

SOUTH AFRICA / JUDGMENT

Msezeni and Others v Workforce Group (Pty) Ltd and Another (30437/2018) [2021] ZAGPJHC 133 (17 May 2021) [2021] ZAGPJHC 133

COURT

South Gauteng High Court, Johannesburg

BEFORE

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CASE / FILE NUMBER

30437/2018

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

LOCAL DIVISION, JOHANNESBURG)

Case

No: 30437 /2018

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

NOT

REVISED

DATE:

17 MAY 2021

In

the matter between:

NONTANDAZO

MSEZENI

First Applicant

SIVE

TWANI

Second Applicant

NOMFUNKO

NKOMIPHELA

Third Applicant

NOMAXHOSA

KHALIPHA

Fourth Applicant

ELIZABETH

CHAUKE

Fifth Applicant

NONZWAKAZI

SIKHWEPHA

Sixth Applicant

PALESA

MOKOENA

Seventh Applicant

and

WORKFORCE

GROUP (PTY) LTD

First Respondent

DEW

CRISP (PTY) LTD

Second Respondent

(This

judgment is handed down electronically by circulation to the parties'

legal representatives by email and by uploading it to

the electronic

file of this matter on CaseLines. The date for hand-down is deemed to

be 17 May 2021.)

JUDGMENT

MIA J:

INTRODUCTION

[1] The applicants in the matter sought an order in the following terms:

"1. The First Respondent has never been the employer of the Applicants.

2. Alternatively that the First Respondent was not the employer of the Applicants at the time the Applicants were dismissed and/or their services were terminated by/or at the Second Respondent.

3. Alternatively that there are no contracts of employment existed

and/or alternatively entered into between the First Respondent and the Applicants in terms of which the First Respondent was the

employer and the Applicants were the employees.

4. All contracts of employment alleged to have existed between the Applicants and First Respondent in terms of which the First Respondent was the employer and the Applicants were the employees,

the copies of which were produced at the CCMA during Arbitration hearing between the Applicants and Second Respondent under Case

Number GAJB17507-17 are invalid and set aside.

5. Alternatively that the signatures of employees alleged by the First

Respondent to be the signatures of the Applicants in the contracts of

employment alleged to be entered into and existed between the First Respondent and the Applicants in terms of which the Applicants were the employees and the First Respondent was the employer, the copies of which were produced at the CCMA during Arbitration hearing between the Applicants and the Second Respondent under Case Number GAJB17507-17 are not the signatures of the Applicants.

6. That the Second Respondent has always been the employer of the

Applicants throughout the whole period of the Applicants employment at the Second Respondent.

7. Alternatively that the Second Respondent was the employer of the Applicants at the time when the Applicants were dismissed and/or their services were terminated at the Second Respondent."

The first respondent opposed the application. There was no notice of opposition or answering affidavit filed by the second respondent.

[2] The first to seventh applicants all reside at Muldersdrift near Krugersdorp in Mogale City Municipality, Gauteng Province. The first respondent is the Workforce Group Staffing (Pty) Ltd, a private company registered in terms of the South African laws with the registration number 1999/006358/07 and business address at 11 Wellington Road in Parktown, Johannesburg. The second respondent is Dew Crisp (Pty) Ltd, a private company having its business address at Plot 81 Muldersdrift, near Krugersdorp in Mogale City Municipality, Gauteng Province.

[3] The applicants allege they worked for the second respondent and signed different contracts from 2015 onwards with the second respondent. The contracts were for fixed periods of employment and were renewed, and at other times, they worked without a contract in place.

They were paid by and received payslips from the second respondent. On 3 March 2017,, the applicants and other employees were called to a meeting by the second respondent during working hours. A representative of the second respondent introduced the first respondent to all the employees, including the applicants. The first respondent was introduced as a company from whom they were required to take funeral policies. They were threatened with loss of employment if they refused to take out such policies. They were requested to sign some forms which they believed to be the forms related to such policies. After they signed the forms as requested by the second applicant and the first respondent related to the funeral policies, the meeting was adjourned.

