

SOUTH AFRICA / JUDGMENT

Petersen v Meltrade 123 CC t/a Silvertree Restaurant and Another (C804/12) [2016] ZALCCT 13; [2016] 7 BLLR 667 (LC); (2016) 37 (ILJ) 1932 (LC) (31 March 2016) [2016] ZALCCT 13

COURT

Labour Court Cape Town

BEFORE

Anton Steenkamp

CASE / FILE NUMBER

C804/12

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REPUBLIC OF SOUTH AFRICA

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THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Case no: C 804/12

In the matter between:

ABEEDA PETERSEN Applicant / judgment creditor and MELTRADE 123 CC t/a SILVERTREE RESTAURANT First Respondent / judgment debtor JENNI JONES t/a PIE MANAGEMENT Second Respondent / garnishee

Heard: 16 March 2016

Delivered: 31 March 2016

Summary: Application for execution against garnishee. Labour Court rule 26; High Court rule 45(12)(a). Jurisdiction: LRA s 158(1)(a)(ii), BCEA s 77(3).

STEENKAMP J

Introduction

- [1] This is an unusual application for this Court. The applicant seeks an attachment order against a third party as a garnishee. The question arises whether this Court has jurisdiction to grant such an order.

Background facts

- [2] The applicant, Ms Abeeda Petersen, was employed by the first respondent, Silvertree Restaurant. She obtained a default judgment against Silvertree in the amount of R16 614, 23. The Restaurant stopped trading. She now seeks to recover the debt from the second respondent, Jenni Jones (trading as PIE Events Management) as garnishee.
- [3] Ms Petersen was employed as a banqueting manager. She dealt with Ms Jones and PIE as a customer of the restaurant in order to organise events. She knows that PIE had failed to settle two accounts to Silvertree and owes about R27 000 to Silvertree. She says that Jones “admitted that the money was owed [to Silvertree] and advised [sic] that she would be willing to pay the monies directly to me because of the manner in which the judgment debtor dealt with its employees

before closing down”.

Jurisdiction

- [4] Upon reading the application papers, I issued a directive to the applicant’s attorneys to address me on the day of the hearing on the question whether the Labour Court has jurisdiction to issue a garnishee order. Mr Rawoot did so.

Evaluation

- [5] Neither the Labour Relations Act[1] nor the rules of the Labour Court deal with this issue directly. It seems to me that it cannot be said that the Labour Court has “exclusive jurisdiction” to do so in terms of s 157(1) as neither the LRA nor any other law gives it exclusive jurisdiction to do so. Depending on the amount owing, the High Court or the Magistrate’s Court also has jurisdiction. But this debt arises from the employment relationship and, more specifically, from a court order obtained against Silvertree in this Court. It appears that the order was granted in terms of s 77(3) of the Basic Conditions of Employment Act.[2] And in terms of that subsection:

“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.”

- [6] It seems to me that, in those circumstances, this Court does have concurrent jurisdiction to deal with the dispute. And s 158(1)(b) of the LRA gives the Court the power to order compliance with the any provision of the LRA “or any employment law”.

- [7] The Rules of the Labour Court do not deal with garnishee orders. The High Court Rules[3] do. High Court rule 45(12)(a) provides that:

Whenever it is brought to the knowledge of the sheriff that there are debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice on such third person, hereinafter called the garnishee, requiring payment by him to the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, pro tanto, of the debt attached.

- [8] Labour Court rule 26 provides that:

“In terms of section 163 of the [Labour Relations] Act, service and execution of the court’s decisions, judgments or orders must take place in accordance with the procedure for service and execution of decisions, judgments or orders of the High Court of South Africa.”

- [9] And s 163 determines:

“Any decision, judgment or order of the Labour Court may be served and executed as if it were a decision, judgment or order of the High Court.”

- [10] Read together, it seems to me that this Court does have jurisdiction to order the attachment of a debt as against a garnishee. The applicant obtained a judgment in this Court against the judgment debtor and seeks to enforce that judgment debt.

- [11] But she faces a further hurdle. She has not asked the Registrar of this Court to issue a writ of execution. The question then arises whether the debt is “subject to attachment”.

- [12] I think the meaning of the words “subject to attachment” in High Court rule 45(12)(a) necessarily means that a writ of execution should already have been issued. The rule goes on to say that the sheriff may, “if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice on such person, hereinafter called the garnishee, requiring

payment by him [sic] to the sheriff of so much of the debt as may be sufficient to satisfy the writ.”

Conclusion

- [13] I find that this Court does have jurisdiction to order attachment of a debt against a garnishee. However, it is a prerequisite to obtain a writ of execution against the judgment debtor. The applicant (the judgment creditor) has not done that. In those circumstances, the order cannot be granted.

Order

- [14] The application is dismissed.

Anton Steenkamp

Judge of the Labour Court of South Africa

APPEARANCES APPLICANT: Yaseen Rawoot Instructed by Parker attorneys.

[1] Act 66 of 1995.

[2][2][2] Act 75 of 1997.

[3] Uniform Rules of Court (RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA).

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