IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN JOHANNESBURG

Case no. J 450/98

In the matter between:

Vela Dlamini and Others Applicants

AND

Savo Sakota 1st

Respondent

Ritso Sakota 2nd

Respondent

Durban Deep Wholesale Meat 3rd

Respondent

Meat ‘n More 4th

Respondent

Dartprops 5th Respondent

–

JUDGMENT

–

MLAMBO J.

1. This is an application to join one Ranko Sakota as a respondent in these proceedings. When the dispute was initially referred to this court for adjudication the respondents were as follows:

1.1_ Sakota Savo - first respondent;

1.1_ 1.2_ Sakota Ritso - second respondent

1.3_ Durban Deep Wholesale Meat - third respondent ;

1.4_ Meat 'n More - fourth respondent and

1.5_ Dartprops - fifth respondent.

2. The first and second respondents are brothers and are cited as respondents because it is alleged that they are co- owners (and/or partners) of the third to fifth respondents. Ranko Sakota the person now sought to be joined as sixth respondent is apparently the father of the first and second respondents . The basis for joining him is that it is alleged that he is a business partner of the first and second respondents and also co-owner of the third to the fifth respondents.

3. The parties could not agree on the procedure to be followed and the court ruled that it would hear evidence from both parties on the joinder point then make a ruling. Thereafter the matter would be re-enrolled for the trial proper.

4. The applicants main witness on this issue was Laas Vicky Baloyi ("Baloyi"). He testified that he was employed on 18 February 1997 to vacuum and cut meat. He was employed at what he called, Durban Deep Meat & More in Roodepoort. He testified that at some stage he was transferred to Meat 'n More Eastgate but later returned to Rodepoort. He confirmed that he knew Vela Dlamini, one of the individual applicants. He was referred to Dlamini's payslips which reflected that on 7 January 1995 he was employed at Meat 'n More - Northgate, on 10 January 1998 he was employed at Durban Deep Wholesale Meat. He was also referred to a document headed "Durban Deep Wholesale Meat" dated 12 January 1998 being a letter confirming that Dlamini had been an employee of the said

Durban Deep Wholesale Meat at a salary of R 425- 00 per week. He confirmed that other individual applicants worked at the different outlets of Durban Deep Wholesale Meat, Meat More and Dartprops, at different points in time.

5. Baloyi was also asked to confirm a number of other documents. These documents bore testimony to the fact that the individual applicants were policy holders of Anchor Life. The documents also reflected that premiums were collected by Durban Deep Wholesale; Durban Deep Bloemfontein; Durban Deep Dartprops; Durban Deep Alexandra; Durban Deep Dobsonville; Durban Deep Grobelsdal; Louis Tritchard, Potgietersrus, Cresta And Burgersfort.

6. Baloyi also confirmed that he and the other individual applicants were members of the Meat ‘n More Provident Fund. R Sakota is reflected as the principal employer for purposes of the provident fund. This R Sakota is also reflected as trading as Meat ‘n More. Baloyi also testified that he and the other

individual applicants, irrespective of where they were employed or based were under a single human resource management.

7. Baloyi's evidence also covered the fact that the Meat 'n More logo appeared on the letter head of Durban Deep Wholesale Meat (third respondent) and on the business card of Dartprops 43 (fifth respondent). He also testified that drivers employed at Durban Deep Wholesale Meat (third respondent) used to load meat at Durban Deep Wholesale Meat in Roodepoort proceeded to Dartprops (fifth respondent) and load more meat in boxes and then deliver at the various outlets of Meat 'n More (fourth respondent).

8. Albert Ndlovu was also called to testify on behalf of the applicants. He testified that he was employed as a driver on 2 April 1996 by Durban Deep Wholesale Meat (third respondent) in Roodepoort. He confirmed Baloyi's evidence that as drivers they loaded meat at Durban Deep Wholesale Meat then went to load frozen meat from Dartprops and then delivered the meat to

the outlets of Meat ‘n More. He testified that all drivers and trucks came from Durban Deep Wholesale Meat and none from Dartprops. He also confirmed when showed photos of trucks that they were the trucks they used. These trucks bear the Meat ‘n More logo.

9. The respondent’s evidence came from Mathys Johannes Swart who testified that he was an accountant practising for his own account and that he was the accountant for Durban Deep Wholesale Meat and Meat ‘n More (third and fourth respondents). He is also the auditor of a company called Dartprops 43 (Pty) Ltd. He testified further that : Durban Deep Wholesale Meat was a partnership of Risto and Savo Sakota, Meat ‘n More was a partnership of the father (Ranko Sakota) and five of his children. During December 1998 the Meat ‘n More outlets were sold to Meat n’ More (Pty) Ltd whose shareholders are the Sakota brothers and their two sisters i.e Dragoljub Sakota Milica Bodokouglo and Ranka Zatezaco. He also testified that the Sakota family was engaged in a number of

business ventures but the administration of the different businesses was conducted at one central office; he also acted as auditor of Durban Deep Butchery (Pty) Ltd which was later converted into Durban Deep Butchery CC whereafter the interest of the partners or members was then sold. He testified that there was no relationship or connection between Meat 'n More and Durban Deep Wholesale Meat and that separate books of account are kept for each entity. He testified that the businesses were totally unrelated in all respects save for the single administration.