- [4] At the end of the month when the meeting occurred, the employees received payslips issued by the first respondent and not from the second respondent. They also noticed that their salaries were not paid in full. They approached their manager, Mr Khalinda, employed by the second respondent, to enquire about the shortfall in their salaries. He informed them he would look into the matter at the Human Resource office and enquire from the first respondent and revert to

them. The following day they called a meeting with Mr Khalinda once more. Mr Khalinda arrived with a representative of the first

respondent. He informed the representative about their concerns and showed him a payslip. The representative advised that the outstanding

money would be paid to the employees. A week later, the outstanding money was paid to the employees.

- [5] On 31 July 2017, a further meeting was called by the second respondent. The applicants and other employees were addressed by a certain Mr Jaco, a shareholder at the second respondent. He informed them that the second respondent was not making a profit and would retrench employees in the future. The meeting was adjourned without further discussion. More than a week after the meeting, as mentioned above and on 11 August 2017, the applicants and other employees were once more called separately by their respective supervisors to different meetings. In the section meetings, they were informed not to return to work from 12 August 2017. Furthermore, they were informed that they would be called if they were required to come to work. That effectively was their last day at work as they were never called to work and remained unemployed.
- [6] When they were dismissed, the applicants allege the second respondent had employed them for more than twelve months. They were employed on different dates as reflected in their payslips issued by the second respondent, some of which were attached to the application. Some employees who were employed after the applicants by the second respondent were never dismissed and remained employed with the second respondent. The applicants, therefore, referred a dispute to the CCMA

challenging their dismissal by the second respondent. The dispute was first referred for conciliation and mediation. The matter remained unresolved on 12 September 2017. The dispute was, after that, referred for arbitration due to take place on 16 February 2018.

[7] The applicants attended the arbitration hearing; however, the second respondent failed to arrive. Instead, the legal representative of the first respondent arrived with a request to join the application and sought a postponement of the arbitration hearing. The applicants' disputed that the first respondent was their employer and objected to

the proposed joinder. They did agree to a postponement of the hearing for purposes of the second respondent's attendance at the hearing since it was their employer and against whom they had referred the dispute. The Commissioner ruled that the first respondent be joined to the proceedings and postponed the matter for the attendance of the second respondent. He further ordered the second respondent to pay the applicant's travelling costs. The matter was postponed and enrolled for hearing on 10 May 2018.

[8] On 10 May 2018, the second respondent did not appear again. The first respondent's representative appeared and claimed that the applicants were their employees placed with their client. The first respondent relied on copies of contracts of employment which were not clear. The applicants' denied that the first respondent was their employer,

repeatedly insisting that the second respondent was their employer. The Commissioner postponed the proceedings again for the second

respondent to attend the proceedings and further ordered the first respondent to produce clear and legible copies of the alleged

contracts of employment.

[9] When the matter was heard on 14 June 2018, the first respondent's legal representative informed the Commissioner that the application for joinder was an error. The first respondent wished to apply for substitution, whereby the first respondent would substitute the second respondent as the employer. The first respondent placed reliance on the same documents as were produced previously. The first respondent alleged that employment contracts entered into between the applicants as the employees and the first respondent as the employer. Therefore, the first respondent had placed the applicants in the business of its client, the second respondent. This was denied by the applicants who denied ever being employed by the first respondent.

[10] Upon perusing the copies of the alleged contracts, the applicants' noticed that the employees' signatures alleged therein by the first respondent to be the applicants' signatures were not their genuine signatures; alternatively were forged. The first respondent did not produce the contract/ or copy of the contract of employment alleged by it to have been entered into between the first respondent as the employer and the sixth applicant as the employee. The sixth applicant confirmed that there is no contract of employment ever entered into between herself as the employee and the first respondent as the employer. This

raised a dispute regarding the contracts of employment and the validity thereof. The Commissioner ruled that the Commission

lacked jurisdiction to hear the matter and should be taken to the appropriate forum.

