

Sneller Verbatim/MLS

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JS 313/02

2002-11-20

In the matter between

SAAPAWU & OTHERS

Applicant

and

CARRADALE WHOLESALE

Respondent

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J U D G M E N T

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LANDMAN J: The applicants in this matter are the South African Agricultural Plantation and Allied Workers Union, Wilson Singo and 23 others. Their statement of claim cites as the respondents Carradale Wholesale CC and Carradale Estates CC.

Both are reflected as having their place of business on portion 1 of 34, portion of portion 16 of the farm Bokfontein

448 Brits, North-West Province.

Paragraph 4.1 of the statement of case alleges that the dispute is in respect of the automatically unfair dismissal of the individual applicants "by the respondent on 24 November 1999 for refusing to give up union membership of a trade union."

The facts upon which the applicants rely are conveniently set out in the statement of case ... (inaudible) November 1999 Kenneth Musharine, the supervisor of the respondent, learnt that the individual applicants had joined the first applicant, i.e. the union. He reported the facts to Jenny McKenzie who was a member of the respondents.

On 24 November 1999 Musharine called a meeting of all the respondent's employees. At that meeting Musharine instructed the respondent's employees that those who have joined the union should proceed to the union offices to deregister their membership of the union and only thereafter may they report for duty.

Individual applicants decided not to deregister their union membership. Musharine then told them that they would not be allowed to report for duty. Two of the employees did in fact deregister their union membership and were allowed to

report for duty.

On 25 November the individual applicants approached the union organiser who immediately approached the respondents, however, the respondents refused to allow the individual applicants to report for duty unless they deregister their membership of the union.

The applicants did not accept this and tendered their services to the respondents.

A liberal interpretation would indicate that the applicants alleged that they were employed by the respondents, it is not clear whether it is alleged that they were employed by both CC's or the CC's jointly. I am alive to the probabilities that farm workers would ordinarily not know that they may be employed by a corporate body.

In this case the respondents have been identified as the employers or as the employer. But Mr Zitha who appears on behalf of the applicants stated from the bar that the individual applicants do not know who their true employer is. I assume that this relates to the CC's which have been cited as the respondents.

Carradale Wholesale CC is alleged by Mr A P McKenzie of Carradale Estates CC to have ceased trading in December

1999. This must be taken to have occurred after the dismissal for whatever cause of the individual applicants.

The member or members of Carradale Wholesale CC, Jennifer Ann McKenzie, died on 16 August 2000. Mr McKenzie is the executor of her estate. He alleges that the CC no longer exists and Mr Beaton submitted from the bar that it was in voluntary liquidation.

Carradale Estate CC alleges that it had not employed the individual applicants according to the affidavit by Mr McKenzie who says that he is the sole member of that CC. This affidavit was filed in regard to the condonation of the late filing of the statement of response.

Mr Zitha who appeared for the applicants has conceded after the matter was raised, well, judgment had been reserved, that Carradale Wholesale CC no longer exists. This means that the action is not pursued against the CC.

What is left is the possibility that either Carradale Estate CC or Carradale Estate CC and the defunct CC were the employers. It seems, however, that the applicants now merely allege that Carradale Estate CC was their employer.

Mr McKenzie who is, as I have indicated, the sole member of the CC explains that the defunct CC employed the

individual applicants.

He says:

"As can be seen from the second respondent's reply to the statement of case filed by the applicants, the first respondent no longer exists, it ceased operating during December 1999 and this cessation of activities was proceeded by retrenchment of the individual applicants. I personally lent money to my know deceased sister who ran the business of first respondent to pay the severance packages to the individual applicants."

The first respondent of course refers to the now defunct CC.

Mr McKenzie's affidavit does not say that Carradale Estate CC did not employ the individual applicants, although this is his case as set out in the statement of response.

I should mention the allegation of an automatically unfair dismissal where it is concerned, the applicants allege that "the supervisor of the respondent" reported the facts to Jenny McKenzie "who was a member of the respondents."

The instruction to resign the union membership apparently emanated from this report to her. This appears too from paragraph 5.2 of the statement of case. It seems to

be alleged by Mr McKenzie that Ms McKenzie was the sole member of the defunct CC, however, this is not entirely clear.

The relevant page of form LRA7/11 reflecting the dispute which has been sent to the CCMA sets out the details of the employer, however, this portion of the form has not been completed. But the proof of service of the referral of the CCMA notice regarding the conciliation hearing and the certificate of outcome, the union's letter of 10 March 2000, the largely illegible letter WS5(ii), the union's letter of April 2000, 26 July 2000 and 14 September 2000 are all addressed to the defunct CC.

The first two documents mention the late Ms McKenzie by name. I do not know if there was cross-membership of the CC's when Ms McKenzie was alive. This was not canvassed in the applicants' papers. The records in the company's office would reveal whether or not this was the case.

The applicants in my opinion did not show a *prima facie* case that Carradale Estate CC was the employer. This taken together with the delay of one year and eleven months which is only partly explained, leads me to the conclusion that the application for condonation should be refused.

The application is dismissed and there is no order as to

costs.

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