

SOUTH AFRICA / JUDGMENT

NUPSAW obo Sesoma and Others v Component Services (Pty) Ltd (JS719/10) [2018] ZALCJHB 154 (16 February 2018) [2018] ZALCJHB 154

COURT

Labour Court Johannesburg

BEFORE

Steenkamp

CASE / FILE NUMBER

JS719/10

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT BRAAMFONTEIN

CASE NO: JS719/10

DATE: 2018-02-16

In the matter between

NUPSAW obo P SESOMA & 4 others Applicant

and

COMPONENT SERVICES (PTY) LTD

Respondent

J U D G M E N T

EX TEMPORE

STEENKAMP J: This is an application in terms of rule 30 and rule 30A of the Uniform Rules of Court read with rule 11 of the Rules of the Labour Court.

The matter was enrolled on an unopposed basis. No pleadings have been filed on behalf of the applicant, NUPSAW (that is the trade union that purports to be acting on behalf of Patrick Sesoma and the other four applicants). However, when the matter was called today, one Mr Monyeki stood up and claimed to be acting on behalf of the applicant. It transpired from his submissions from the bar that he had been employed by NUPSAW as a union official, but resigned last year. He is now affiliated to another union. He has provided no proof of his affiliation to that union or of that union's registration or of the alleged membership of Mr Sesoma to that union, known as

UCIMESHWU. Mr Monyeke, nevertheless, asked from the bar for the matter to be postponed, despite the fact that he has filed no application for postponement. In support of that submission he says that this application in terms of rule 30 was only delivered to him on the 8th of February 2018. That is more than a week ago. He could not explain why he has filed no papers, nor has he properly applied for a postponement. The application for postponement is refused.

I then deal with the merits of the application on an unopposed basis. The matter has a long history and it appears from that history that Mr Sesoma and his colleagues have been badly served by a number of trade unions. Initially a statement of a claim was filed, purportedly by MEWUSA on behalf of Patrick Sesoma and four others, against an entity cited as Component Sources (Pty) Ltd. That happened more than seven years ago. Then, in August 2017, seven years after that referral, another statement of case was filed under the same case number; this time purportedly by NUPSAW, against three respondents, including Component Services (Pty) Ltd. Although the initial referral as well as the citation of the second referral refers to “NUPSAW on behalf of Patrick Sesoma and four others”, the new referral states that “the applicant”, whoever that may be, is the only person involved in this matter. The other applicants are no longer involved.

As Mr Crous for the third respondent pointed out, that entity is incorrectly cited as Component Services (Pty) Ltd, a company which does not

exist. He explained that he acts on behalf of an entity called Component Sources CC; an entity that is not cited. The notice in

terms of rule 30 and rule 11 was served on the applicant, NUPSAW, on the 5th of September 2017. Then Mr Monyeke sent an email back saying “we will stand on our application”.

It appears that Mr Monyeke left NUPSAW after that and Component Services filed this application on 16 October 2017 and properly served it on the applicant, NUPSAW, by registered post at its chosen address. However, that was returned and an attorney from Mr Crous’s office, Ms Alexandra Mihaletto, phoned Mr Elias Molefe, whose number appears on an affidavit filed together with the statement of case, and informed him of the application. Molefe referred her to Monyeke and on the 25th of January of this year the attorney, Ms Mihaletto, phoned the offices of NUPSAW and was told that Monyeke had left NUPSAW last year already. The company’s attorneys, nevertheless, sent the relevant documents to NUPSAW which was still cited as the applicant.

However, on the 1st of February NUPSAW advised it that it was not representing the applicant.

It is in those circumstances that the attorneys contacted Monyeke on the 7th of February 2018 and informed him of today’s court date. Despite that, Monyeke did nothing more to oppose the matter or, as I have noted, to present proof as to whom he was purporting to represent in these proceedings.

On the unopposed papers before me the applicant (i.e. the employer) has made out a case for the relief it seeks. I am not persuaded to order costs, given that the employee has been badly served by his representatives.

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ORDER

An order is granted in the following terms:

1. The applicant's statement of claim dated 22 August 2017 is declared to be an irregular step or proceeding in terms of rules 30 and 30A of the Uniform Rules of the High Court, read with rule 11 of the Rules for Conduct of Proceedings in the Labour Court.
2. The irregular step is set aside and the claim is dismissed.
3. I do not make an order as to costs.

STEENKAMP J

JUDGE OF THE LABOUR COURT

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No: 86 Cnr Juta & Melle Street, Arbour Square, 6th Floor Braamfontein, JHB

TEL / FAX 011 339 4362 FAX: 086 726 6628

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NUPSAW OBO p sesoma v COMPONENT SERVICES

CASE NUMBER:

JS719/10

RECORDED AT:

Labour Court

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2018-02-16

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Ex tempore judgment

TRANSCRIBER:

Ms M Brits

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