

SOUTH AFRICA / JUDGMENT

Seale and Another v Marce Fire Fighting Technology (J947/2023)

[2023] ZALCJHB 220 (13 July 2023)

[2023] ZALCJHB 220**COURT**

Labour Court Johannesburg

BEFORE

Lallie

CASE / FILE NUMBER

J947/2023

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Policy**IN****THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****Not****Reportable****CASE****NO: J947/2023****In**

the matter between:

MASILO

LAPSON JOHN SEALE

First

Applicant

J[...]

P[...] S[...]

Second

Applicant

And

MARCE

FIRE FIGHTING TECHNOLOGY

Respondent

Heard:

6 and 7 July 2023

Delivered: This judgment was handed down electronically by circulation to the Applicant's and Respondent's 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 13 July 2023.

JUDGMENT

LALLIE, J

[1] The applicants launched this urgent application seeking relief in the following terms:

'2. An order in terms of which the respondent is ordered to deliver and return the first applicant's personal information and his information relating to Maree Projects (Pty) Limited on the Laptop which he has handed to the respondent (on 21 June 2023) on an external hard drive and/or memory device provided by the first applicant on a date determined by the Honourable Court pending the outcome of the applicants' suspension referral to the CCMA

3. An order in terms of which the respondent is ordered to deliver and return the second applicant's personal information and information relating to his foreign companies and interest identified in paragraphs 8.5, 8.6, 8.7 and 8.8 of the founding affidavit on the Laptop which he has handed to the respondent (on 19 June 2023) on an external hard drive and/or memory device provided by the first applicant on a date determined by the Honourable Court pending the outcome of the applicants' suspension referral to the CCMA.'

The application is opposed by the respondent.

[2] The applicants are directors and employees of the respondent which manufactures firefighting trucks and equipment. The respondent started as Maree Marketing CC, a close corporation which was founded by Mrs S[...], the second applicant's wife. In 2015 the close corporation was converted into the respondent's current form. Mrs S[...] is its director and 100% shareholder. The second applicant was employed as its managing director. The respondent

conducts business in South Africa and other countries. In South Africa part of the marketing of the respondent's products is done by Maree Projects (Pty) Limited which will be referred to as Marces Projects in this judgment. The first applicant is the majority

shareholder of Maree Projects. He has 51% of the shares. The remainder belongs to the respondent. The applicants are directors of Maree Projects. The second applicant established companies in Mozambique, Botswana, Namibia, Mauritius, China, Uganda and Zimbabwe

for marketing the respondent's products outside the South African borders.

[3] The applicants received mobile phones, laptops, SIM cards, memory sticks, computers and routers from the respondent as part of their tools of trade. Owing to marital problems, Mrs S[...] instituted divorce proceedings against the second applicant in May 2023. On 19 June 2023, the second applicant was issued with a notice of the respondent's intention to suspend him. Acting in terms of the notice, the second applicant handed over the respondent's equipment which included a mobile phone, SIM card and a laptop. He was then told to leave his workplace. He received his letter of suspension the following day. The first applicant was suspended from duty on 21 June

2023. He complied with the respondent's instructions to return a laptop and company car.

[4] The applicants' battle for the return of their personal information

on the devices they left at the respondent shortly before their suspension commenced on 21 June 2023. It culminated in the filing of the application at hand on 4 July 2023. The respondent challenged the jurisdiction of the Labour Court to adjudicate this dispute. As a court can only act when it has the necessary jurisdiction, the issue whether this court has it in this matter will be determined first.

Jurisdiction

[5] The applicants' grounds for alleging that this matter falls within this court's jurisdiction are that they are employees of the respondent. They submitted that their dispute falls within the purview of section 157 (1) of the Labour Relations Act[1] (the LRA). They further relied on the powers vested in this court in section 158(1)(a)(i)(ii) and (iii) of the LRA. The respondent

submitted that the relief sought by the applicants is not interim in nature as it has a final effect. It further alleged that the relief sought by the applicants is not located in a statute conferring jurisdiction on this court such as the LRA, Basic Conditions of Employment Act[2] (BCEA) or the Employment Equity Act[3] (EEA). It was the respondent's case that the substantive relief sought by the applicants cannot be located in the LRA. In *Chirwa v Transnet Ltd and Others*[4], authority the applicants relied on, the court expressed the significance of giving the jurisdiction of the Labour Court an interpretation 'that gives full effect to the policy and the objectives of the LRA'.

[6] I accept the respondent's submission that the applicants had to prove that this court has the jurisdiction envisaged in section 157 of the LRA before it can exercise the powers in section 158 of the LRA. The applicants have relied on section 157(1) of the LRA which grants this court exclusive jurisdiction over matters identified in the LRA and any other law. The applicants did not identify the specific provision of the LRA or any legislation on which their allegations on jurisdiction are based. The respondent correctly argued that the applicants' case falls outside the jurisdiction of section 157 (1) of the LRA. It was, however, argued on behalf of the respondents that the applicants should approach the High Court for relief.

