
SOUTH AFRICA / JUDGMENT

Hotellica obo Groenewald v Good Logistics Solutions and Others (C440/2010) [2013] ZALCCT 56 (31 May 2013)

[2013] ZALCCT 56

COURT

Labour Court Cape Town

BEFORE

Steenkamp

CASE / FILE NUMBER

C440/2010

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IN THE LABOUR COURT OF SOUTH AFRICA

(HELD CAPE TOWN)

CASE NUMBER: C440/2010

DATE: 31 MAY 2013

In the matter between:

HOTELLICA obo MERCIA MARLESE

Applicant

GROENEWALD

and

GOOD LOGISTICS SOLUTIONS First Respondent

CCMA

Second Respondent

COMMISSIONER ALVISO ADAMS Third Respondent

J U D G M E N T

STEENKAMP, J:

This is an application to dismiss a review application that was filed by the applicant in the main application, i.e. Hotellica (to which I shall refer as “the Union”) more than three years ago, on 18 May 2010. The application to dismiss is unopposed. Nevertheless, Mr K Somdyala appeared in Court today for the Union. Despite the fact that the Union has not filed any answering papers, I allowed Mr Somdyala to address the Court.

This sorry saga flows from an arbitration award issued by the Commissioner, Alviso Adams, who is cited as the third respondent,

under the auspices of the CCMA, as long ago as 12 April 2010. In that award the Commissioner found that the dismissal of the individual applicant, Mercia Marlese Groenewald, who is a member of the Union, was substantively and procedurally unfair. It is that award that the Union sought to have reviewed and set aside.

However, the Union did not comply with Rule 7A, despite the fact that the CCMA on 31 May 2010, that is exactly three years ago, advised the Union that it (i.e. the CCMA) had despatched the record of proceedings to the registrar of this Court. The CCMA further advised the Union that it was required to make copies of the record; to furnish the other parties with a copy; and to advise the registrar in terms of Rule 7A(8) whether they stand by their notice of motion or wish to amend, add to or vary it.

Despite that advice from the CCMA, the Union did nothing to comply with the Rules of Court until 6 October 2010, when the employer, who is the applicant today, filed an application in which it sought to order the Union to file a record in accordance with Rule 7A(6) within 10 days. The Union still did nothing to comply with the Labour Court Rules and the registrar then enrolled an application two years ago, on 23 March 2011.

That application came before my sister Rabkin-Naicker J. She issued an order in which she directed the Union to file a record within 10 days. The Union did eventually file a record but still did not comply with Rule 7A(8).

On 7 July 2011 the employer once again filed an application for the matter to be set down and for an order to be made that the review

application be dismissed. That application was enrolled on 2 December 2011 and came before Savage, AJ.

The Court then made an order, ordering the Union to serve and file a transcript of the arbitration proceedings. By this stage the Union had still not filed the record. It is only after the second order by Savage, AJ that it did so. The Union then filed a copy of the transcript on 12 December 2011 but still did not comply with Rule 7A(8).

The employer then delivered yet another application on 20 March 2012, seeking an order for the review application to be dismissed.

Eventually, on 2 July 2012, the Union delivered a notice in terms of Rule 7A(8)(b) in which it simply stated that it intends to stand by the original notice of motion. Since then, it has done nothing further to prosecute the review application.

Eventually, on 3 May 2013, the registrar enrolled this unopposed application for dismissal for hearing today. The Union was still not prompted into action and did not file any opposing papers. Mr Somdyala simply arrived at Court today seeking to oppose the application without filing any papers.

As I have said, I have allowed him to address the Court nevertheless. The only excuse he offered is that the Union is not conversant with the Rules of the Labour Court. That is simply inexcusable. A trade union should not purport to represent its members when it cannot do so competently. It is shocking that a trade union should collect subscription money from its members when it cannot provide a proper service to them.

My brother Le Grange J has noted in *Nehawu v Vanderbijlpark Society for the Aged*

(2011) 32 ILJ 1959 (LC) that the Labour Relations Act has now been in force for some 17 years and that trade unions should be well aware of the Rules of this Court and the provisions of the LRA.

The employer party in this case has been forced to approach the Court on at least three occasions in order to prompt the Union to do its job. The Union still did not do so.

In these circumstances, a punitive costs order is called for.

THE REVIEW APPLICATION IS DISMISSED WITH COSTS ON AN ATTORNEY AND CLIENT SCALE, INCLUDING THE COSTS OF COUNSEL; SUCH COSTS TO INCLUDE THE COSTS OF THE APPLICATIONS HEARD ON 23 MARCH 2011, 2 DECEMBER 2011, AND TODAY, 31 MAY 2013.

STEENKAMP, J

APPEARANCES:

APPLICANT (Hotellica):

K Somdyala

(Union official)

RESPONDENT (Good Logistics Solutions): C de Kock

Instructed by: Carelse

Khan

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