

VIC & DUP/JOHANNESBURG/LKS

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

DATE: 17 SEPTEMBER 1999

CASE NO. J166/99

In the matter between:

KHENSIWE MASHEGO

Applicant

and

MULTI-HIRE (PTY) LTD

Respondent

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J U D G M E N T

BRASSEY, AJ: In this matter the applicant comes before me on a statement of claim which indicates that she was dismissed on the grounds of theft. The salient allegation is the following: The applicant was dismissed on 11 January 1999. The reason was that "we were getting our salaries from our bank account and my employer deposited money into my account by mistake. I assumed that someone deposited the money. On my arrival at work I was told that I stole the money and I

was commanded to pay it in cash or I must face dismissal. No hearing to explain the side of my story."

In the following paragraph the legal issues are said to be the following: Unfair dismissal. No hearing was held. Audi alteram partem rule not followed. Duress. I either pay in cash or I am dismissed. In paragraph 9 the relief sought is set out as compensation.

The/..

The respondent has filed a reply in which certain points in limine are taken. The first is that the applicant has failed to comply with the provisions of section 191 of the Labour Relations Act, 66 of 1995. In support of the allegation the respondent alleges that it falls under the jurisdiction of the bargaining council for the Road Freight Industry and that the applicant has failed to refer the dispute to the bargaining council for conciliation. This is a matter on which, in these proceedings, I am unable to pronounce since evidence is required to indicate what precisely is the nature of the respondent's business.

The second point in limine is different however in that it is one that I can and must decide in these proceedings. The point is recorded in the following

terms in the respondent's reply: "The applicant has nowhere alleged that the reason for dismissal is one of the grounds contemplated in section 191(5) of the Labour Relations Act". Accordingly, it is stated, this Honourable Court does not have jurisdiction to hear this matter. That point, it seems to me, is well taken. There is nothing in the statement of case to indicate that this matter comes properly before the Labour Court, on the contrary it appears to be a matter that should, as the respondent suggests, either be submitted to the applicable bargaining council or if it does not have jurisdiction to the Commission for Conciliation, Mediation and Arbitration. The point on jurisdiction is therefore well taken and this application must consequently be dismissed.

When this matter was called I asked the applicant whether she was represented by an attorney. She said that

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she was and told me that a certain Adam Creswick had been appointed at her request by the Legal Aid Board. She told me further that she expected her attorney to be appearing in court on her behalf today. I asked the interpreter to make an effort to communicate with Mr Creswick by telephone and he has reported back to me

that the numbers given on the business card simply rings and rings.

On the facts that have been placed before me I cannot escape the conclusion that Mr Creswick is in dereliction of his duty as an attorney and I consider it appropriate to draw the attention of the Legal Aid Board to his conduct. Accordingly I make an order that this judgment be typed and submitted to the Director of the Legal Aid Board for his attention. If, after considering the matter, he considers that a prima facie case of dereliction of duty is disclosed against Mr Creswick, he will be at liberty to refer this matter to the appropriate disciplinary bodies. For the purpose of his enquiries I record the following, that Mr Creswick's offices are at No. 1 The Avenue, Corner Henriette Road, Orchards, Johannesburg. His P O Box number is 10531, Johannesburg, 2000. His telephone number is 728-1124. His fax number is 483-3077 and his Docex number is 332, Johannesburg.

This application is dismissed.

BRASSEY AJ

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