONS FOR AND VARIATION OF ORDER

PHEHANE, J

- [1] On 30 May 2024, an order was issued striking this application off the roll for lack of jurisdiction. An application was made by the applicant from the Bar seeking my recusal. I dismissed the recusal application.

[2] The aforesaid order is varied to include the dismissal of the recusal application.

[3] The brief reasons for the order appear below.

Recusal application

[4] At the start of the proceedings, the applicant who was self-representing, insisted that I recuse myself from presiding over all his matters, without specifying those matters. There was no recusal application before the Court. The applicant was informed of

this, whereafter he elected to move the recusal application from the Bar.

[5] The applicant submitted that I should recuse myself from all applications involving him on the grounds that I am biased in all his cases and he has lodged a grievance to this effect.

[6] I dismissed the recusal application. The applicant demanded reasons for my order. He was informed that reasons would be provided in writing.

[7] The recusal application was dismissed for the reason that the applicant failed to satisfy the test for recusal as succinctly set out recently by the Constitutional Court in the case of Electoral Commission v Umkhonto Wesizwe Political Party and Others[1] (Umkhonto Wesizwe).

[8] In brief, the Constitutional Court in Umkhonto Wesizwe referred to its decision in South African Commercial Catering and Allied Workers Union v Irvin & Johnson Limited Seafoods Division Fish Processing[2] and stated that the test is one of double reasonableness: that is, the person apprehending bias must be a reasonable person and the apprehension itself must in the circumstances, be reasonable.

[9] Although not mentioned by the applicant, I presided over two previous matters involving the applicant, and an application for leave to appeal in one of those matters. The orders were against the applicant. On the date of hearing of this present matter, a second

application of the applicant was before me.

[10] I know of no “grievance” against me by the applicant. The applicant wanted a judge, any judge other than myself, to preside over all of his matters. In this regard, in Umkhonto Wesizwe, the Constitutional Court stated the following:

‘This Court, in Bernert set out the test for recusal, which imposes a burden of proof on an applicant for recusal based on the “presumption

of impartiality and the double requirement of reasonableness”. The Court said:

“The presumption of impartiality and the double-requirement of reasonableness underscore the formidable nature of the burden resting upon the litigant who alleges bias or its apprehension. The idea is not to permit a disgruntled litigant to successfully complain of bias simply because the judicial officer has ruled against him or her. Nor should litigants be encouraged to believe that, by seeking the disqualification of a judicial officer, they will have their case heard by another judicial officer who is

likely to decide the case in their favour. Judicial officers have a duty to sit in all cases in which they are not disqualified from sitting. This flows from their duty to exercise their judicial functions. As has been rightly observed, '[j]udges do not choose their cases; and litigants do not choose their judges.' An application for recusal should not prevail unless it is based on substantial grounds for contending a reasonable apprehension of bias."[3]

(Own emphasis).

- [11] In view of the foregoing, the applicant failed to prove any reasonable apprehension of bias. It is for this reason that the recusal application did not succeed.

Urgent application

- [12] The first respondent submitted that the matter is not urgent and sought leave to file its answering affidavit in due course, as it laboured under the impression that the fourth respondent would oppose this application as the prayers sought in the notice of motion involved the applicant and the fourth respondent.
- [13] Given the order dismissing the recusal application, this matter stood down firstly, to provide the applicant an opportunity to decide what steps he intended to take following the dismissal of the recusal application and secondly, for the applicant to consider the stance of the first respondent in seeking to file an answering affidavit in due course.
- [14] While the matter stood down, a second application on the roll by the applicant referred to above and under case number J223/24 was called. Following the dismissal of the applicant's recusal application in that application, and while the representative of the first respondent was addressing the Court, the applicant feigned sudden illness and abruptly announced that he was leaving the courtroom. He was warned by the Court that he had not been excused but he proceeded to walk out of the courtroom, insisting that he felt ill and needed to take his medication. He did not return to the Courtroom. That matter was concluded in his absence. After hearing the argument of the respondents in that matter, his application was struck off the roll and an adverse costs order was made against the applicant.
- [15] When this matter was recalled, in the absence of the applicant, the first respondent intimated in view of my remarks that the court lacks jurisdiction to adjudicate the application and withdrew its request to file an answering affidavit in due course.
- [16] In his notice of motion, the applicant seeks this Court to declare the first respondent guilty of a criminal offence for contravening

various sections of the Compensation for Occupational Injuries and Diseases Act[4] (COIDA) and directing the respondents jointly to pay damages to him for negligence of duty, and ancillary orders. This court lacks

jurisdiction to determine disputes regarding breach of the provisions of COIDA.

Variation of order

[17] The order inadvertently excludes the order regarding the dismissal of the recusal application.

[18] In the premises, the varied order is as follows:

Order:

1. The applicant's recusal application is dismissed.
2. The application is struck off the roll for lack of jurisdiction.

M. T. M. Phehane

Judge of the Labour Court of South Africa

[1] (CCT 97/24) [2024] ZACC 6 (20 May 2024) at paras [24] to [27]. See also: President of the Republic of South Africa v South African Rugby Football Union and Others [1999] ZACC 9; 1999

(7) BCLR 725 (CC) at paras [45] to [48].

[1] (CCT 97/24) [2024] ZACC 6 (20 May 2024) at paras [24] to [27]. See also: President of the Republic

of South Africa v South African Rugby Football Union and Others [1999] ZACC 9; 1999

(7) BCLR 725 (CC) at paras

[45] to [48].

[2]

[2000] ZACC 10; 2000 (3) SA 705 (CC) at para [15].

[3] Umkhonto Wesizwe at para [24] where the Constitutional Court quoted Bernert v Absa Bank Ltd (4) BCLR 329 (CC).

[4] Act 130 of 1993.

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