
SOUTH AFRICA / JUDGMENT

Seepe v Thermadyne Plant Rental and Another (J1013/2011) [2016] ZALCJHB 186 (5 April 2016)

[2016] ZALCJHB 186

COURT

Labour Court Johannesburg

BEFORE

AH Shene

CASE / FILE NUMBER

J1013/2011

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J1013/2011

In the matter between:

PETER SEEPE

Applicant

and

THERMADYNE PLANT RENTAL

First Respondent

RENTTECH SA (PTY) LTD

Second Respondent

Heard: 5 March 2015

Delivered: 5 April 2016

Summary: Rule 22 of the Labour Court Rules, joinder of parties to proceedings where a court order has already been handed down.

AH SHENE, AJ

Introduction

- [1] This is an application in terms of Rule 22 of the Labour Court Rules to join the Second Respondent as a party to this matter.
- [2] The applicant seeks an order joining the Second Respondent to an existing court order handed down on 13 April 2013 under the above case number and so as to comply with the order handed down.
- [3] The second respondent opposed this application and raised the following points in limine:
 - 3.1. That it was not competent to seek an order joining a party where a court order has already been obtained;
 - 3.2. That it was not competent to join a party to an order where the party was not cited as a respondent before the CCMA;
 - 3.3. That the award granted against the first respondent has prescribed.

Background

- [4] On 8 October 2008, the Applicant, was dismissed by his employer, a business entity known to him as “Thermadyne Plant Rental”,

the first respondent in this matter. The applicant thereafter referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA).
- [5] A default arbitration award was handed down on 8 December 2008.
- [6] The first respondent applied for a rescission thereof.
- [7] After a fairly long history, the arbitration came before Commissioner Kekana and an arbitration award was handed down on 25 January 2010. The first respondent subsequently applied for a rescission of the arbitration award but such application was refused.
- [8] The applicant then filed a section 158(c) application, which was initially opposed. The application was set down on 11 April 2013.
- [9] A day before the matter was to be heard on the opposed roll before this court, the first respondent’s attorneys withdrew as the attorney of record. From the pleadings in the aforementioned application, only the first respondent (“Thermadyne Plant Rental”) was cited as a party.
- [10] The arbitration award was thus made an order of court on 11 April 2013, wherein the following order was made:

‘1. The arbitration award dated 25 January 2010 and issued by Commissioner Prince Kekana of the Commission for Conciliation, Mediation and Arbitration Johannesburg, under case number GAJB30989-08, is made an order of court in terms of section 158(1)

- (c) of the Labour Relations Act 66 of 1995.
2. the applicant is to report for duty on Monday 15 April 2013 at 8h00.’
- [11] The first respondent was ordered to reinstate the applicant but on Monday 15 April 2015, the Respondents refused. The second respondent replied to the applicant’s attorney stating that it was not the applicant’s employer’s but that the first respondent was.
- [12] The applicant avers that the first and second respondents’ share the exact same address, postal address and contact details. In addition, they also shared the same directors. The applicant’s letter of employment is headed Renttech SA t/a Thermadyne Plant S.A. In otherwords, the applicant alleges that the first and second respondent are one and the same entity.
- [13] From the papers before me, it is evident that the second respondent on 18 June 2013, subsequent to the section 158(1)(c) being filed, paid an amount of R15 588.00[1] to the applicant’s attorney. It was averred that the payment sought to resolve pending litigation between the parties. In August 2013, the applicant filed a joinder application despite having paid the said amount in accordance with the arbitration award. The second respondent then demanded the return of the amount paid[2] citing that it had erroneously paid the amount.
- [14] The second respondent avers that it is registered as Rentech South Africa, a private company which was registered on 10 December 2008, its registered office at 137 Daisy Street, corner Grayston Drive, Sandown. The applicant was dismissed on 8 October 2008. The second respondent was only registered on 8 December 2008 and started operating in January 2009. Accordingly, as argued by Mr Bekker, it could not be liable for the actions of the first respondent as the two were separate entities.