[11] In the application before this court, the applicants refer to the alleged signatures of the first, second, third, fourth, fifth and seventh applicants as per their founding affidavit. The first applicant contends that her signature has always been as appended to her founding affidavit as compared to the contracts produced by the first respondent. The remaining applicants who signed confirmatory affidavits contend that their signatures appear as they have signed in their confirmatory affidavits attached to the founding affidavit as Annexures. The first respondent produced no contract relating to the sixth respondent.

[12] The issues for determination are as follows:

1. The admissibility of the first respondents answering affidavit due to non-compliance with formalities for commissioning an affidavit?
2. Whether the first respondent or the second respondent was the applicants'

employer at the time the applicants were dismissed and/or their services were terminated?

[13] Section 77 of the Basic Conditions of Employment Act 75 of 1997 (BCEA) provides:

"77. Jurisdiction of Labour Court.—(1) Subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where this Act provides otherwise,

the Labour Court has exclusive jurisdiction in respect of all matters in terms of this Act.

(1A) The Labour Court has exclusive jurisdiction to grant civil relief arising from a breach of sections 33A, 43, 44, 46, 48, 90 and 92.

- (2) The Labour Court may review the performance or purported performance of any function provided for in this Act or any act or omission of any person in terms of this Act on any grounds that are permissible

in law.

- (3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes

a term of that contract.

(4) Subsection

- (1) does not prevent any person relying upon a provision of

this Act to establish that a basic condition of employment constitutes a term of a contract of employment in any proceedings in

a civil court or an arbitration held in terms of an agreement.

- (5) If proceedings concerning any matter contemplated in terms of subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer that matter to the Labour Court.

[14] Section 33A of the BCEA provides:

"33A. Prohibited conduct by employer.—(1) An employer must not—

- (a) require or accept any payment by or on behalf of an employee or potential employee in respect of the employment of, or the allocation of work to, any employee; or
 - (b) require an employee or potential employee to purchase any goods, products or services from the employer or from any business or person nominated by the employer.
- (2) Subsection (1) (b) does not preclude a provision in a contract of employment or collective agreement in terms of which an employee is required to participate in a scheme involving the purchase of specific goods, products or services, if the purchase is not prohibited by any other statute and—
- (a) the employee receives a financial benefit from participating in the scheme; or
 - (b) the price of any goods, products or services provided through the scheme is fair and reasonable."

POINTS IN LIMINE

[15] Counsel for the first respondent, Ms Rambachan-Naidoo, raised several points in limine. The first point raised was that the applicants' disputing the validity of the answering affidavit was dispositive of the opposition raised. She referred to several decisions^[1] wherein the court exercised its discretion regarding the admission of an affidavit that did not comply with Regulation 4(1) of the Regulations Governing the Administration of Oaths or Affirmation No 1258 of 21 July 1972(the Regulations). Regulation 4(1) provides:

"4. (1) Below the deponent's signature or mark the Commissioner of Oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration."

[16] Mr Mbelu relied on the case of *Smit v Pretorius & others* (33801/2001)

[2014] ZAGPPHC 632 (20 August 2014), where the court rejected an affidavit which appeared not to have been deposed to before a Commissioner of Oaths, and there was no reason to explain why the deponent signed after the Commissioner of Oaths had signed. He, therefore, requested that I reject the answering affidavit in the present matter. Ms Ramabachan- Naidoo submitted the in the present matter the oath was administered, and

each page was initialled, and the last page was signed. There was substantial compliance save for stating the date and place, clearly indicated in the Commissioner of Oaths stamp as Parktown. I agree with Ms Ramabachan Naidoo that the present matter is distinguishable from Smit's case, where Mrs Lombard testified that she was summoned to the office of her father's attorney to sign the affidavit, which she did without reading it. In Smit, the evidence did not show that she took an oath before signing the affidavit. She signed the affidavit in the office of her father's

attorney in the presence of her father, the attorney and herself. She did not appear before a Commissioner of Oaths and could not have deposed and signed before the Commissioner of Oaths.

