

SOUTH AFRICA / JUDGMENT

Nsele v SA National Parks and Another (JS283-17) [2021] ZALCJHB 90 (2 June 2021)

[2021] ZALCJHB 90

COURT

Labour Court Johannesburg

BEFORE

F Coetzee

CASE / FILE NUMBER

JS283-17

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

no: JS283-17

In

the matter between:

SIFICO

PANUEL NSELE

Applicant

and

SA

NATIONAL PARKS AND ANOTHER First

Respondent

THE

MINISTER OF ENVIRONMENTAL AFFAIRS

Second Respondent

Heard: 2 June 2021

Delivered:

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 2 June 2021.

Summary:

Jurisdiction

JUDGMENT

COETZEE, AJ

- [1] The first respondent relies upon a point in limine to the effect that the Labour Court does not have jurisdiction to adjudicate the applicant's claim.
- [2] The first respondent, for the first time, raised this legal issue during the pre-trial conference.
- [3] The first respondent's complaint is that nowhere in the statement of claim does the applicant rely upon the Basic Conditions of Employment Act, 75 of 1997 ("the BCEA"). Secondly, the language employed in the pleadings does not ground the dispute in labour law, according to the respondent.
- [4] The first respondent relies upon *Gcaba v Minister of Safety and Security and Others*
- [1] .
- [5] The *Gcaba*-matter concerned the question whether a failure to promote and appoint the applicant constituted administrative action subject to review and whether the High Court correctly decided that it had no jurisdiction to hear the matter.
- [6] The applicant had relied exclusively upon the administrative law to challenge the respondent for not promoting him. The *Gcaba*-matter is only of assistance to the extent that the jurisdiction must be determined on the basis of the pleadings and not the substantive

merits of the case:[2]

‘75. Jurisdiction is determined on the basis of the pleadings, as Langa CJ held in *Chirwa* [supra] and not the substantive merits of the case. If Mr *Gcaba*’s case were heard by the High Court, he would have failed for not being able to make out a case for the relief he sought, namely review of an administrative decision. In the event of the Court’s jurisdiction being challenged at the outset (in limine), the applicant’s pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the Court’s competence.”

- [7] The first respondent also relies upon *Rand Water v Stoop and Another*. [3] The Labour Appeal Court held that the Court had jurisdiction where an employer claims damages from the former employee arising from the provisions of the contract of employment whether explicit or implied, provided the contractual provisions are pleaded.
- [8] In summary, the authorities referred to require of the applicant to plead a contractual term and the breach thereof. The Court must only look at the pleading and not consider any evidence or look at the substantive merits of the case.

The statement of claim

- [9] Having regard to the statement of claim, the applicant specifically pleads in paragraph 4.1 that the Court has jurisdiction to hear the matter in terms of section 77(3) of the BCEA. The applicant therefore clearly relies upon the BCEA as the legal framework for his claim.
- [10] The applicant further pleads in paragraph 5.10 that in terms of the contract of employment the applicant was entitled to the housing allowance that he claims in the statement of claim and that the respondent is contractually obliged to pay the applicant such allowance.
- [11] The respondent denies that the contract of employment entitled the applicant to a housing allowance. That, however, is a dispute on the substantive merits of the matter which this Court is called upon to adjudicate at trial and not in this application. The respondent may or may not be successful with its denial of such a contractual right.
- [12] There is no merit in the first respondent's submission that the Court does not have jurisdiction.
- [13] The Court has jurisdiction to adjudicate the dispute as pleaded.
- [14] The first respondent contends that the citing of the second respondent constitutes a misjoinder. According to the first respondent the second respondent has no direct or material interest in the matter.
- [15] It is for the second respondent to raise such argument. The fact that the second respondent has been cited does not affect the defence or defences of the first respondent and is not to the first respondent's prejudice.

Costs

- [16] This is an interlocutory matter where the applicant is successful. Having regard to the relevant factors there is no reason to make a costs order.
- [17] The following order is hereby made:

Order

1. The Court has jurisdiction to adjudicate the dispute.
2. There is no order as to costs.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances:

The matter has been determined on paper.

[1] 2010

- (1) SA 238 (CC)
- [2] Para 75
- [3] (2013) 3 for ILJ 579 (LAC)
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