Analysis

- [15] The matter emanates from the fact that the second respondent has refused to reinstate the applicant in terms of the Court Order dated 11 April 2013.
- [16] The applicant alleges that:
- 16.1 The first and second respondents share the same premises;
- 16.2 They share the same postal address and contact details;
- 16.3 They share the same directors;
- 16.4 The applicant’s letter of appointment was headed Renttech SA trading as Thermadyne Plant SA; and
- 16.5 The second respondent paid the amount of R15 880 into the trust account of the applicant’s attorney.

- [17] Numerous points, have been raised by the second respondent, however, the primary issue is whether it would be competent for this court to join the second respondent as party to a court order.
- [18] It was submitted on behalf of the second respondent that it was registered on 8 December 2008. The applicant was dismissed by the first respondent on 8 October 2008. As a result, thereof, it was argued that there could be no connection between the first and second respondent. The applicant has furthermore not alleged that there has been a transfer as a going concern as envisaged in section 197 of the Act.
- [19] Where I have sympathy for the applicant, it must be emphasised that Rule 22 is a provision for joinder of proceedings before the Labour Court. A final decision to make the arbitration award an order had already occurred on 11 April 2013. The core principles underlying the requirement for joinder were summarised in the *Amalgamated Engineering Union v Minister of Labour*: [3]
- ‘Indeed it seems clear to me that the Court has consistently refrained from dealing with issues in which a third party may have direct and substantial interest without either having that party joined in the suit or, if the circumstances of the case admit of such a course, taking other adequate steps to ensure that its judgment will not prejudicially affect that party’s interest.’
- [20] In the aforementioned case, the Appellate Division recognised that joinder of an interested party even at the appeal stage was not inappropriate and could be ordered *mero motu* by the appeal court, however, it must be emphasised that the Court was addressing a case where the question of joinder arose before judgment was handed down.
- [21] In *Du Preez v LS Pressing and Another*, [4] where Dobson AJ held that joining parties to proceedings where a final decision has already been rendered would have the effect of a judgment being taken and enforced against the parties without their cases ever being heard.
- [22] Further to the above, the second respondent was never joined to the conciliation proceedings before the CCMA and, accordingly, the applicant did not comply with section 191 of the Labour Relations Act, which requires referral of a dispute to conciliation before it can be adjudicated in the Labour Court.
- [23] In *National Union of Mineworkers of South Africa v Intervale (Pty) Ltd and Others*, [5] the Constitutional Court confirmed the decision of the Labour Appeal Court, where it was held that it is not competent to seek a joinder of a party where unfair dismissal allegation was not referred against such a Respondent to the CCMA.
- [24] With reference to the above authorities, the Applicant cannot now seek to join a party after a court order has already been handed down or where there has been no referral to the CCMA under section 191 (1) citing the second respondent as an employer to conciliation. A joinder, in such circumstances, is not competent. This in itself

disposes of the preliminary points raised and, therefore, I do not need to consider the further issues raised in this application.

Costs

[25] I now turn to the issue of costs. Normally, costs follow the result, however, I have considered the interest of fairness and justice, in accordance with Section 162 of the Act. I have taken into account that the applicant has not acted frivolous in this matter and, accordingly, I make no order as to costs.

Order

[26] The following order is made:

1. The application is dismissed.
2. No order as to costs

AH SHENE AJ

Acting Judge of the Labour Court

Appearances:

For the applicants: Mr A Goldberg of Goldberg attorneys

For the respondents: Advocate Bekker

Instructed by:

Nothnagel Attorneys (Appearing)

[1] Index to pleadings at p 67-68.

[2] Index to the Pleadings at p104.

[3] 1949

(3) SA 637 (A) at 659.

[4] (J861/11) 2012 ZALCJHB 74 (26 July 2012) at para 18.

[5] [2015] 2 BCLR 182 (CC).

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