

SOUTH AFRICA / JUDGMENT

Motswi v Maxi Security and Others (JR1923/03) [2013]

ZALCJHB 173 (18 July 2013)

[2013] ZALCJHB 173

COURT

Labour Court Johannesburg

BEFORE

Leppan

CASE / FILE NUMBER

JR1923/03

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case No: JR1932/03

In the matter between:

MATOME TERENCE MOTSWIAPPLICANT

and

MAXI SECURITYFIRST RESPONDENT

MAIGRET (PTY) LTDSECOND RESPONDENT

MAXISURE (PTY) LTDTHIRD RESPONDENT

MAXI STRATEGIC ALLIANCE (PTY) LTDFOURTH RESPONDENT

MAXI PHUMELELA SECURITYFIFTH RESPONDENT

COMMAND PROTECTION SERVICES

GAUTENG (PTY) LTDSIXTH RESPONDENT

MAXI SECURITY SERVICES (PTY) LTDSEVENTH RESPONDENT

COMMAND HOLDINGS LIMITEDEIGHTH RESPONDENT

COMMAND SECURITY SERVICES (PTY) LTDNINTH RESPONDENT

DANIEL JOHANNES HUGO DE VILLIERSTENTH RESPONDENT

MAXI SECURITY 2000ELEVENTH RESPONDENT

Heard : 18 July 2013

Delivered :

Summary : Rule 22 of the Labour Court Rules, joinder of parties to proceedings where an Order of Court has already been handed down, the necessity of the audi alteram partem principle.

LEPPAN AJ

Introduction

This is an application in terms of Rule 22 of the Labour Court Rules to join the Third to Eleventh Respondents (save for the Sixth, Eighth and Ninth Respondents) ("the Respondents") as parties to this matter.

The applicant also seeks an order to make the Respondents pay the costs of this matter and to comply with an Order of this Court, handed down on 21 April 2005, bearing case number: JR 1932/03 ("the Order").

The Respondents opposed this application and raised a point in limine regarding the validity of an application for joinder subsequent to an Order being handed down in the same matter.

Background

On 20 November 2002 the Applicant was dismissed by the business entity he knew as 'Maxi Security', the First Respondent in this matter. Subsequent to the matter having been arbitrated, an award was issued by the Commission for Conciliation, Mediation and Arbitration ("CCMA") on 5 September 2003. In terms of this Award, the Applicant was awarded compensation in the amount of R19 806.30.

On 13 October 2003, the First Respondent launched a review application in terms of section 145 of the LRA.

On 26 April 2005, the Applicant issued a writ upon which a Sheriff attempted to serve same upon the First Respondent. The writ was served on a Mr de Villiers, the Tenth Respondent in this matter, on 23 May 2005. The Tenth Respondent stated that the entity 'Maxi Security', which is the First Respondent herein, is not a legal entity and thus a writ cannot be served on an entity that did not exist. The Tenth respondent also stated that, according to him, the matter had been rescinded.

On 21 April 2005 the review application brought by the First Respondent in this matter, was dismissed in terms of the Order referred to in paragraph 2 above and in addition, it was ordered that the Second Respondent (Maigret Pty Ltd) be joined to the proceedings.

Two further writs of execution were issued and served on 23 May 2005 and 4 May 2007 respectively. In both instances a nulla bona return was received.

The underlying reason for the Applicant's inability to successfully obtain the amount of compensation in terms of the Award from the First and / or Second Respondent was due to the following

reasons:

9.1. The First Respondent was merely a trading name for a company registered as Maigret (Pty) Ltd, the Second Respondent herein.

9.2. The Tenth Respondent admits to having been the Director of the Second Respondent which, according to his account ceased trading in April of 2003.

On 06 April 2011 the Applicant launched an application at this Court in order to join and compel the relevant Respondent(s) to honour the Order referred to above.

Analysis

The matter before this Court emanates from a sequence of events which pertain to the Applicant attempting to obtain payment of an amount stipulated in the Award from the First and Second Respondents.

The Tenth Respondent alleged in his answering affidavit that the Second Respondent (Maigret (Pty) Ltd) ceased trading in 2003 and has been placed in provisional liquidation since 7 January 2010.

The Tenth Respondent alleged in his answering affidavit that the First Respondent is not a legal entity and was merely used as a trading name for the Second Respondent which is currently in liquidation.

The Applicant, in an attempt to seek an order against the correct natural or juristic person, brought an application before this Court to join the Third to Eleventh Respondents in these proceedings. However, the Applicant has omitted to take certain imperative procedural steps which need to be adhered to given the nature of this application.

The Applicant, who was made aware of the insolvency of the Second Respondent, did not endeavour to join the liquidator of the Second Respondent to this proceeding. The judgment of *Mofokeng and Others v JAC Pallets Africa CC and Others* (J 1990/07) (2008) ZALC 218 at paragraph 7 correctly held that it is trite in terms of South African insolvency law that once an entity has been placed in liquidation, the liquidator must be cited as the party against whom the claim is made, not the liquidated entity.

The requirement of audi alteram partem with regard to procedural fairness has not been acknowledged by the Applicant. This principle is concerned with affording parties an opportunity to participate in proceedings where potentially decisions can affect them, and more importantly, to enable such

parties an opportunity to influence the outcome of such decisions. This notion is supported by the case of Johannes Lodewikus du Preez v L.S. Pressings and Another (J861/11) (2012) ZALCJHB 74at paragraph 18 where Dodson AJ held that joining parties to proceedings where a final decision has already been rendered, would have the effect of a judgment being taken and enforced against parties without their cases ever having been heard.

In the du Preezcase (supra), the Court goes further to state:

"Even if the second respondent could not have disputed the fairness of the dismissals, it ought to have been heard on the question of relief, which after all is something that could directly affect it and not merely in a financial sense."

This school of thought is substantiated by the judgment of Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A) at page 444 where Fagan AJA held that Courts should not make an Order that may prejudice the rights of parties that are not before it.

In casu therefore, the Applicant cannot seek to join parties on an ad hoc basis without providing a substantive argument and proof thereof as to why such parties have a substantial interest in the matter and would thus be subject to the same relief prayed for. Further, due to the fact that an Order has already been handed down in this matter by this Court in 2005, which joined the Second Respondent to the matter, the Applicant should pursue the liquidator of the Second Respondent, as it has been confirmed that that entity is in liquidation.

Order

For these reasons I make the following order:

20.1. The joinder application is dismissed.

20.2. No order is made as to costs.

APPEARANCES:

Applicant :MATOME TERENCE MOTSWI

Instructed by : Goldberg Attorneys

Tenth Respondent : DANIEL JOHANNES HUGO DE VILLIERS

Instructed by : C de Villiers Attorneys.

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