

SOUTH AFRICA / JUDGMENT

Setona v Niewoudt and Others (J3977/99) [2002] ZALC 138 (14 May 2002)

[2002] ZALC 138

COURT

Labour Court

BEFORE

AA Landman

CASE / FILE NUMBER

J3977/99

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IN

THE LABOUR COURT OF SOUTH AFRICA

(HELD

AT JOHANNESBURG)

CASE

NO: J3977/99

6-5-2002

In

the matter between:

MAROBENG

JOHNNY SETONA Applicant

and

JACOBUS

GERRIT NIEUWOUDT First Respondent

KING

PIE POTCHEFSTROOM (PTY) Second Respondent

LIMITED

RANJEET

CHOUHAN Third Respondent

AUM

SOUNDS (PTY) LIMITED t/a Fourth Respondent

KING

PIE POTCHEFSTROOM

JUDGMENT

LANDMAN J:

1. Commissioner Eric Louw made an award in favour of the applicant, Mr Setona. The Commissioner found that King Pie Potchefstroom (Pty) Ltd had unfairly dismissed him. The award was made an order of this court on 20 June

2000. Mr Setona has tried unsuccessfully to obtain his reinstatement and the satisfaction of the order.

2. On this occasion, two applications serve before me. The first is an application by Mr Setona to join the following persons as respondents to the proceedings which have culminated in the order set out above. These persons are:

1. Mr J G Nieuwoudt.
2. Mr D van der Merwe Viljoen.
3. Dr S G van Niekerk.
4. Mr Ranjeet Singh Chouhan.

The first three persons are directors of King Pie Potchefstroom (Pty) Ltd, the judgment debtor. The fourth is a director of Aum Sound (Pty) Ltd t/a King Pie Potchefstroom. It is simply not competent to join any of these persons as respondents to an application which has been finalised and which has resulted in an order.

3. The first three persons, assuming that they, as directors, are in charge of the judgment debtor, could be cited for contempt of court if they fail to ensure that the judgment debtor reinstates Mr Setona. In fact, such an application has been brought and I shall deal with it later.

4. As far as Mr Chouhan is concerned, there is no factual or legal link between him and the judgment debtor. The fact that he is a director of a company that purchased a King Pie franchise from a company called "King Pie Potch (Pty) Ltd" (which is not the judgment debtor) is of no consequence. The application for his joinder may be borne out of Mr Setona's frustration but there is no legal basis for the application. No reliance is placed on section 197 of the Labour Relations Act 66 of

1995. The deed of sale between the judgment debtor and King Pie Potch (Pty) Ltd was apparently concluded before the dismissal of Mr Setona.

5. Mr Oosthuizen, who appeared on behalf of the judgment debtor and Mr Nieuwoudt, tendered the deed of sale for Mr Setona's perusal. Mr Setona, however, declined my suggestion that he look at it.

6. I turn to the second application which is for all four of the persons mentioned above to be found guilty of contempt of court and to be sanctioned accordingly. There is no case against Mr Chouhan. The application against him is vexatious and the application must be dismissed.
7. As far as the other three persons are concerned, they are all directors of the judgment debtor. They were not served with the application for their committal. It came to the attention of the judgment debtor and Mr Nieuwoudt after being served at Aum Sounds' pie shop in Potchefstroom.
8. Are the directors of the judgment debtor guilty of contempt of court? It has not been shown that any of them was aware of the court order of 20 June 2000. Nor, save for Mr Nieuwoudt, they were not served with notice of this application. As far as the judgment debtor is concerned, it is in default of its obligation to satisfy the debt. But, here too, there is no proof that the company was aware of the judgment. It is also said, by Mr Nieuwoudt, that the company is dormant. Whether this means that the judgment debtor has no assets and does not trade is something which I need not decide on these papers. The application therefore must fail.
9. If Mr Setona believes that the judgment debtor has assets and has a business in respect of which he can be reinstated, then he must apply for an enquiry to be instituted. He must, however, be aware that if the judgment debtor has no assets then the debt cannot be satisfied and that is the end of the road. This court cannot extract performance from a judgment debtor which has no means to satisfy the judgment.
9. In the premises:
 1. Both applications are dismissed.
 2. The applicant is to pay the costs of King Pie Potchefstroom (Pty) Ltd and Mr J G Nieuwoudt.
 3. The applicant is to pay the costs of R S Chouhan and Aum Sounds (Pty) Ltd on an attorney and client basis.

SIGNED AND DATED AT BRAAMFONTEIN THIS 14TH DAY OF MAY 2002.

AA Landman

Judge of the Labour Court of South Africa

For the applicant: In person

For the first and second respondents: Mr Oosthuizen of Viljoen & Meek Attorneys.

For the fourth respondent: Adv P Roopa instructed by De Villiers Attorneys.

Date of hearing: 6 May 2002.

Date of judgment: 14 May 2002.

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