[17] I now deal with the submissions related to the second affidavit filed by the first respondent who filed an application for condonation for the late filing of the answering affidavit. The first affidavit is marked "EK1" filed on Caselines at 009-48. The deponent is Tebogo Moalusi. The second affidavit and the one which refers to the signature at Parktown is the affidavit which the first respondent calls "EK2". The document is not marked. After the first page the remainder of the affidavit pages are filed upside down which goes contrary to proper filing and paginating a file and is found at

Caselines 009-97. There was no attempt made to address this and to correct the error. The first respondent's request is that the

affidavit marked "EK2" replace the document marked "EK1" should the court find the document marked "EK1" is not compliant in terms of attestation.

[18] Both affidavits reflected the date and place in the Commissioners Oath. There was nothing before me to suggest the Commissioner had signed before the deponent or that any other irregularity had occurred as suggested. To the extent that the first respondent seeks to have the second answering affidavit admitted, it seeks to get a second bite at the cherry as it were. The same discretion I am asked to apply to the first answering affidavit would apply to the second answering affidavit in terms of the formalities related to the Regulations. The first respondent sets out no circumstances justifying the filing of the second affidavit, which sets out further facts not contained in the first affidavit. The document is also not marked "EK2", and it is not clear that the second answering affidavit is the document referred to in the application for condonation. The first respondent's conduct has not been reasonable in this regard. I note further that the annexures attached are barely legible, and some are not legible at all. There are no grounds made out in the affidavit on which the affidavit should be accepted and admitted into evidence. The indulgence the respondent seeks places the parties on unequal ground in litigating if I were to admit the second affidavit with the first respondent laying a sound basis for its admission. Consequently, the second affidavit is not admitted, and I will rely only on the affidavit marked "EK1".

[19] The second point in limine raised was by the applicants who disputed the first respondent's locus standi. Ms Rambachan-Naidoo noted the requirements[2] for locus standi. She submitted that the first respondent had a direct and substantial interest in the outcome of the relief sought in this paragraph, which accords fully with the reasoning in the matter of *Ahmadiyya Anjuman Ishaati-Islam Lahore (South Africa) & another v Muslim Judicial Council (Cape) and others* 1983

(4) 855 (C) at 863H-864A; where Tebutt J explained the concept of a direct and substantial interest in a matter, in the following terms:

"It is clear that in our law a person who sues must have an interest in the subject-matter of the suit that such interest must be a direct one"

She relied on the *South African Post Office Ltd v Tas Appointment and Management Services CC and Others* (JA 112112) [2012] ZALCJHB 11; [2012] 6 BLLR 621 (LC); (2012) 33 1 L1958 (LC) (13 February 2012), where Lagrange J stated the following:

"The essential features of the legal relationship between the labour broker, the client and the labour brokers' employees are well-known. The labour broker contracts with the client to provide certain types of labour to perform work for the client, but the persons who are engaged to perform the work are employed by the labour broker and not the client. The client thereby obtains the services of persons to perform the work it requires without having to employ them."

[20] It is disputed that the first respondent (the labour broker) contracted with the applicants (the employees) to provide certain types of labour to perform work for the client (*Dewcrisp (Pty) Ltd*). On the issue of locus standi, the applicant joined the first respondent because they have an interest in the matter before this court, and thus the issue of locus standi cannot be an issue in this court.

[21] The applicants allege that the first respondent is incorrect in raising the point in limine regarding jurisdiction of the court to deal with the matter as this court has jurisdiction to hear the application on the basis of the ruling of the Commissioner at the CCMA. The main referral and the primary issue for the applicants is whether or not the first respondent is the employer. Ms Rambachan-Naidoo argued that the question is whether the claim, as formulated by the applicants in their pleadings, fall within the scope of the above Honourable Court's jurisdiction to consider. (See *Radon Projects (Pty) Ltd v NV Properties (Pty) Ltd & another* 2013

(5) SA 345 (SCA) at [23].)

