
SOUTH AFRICA / JUDGMENT

Hertzberg v Stargaze Media CC and Others (J23/14) [2016] ZALCJHB 576 (14 December 2016) [2016] ZALCJHB 576

COURT

Labour Court Johannesburg

BEFORE

Omphemetse Mooki

CASE / FILE NUMBER

J23/14

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case No: J23/14

Not Reportable

In the matter between:

PHILHARMON HERTZBERG

Applicant

and

STARGAZE MEDIA CC

First Respondent

PHILLIP SUPERAMONIEM

Second Respondent

AJAY MANGER

Third Respondent

OSIRIS TRADING (PTY) LTD

Fourth Respondent

Heard: 14 December 2016

Delivered: 14 December 2016

Summary:

Joinder of parties – no live proceedings; application dismissed

JUDGEMENT

MOOKI AJ

1. The applicant sought relief to “join” the second to fourth respondents. The applicant subsequently indicated that he had withdrawn his request to join the second and third respondents and that he was persisting with joining the fourth respondent and a Lawrence Michel.
2. The applicant obtained an award against the first respondent (“Stargaze Media”). The award is dated 18 November 2013 and was made an order of court on 12 June 2014.
3. The applicant has been unable to enforce the award against Stargaze Media. It appears that Stargaze Media is no longer in business. The thrust of the applicant’s submission was that he had no other person or entity who would be liable for the award absent Stargaze Media.
4. The matter first came before court on 2 February 2016. It was removed from the unopposed roll for enrolment on the opposed roll. The costs were reserved. The applicant indicated, when the matter first came before court, that he was instituting some form of contempt proceedings against the second and third respondents about the applicant’s attempts to enforce compliance with the award. The respondents oppose the relief sought by the applicant.
5. The applicant sought relief against the second and third respondents on the basis that they were managers at Stargaze Media. The applicant subsequently sent an email indicating that the second and third respondents were no longer “parties” to his application and that he was instead joining Lawrence Michel as the second respondent and the fourth respondent (“Osiris”) as the third respondent. The applicant submitted that he sought to join Lawrence Michel because he was a director Osiris.
6. The applicant submitted that he initially sought relief against the second and third respondents because he lacked certain information at the time. The case advanced by the applicant in the founding affidavit was that Osiris be joined because there had been a name change from “Stargaze Media” to “Osiris”.
7. The applicant changed the basis for seeking to join Osiris in his replying affidavit. He contended that there had been a section 197 transfer between Stargaze Media and Osiris.

8. Ms Dobson, appearing for Osiris, submitted that the issue of whether or not there was a section 197 transfer as between Stargaze Media and Osiris was not before the court. She submitted that the subject of section 197 was mentioned for the first time in the applicant's replying affidavit. She also submitted that that was not the relief sought in the notice of motion and that the applicant sought relief on the basis of a name-change from "Stargaze Media" to "Osiris".
9. I understood the submission by Ms Dobson to be of the effect that the issue of a section 197 transfer was not properly before the court and that Osiris had no opportunity to deal with the contention that there was a section 197 transfer because the issue first arose in the replying affidavit.
10. The applicant spent considerable effort in seeking to persuade the court, with reference to various statements in the papers, that the signs pointed to there having been a section 197 transfer between Stargaze Media and Osiris.
11. I agree that the issue of whether or not there has been a section 197 transfer is not properly before the court. It remains open to the applicant to deal specifically with that contention. The applicant, if he is so inclined, can pursue his remedies insofar as he holds the view that there was a section 197 transfer as between Stargaze Media and Osiris. The court was not asked to determine that issue and the court does not express a view on the subject.
12. The narrow issue before the court is whether or not the applicant has made out a case for joinder. The application is made with reference to the arbitration award that was made an order of this court. Stargaze Media is the first respondent and Dianne Clark is the second respondent, as per the court order.
13. The applicant seeks to have Stargaze Media and Lawrence Michel as further parties to the above court order.
14. There are no pending proceedings in relation to the relief sought by the applicant. It is not competent for a party to seek to join another person when there are no proceedings to which the other person is to be joined. The authorities are clear in this regard. The substance of what the applicant wishes to achieve is effectively to modify the court of 12 June 2014 by having Stargaze Media and Lawrence Michel as parties in that order. The joinder application cannot succeed.
15. The respondents take issue with how the applicant approached the court and how the applicant conducted the litigation. Ms Dobson pointed out that the applicant appeared as a layman when the matter was argued but that he was assisted by a firm of attorneys in the past. I understood the import of the submission to suggest that the court ought to have regard to the applicant having had the benefit of legal representation in the past; especially in relation to proceedings on 2 February 2016.

16. The issue of costs is in the discretion of the court. The court was minded not to make a cost order in relation to proceedings when the matter was argued. There are no good reasons why the applicant should not bear the costs that were reserved on 2 February 2016.
17. This is an ex tempore judgement which the court has edited. The reasons for the order were delivered at the time of the judgement. The applicant has not complied with the practice manual regarding ex tempore judgements. That has led to the delay in the formal delivery of this judgement.
18. I make the following order:
 - 18.1. The application for joinder is dismissed.
 - 18.2. The applicant is ordered to pay the costs incurred by the second and third respondents which cost were reserved on 2 February 2016.

Omphemetse Mooki

Judge of the Labour Court (Acting)

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