

SOUTH AFRICA / JUDGMENT

Winnie Mabaso Foundation v CCMA and Others (J293/21) [2021] ZALCJHB 46 (24 March 2021) [2021] ZALCJHB 46

COURT

Labour Court Johannesburg

BEFORE

G. N. Moshwana

CASE / FILE NUMBER

J293/21

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The Labour Court of South Africa, JOHANNESBURG

Not Reportable

case no: J293/21

In the matter between:

THE WINNIE MABASO FOUNDATION

Applicant

and

THE CCMA AND OTHERS

Respondent

Heard: 23 March 2021 (Due to Covid19 lockdown, this matter was determined on the papers)

Delivered: 24 March 2021 (Due to Covid19 lockdown, this judgment was handed down electronically by sending a copy through email and the date of delivery shall be deemed to be 24th March 2021)

Summary: Urgent application – review of a jurisdictional ruling – defective service does not oust the jurisdiction of the CCMA. Section 158 (1B) prevents this Court to intervene at this stage and in due course. Application to stay baseless in law. Interdict not sought as a relief and shall not be entertained. Held: (1) The application is dismissed. Held: (2) There is no order as to costs.

Judgment

MOSHOANA, J

Introduction

- [1] The applicant, the Winnie Mabaso Foundation (WMF), a non-profit organisation, seeks an urgent review of a jurisdictional ruling made on 14 December 2020 and in the alternative a stay of the arbitration proceedings pending the outcome of the review of the jurisdictional ruling in the ordinary course. The application stands unopposed.

Background

facts

- [2] Given the view this Court takes at the end, it is unnecessary to give a full rendition of the facts of this dispute. It suffices to mention that one Xolani Sibanda (Sibanda) was employed by WMF and was retrenched on 21 June 2020. Aggrieved by his retrenchment, he referred a dispute to the CCMA. On 30 November 2020, the dispute was enrolled for arbitration. The applicant raised a jurisdictional point to the effect that due to defective service, the CCMA lacked jurisdiction over the dispute. On 14 December 2020, Commissioner Ngwane issued a ruling rejecting a jurisdictional point and directed that the dispute be enrolled for arbitration. The applicant is discomfited hence the present application.

Evaluation

- [3] This application is nothing but an abuse of Court processes. It was ill-conceived, hopeless and baseless in law. The applicant contends that the ruling is incorrect simply because the applicant was not served with the referral forms. There is no merit in this contention. The jurisdiction of the CCMA over dismissals based on operational requirements obtains from section 191
- (12) of the LRA. The issue of service has nothing to do with jurisdiction. Defective service is not tantamount to lack of jurisdiction. In terms of rule 6
- (3) of the CCMA Rules, the Commission at its discretion may accept proof of service in a manner other than prescribed in the Rules as being sufficient. Section 191
- (3) of the LRA provides that an employee must satisfy the Commission that a copy of the referral has been served on the employer. In terms of section 213 of the LRA serve in respect of the Commission means any other method of service specified in the Rules of the Commission.
- [4] On the applicant's own admission it attended the arbitration proceedings on 30 November 2020 despite lack of service of the

referral forms. Instead of defending itself against the alleged unfair dismissal claim, it chose to raise a technical defence. On that day it had an opportunity to exercise its audi alteram partem rule in line with section 34 of the Constitution of the Republic of South Africa. In *Akshardham (Pty) Ltd v JSR 108 Investments CC and others*[1], Meyer J aptly stated the following:

[14] This is not a case where the proceedings have begun without ‘notice’ or where there was mere ‘knowledge’ of the issue of summons. The summons were served incorrectly and the subsequent proceedings are, therefore, not void as JSR would have it...JSR has been afforded, and has utilised, the opportunity to be heard. There has thus been proper service and the non-compliance with the Uniform Rules of Court becomes irrelevant.

[5] Similarly, in *casu*, the applicant having appeared on 30 November 2020, it had the opportunity to be heard and the fact that the referral forms would

have been not served or served irregularly is of no moment. Rightfully, Commissioner Ngwane should not have entertained the point, since it was not in reality a jurisdictional point, but should have commenced with arbitration forthwith.

[6] The other insurmountable difficulty facing the applicant squarely is the provisions of section 158 (1B) of the LRA. The section prevents the Labour Court from reviewing any ruling made during arbitration proceedings before the issue in dispute has been finally determined except if the Labour Court is of the opinion that it is just and equitable to review before the issue in dispute has been finally determined. On the facts of this case, it is neither just nor equitable to review the jurisdictional ruling now or in due course. Therefore this application must fail. Additionally, there is no basis in law to even stay the arbitration proceedings involved in this matter, simply because the review is meritless now and in the future.

[7] Finally, the applicant in the founding papers make allegations that supports an interdict order whilst the notice of motion does not seek an interdict as a relief. In terms of rule 7 (2) (c) of the Labour Court Rules a notice of motion must set out the relief sought. In paragraph 32 of the founding affidavit, the applicant seeks orders as set forth in the notice of motion. Rule 7 (3)

(d) of the Labour Court Rules obligates that the supporting affidavit must clearly set out the relief sought. For these reasons

an interdict request shall not be entertained.

[8] In the results, I make the following order:

Order

1. The application is dismissed.
2. There is no order as to costs.

G. N. Moshoana

Judge of the Labour Court of South Africa

Appearances:

No appearances.

[1] (3128/17

[2019] ZAGPJHC 323 (16 September 2019)

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