[22] On the question of jurisdiction, Ms Ramabachan-Naidoo submitted in her heads of argument that "Section 77 (1) of the BCEA vests the Labour Court with exclusive jurisdiction "in respect of all matters in terms of this Act, except in respect of an offence in section 43, 44, 46, 48, 90 and 92.". On this basis, she concludes that this court does not have jurisdiction, and submitted that the Labour Court had exclusive jurisdiction.

Section 77 reads as follows:

A plain reading of section 77(1) indicates clearly that the Labour Court has exclusive jurisdiction, "except where this Act

provides otherwise". It then goes on to specify the exclusive areas of jurisdiction the Labour Court has, namely with regard to sections 33A, 43,44,46,48,90 and 92. Section 77 then goes further in section 77(3) to state that:

"77 (3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract."

Thus a plain reading of this section means a civil court has concurrent jurisdiction regarding any matter which concerns a contract of employment, consequently, this court does have jurisdiction.

[23] I now move to the issue raised that there is a dispute of fact. The applicants' contend that the first respondent did not dispute the signatures on the fixed-term contracts as a material dispute of fact. Mr Mbelu, for the applicants, submitted that the authenticity of the signatures is not a material dispute. He referred to the court's approach in *Marneweck and Others v Shabalala and Others* (A5030/13)

[2014] ZAGPJHC 85 (8 April 2014) at paragraph [25]. The court said:

"The test to determine the existence of a dispute of fact is trite. The court must decide whether the dispute is a genuine[3] dispute of fact. Therefore, the party who relies on a defence of a dispute of fact must established it in the affidavit.[4]

The affidavits constitute both the facts and evidence. The litigants are expected to establish their rights in their affidavits. It has been said time and time again that a bare denial as the Respondents have done will not suffice. However, even when there is a dispute of fact the court is entitled to take a robust approach if the case is justified in the circumstances. The contents of the affidavits are the facts which the opponents are asked to act upon. Even where there are genuine facts the court is enjoined to take a robust attitude."

[24] Ms Rambachan- Naidoo argued that this case is distinguishable from the decision in *Marneweck* above, where the respondents raised a bare denial in their answering affidavit in comparison to the first respondent in the present matter who has established that there is a dispute of fact in its answering affidavit. She argued that the applicants fail to challenge the version of the first respondent that they employed the applicants, referring to *Makanya v University of Zululand* 2010 (1) SA (SCA) at [22] - [24]. (A5030/13) [2014] ZAGPJHC 85 (8 April 2014) at para [25]. She continued that the applicants did not attach the transcription of the record of the CCMA, nor have they attached their contracts of employment with the second respondent to dispute the first respondent's version.

[25] It is apparent from the applicants' affidavits that there were numerous contracts concluded over a period of time. They were only in receipt of salary advice slips which they attached. Similarly, the first respondent was only in possession of the disputed contracts they allege they concluded with the applicants. They did not attach salary advice slips. Regarding the reasons for the second respondent issuing the salary advice slips, the first respondents do not attach either the agreement with the second respondent which they rely on for the second respondent issuing salary advice slips nor have they attached a confirmatory affidavit. However, they do confirm that they are not in a position to speak on behalf of their client. In this regard, they also confuse the issue regarding the relief sought by the applicants. Mr Mbelu submits the applicants seek a determination

as to whether the first or second respondent was the employer whilst the first respondent assumed the application was launched to determine the issue of unfair dismissal or retrenchment, which is not the reason for the application. The applicants he continued are not pursuing the application to determine dismissal or retrenchment before this court.

[26] I accept that the dispute the applicants referred to this court was whether the first respondent or the second respondent was the employer of the applicants. The applicants' had stipulated their periods of employment with the second respondent and submitted their salary advice slips for the periods part of those periods. The first respondent disputes that this court has jurisdiction. I have already pronounced that this court has jurisdiction to deal with the matter. Furthermore, pertaining to the dispute of fact, the first respondent did not specify the dispute of fact. According to the first respondent, the applicant must prove that it is not their signatures. However, the applicants contend that the first applicant was never their employer, and they never signed any agreements with the first respondent. They assert that the second respondent was their employer

and they attached their salary advice slips. The issue of the validity of the signatures lies with the first respondent who must

prove the disputed contracts and the signatures. The first respondent referred to the approach adopted in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 All SA 366 A at 368 Corbett JA stated that:

'..where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.'