10. According to Swart the only respondent in this matter is Durban Deep Wholesale Meat ("the third respondent). However according to the applicants all the respondents including Ranko Sakota are one and the same employer though trading in several outlets and in different venues.

11. Rule 22 of the rules of this court provides:

"1 The court may join any number of persons, whether jointly,

jointly or severally, separately, or in the alternative , as parties in proceedings, if the right to relief depends on the determination of substantially the same question of law or facts.

2(a) The court may, of its own motion or on application and on notice to every other party, make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.

2. When making an order in terms of paragraph (a), the court may give such directions as to the further procedure in the proceedings as it deems fit, and make an order as to costs."

Herbstein & Van Winsen (Juta) 1997 in **"The Civil Practice of the Supreme Court of South Africa"** at page 170 state: **"If a third party has or may have, a direct and substantial**

interest in any order the court might make in proceedings or if such an order cannot be sustained or carried into effect without prejudicing that party, he is a necessary party and should be joined in the proceedings,..". At page 172 a "direct and substantial interest" is described as **"an interest in the right which is the subject matter of the litigation and not merely a financial interest which is only an indirect interest in such litigation."**

12. In a dismissal dispute where joinder is in issue a party that may closely be connected with the employment, supervision and remuneration of the employee has a direct and substantial interest in the outcome of the dispute. That party should be joined and or can demand to be joined in the proceedings.

13. It is clear therefore that Durban Deep Wholesale Meat as a partnership of Risto and Savo Sakota have a direct and substantial interest in this matter. They should have been cited

as Risto and Savo Sakota trading as Durban Deep Wholesale Meat.

14. I am of the view that the proper approach regarding the other respondents is to consider the business activities of the Sakota family on the one hand and those of the entities they created to conduct their businesses and how these affected the employment of the individual applicants.

15. I accept the evidence of Mr Swart that other than the partnership of Durban Deep Wholesale Meat and Meat ‘n more there are other entities such as Durban Deep Butchery(Pty) Ltd, Dartprops 43 (pty)Ltd. However there are several common denominators amongst these entities and they are:

15.1 They are all engaged in one trade, i.e. the meat trade.

15.2 They all involve the same family, i.e a father and his sons and daughters.

15.3 Save for Meat ‘n More (Pty) Ltd they all utilize a single administration office.

15.4 They all utilize the same marketing logo i.e Meat ‘n More.

16. The entity known as Durban Deep Wholesale Meat is the only one mentioned by Swart as the employer of the individual applicants. It is in this regard that the evidence of Baloyi and Ndlovu becomes crucial. Their evidence that their pay slips reflected different employers at certain stages must mean something. For instance if Vela Ndlamini was an employee of Durban Deep Wholesale meat then that is what his payslip should reflect. That payslip cannot at a different stage reflect the name Meat ‘n More and at another stage again reflect Durban Deep Wholesale Meat as employers. This confirms the applicants’ evidence that they were employed interchangeably amongst the different businesses.

17. The applicants’ evidence that they loaded meat at Durban Deep Wholesale Meat and also at Dartprops and thereafter delivered it at Meat ‘n More outlets is unchallenged. There was no evidence from the respondents to the effect that other business

entities had their own employees. More telling is the fact that the trucks used to load and deliver the meat were driven by the same employees and the same trucks serviced all the business entities.

18. I can also not ignore the fact that the trucks bore the same logo common to all the business entities. I can also not ignore the fact that a partner in one entity could also be managing director of one of the other business entities. In my view all the members of the Sakota family mentioned in these proceedings as well as the business entities they were involved in were intimately connected and involved to the employment of the individual applicants. In my view they all have a direct and substantial interest in the outcome of the present litigation.

19. In my view all the business entities i.e. Durban Deep Wholesale Meat; Meat 'n More; Durban Deep Butchery (Pty) Ltd and/or Durban Deep Butchery CC; Meat 'n More (Pty) Ltd; and all the Sakota family members named in this litigation were all

engaged in the same enterprise. They are for all intents and purposes one and the same employer of the individual applicants. The joinder application should therefore succeed and the court, of its own motion, also joins Durban Deep Butchery (Pty) Ltd and/or Durban Deep Butchery CC; Meat ‘n More (Pty) Ltd and Dartprop 43 (Pty) Ltd as respondents in this matter.

20. The order of the court is therefore:

20.1 The joinder application is upheld.

20.2 Ranko Sakota is joined as a respondent in these proceedings jointly and severally.

20.3 Durban Deep Butchery (Pty) Ltd and/or Durban Deep Butchery CC, Meat ‘n More (Pty) Ltd and Dartprops 43 (Pty) Ltd are joined in these proceedings as respondents jointly and severally.

20.4 The costs of this application shall be costs in the cause.

Mlambo J.

Date of judgment: 15 April 1999.

For the applicants: Mr Maluleke of National Entitled Workers Union.

For the respondents: Mrs Moyses instructed by Sampson Okes,

Higgings Inc.