

SOUTH AFRICA / JUDGMENT

SAICA Enterprise Development (Pty) Ltd v Brown and Another (P73/21) [2023] ZALCPE 16 (10 August 2023) [2023] ZALCPE 16

COURT

Labour Court Port Elizabeth

BEFORE

Lallie

CASE / FILE NUMBER

P73/21

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IN

THE LABOUR COURT OF SOUTH AFRICA, GQEBERHA

Reportable

CASE NO: P73/21

In

the matter between:

SAICA
ENTERPRISE DEVELOPMENT (PTY) LTD
Applicant
And
ZELIA
BROWN & ANOTHER
Respondent

Heard:

24 November 2023

Delivered:

This judgment was handed down electronically by circulation to the Applicant's and Respondents' Legal Representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 16h00 on 10 August 2023.

JUDGMENT**LALLIE, J**

[1] The applicant launched this application in terms of Rule 23 (1) of the Labour Court Rules seeking the consolidation of the disputes referred by the respondents under case number PS19/21 and PS20/21. The application is opposed by the respondents.

[2]

The respondents were employed by the applicant. They were both dismissed for the applicant's operational requirements on 28 February

2021. On dismissal the first respondent was a Financial Excellence Offering and Project Manager while the second was a Financial

Excellence Graduate and Project Officer. The former had 8 years service and the latter had worked for the applicant for four years.

The respondents challenged the fairness of their dismissal for the respondent's operational requirements which will be referred to as a retrenchment in this judgment, by referring an unfair retrenchment dispute to the Commission for Conciliation, Mediation and Arbitration (the CCMA). An attempt to resolve the dispute through conciliation did not succeed and the respondents made different referrals to this court challenging the substantive and procedural fairness of their retrenchment. The first respondent's statement of claim was filed under case number PS20/21 on 7 July 2021 and the second respondent's on 9 July 2021 under case number PS19/21.

[3] The application at hand was brought in terms of Rule 23 (1) of the Labour Court Rules which provides as follows:

"The court may make an order consolidating any separate proceedings pending before it if it deems the order to be expedient and just"

[4] The applicant's grounds for the application are that the respondents' referrals are similar as they arise from the same retrenchment exercise. The respondents were retrenched on the same date, they both challenge the substantive and procedural fairness of their dismissal and base their respective cases on similar averments. Each respondent alleged that the applicant relied on vague allegations in justifying the redundancy of their positions owing to the applicant's structure. They both deny that their roles were, redundant because they were performed by consultants after their dismissal. They both attack the fairness of the selection criteria on the basis that it was neither discussed with nor explained to them. They both alleged that the applicant failed to comply with its statutory obligations in conducting pre-retrenchment consultation. The applicant sought to rely on the adverse consequences which will result from a separate adjudication of the disputes which may result in conflicting judgments. The applicant further submitted that the consolidation will result in the efficient

resolution of the disputes in line with objects of the Labour Relations Act[1]. It was submitted that the consolidation is in the public interest and will contain the costs of each referral in an effective manner. The applicant sought to rely on the prejudice it stands to suffer in raising the same arguments before two different judges and having to incur legal costs for the adjudication of each referral. A further concern is the possibility of Judges reaching conflicting decisions on the matters.

- [5] The respondents' opposition is based on the distinction between the positions they held and the evidence relevant to each respondent's

case. The first respondent was a manager and the second her subordinate. The first has an insurance with Legal Wise for the payment of her legal fees which will decline to assist her should her claim be consolidated with another resulting in her losing her benefit.

- [6] The respondents based their argument on Rule 11 of the Uniform Rules of Court which enables the court to consolidate actions when appears to the court convenient to do so". I accept the applicant's argument that Rule 11 of the Uniform Rules of Court does not apply in this case."The Labour Court has its own rules which regulate its proceedings. It is only, as Rule 11 (3) provides, when the Labour Court Rules do not provide for a situation that other means, including the use of the Uniform rules of Court is permitted. This application will therefore be determined in terms of Rule 23 (1) of the Labour Court Rules. I agree with the interpretation the court gave to Rule 23 (1) in *Piner v SA Breweries Ltd*[2] which the applicant sought to rely on. The meaning the court attached to "expedient and just" is that consolidation is permissible if granting it will be equitable to all the parties to the separate actions. Although the respondents' argument is based on Rule 11 of the Uniform

Rules of Court, the relevance of the argument on prejudice cannot be overlooked because it addresses the 'just' part of Rule 23

- (1) of the Labour Court Rules. In addition, word 'convenient' used in the Uniform Rules has a similar meaning to the word 'expedient' used in the Labour Court Rules.
- [7] I accept the applicant's argument that consolidating the trials will be expedient because it will lead to an expeditious finalization of both trials. The claims of both respondents arose from the same retrenchment process and the applicant will have the benefit of calling witnesses once in proving the fairness of the dismissal of both respondents. The applicant will also incur less costs. I reject the applicant's argument that consolidating the two referrals would be just. The first respondent's submission that she will lose her benefit of having her legal fees covered by Legal Wise was not refuted. I was given no reason to reject the submission by the respondents' attorney that owing to her longstanding relationship with Legal Wise she knows that the first respondent's funding would be withdrawn should the referrals be consolidated. Her submission is not far-fetched because a consolidation of trials has the effect of extending the period of the hearing of the trial. The applicant's obligation to prove the fairness of each respondent's dismissal will not be curtailed. So will the right of each respondent to present his or her case.

[8] Justice to all the parties must be taken into account in deciding whether consolidating the trials would be just. The applicant is legally represented. The first respondent took out a Legal Wise insurance so that her legal fees could be funded in the event of her needing to be legally represented. The need has arisen and justice requires that she enjoys the benefit of having her legal

representation funded. I am not convinced that the benefit of the expedience of the consolidation justifies a decision which will see the first respondent lose her Legal Wise benefit. It would not be just to grant consolidation which will leave the first respondent

without legal representation, alternatively, forcing her to use her own money to fund her trial in the face of her effort to plan for future legal costs. Although the respondents were retrenched in the same retrenchment exercise each has a right to a fair trial which may not be sacrificed for expedience. I accept the respondents' argument that they will suffer injustice as a result of the prejudice that will result from a consolidation. A consolidation of the trials stands to benefit the applicant which will incur less, legal costs and remove its witnesses from their work stations to give evidence at the trial once. A decision that benefits one party and prejudices the others is inherently unjust. The possibility of having 2 conflicting judgments issued if consolidation is denied is a natural consequence of litigation involving the simultaneous dismissal of a number of employees. It cannot, on its own, justify consolidation of trials. The application for consolidation cannot succeed as the applicant did not prove that granting it will be expedient and just.

[9] Fairness requires that the respondents should not be out of pocket for defending their right to a fair trial.

[10] In the premises, the following order is made:

1. The application is dismissed with costs.

Z. Lallie

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Advocate I. Lambrechts

Instructed by:

Cliffe Dekker Hofmeyr Inc

For the Respondents:

Advocate O.H Smith

Instructed by

Monique Cooper Attorneys Inc

[1] Act 66 of 1995 as amended.

[2]

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