In adopting the *Plascon-Evans* approach the first respondents has not placed legible copies of the contract before this court, the signatures are disputed, their client does not confirm their version. Having regard to the applicants affidavit and what the first respondent admits. There is a dispute of fact such that the first respondent's version appears improbable and is rejected.

- [27] The first respondent is the Workforce Group Staffing (Pty) Ltd (a staffing company), a private company registered in terms of the South African Laws with the registration number 1999/006358/07 and business address at 11 Wellington Road in Parktown, Johannesburg. The second respondent is Dew Crisp (Pty) Ltd, a private company having its business address at Plot 81 Muldersdrift, near Krugersdorp in the Mogale City Municipality, Gauteng Province. The first respondent contended that it placed staff at the second respondent. For the purpose of addressing the issue whether the first respondent had a mandate to represent the second respondent is not clear from the papers. The first respondent makes it clear on the papers that it had no mandate contractually or otherwise to speak on behalf of the second respondent who has chosen to ignore the proceedings.
- [28] Mr Mbelu submitted that the applicants have remained consistent in their contention that the second respondent was their employer throughout the whole period of their employment up until they were dismissed from employment. The first respondent was never the employer of the applicants and there are no contracts of employments concluded between the applicants and the first respondent. The contracts of employments relied upon by the by the first respondent produced at the CCMA are disputed. The applicants deny having signed such agreements. The applicants contend that they never approached the first respondent to seek employment and never concluded nor signed any contracts of employment with the first respondent or to be placed with an employer. They therefore seek the agreements be declared invalid and set aside.
- [29] The first respondent's contention that the applicants are their employees based on the aforesaid contracts of employment alleged by the first respondent to have been concluded between itself and the applicants is unfounded. In view of the applicants' disputing the signatures and/or validity of such contracts of employment, this court was directed to the payslips the applicants produced issued by the second respondent. With regard to the dispute that the signatures of employees therein are their signatures, the applicants have produced payslips issued by the second respondent to the applicants during the period of employment, the applicants have filed affidavits denying signing the contracts and referred to. They referred their complaint of an unfair dismissal against the second respondent at the CCMA for resolution. The CCMA lacks jurisdiction regarding the contractual dispute between the first respondent and the applicants. The aforesaid contracts produced by the first respondent at the CCMA remain disputed by the applicants.
- [30] Except for the copies of the alleged disputed contracts of employment, no other evidence is produced by the first respondent that it was the employer and that the disputed contracts of employment are valid as between the applicants and the first respondent. Having regard to the applicant's undisputed evidence regarding the period of employment prior to 2017 the second respondent was the applicants employer throughout the whole period of their employment up until they were dismissed from employment. The disputed contracts do not cover the periods for the contract stated in the applicants' affidavit namely:

30.1 Applicant went to the second respondent to seek for employment, and was employed to work only on Saturdays. From 2 February 2016 she commenced work every day, including Saturdays. In June 2016 she signed a contract of employment with the second respondent and continued to work until the expiry of the said contract which was in October 2016. From October 2016 she worked without contract of employment until January 2017. She signed another contract on 9 January 2017 which expired on 31 January 2017, thereafter the contract was renewed on 1 February 2017 until it expired on 28 February 2017. She continued to work until she was dismissed on 11 August 2017.

30.2 The second applicant commenced work at the second respondent on 13 October 2015. He signed a contract of employment in November 2015 and worked until June 2016. He then signed another contract of employment and continued to work until he was dismissed on 11 August 2017.

30.3 The third applicant commenced work at the second respondent in December 2014 however she worked on Saturdays only. In June 2016, she signed a contract of employment with the second respondent and worked until the end of October 2016. From thereon she continued to work until January 2017 without a contract of employment. In January 2017 she signed another contract of employment with the second respondent which expired on 31 January 2017. The contract was renewed on 1 February 2017 until 28 February 2017 whereafter she worked without renewal until she was dismissed on 11 August 2017.

