

SOUTH AFRICA / JUDGMENT

Mogata v Commission for Conciliation, Mediation and Arbitration and Others (C617/2019) [2021] ZALCCT 23 (13 May 2021)

[2021] ZALCCT 23

COURT

Labour Court Cape Town

BEFORE

Rabkin-Naicker

CASE / FILE NUMBER

C617/2019

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IN THE LABOUR COURT OF
SOUTH AFRICA, CAPE TOWN

Not Reportable

Case

no: C617/2019

In

the matter between:

NTIKE
JACOB
MOGATA
Applicant
and
THE COMMISSON FOR
CONCILIATION, MEDIATION
AND
ARBITRATION
First Respondent
LANTHIS
TAYLOR
N.O.
Second Respondent
NORDEX
ENERGY SOUTH AFRICA (PTY) LTD
Third Respondent
Date heard: 11 May 2021
on the papers Delivered: 13 May 2021 by means of email

JUDGMENT

RABKIN-NAICKER J

- [1] This is an unopposed application to review and set aside a Ruling under case number WECT13853 -19 by the second respondent (the Commissioner). The Ruling is brief and is recorded as follows:

“BACKGROUND

1. A conciliation arbitration hearing was scheduled for 9am on 13 August 2019 at the CCMA offices in Cape Town. The matter before me was referred as a termination relating to probation. The respondent was represented by Mr. David Bernstein from the Employers' Organisation ESOSA. He presented his credentials to me at the outset of the proceedings. Conciliation failed, I issued a certificate indicating that the matter was unresolved and was to immediately proceed with the arbitration as the issue related to a dismissal relating to probation.
2. At the start of the arbitration proceedings, the applicant's attorney, Tyrone Maseko, presented himself, but could not present his credentials when requested to do so. I thus disqualified Mr. Maseko from the proceedings. He was of the view that I should investigate his credentials with the relevant authority. I informed him that it is for him to present his credentials when requested and not for me to have to investigate them. Mr. Maseko took exception to this and then left the proceedings taking his client along with him.
3. I advised the applicant that he could continue with the arbitration on his own and that should he decline to do so his matter would be dismissed. The applicant left the proceedings along with Mr. Maseko who threatened to take the matter to the High Court.
4. I placed on record what had transpired in the presence of the respondent's representatives who confirmed on record what they had witnessed. Sometime later the applicant and Mr. Maseko approached me for the pro-forma dismissal ruling and a copy of the attendance register. I handed a copy of the dismissal ruling and a copy of the attendance register to the applicant's representative.
5. The applicant was told that the matter would be dismissed if he left the process. I stand by my ruling in this regard.

RULING

6. The matter before me is dismissed as I could not continue with the matter due to the applicant electing to leave the proceedings and refusing to participate despite me indicating to the applicant that the matter could continue without his legal representative. He opted to leave the process.”

- [2] The applicant had applied for legal representation in terms of the CCMA Rules for a dispute he had referred concerning his dismissal by the third respondent (the Company), during an extended probationary period.
- [3] His attorney of record appeared in order to argue the Rule 25 application, and as can be gleaned from the Ruling, was asked to present 'his credentials' before making submissions on behalf of his client.
- [4] Rule 25(4) of the CCMA Rules provides for the production of credentials by representatives of the parties, being trade unions and employers' organisations as follows:

"(4) A representative must tender any documents requested by the commissioner for the purposes of subrule (3), including constitutions, payslips, contracts of employment, documents and forms or recognition agreements and/or proof of membership of a trade union or employers' organisation."

- [5] In the Court's view it was grossly irregular to 'disqualify' the applicant's attorney from the proceedings without allowing him to present his argument on behalf of the applicant. No reason for questioning the attorney's standing was given by the Commissioner. From the unopposed pleadings in this application, it appears that the Commissioner did not even afford the attorney time to go through his lap top to demonstrate documents to support his status. The record that was recorded of the discussion between the Commissioner and the Company representatives after the applicant left

the proceedings, reflects that applicant's attorney was highly offended. He left the proceedings with his client.

- [6] In the papers before me, applicant's attorney of record has annexed the Order admitting him as an attorney in 2008, as well as his Certificate indicating his right of appearance in the High Court dated 2012. I am hardly surprised that he took offence when asked to produce proof of his standing at a CCMA hearing. In any event, I am of the view that a fair hearing of the issues regarding whether the applicant employee was entitled to legal representation was denied to him.
- [7] In all the circumstances, I am of the view that the Ruling stands to be reviewed and set aside. The Commissioner exceeded his powers and committed a gross irregularity in the conduct of the proceedings. This led to an unreasonable result wherein the applicant was unable to exercise his right to apply for legal representation and for such application to be entertained.
- [8] I therefore make the following order: Order
1. The Ruling under case number WECT13853 -19 is reviewed and set aside.
 2. The dispute, including the application in terms of Rule 25 (6), is remitted to the first respondent for rehearing before a Commissioner other than second respondent.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Representation

Applicant: T. Maseko Attorneys

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