

SOUTH AFRICA / JUDGMENT

NUM obo Morobe and Others v Bidvest Protea Coin (Pty) Ltd (JS 317/14) [2021] ZALCJHB 168 (20 July 2021) [2021] ZALCJHB 168

COURT

Labour Court Johannesburg

BEFORE

P Nkutha-Nkontwana

CASE / FILE NUMBER

JS 317/14

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 317/14

In the matter

between:

NUM obo Morobe and 4
Others Applicant
and
BIDVEST
PROTEA COIN (PTY)
LTD
Respondent

Heard:

27
May 2021

Delivered:

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 20 July 2021.

Summary:

Respondent's jurisdictional point is ill-conceived – party must serve its bundle of documents five days before the trial – failure to do so, the matter may be postponed with costs.

JUDGMENT

NKUTHA-NKONTWANA, J

- [1] This matter was set down for trial on 27 May 2021. The respondent raised a point in limine to the effect that the court lacks jurisdiction to deal with the matter as the dispute pertaining to the applicants was never referred to conciliation. On the other hand, the applicant sought postponement due to the fact that it had been served with the respondent's bundle of documents with more than 200 pages a day prior to the hearing. It also sought wasted costs due to the postponement.
- [2] I deal first with the respondent's point in limine, a point taken for the first time at the hearing of the matter and without giving the applicant a prior warning. As a result, the parties were directed to file written submissions by 17 June 2021, addressing both the jurisdictional point and the costs sought by the applicants due to postponement. They both duly complied.
- [3] It is common course that the members of the applicant (applicant employees), were employed by the respondent. They were retrenched on 31 January 2014 following a section 189 process and on the basis of the respondent's operational requirements. It is not disputed that during the course of their employment, the applicant employees referred several dispute to the Commission for Conciliation Mediation and Arbitration (CCMA), including unfair labour practice dispute.
- [4] However, 04 February 2014, the applicant specifically referred a dispute to the CCMA under case number NWRB 478-14. It is apparent from the certificate of outcome, LRA Form 7.12, that the parties that were before the CCMA are the same parties before the court and the dispute pertained to an alleged unfair dismissal related to employer's operational requirements. The dispute was certified as unresolved on 13 March 2014. These facts are conceded by the respondent in its statement of response and are also recorded as common cause in the pre-trial minute.
- [5] Obviously, the respondent's point in limine is ill-conceived and must fail.
- [6] That takes me to the applicant's request for postponement. The applicant took issue with the fact that the respondent served it with its bundle of documents a day before the hearing. As a result, it could not consult its members and properly prepare for trial. The respondent, on the other hand, submitted that its conduct did not fall short of neither the Rules nor the Practice Manual of the Labour Court as none of them contains any specific requirement that the documents to be utilised by a party during trial should be submitted at any specific time before the trial.

- [7] Granted, in terms of clause 10.5 of the Practice Manual, the referring party must attend to the pagination, indexing, binding and general preparation in respect of the bundle of pleadings not less than five days prior to the date allocated for the hearing of the trial. Even so, clause 10.6 of the Practice Manual enjoins a party that intends utilising documents during trial to ensure that they collated chronologically, numbered consecutively and suitably bound. In addition, paragraph 4.4 of the notice of set down issued by the Registrar notably states that the bundles to be utilised during trial must be prepared not less than five days before the trial.
- [8] In any case, as correctly submitted by the applicant, the purpose of the prompt discovery of documents a party intends relying on during trial is to enable the opponent to prepare in advance for the case and to avoid, proverbially, a trial by ambush. Of course, pagination of pleadings is important but failure to attend to same would not necessarily be prejudicial so as to warrant a postponement. However, the documentary evidence is different; hence a party intending to use a bundle of documents must serve the opponent with same at least five days before the trial.
- [9] It follows that the applicant's request for postponement was justified.
- [10] When it comes to costs, while it is well accepted that costs do not follow the result in this Court in keeping with the dictates of law and fairness, in the present instance there is no reason why the respondent should not pay the applicant's costs. Firstly, the respondent was ill-advised in taking the point in limine when it is obviously common cause, per the pre-trial minute, that the dispute had been conciliated and a LRA 7.12 form issued. Secondly, for some unfathomable reason, the respondent does not seem to grasp the elementary etiquette that in litigation you do not surprise your opponent by late discovery of documents.

[11] In the premises, I make the following order:

Order

1. The respondent's point in limine is dismissed.
2. The matter is postponed sine die.
3. The respondent should to pay the applicant's costs.

` P. Nkutha-Nkontwana

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate KM Mokotedi

Instructed by:

Mohale Incorporated Attorneys

For the Respondent: Ms S Lancaster of Lancaster Kungoane Attorneys

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