

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

CASE NUMBER: C175/97

In the matter between :
DAPHNE Q HORNE

Applicant

and

INDEPENDENT MEDIATION SERVICE OF S.A. First Respondent

SOUTH AFRICAN BREWERIES

Second Respondent

FOOD AND ALLIED WORKERS UNION

Third Respondent

JUDGEMENT

ZONDO J:

[1] After hearing argument by Mr David Loxton, who appeared for the second respondent in this matter on the 28th may 1998, I dismissed the application. Since then the applicant has requested reasons for the dismissal of the application. These are they.

[2] The applicant was previously employed by the South African Breweries Ltd, the second respondent in this matter. She was dismissed in November 1996. A dispute arose about the fairness or

otherwise of the applicant's dismissal. That dispute was the subject of an arbitration which was conducted under the auspices of the Independent Mediation Service of South Africa ("**IMSSA**") the first respondent in these proceedings. In a 15 page award, the arbitrator in that matter concluded that the applicant's dismissal was fair and dismissed the applicant's claim.

[3] The arbitrator's award was signed on the 18th July 1997 and "**published**" on the same day. I use "**published**" here in the context of sec 33(2) of the Arbitration Act, 1965 (Act No 42 of 1965) ("**the Arbitration Act**"). The relevance hereof will be apparent later on in this judgement. On the 10th October 1997 the applicant filed with the registrar certain papers which form the basis of her case in this matter. The first document is headed : "**Motion of appeal in terms of section 157(3) of the Act**". That document says:

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It is addressed to the First Respondent, the Second and Third respondents. That document was accompanied by a statement signed by the applicant. At the end of that statement appears

stamp of a Commissioner of Oaths - one Myrtle Carol Flanders-Koeul. There are no annexures to the statement. A reading of the statement gives one the impression that the intention of the applicant is to have the award reviewed served and set aside. The second and third respondents filed opposing affidavits. The first respondent does not oppose this application.

[4] When this matter was called, Mr F. Rautenbach appeared for the applicant. Mr D. Loxton appeared for the second respondent. Mr Rautenbach then applied for the matter to be postponed in order to give the applicant the opportunity to re-look at her papers with a view to supplementing them. It was clear from what Mr Rautenbach said that the intention was to give the applicant an opportunity to file papers presenting a new case altogether. Trying to explain from the Bar why this was not done much earlier, Mr Rautenbach indicated that earlier on it had not been realised that the matter could be presented in the manner in which it was now sought to present it. This postponement application was strenuously opposed by Mr Loxton. I refused the application for postponement.

[5] The applicant had launched the application on the 10th October 1997. The matter was being heard on the 28th May 1998 which means that the matter had been pending for eight months. The second respondent had filed and served its opposing affidavits about the 5th December 1997. The applicant had never filed replying affidavits in

response to such affidavits. About six months after the applicant had received the second respondent's answering affidavits, not only had it not used that time to file a reply but it was now seeking a postponement of the matter to basically come back to Court with a new case. Mr Rautenbach did not indicate what the new case would be. In other words it was possible that after considering the matter, the applicant could conclude that it had no case to pursue. I conclude that it had not been shown that a postponement would serve any useful purpose nor had it been shown that there was a good explanation why the postponement was not sought much earlier. Furthermore the second respondent had already incurred a lot of costs to oppose the particular case which was before the Court. On a consideration of all these factors and the need to bring about finality to litigation, I concluded that I should refuse the application for a postponement. I ordered accordingly.

[6] After the applicant's application for a postponement had been refused, Mr Rautenbach asked for the matter to be stood down to enable the applicant to consider her position. The matter was stood down. When it was called up later, Mr Rautenbach informed the Court that he had no instructions to argue the matter and asked to withdraw from the proceedings. This was granted. After Mr Rautenbach had withdrawn from the proceedings, there was no appearance for the applicant. The matter proceeded and Mr Loxton presented argument for the dismissal of the application.

[7] This purported review application purported to have been brought in terms of sec 157(3) of the Labour Relations Act. Sec 157 (3) says :-

“Any reference to the Court in the Arbitration Act, 1965 (Act no. 42 of 1965), must be interpreted as referring to the Labour Court when an arbitration is conducted under that Act in respect of any dispute that may be referred to arbitration in terms of this Act”.

[8] The applicant’s application was beset with numerous difficulties. Firstly there was no notice of motion - let alone one which is appropriate in review applications. Secondly the statement accompanying the applicant’s so- called **“motion of appeal”** was not an affidavit even though there was a stamp of a Commissioner of Oaths appearing at the end thereof. The requirements for a document to be an affidavit had simply not been met. Thirdly the arbitrator had not been called upon to furnish the record of the arbitration proceedings which were sought to be reviewed.

[9] Apart from the above difficulties, the applicant simply made a bare allegation that the arbitrator had not applied his mind to the matter and did not substantiate that allegation in any way. I am of the opinion that the arbitrator properly and thoroughly applied his mind to the matter before him. Even if the Court were to overlook all the other

difficulties I have referred to above, in the end the applicant's complaint in this matter is not supported by any evidence. In those circumstances I consider that the application feel to be dismissed and dismissed it with costs.

ZONDO J

Labour Court of South Africa

Date of Trial : 28 May 1998

Date of Argument : 28 May 1998

Date of Judgement : 28 May 1998

For the Applicant

Instructed by

For the Respondent

Instructed by