

Sneller Verbatim/LR

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**IN THE LABOUR COURT OF SOUTH AFRICA****BRAAMFONTEIN****CASE NO: J3642/00**Heard on: **2001-07-24**Delivered on : **2001-07-27**

In the matter between

**T J MAGANO**

Applicant

and

**MEC FOR EDUCATION GAUTENG PROVINCE**

Respondent

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**J U D G M E N T**

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**PILLAY, J:** This matter was set down for hearing of several interlocutory applications. On 24 July 2001 the court granted an order dismissing the application for the joinder of the Education Labour Relations Council as the second respondent with costs. Herewith my brief reasons for that order.

The claim against the E L R C was purportedly for delictual damages arising from the way the E L R C handled the applicant's case. This court has no jurisdiction over a dispute between a bargaining council and an employee of a party to the council as it is not a dispute between an employer and an employee. Whereas the court is expressly empowered in terms of section 158(1)(e) to adjudicate a dispute between a trade union or employer's organisation and its members, a similar power is not granted for disputes between a bargaining council and the employees of a party to it.

It also seemed that the application for the joinder was aimed at securing the attendance of representatives of the E L R C as witnesses as certain documents were required by the applicant for trial. The applicant was directed to use the process of subpoenaing witnesses who are relevant and to request that they produce such documents that are in their possession that the applicant requires.

Insofar as the claim against the E L R C may be for delictual damages, see the judgment below regarding the exception to strike out.

The court also disposed of an application by the applicant for documentation and disclosure on the basis of an undertaking by the respondent to respond formally by affidavit to the application appearing from page 209 of the bundle within ten days.

The court reserved judgment on the remaining applications.

Herewith the judgment on those applications.

The applicant's applications as pleaded had to be clarified at the hearing as there was much difficulty in understanding precisely what the issues were and what relief was sought.

The applications for assistance by the court in securing the attendance of expert witnesses and to provide the financial resources for such witnesses are refused. The applicant is once again directed to secure the attendance of such witnesses as are relevant to the issues in dispute by subpoena if necessary and at his own costs. The court has neither the resources nor the power to pay for the witnesses of a party. If the court wishes to call its own witnesses it may do so in exceptional circumstances and once it is satisfied that such expert testimony is required and is available.

The application for an order for the payment of an allowance being the equivalent of the applicant's salary pending the finalisation of the dispute is refused. Every employee who is dismissed experiences financial hardship. Unlike the old LRA the legislature has not empowered the Labour Court to grant so-called "*status quo*" orders pending finalisation of the dispute.

The applicant's launched an application to compel the respondent to admit or deny the authenticity of signatures of certain officials. If the applicant disputes the signature of such officials he will have to prove his case at the trial. The proper procedure for raising such issues is at a pretrial conference. If the respondent fails to respond at all or adequately to the inquiry, the applicant can request a pretrial conference before a judge or approach the trial court for an appropriate costs order. However, this court does not in its discretion consider it appropriate to compel such a response from the respondent at this stage.

Then there is the application for a directive to verify tape-recorded

information relating to the disciplinary inquiry. The applicant alleges that the tape-recordings were tampered with. If the applicant intends to challenge the authenticity of the tape-recordings he must do so in the usual way through witnesses at the trial. The court is not an expert to determine the authenticity of tapes by listening to them.

Finally, the respondent's application to strike out is granted as prayed for the following reasons:

The applicant seeks reinstatement. Insofar as the issues raised in the paragraph struck off do not go to proving the fairness or unfairness of his dismissal, they are irrelevant, vexatious or embarrassing and must be struck off.

Furthermore, this court has no power to award any compensation beyond that authorised by section 194 of the LRA. If it were the intention of the legislature not to cap damages, but to permit claims for delictual damages it would have said so expressly because every dismissal is potentially a delictual claim. In the circumstances the application to strike out must succeed.

With regard to costs, the applicant was unsuccessful in every application that he has launched and canvassed above. He also failed to resist the respondent's application to strike out. The applicant's "pleadings" were voluminous and extremely cumbersome to work through. The costs of all the applications must therefore be paid by the applicant.

PILLAY J