

**IN THE LABOUR COURT OF SOUTH AFRICA  
HELD AT JOHANNESBURG CASE NO J3755/98**

In the matter between:

**MARIO OELOFSE**

Applicant

and

**QUICK CO 95(PTY) LTD t/a MUNCHIES INC** First Respondent

**STUDENT FAST FOODS CC t/a MUNCHIES INC** Second  
Respondent

**LUIGI BIANCO**

Third  
Respondent

**JOHANNA SUSANNA BIANCO**

Fourth  
Respondent

**JUDGMENT**

**JAMMY AJ**

1 On 26 May 1999, in proceedings under this case number but the parties to which were the Applicant and the First Respondent in this application, the latter being cited therein as the sole Respondent, this Court ordered, as a consequence of its determination that the dismissal of the Applicant by the Respondent was unfair, that the Respondent was to pay the Applicant "nine months remuneration, at the rate of remuneration earned by the Applicant at the time of his dismissal" and that it was to pay the Applicant's costs.

2 It is common cause that, pursuant to that order, a Writ of Execution of Movable Property was subsequently issued and executed by the Sheriff, an attachment of movable property purportedly belonging to the First Respondent was made and that interpleader

proceedings were thereupon instituted at the instance of the Second Respondent, represented by the Third Respondent, in which ownership of the movable property which had been attached, was claimed. It is not disputed that the Applicant, being apparently unable to comply with the Sheriff's request for security for the costs of the interpleader proceedings, thereupon launched the application now before this Court.

3The order sought by the Applicant in these proceedings is in the following terms:

- "1. That the Honourable Court make an order joining the Second, Third and Fourth Respondents jointly and severally, separately, or in the alternative as parties in the proceedings before the Honourable Court, to be bound by the Order of Court dated 26 May 1999.**
- 2. In the alternative, substitute the Second, Third and Fourth Respondents to the proceedings before the Honourable Court, to be bound by the Order of Court dated 26 May 1999.**
- 3. That the Honourable Court give any directions as to the further proceedings as it deems fit.**
- 4. Costs.**
- 5. Further and/or alternative relief."**

The application, supported by commendably formidable Heads of Argument and a plethora of legal authority submitted by the Applicant's Attorney, is based in relation to the Second Respondent, on an undisputed sale of the business of the First Respondent to the Second Respondent as a going concern and the consequent application of Section 197 of the Labour Relations Act 66 of 1995, and insofar as the Third and Fourth Respondents are concerned, on an allegation that the factual relationship between the four Respondents justifies the piercing by this Court of the corporate veil, and/or the application of the "doctrine of alter ego" on a basis which would render all of them jointly and severally liable to the Applicant for satisfaction of the Order of Court above referred to.

5. Notwithstanding the comprehensive factual submissions, legal argument and weighty authority submitted on behalf of the Applicant to support the justification for and validity of the relief which he seeks, this application is patently misconceived. The

Second, Third and Fourth Respondents were not before this Court when its Order of 26 May 1999 was made. The principle that no Court is entitled to give a judgment or make an order which

**"..... cannot be sustained and carried into execution without necessarily prejudicing the interest of parties who have not had an opportunity of protecting their interest by reason of their not having been made parties to the cause"** is emphatically enunciated by the Appellate Division in **Amalgamated Engineering Union v Minister of Labour 1949(3) SALR at page 653, citing Bekker v Meyring, Bekker's Executor (2) Menzies 436.**

6. The issue between the Applicant and the First Respondent, in the context of the Order of Court of 26 May 1999, is *res judicata* and it is an equally well established principle of law that a judgment cannot be pleaded as *res judicata* against someone who was not a party to the suit in which it was given. **Amalgamated Engineering Union v Minister of Labour (*supra*) at 651.**

7. Whether or not the conduct of the Respondents constituted an unlawful and collusive manipulation as the Applicant contends, the Second, Third and Fourth Respondents were entitled to be heard before any Order of Court affecting them or potentially prejudicial to their rights and interests, was made.

8. They were not, as I have stated, parties to the proceedings which culminated in the Order of 26 May 1999 and just as that Order cannot, for those reasons, operate against them, nor can it be pleaded by them as *res judicata* in any separate action against them. The Applicant's proper course of action should accordingly have been, and may still be, to institute independent action against those parties in terms of the relevant provisions of the Labour Relations Act and on the basis of the comprehensive factual allegations and legal submissions presented in these proceedings. If there is indeed a corporate veil to be pierced or any other basis upon which the Second, Third and Fourth Respondents may held legally answerable to the Applicant, it is in that context that it must be established. Financial constraints such as those which purportedly precluded the Applicant from entering into the

interpleader arena, cannot justify a course of action which has no foundation in law.

9. For these reasons, I make the following Order:

9.1 The application is dismissed.

9.2 The Applicant is ordered to pay the Second, Third and Fourth Respondents' costs.

**B M JAMMY AJ**