

SOUTH AFRICA / JUDGMENT

NUM obo Mlotshwa and 57 Others v Reitspruit Crushers and Construction (PTY) Ltd and Others (J 820/22) [2022] ZALCJHB 194 (26 July 2022) [2022] ZALCJHB 194

COURT

Labour Court Johannesburg

BEFORE

G N Moshwana

CASE / FILE NUMBER

J 820/22

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

CASE NO: J 820/22

In the matter between:

NUM OBO SANDILE MLOTSHWA

AND 57 OTHERS

Applicant

and

REITSPRUIT CRUSHERS AND

CONSTRUCTION (PTY) LTD

and others

Respondents

Heard: 22 July 2022

Reasons:

26 July 2022

Summary: Urgent application – set aside a dismissal as being unlawful. Jurisdiction of the Labour Court. The Labour Court lacks jurisdiction to entertain the application.

REASONS

MOSHOANA, J

Introduction

[1] On 22 July 2022, in the urgent Court, this Court made an order dismissing the urgent application and ordered the applicant to pay the costs. What follows hereunder are the reasons for the order. Where a Court of law makes an order parties affected by that order, be it adversely or favourably are generally entitled to be given reasons, more particularly the party who lost[1].

Pertinent

facts

[2] Reitspruit Crushers and Construction (Pty) Ltd (Reitspruit) voluntarily applied to be placed under business rescue. On 7 February 2022, Reitspruit was duly placed under business rescue. On 12 to 14 April 2022, the employees of Reitspruit engaged in an industrial action. On 19 April 2022, Reitspruit dismissed employees who engaged

in what it termed unprotected strike action.

[3] Aggrieved by the dismissal, the National Union of Mineworkers (NUM) referred a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) and alleged unfair dismissal. On 23 June 2022, Commissioner Sifiso Ngala (Ngala) issued a ruling declining jurisdiction. In a written ruling, the learned commissioner concluded that the CCMA lacked jurisdiction until the conclusion of business rescue proceedings. The applicants chose not to challenge that ruling on review. Instead on or about 7 July 2022, the applicants elected to launch the present application to be heard on the urgent roll.

[4] In the notice of motion, the applicants sought a declarator that this Court has jurisdiction to adjudicate in terms of section 157

(2) of the Labour Relations Act[2] (LRA). As a sequel, the applicants sought an order declaring the dismissal to be unfair. Additionally sought an order compelling Reitspruit to comply with fair procedure before dismissing the employees. An order was sought that until compliance with a fair procedure a dismissal ought to be interdicted and restrained. Ultimately, the applicants sought a reinstatement order.

[5] The respondents duly opposed the application. They challenged the jurisdictional powers of this Court. After hearing submissions, this Court issued the order outlined above.

Evaluation

[6] This is one of those hopeless and ill-advised urgent applications. The notice of motion is badly drafted and contradictory in many respects. Whoever drafted it conflated the provisions of section 189A

(13) with the provisions of section 191 of the LRA. Section 189A (13) is reserved for a dismissal based on operational reasons in respect of mass dismissals. The employees in the present application were dismissed for reasons that they participated in an unprotected strike action.

[7] Based on the wrong ruling by the commissioner, it is apparent that the dispute was not conciliated upon. This Court lacks jurisdiction where a dispute has not been subjected to a conciliation process[3]. It was open and it is still open for the applicants to challenge the ruling of Ngala on review. It does seem that the commissioner

misunderstood the provisions of section 133 (1) of the Companies Act[4]. Proceedings in the CCMA do not amount to legal proceedings[5]. Thus before making a referral, an employee does not require consent or leave of a Court.

[8] In view of the fact that the applicants are seeking to challenge the fairness of a dismissal by way of motion before the conciliation processes occurs, this Court is bereft of jurisdiction. It was on this basis that this Court dismissed the application for want of jurisdiction.

Costs

[9] With regard to costs, it is the view of this Court that the application was ill advised and was launched simply to harass Reitspruit. NUM should have known better, particular in an instance where it is legally represented. The application was frivolous and vexatious in nature. It would be unfair to mulct the respondents with

the costs of such a hopeless application. The conduct of persisting with such a hopeless application drove the Court to making an award of costs. The respondents made it abundantly clear in their answering papers that this Court lacked jurisdiction. In Court it was highlighted that the Labour Court lacked jurisdiction but counsel for the applicants forged ahead with the application.

[10] It was for the above stated reasons that this Court dismissed the application with costs.

G. N. Moshwana

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr R C Mathevula together with Ms JR Rakhadani.

Instructed by:

Mohale Inc, Pretoria

For the Respondents:

Mr A P Brandmuller of Brandmullers Inc.

[1] See R v Sheppard 2002 SCC.

[2] No. 66 of 1995, as amended.

[3] See September and others v CMI Business Enterprise CC

[2018] 5 BLLR 431 (CC).

[4] No. 71 of 2008

[5] See MEC for the Department of Co-operative Governance and Traditional Affairs v
Maphanga

(2020) 1 All SA 52 (SCA).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCJHB/2022/194.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/num-obo-mlotshwa-and-57-others-v-reitspruit-crushers-and-construction-pty-ltd-and-others-unknown-topic-alcjhb-2022>

Prepared on 13 October 2026 · Esheria