30.4 The fourth applicant commenced working for the second respondent in February 2015, and worked only on Saturdays. On 8 October 2015, she signed a contract of employment with the second respondent and worked until February 2016 when the said contract expired. Thereafter she continued to work without a contract of employment until June 2016. In June 2016 she signed another contract of employment with the second respondent and continued to work until October 2016 when the contract expired. Thereafter she continued to work without any contract of employment until 1 February 2017. The contract was renewed until 28 February 2017 whereafter she continued to work until she was dismissed on 11 August 2017.

30.5 The fifth respondent commenced working for the second respondent since September 2015, however she only worked on Saturdays. She started to work every day in February 2016. She signed a contract of employment in June 2016 and continued to work until it expired in October 2016. Thereafter she continued to work without a contract of employment until she signed another one - month contract of employment on 1 February 2017 which expired on 28 February 2017. From 28 February 2017 she continued to work without contract of employment until she was dismissed on 11 August 2017.

30.6 The sixth applicant commenced working for the second respondent in April 2016, on Saturdays only. She started and continued to work every-day from May 2016 until she was dismissed on 11 August 2017.

30.7 The seventh applicant commenced working for the second respondent in December 2015, on Saturdays only. On 26 January 2016 she started to work every-day and continued to work until June 2016 when she signed a contract of employment and continued to work until it expired in October 2016. Upon the expiry of the employment contract, she continued to work without any contract of employment until she signed another contract of employment on 1 February 2017 which expired on 28 February 2017. Upon expiry of the contract she continued to work without a contract until she was dismissed on 11 August 2017.

[31] In response to the above periods, the first respondent has no records. The second respondent does not dispute the applicants' version. The first respondent cannot furnish a response on behalf of the second respondent as it has provided no authority to do so. The second respondent has not confirmed the first respondent's version either. The applicant attached their payslips for the period 2017, which is the period when they were supposed to be employed by the first respondent. Thus, the second respondent has not disputed the applicants' version regarding employment as indicated for the first to the seventh applicant for the period before 2017, nor has it disputed issuing salary advice slips for the period 2017. The only

conclusion

to be drawn from these facts then is that the second respondent was the applicants' employer.

[32] The full extent of the relief requested by the applicants is not possible as the transcription of proceedings at the CCMA was not made available to this court. There were also issues that this court is precluded explicitly from deciding upon. I am satisfied that based on the salary advices that the second respondent employed the applicants.

[33] I now move to the issue of costs. There are no reasons why cost should not follow the cause.

ORDER

[34] In the result, the following order is granted:

1. The second respondent has always been the employer of the applicants throughout the whole period of the applicants' employment at the second respondent and when the applicants were dismissed and/or their services were terminated at the second respondent.
2. The first respondent to pay the costs herein

S C MIA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES:

On behalf of the applicant :

Mr SA Mbelu

Instructed by

: SA Mbelu Attorneys Incorporated

On behalf of the applicant :

Adv Rambachan Naidoo

Instructed by

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Matter Heard On

: 23 November 2020

Judgment

Reserved On :

23 November 2020

Judgment

Delivered On :

17 May 2021

[1] ABSA Bank Limited v Botha NO and Others 2013(5) SA 563 GNP;Capriati v Bonnox (Pty) Ltd and Another (101816/2016) [2018] ZAGPPHC 345(10 May 2018)

[2] 1.It must have an adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief

sought; 2. The interest must not be too remote; 3.The interest must be actual, not abstract or academic;; and 4 The interest must be current and not a hypothetical one

[2] 1.It must have an adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief

sought;

2. The interest must not be too remote;

3.The interest must be actual, not abstract or academic;; and

4 The interest must be current and not a hypothetical one

[3] See: The Civil Practice of High Court Vol.1 Page 293.

[4] Pountas Trustee v Lahanas 1924 WLD 67 at 68.

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