- [7] The respondent's argument that the applicants should have approached the High Court is consistent with the applicants' pleaded case. The applicants seek an order that the respondent return their personal information. In terms of their pleaded case, the Labour Court derives the necessary jurisdiction from section 157
- (2) of the LRA which grants it concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental rights entrenched in chapter 2 of the Constitution. Section 23 (1) of the Constitution of the Republic of South Africa, 1996 guarantees everyone the right to fair labour practices. This right forms part of the rights entrenched in chapter 2 of the Constitution. Notwithstanding reference to section 157 (1) of the LRA, the pleaded

case before me is based on section 157

- (2) of the LRA. The principle is expressed in *Chirwa* (supra)[5]. The applicants have therefore established that this court has the necessary jurisdiction to hear this application.

Urgency

- [8] The respondent submitted that the applicants failed to prove the urgency of their application. The claim is based on the applicants' delay in bringing the application, their lack of entitlement to the information they are seeking based on the respondent's policies and the applicants' refusal to co-operate with the respondent in its efforts to hand over the information. I accept the applicants' version that urgency has been proved. The applicants were suspended on 19 and June 2023. The applicants sought the return of the information from 21 June 2023 and after an exchange of correspondence

they filed this application on 4 July 2023. The applicants proved that they acted with the necessary urgency and that they will not be able to obtain the relief they are seeking in due course. This application is therefore urgent.

- [9] It is common cause that the respondent expressed its willingness to hand over the information the applicants are entitled to including their personal information. There are only a few documents whose ownership is in dispute. The applicants conceded that the ownership of those documents has to be determined in terms of the Companies Act[6]. An employee retains ownership of his or her personal information and the employer has no right to confiscate or deny an employee the right to that information. Employers have a duty to regulate the use of tools of trade by employees in clear terms which should be communicated to employees. Employees need to know before hand the nature of information that can be stored in employers' devices that they have

the right to use and the ownership of the information after it has been stored.

- [10] In light of the concession by the respondent that the applicants are entitled to the documents which fall outside the realm of the Companies Act, the applicants' clear right to those documents has been established. The applicants have further proved the irreparable

harm they will suffer if they continue being denied their personal information which includes crucial and time sensitive information relating to their work for Maree Projects. The applicant's contention that they have no alternative remedy was not disproved by the respondent. In the premises, the application in respect of the documents whose ownership falls within the jurisdiction of this court must succeed.

- [11] Each party sought a costs order against the other based on the alleged unreasonableness of the parties in bringing and conducting these proceedings. These proceedings emanated from a personal relationship between the second applicant and Mrs S[...] who holds a position of authority at the respondent. Their acrimonious dispute spilled over into the workplace and had an impact on the current proceedings. The first applicant was caught in cross fire. Further, each party has partially succeeded. Granting a costs order in the circumstances will not be appropriate.
- [12] In the premises, the following order is made:
1. The non-compliance with the Labour Court Rules (the Rules) in respect of form, service and the time periods as provided for in Rule 8 is of the Rules is condoned.
 2. The respondent is ordered to deliver and return the first applicant's personal information and his information relating to Maree Projects (Pty) Limited on the laptop which is handed to the respondent on 21 June 2023 on an external hard drive and/or memory device provided by the first applicant on or before 18 July 2023 pending the outcome of the applicants' suspension referral to the CCMA.
 3. The respondent is ordered to deliver and return the second applicant's personal information and information relating to his foreign companies and interests identified in paragraphs 8.5, 8.6, 8.7 and 8.8 of the founding affidavit on the laptop which he handed to the respondent on 19 June 2023 on an external hard drive and/or memory device provided by the first applicant on or before 18 July 2023 pending the outcome of the applicants' suspension referral to the CCMA.
 4. The information referred to in paragraph 3 above excludes the information in respect of the 4 companies in dispute.
 5. There is no order as to costs.

Z. Lallie

Judge of the Labour Court of South Africa

Appearance For the Applicant: Advocate E.S.J van Gvaan SC Instructed by AJ Stone Attorneys For the Respondent: Advocate R. Grundlingh Instructed by Cavanagh Richards Attorneys

[1] 66 of 1995 as amended.

[2] 75 of 1997 as amended.

[3] 55 of 1998 as amended.

[4] 2008 (4) SA 361 CC.

[5] At 424 E-F The determination of whether the dismissal does constitute administrative action is part of the merits of the claim, not a jurisdictional requirement.⁵ The finding, however, rests on the case as pleaded by Ms Chirwa. She formulated her case on the basis of PAJA, and a court must assess its jurisdiction in the light of the pleadings. To hold otherwise would mean that the correctness of an assertion determines jurisdiction, a proposition that this Court has rejected (footnotes omitted).

[6] 71 of 2008.

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